

07-1865-CD

Peter Smith vs Cld Cty Tax Claim

2007-1865-CD

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Peter F. Smith,
Appellant

v.
Clearfield County Tax Claim Bureau

: No. 1580 C.D. 2008
: Argued: May 5, 2009

5 JUN 19 2009
m/11:00/09
William A. Shaw
Prothonotary/Clerk of Courts

FILED

BEFORE: HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: June 17, 2009

Peter F. Smith (Smith) appeals from the April 22, 2008 order of the Court of Common Pleas of Clearfield County (trial court) ultimately qualifying Michael Rudella (Rudella) as the only remaining party eligible to buy the property at issue for an amount equal to the upset value as of the date of purchase, plus all additional costs incurred by the Tax Claim Bureau (Bureau). The issues before this Court are whether the trial court erred as a matter of law or abused its discretion in determining that Smith was not qualified to participate in an auction-style sale for the coal rights, and whether the trial court erred as a matter of law or abused its discretion in failing to fix a minimum price as required by statute. For the reasons that follow, we affirm the trial court.

Smith Coal Company (Company) owns 100 acres of coal rights in Clearfield County. The Company failed to pay real estate taxes for approximately thirteen years. Multiple public sales did not result in the purchase of the rights but,

on February 7, 2007, Rudella submitted a private bid of \$200.00 to purchase the coal rights. Rudella's bid was to be accepted at a private sale on December 27, 2007. On November 14, 2007, Smith, who is a shareholder in the Company, filed a Petition to Disapprove the Private Sale. The trial court issued an order on November 13, 2007 disapproving the private sale to Rudella, and ordering the Bureau to conduct an auction-style sale between Smith and Rudella with a starting price of not less than \$1,928.11.

Rudella filed a Motion to Rescind Court Order and Disqualify Bidder, requesting a hearing on the disapproval of the private sale, and asking the trial court to determine that Smith was not qualified to bid at the auction-style sale pursuant to Sections 618 and 619 of the Real Estate Tax Sale Law (Tax Sale Law)¹ because he was the owner of the property. Smith filed an answer to Rudella's motion wherein he admitted that he was ineligible to participate in the auction-style sale pursuant to Section 618 of the Tax Sale Law. On February 25, 2008, Rudella filed a Motion for Judgment on the Pleadings relative to his Motion to Disqualify Bidder. The trial court scheduled argument for March 3, 2008. At the hearing, Smith changed his position and claimed that he may have the right to bid at an auction-style sale.

Following the hearing and the submission of briefs, the trial court entered an order: (1) rescinding the trial court's November 13, 2007 order disapproving the private sale; (2) disapproving the private sale to Rudella for \$200.00; (3) ruling that the provisions of Section 613² of the Tax Sale Law do not

¹ Act of July 7, 1947, P.L. 1368, *as amended*, 72 P.S. §§ 5860.101-5860.803. Section 618 was added by Act of July 3, 1986, P.L. 351, 72 P.S. § 5860.618. Section 619 was added by Act of January 29, 1998, P.L. 24, 72 P.S. § 5860.619. While Rudella mentioned Section 619 in the instant appeal, the trial court did not address it, and it was not addressed in detail in any of the briefs filed in this Court in the instant matter; therefore, Section 619 will not be addressed in this opinion.

² 72 P.S. § 5860.613.

allow an owner to participate in an auction-style sale as a “party to the proceeding”; (4) granting Rudella’s Motion to Rescind Court Order and Disqualify Bidder; (5) dismissing, as procedurally incorrect, Rudella’s Motion for Judgment of the Pleadings; and (6) identifying Rudella as the only remaining party qualified to buy the property for an amount equal to the upset value as of the date of purchase, plus all additional costs incurred by the Bureau. Smith appealed to this Court.³

Smith argues that Section 613 of the Tax Sale Law expressly authorizes property owners to petition the court for disapproval of a private sale, and thereby enables owners to participate as a party in proceedings, such as an auction-style sale.

Section 613(a) of the Tax Sale Law states in relevant part:

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). However, Section 618 of the Tax Sale Law prohibits an owner from purchasing his own property at a judicial or private sale. Smith has an ownership interest in the coal rights at issue in this case. Reproduced Record (R.R.) at 52a. He filed a petition to disapprove the private sale, indicating that the bid of \$200.00 by Rudella was insufficient to cover outstanding taxes. R.R. at 10a. There is no dispute that Smith had a right to petition to disapprove the sale of the coal rights for \$200.00, pursuant to Section 613(a) of the Tax Sale Law. However, he argues

³ 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).

that this section also makes him a “party to the proceedings” which allows him to bid on the property. We disagree.

Finding that an owner is allowed to participate in an auction-style sale as established in Section 613 of the Tax Sale Law simply because he is a “party to the proceedings,” would defeat the purpose of Section 618 of the Tax Sale Law. In addition, Section 613(a) of the Tax Sale Law states: “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.*” (Emphasis added). Section 618 of the Tax Sale Law specifically states that an owner may not purchase his own property *at a judicial sale under the provisions of this act.* Since the only types of sales allowed under Section 613(a) of the Tax Sale Law are judicial or private sales, the owner will never be allowed to participate in the purchase of the property.⁴ The auction-style sale is merely a means of carrying out either the judicial or private sale required in Section 613(a) of the Tax Sale Law. Therefore, the trial court did not err as a matter of law or abuse its discretion in determining that Smith was not eligible to participate in the auction-style sale of the coal rights at issue.

Smith also argues that the trial court’s order did not fix a minimum sale price as required by Section 613(a) of the Tax Sale Law. Section 613(a) of the Tax Sale Law states, in relevant part:

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

⁴ According to Section 618 of the Tax Sale Law, an owner is also prohibited from purchasing his own property from the Bureau’s repository of unsold property.

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.

(Emphasis added). In the present case, the trial court did set a minimum price, although it is not spelled out in the order. The trial court's order included that following instruction: "Michael Rudella, as the only remaining party qualified to buy the property, shall have the right to purchase the coal rights *for an amount equal to the full upset price* as of the date of purchase, plus all additional costs incurred by the Tax Claim Bureau." R.R. at 60a (emphasis added). The trial court determined that Smith was ineligible to purchase the coal rights. In doing so, the only interested party remaining was Rudella. While the trial court did not specifically use language such as "the minimum price will be . . . , " it did indicate that Rudella would have to purchase the coal rights at the full upset price plus costs. That is the lowest amount the Bureau would accept for the purchase of the coal rights and, since there were no other parties to participate in an auction-style sale, it is the price that will have to be paid by Rudella if Rudella is to purchase the coal rights. Therefore, the trial court did not fail to fix a minimum price as required by statute.

For the reasons stated, the trial court's order is affirmed.

JOHNNY J. BUTLER

JOHNNY J. BUTLER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Peter F. Smith,
Appellant

v.

Clearfield County Tax Claim Bureau

No. 1580 C.D. 2008

ORDER

AND NOW, this 17th day of June, 2009, the April 22, 2008 order of the Court of Common Pleas of Clearfield County is hereby affirmed.

Johnny J. Butler

JOHNNY J. BUTLER, Judge

Prothonotary/Clerk of Courts
William A. Shaw

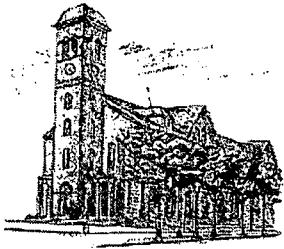
JUN 19 2009

FILED

Certified from the Record

JUN 17 2009

and Order Exit



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

June 27, 2008

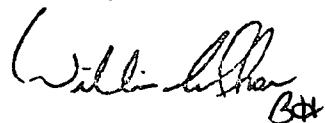
Superior Court of Pennsylvania
Office of the Prothonotary
600 Grant Building
Pittsburgh, PA 15219

RE: Peter F. Smith
vs
Clearfield County Tax Claim Bureau
No. 07-1865-CD
Superior Court No. 902 WDA 2008

Dear Prothonotary:

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

Sincerely,



William A. Shaw
Prothonotary

FILED
JUN 27 2008

Recd
William A. Shaw
Prothonotary/Clerk of Courts

20 A.M.

2007-1865-C0

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 902 WDA 2008

Page 1 of 3

May 29, 2008



Peter F Smith, Appellant

v.

Clearfield County Tax Claim Bureau

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: May 28, 2008

Awaiting Original Record

Journal Number:

Case Category: Civil

Case Type: Civil Action Law

Consolidated Docket Nos.:

Related Docket Nos.:

FILED

JUN 02 2008

5/11:55 AM

William A. Shaw
Prothonotary/Clerk of Courts

SCHEDULED EVENT

Next Event Type: Receive Docketing Statement

Next Event Due Date: June 12, 2008

Next Event Type: Original Record Received

Next Event Due Date: July 21, 2008

Appeal Docket Sheet

Docket Number: 902 WDA 2008

Page 2 of 3
May 29, 2008

Superior Court of Pennsylvania



COUNSEL INFORMATION

Appellant Smith, Peter F
 Pro Se: Appoint Counsel Status:

IFP Status: No

Appellant Attorney Information:

Attorney: Smith, Peter F.
 Bar No.: Law Firm:
 Address: Po Box 130 30 S. 2nd St.
 Clearfield, PA 16830
 Phone No.: (814)765-5595 Fax No.:
 Receive Mail: Yes
 E-Mail Address:
 Receive E-Mail: No

Appellee Clearfield County Tax Claim Bureau
 Pro Se: Appoint Counsel Status:

IFP Status: No

Appellee Attorney Information:

Attorney: Kesner, Kim C.
 Bar No.: 28307 Law Firm:
 Address: PO Box 1
 Clearfield, PA 16830
 Phone No.: (814)765-8972 Fax No.:
 Receive Mail: Yes
 E-Mail Address:
 Receive E-Mail: No

Attorney: Bell III, F. Cortez
 Bar No.: 30183 Law Firm: Clearfield County District Attorney's Office

Address: 318 E Locust St
 PO Box 1088
 Clearfield, PA 16830

Phone No.: (814)765-5537 Fax No.: (814)765-9730

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
5/22/08	Notice of Appeal	60.00	60.00	2008SPRWD000541

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas
 County: Clearfield Division: Civil

20 A.M.

ppel Docket Sheet

ocket Number: 902 WDA 2008

age 3 of 3

ay 29, 2008

Superior Court of Pennsylvania



ate of OrderAppealed From: April 22, 2008

Judicial District: 46

ate Documents Received: May 28, 2008

Date Notice of Appeal Filed: May 22, 2008

order Type: Order Entered

OTN:

udge: Ammerman, Fredric J.
President Judge

Lower Court Docket No.: No.07-1865-CD

ORIGINAL RECORD CONTENTS

Original Record Item

Filed Date

Content/Description

Date of Remand of Record:

BRIEFS

DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
May 28, 2008	Notice of Appeal Filed	Appellant	Smith, Peter F
May 29, 2008	Docketing Statement Exited (Civil)		Western District Filing 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:

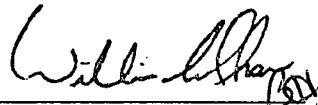
Peter F. Smith
VS.
Clearfield County Tax Claim Bureau
07-1865-CD

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

June 27, 2008.



William A. Shaw

Prothonotary/Clerk of Courts

(seal)

Date: 6/27/2008
Time: 02:50 PM

Clearfield County Court of Common Pleas

User: BHUDSON

Page 1 of 2

ROA Report

Case: 2007-01865-CD

Current Judge: Fredric Joseph Ammerman

Peter F. Smith vs. Clearfield County Tax Claim Bureau

Civil Other-COUNT

date		Judge
1/14/2007	New Case Filed. Filing: Petition to Disapprove Private Sale Paid by: Smith, Peter F. (plaintiff) Receipt number: 1921462 Dated: 11/14/2007 Amount: \$85.00 (Check) 2CC Atty P. Smith. Order AND NOW, this 13 day of November 2007, upon consideration of the Fredric Joseph Ammerman foregoing Petition, IT IS ORDERED AND DECREED that the proposed private sale by the Clearfield County Tax Claim Bureau of 100 coal rights assessed to Smith Coal Company and identified by Clearfield Assessment Map Number 115-N06-000-0000MN for the sum of \$200.00 is disapproved. Respondent shall conduct an auction-style bid of said 100 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 \$1,928.11. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Atty Smith (will serve)	No Judge No Judge
1/15/2007	Certificate of Service, filed. That a true and correct copy of a Petition to Disapprove Private Sale and Order was hand delivered to Clearfield County Tax Claim Bureau on November 15, 2007 filed by s/ Peter F. Smith Esq. No CC.	No Judge
1/31/2007	Motion to Rescind Court Order and Motion to Disqualify Bidder, filed by Att. Bell 6 Cert. to Atty.	No Judge
2/2008	Rule, this 2nd day of Jan., 2008, upon consideration of the Motion to Rescind Court Order, a Rule is granted on the Petitioner, Peter F. Smith, to show cause why said Motion should not be granted. Rule Returnable for Answer by the Petitioner and hearing on said Motion to be held on the 3rd day of March, 2008, at 9:00 a.m. in Courtroom 1. by The court, /s/ Fredric J. Ammerman, Pres. Judge. 5CC to Atty. Bell	Fredric Joseph Ammerman
1/8/2008	Certificate of Service, filed. That a true and correct copy of a Response to Mr. Rudella's Motion has been served upon: Mary Anne Wesdock (hand delivery) and by first class mail to Kim C. Kesner Esq., and F. Cortez Bell III Esq., filed by s/ Peter F. Smith Esq. No CC. Response to Mr. Rudella's Motions, filed by s/ Peter F. Smith, Esquire. No CC	Fredric Joseph Ammerman
2/5/2008	Motion For Judgment on Pleadings as to Motion to Disqualify Bidder, filed by s/ F. Cortez Bell, III, Esquire. 5CC Atty. Bell	Fredric Joseph Ammerman
2/8/2008	Order, this 28th day of Feb., 2008, upon consideration of the Motion for Judgment on the Pleadings as to the Motion to Disqualify Bidder, argument on said Motion is scheduled for the 3rd day of March, 2008 at 9:00 a.m. in Courtroom 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Smith, F. Bell; 1CC Def.	Fredric Joseph Ammerman
3/2008	Order, this 3rd day of March, 2008, following argument on the Petitioner's Motion to Rescind Court Order and Motion to Disqualify Bidder, it is Ordered that counsel have no more than 20 days from this date in which to submit appropriate letter brief. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: P. Smith, F. Bell; 1CC Tax Claim	Fredric Joseph Ammerman
2/5/2008	Certificate of Service, filed. That a true and correct copy of the Requested Letter Brief has been served upon Honorable Fredric Ammerman (hand delivery) and Kim C. Kesner Esq. and F. Cortez Bell III Esq. (first class mail), filed by s/ Peter F. Smith Esq. No CC.	Fredric Joseph Ammerman

Date: 6/27/2008

Time: 02:50 PM

Page 2 of 2

Clearfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2007-01865-CD

Current Judge: Fredric Joseph Ammerman

Peter F. Smith vs. Clearfield County Tax Claim Bureau

Civil Other-COUNT

date	Judge
23/2008	Opinion and Order, NOW, this 22nd day of April, 2008, it is Ordered: (see original). By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty: Smith, F. Cortez Bell; 1CC Clfd. Co. Tax Claim Bureau; 1CC Law Library, D. Mikesell (without memo)
22/2008	Filing: Notice of Appeal to High Court Paid by: Smith Coal Company Receipt number: 1924168 Dated: 5/22/2008 Amount: \$50.00 (Check) 1 Cert. to Superior Court w/\$60.00 Check One CC Attorney Smith
	Request for Transcript, filed. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attorney Smith One CC Superior Court
2/2008	Appeal Docket Sheet # 902 WDA 2008 from Superior Court, filed.
3/2008	Order, this 5th day of June, 2008, it is Ordered that Peter F. Smith, 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 Plff., 1CC Def.
25/2008	Concise Statement of Matters Complainted of, filed by s/ Peter F. Smith Esq. 4CC Atty Smith.
27/2008	June 27, 2008, Appeal Mailed to Superior Court. June 27, 2008, Letters, Re: Notification of mailing appeal mailed to Peter F. Smith, Esq.; Clearfield County Tax Claim Bureau; F. Cortez Bell, III, Esq. with certified copies of docket sheet and Document listing required by P.A.R.A.P. 1931(c).

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

JUN 27 2008

Attest,



William A. Ober
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 07-1865-CD
Peter F. Smith
Vs.
Clearfield County Tax Claim Bureau

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	11/14/07	Petition to Disapprove Private Sale	04
02	11/14/07	Order, Re: proposed sale disapproved	01
03	11/15/07	Certificate of Service	01
04	12/31/07	Motion to Rescind Court Order and Motion to Disqualify Bidder	09
05	01/02/08	Rule, Re: Motion to Rescind Court Order, Rule granted; Rule Returnable for Answer and hearing	01
06	01/18/08	Certificate of Service	01
07	01/18/08	Response to Mr. Rudella's Motions	04
08	02/25/08	Motion for Judgment on Pleadings as to Motion to Disqualify Bidder	20
09	02/28/08	Order, Re: hearing scheduled for Motion for Judgment on the Pleadings as to the Motion to Disqualify Bidder	01
10	03/06/08	Order, Re: briefs to be submitted	01
11	03/25/08	Certificate of Service	01
12	04/23/08	Opinion and Order	09
13	05/22/08	Notice of Appeal to High Court and Request for Transcript	14
14	06/02/08	Appeal Docket Sheet, 902 WDA 2008	03
15	06/06/08	Order, Re: Concise Statement to be filed	01
16	06/25/08	Concise Statement of Matters Complained Of	02
17	06/27/08	Letters, Re: Notification of mailing appeal mailed to Peter F. Smith, Esq.; Clearfield County Tax Claim Bureau; F. Cortez Bell, III, Esq. with certified copies of docket sheet and Document listing required by PA.R.A.P. 1931(c).	04

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

Peter F. Smith

Vs.

Case No. 2007-01865-CD

Clearfield County Tax Claim Bureau

FILED

JUL 02 2008
APR 11 2009
William A. Shaw
Prothonotary/Clerk of Courts

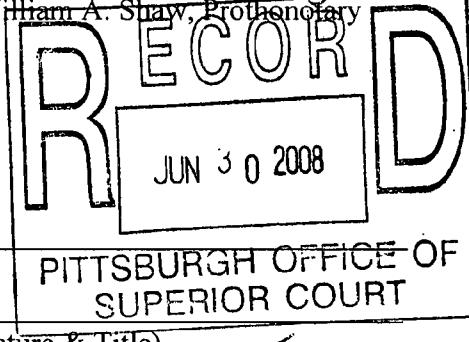
CERTIFICATE OF CONTENTS

NOW, this 27th day of June, 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 Superior 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



Date:

(Signature & Title)

GM

Record, Etc. Received:

A-1

In the Superior Court of
Pennsylvania

FILED

M 10:51 a.m. 64

AUG 19 2008

(610)

William A. Shaw
Prothonotary/Clerk of Courts

Sitting at Pittsburgh

NO. 902

WESTERN DOCKET APPEAL. 2008

PETER SMITH
v.
CLEARFIELD COUNTY TAX CLAIM BUREAU

Appeal from the Order of 4-22-2007,
Honorable Frederic J. Ammerman
Court of Common Pleas of Clearfield County
Civil Division
Docket Numbers: No. 07-1865-CD

Certified From the Record

"Order of Court"

The Court hereby SUA SPONTE TRANSFERS this Appeal to the Commonwealth Court of Pennsylvania, which has exclusive jurisdiction over the appeal by virtue of 42 Pa.C.S. 762(a)(1)(i). The briefing schedule is suspended. A new briefing schedule, if necessary, will be issued by the Commonwealth Court

July 9, 2008

Per Curiam"

In Testimony Whereof, I have hereunto set my hand and the seal of said Court at
Pittsburgh, Pa.

this .

18th Day of August

2008

Eleanor H. Valechko
Deputy Prothonotary

SUPERIOR COURT OF PENNSYLVANIA

CIVIL RECIEPT

RECEIVED FROM THE SUPERIOR COURT OF PENNSYLVANIA,

THE CASE OF:

PETER SMITH V. CLEARFIELD TAX CLAIM BUREAU
NO. 902 WDA 2008

DOCKET NUMBER: NO. 07-1865-CD

Filed: **CERTIFIED ORDER OF COURT DATED AUGUST 18, 2008**

RECEIPT ACKNOWLEDGED: William A. Shaw DATE: 8-19-08

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2010
Clearfield Co., Clearfield, PA

FILED
in 10:53 a.m. on 14 Superior Court
AUG 19 2008

William A. Shaw
Prothonotary/Clerk of Courts

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

PETER F. SMITH, :
Petitioner :
Vs. : NO: 07- 1865-CD
CLEARFIELD COUNTY TAX CLAIM :
BUREAU, :
Respondent :
:

S
FILED
013-53801
DEC 18 2008
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I, Peter F. Smith, Petitioner in the above-captioned matter, certify that a true and correct original of the **PETITIONER'S BRIEF** was hand delivered to the Court Administrator's Office and true and correct copies were sent by U.S. First Class Postage Prepaid to F. Cortez Bell, Attorney for Michael Rudella, Kim C. Kesner, Attorney for the Clearfield County Tax Claim Bureau on December 18, 2008 at the following addresses:

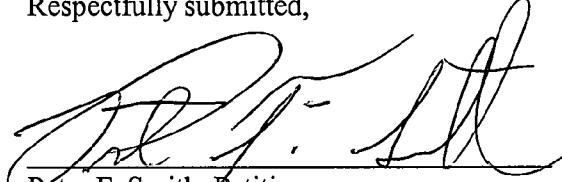
Hand Delivered

Clearfield County Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

U.S. First Class Mail Postage Prepaid
F. Cortez Bell, III, Esquire
Attorney for Mr. Rudella
318 E. Locust Street
P.O. Box 1088
Clearfield, PA 16830

U.S. First Class Mail Postage Prepaid
Kim C. Kesner, Esquire
Solicitor for Clearfield County
212 South Second Street
Clearfield, PA 16830

Respectfully submitted,



Peter F. Smith, Petitioner
P. O. Box 130, 30 South Second St.
Clearfield, PA 16830
(814) 765-5595

Date: December 18, 2008

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

PETER F. SMITH,	:	
Petitioner	:	No. 2008-1942-CD
:	:	
VS.	:	
:	:	
CLEARFIELD COUNTY TAX	:	
CLAIM BUREAU,	:	
Respondent	:	
:	:	
And	:	
:	:	
MICHAEL A. RUDELLA, JR.	:	
Respondent	:	

PETITIONER'S BRIEF

Two overarching facts emerged at hearing of this Petition on Wednesday, November 19, 2008. First, none of the parties entitled to notice of Mr. Rudella's private bid received accurate notification. That included Mr. Rudella himself. The parties did not receive proper notice because the letters sent to them by the Tax Claim Bureau misidentified the subject property. Second, no one involved recognized those errors for almost a year until it was inadvertently called to Petitioner's attention in September of this year.

Petitioner's Exhibit D contains the file of this matter produced by the Tax Claim Bureau. The notice to Mr. Rudella states the owner to be "Shawville Coal," and that the property is in section "N06." The notices to Smith Coal Company (the taxpayer), the Clearfield County Commissioners, the Clearfield Area School District and the Goshen Township Supervisor follow. They all make reference to the incorrect section number by using "N06."

All agree that the subject assessment is in section "N05."

In order to pass a good title, a tax sale must fulfill two essential requirements. First, those entitled to notice of the sale must be notified as required by the governing statute, and second the property subject to sale must be accurately described. Often the issues of notice and description are intertwined. That is the case here. The taxpayer and the petitioner knew that a private bid had been submitted but were misinformed as to the particular parcel.

The misinformation has been extremely counterproductive and has caused a duplication of litigation.

No one disputes that these mistakes can be easily be made. Three sets of lawyers and three sets of clients examined the materials in the other case. It has gone all the way to the Commonwealth Court before the error was detected.

In this instance, the notice requirement for a valid private sale is contained in Section 72 P.S. §5860.613. Failure to give notice of a Private Tax Sale to the local taxing authorities rendered a conveyance of the property void *ab inito*. County of Schuylkill, Reilly Twp. v. Ryon, 143 Pa. Cmwlth. 285, 598 A.2d 1075 (1991), *appeal denied* 530 Pa. 662, 609 A.2d 169. The statutory notice requirements must be strictly followed to avoid stripping a taxpayer of his property without due process of law. Marsh v. Banus, 395 Pa. 629 151 A.2d 612 (1959).

“Whether or not an assessment, or notice of sale, of realty for taxes adequately described the properties depended upon a number of circumstances, among which is . . . whether there are other lands in the same vicinity owned by the same person.” In Re Tax Sale of Bolen’s Real Estate, 393 Pa. 377, 379; 143 A.2d 339, 341 (1958), *citing* Humphrey v. Clark, 359 Pa. 250, 255, 58 A.2d 836, 839. As shown by Mr. Rudella’s Exhibit 6, the Smith Coal Company had two parcels under the Goshen Township section of the Private Sale List.

These errors have prejudiced the taxpayer and the Petitioner. The Tax Claim Bureau notified the Smith Coal Company of the private bid by the letter dated October 26, 2007. The statute grants parties in interest 45 days to file a Petition to Disapprove the Sale. 72 P.S. §5860.613(a). A timely petition was filed, but it concerned the other, incorrect tax map number.

The Court may be inclined to deny this Petition, but that will not remedy the defects which underlie the bid for the parcel at issue here, Tax Map Number 105-N05-000-00008 MN. Nor will it remedy the defect in the other proceeding brought by the Petitioner at Clearfield County Number 07-1865-CD which it is on appeal to the Commonwealth Court of Pennsylvania. Only a bad title and further dispute can emerge.

The hands of time cannot be turned back. Therefore Petition for this sale must be halted respectfully.

Respectfully submitted,



Dated: December 18, 2008

Peter F. Smith, Petitioner
30 South Second Street
P.O. Box 130
Clearfield, PA 16830
(814) 765-5595



Supreme Court of Pennsylvania

Western District

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

801 City-County Building
414 Grant Street
Pittsburgh, PA 15219
(412) 565-2816
www.pacourts.us

July 15, 2009

NOTICE

5 **FILED** *[Handwritten signature]*

RE: Peter F. Smith, Petitioner
v.
Clearfield County Tax Claim Bureau, Respondent
No. 330 WAL 2009
Trial Court Docket No: No. 07-1865-CD

JUL 17 2009
M7 12.20/aw
William A. Shaw
Prothonotary/Clerk of Courts

Commonwealth Docket Number: 1580 CD 2008
Appeal Docket No:

Date Petition for Allowance of Appeal Filed: July 15, 2009

Disposition:

Disposition Date:

Reargument/Reconsideration Disposition:

Disposition Date:

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

PETER F. SMITH, : No. 330 WAL 2009
Petitioner : Petition for Allowance of Appeal from the
Order of the Commonwealth Court
v. :
CLEARFIELD COUNTY TAX CLAIM :
BUREAU, :
Respondent :
:

ORDER**PER CURIAM**

AND NOW, this 2nd day of December 2009, the Petition for Allowance of Appeal is
DENIED.

A True Copy Patricia Nicola
As of: December 2, 2009
Attest: *Patricia Nicola*
Chief Clerk
Supreme Court of Pennsylvania

FILED
M10:44AM
DEC 23 2009
S (610)
William A. Stetler
Prothonotary/Clerk of Courts



Supreme Court of Pennsylvania

Western District

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

801 City-County Building
414 Grant Street
Pittsburgh, PA 15219
(412) 565-2816
www.pacourts.us

December 21, 2009

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

RE: Peter F. Smith, Petitioner

v.

Clearfield County Tax Claim Bureau, Respondent
No. 330 WAL 2009
Trial Court Docket No: No. 07-1865-CD

Commonwealth Docket Number: 1580 CD 2008

Appeal Docket No:

Date Petition for Allowance of Appeal Filed: July 15, 2009
Disposition: Order Denying Petition for Allowance of Appeal
Disposition Date: December 02, 2009

Reargument/Reconsideration Disposition:

Reargument/Reconsideration Disposition Date:

/kao



Commonwealth Court of Pennsylvania

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

Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 2100
P.O. Box 69185
Harrisburg, PA 17106-9185

January 4, 2010

CERTIFICATE OF REMITTAL/REMAND OF RECORD

TO: Mr. Shaw
Prothonotary

RE: Smith, P. v. Clearfield County Tax Claim Bureau
1580 CD 2008
Trial Court: ~~Clearfield County Court of Common Pleas~~
Trial Court Docket No: No.07-1865-CD

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

Original Record contents:

Item	Filed Date	Description
trial court record	August 22, 2008	1

Remand/Remittal Date:

ORIGINAL RECIPIENT ONLY - Please acknowledge receipt by signing, dating, and returning the enclosed copy of this certificate to our office. Copy recipients (noted below) need not acknowledge receipt.

Respectfully,

Commonwealth Court Filing Office

FILED
JAN 06 2010
S/ William A. Shaw
Prothonotary/Clerk of Courts
(60)

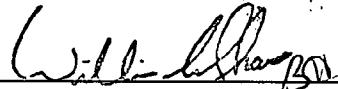
Smith, P. v. Clearfield County Tax Claim Bureau
1580 CD 2008

January 4, 2010

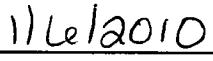
Letter to: Mr. William A. Shaw

Acknowledgement of Certificate of Remittal/Remand of Record (to be returned):

Signature



Date



Printed Name

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan, 2014
Clearfield Co., Clearfield, PA

9:20 A.M.

2007-1865-C0

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 902 WDA 2008

Page 1 of 3

May 29, 2008

1580 CD 2008



Peter F Smith, Appellant

v.

Clearfield County Tax Claim Bureau

Initiating Document: Notice of Appeal

FILED

Case Status: Active

Case Processing Status: May 28, 2008

Awaiting Original Record

JUN 02 2008

5/11:55 AM

William A. Shaw
Prothonotary/Clerk of Courts

Journal Number:

Case Category: Civil

Case Type: Civil Action Law

Consolidated Docket Nos.:

Related Docket Nos.:

SCHEDULED EVENT

Next Event Type: Receive Docketing Statement

Next Event Due Date: June 12, 2008

Next Event Type: Original Record Received

Next Event Due Date: July 21, 2008

RECEIVED & FILED
COMMONWEALTH COURT
OF PENNSYLVANIA
21 AUG 2008 11 49

Record

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 902 WDA 2008

Page 2 of 3

May 29, 2008



COUNSEL INFORMATION

Appellant Smith, Peter F
 Pro Se: Appoint Counsel Status:
 IFP Status: No

Appellant Attorney Information:

Attorney: Smith, Peter F.
 Bar No.: Law Firm:
 Address: Po Box 130 30 S. 2nd St.
 Clearfield, PA 16830
 Phone No.: (814)765-5595 Fax No.:
 Receive Mail: Yes
 E-Mail Address:
 Receive E-Mail: No

Appellee Clearfield County Tax Claim Bureau
 Pro Se: Appoint Counsel Status:
 IFP Status: No

Appellee Attorney Information:

Attorney: Kesner, Kim C.
 Bar No.: 28307 Law Firm:
 Address: PO Box 1
 Clearfield, PA 16830
 Phone No.: (814)765-8972 Fax No.:
 Receive Mail: Yes
 E-Mail Address:
 Receive E-Mail: No

Attorney: Bell III, F. Cortez
 Bar No.: 30183 Law Firm: Clearfield County District Attorney's Office
 Address: 318 E Locust St
 PO Box 1088
 Clearfield, PA 16830
 Phone No.: (814)765-5537 Fax No.: (814)765-9730
 Receive Mail: Yes
 E-Mail Address:
 Receive E-Mail: No

FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
5/22/08	Notice of Appeal	60.00	60.00	2008SPRWD000541

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas
 County: Clearfield Division: Civil

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 902 WDA 2008



Page 3 of 3

May 29, 2008

Date of OrderAppealed From: April 22, 2008

Judicial District: 46

Date Documents Received: May 28, 2008

Date Notice of Appeal Filed: May 22, 2008

Order Type: Order Entered

OTN:

Judge: Ammerman, Fredric J.
President Judge

Lower Court Docket No.: No.07-1865-CD

ORIGINAL RECORD CONTENTS

Original Record Item	Filed Date	Content/Description
----------------------	------------	---------------------

Date of Remand of Record:

BRIEFS

DOCKET ENTRIES			
Filed Date	Docket Entry/Document Name	Party Type	Filed By
May 28, 2008	Notice of Appeal Filed	Appellant	Smith, Peter F
May 29, 2008	Docketing Statement Exited (Civil)		Western District Filing 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:

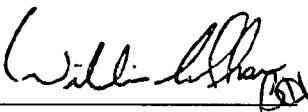
Peter F. Smith
VS.

Clearfield County Tax Claim Bureau
07-1865-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 June 27, 2008.



William A. Shaw
Prothonotary/Clerk of Courts

(seal)

Date: 6/27/2008
Time: 02:50 PM
Page 1 of 2

Clearfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2007-01865-CD

Current Judge: Fredric Joseph Ammerman

Peter F. Smith vs. Clearfield County Tax Claim Bureau

Civil Other-COUNT

Date	Judge
11/14/2007	New Case Filed.
	Filing: Petition to Disapprove Private Sale Paid by: Smith, Peter F. (plaintiff) Receipt number: 1921462 Dated: 11/14/2007 Amount: \$85.00 (Check) 2CC Atty P. Smith.
	Order AND NOW, this 13 day of November 2007, upon consideration of the Fredric Joseph Ammerman foregoing Petition, IT IS ORDERED AND DECREED that the proposed private sale by the Clearfield County Tax Claim Bureau of 100 coal rights assessed to Smith Coal Company and identified by Clearfield Assessment Map Number 115-N06-000-0000MN for the sum of \$200.00 is disapproved. Respondent shall conduct an auction-style bid of said 100 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 \$1,928.11. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Atty Smith (will serve)
11/15/2007	Certificate of Service, filed. That a true and correct copy of a Petition to Disapprove Private Sale and Order was hand delivered to Clearfield County Tax Claim Bureau on November 15, 2007 filed by s/ Peter F. Smith Esq. No CC.
12/31/2007	Motion to Rescind Court Order and Motion to Disqualify Bidder, filed by Att. Bell 6 Cert. to Atty.
1/2/2008	Rule, this 2nd day of Jan., 2008, upon consideration of the Motion to Rescind Court Order, a Rule is granted on the Petitioner, Peter F. Smith, to show cause why said Motion should not be granted. Rule Returnable for Answer by the Petitioner and hearing on said Motion to be held on the 3rd day of March, 2008, at 9:00 a.m. in Courtroom 1. by The court, /s/ Fredric J. Ammerman, Pres. Judge. 5CC to Atty. Bell
1/18/2008	Certificate of Service, filed. That a true and correct copy of a Response to Mr. Rudella's Motion has been served upon: Mary Anne Wesdock (hand delivery) and by first class mail to Kim C. Kesner Esq., and F. Cortez Bell III Esq., filed by s/ Peter F. Smith Esq. No CC. Response to Mr. Rudella's Motions, filed by s/ Peter F. Smith, Esquire. No CC
2/25/2008	Motion For Judgment on Pleadings as to Motion to Disqualify Bidder, filed by s/ F. Cortez Bell, III, Esquire. 5CC Atty. Bell
2/28/2008	Order, this 28th day of Feb., 2008, upon consideration of the Motion for Judgment on the Pleadings as to the Motion to Disqualify Bidder, argument on said Motion is scheduled for the 3rd day of March, 2008 at 9:00 a.m. in Courtroom 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Smith, F. Bell; 1CC Def.
3/6/2008	Order, this 3rd day of March, 2008, following argument on the Petitioner's Motion to Rescind Court Order and Motion to Disqualify Bidder, it is Ordered that counsel have no more than 20 days from this date in which to submit appropriate letter brief. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: P. Smith, F. Bell; 1CC Tax Claim
3/25/2008	Certificate of Service, filed. That a true and correct copy of the Requested Letter Brief has been served upon Honorable Fredric Ammerman (hand delivery) and Kim C. Kesner Esq. and F. Cortez Bell III Esq. (first class mail), filed by s/ Peter F. Smith Esq. No CC.

Date: 6/27/2008
Time: 02:50 PM
Page 2 of 2

Clearfield County Court of Common Pleas

ROA Report

Case: 2007-01865-CD

User: BHUDSON

Current Judge: Fredric Joseph Ammerman

Peter F. Smith vs. Clearfield County Tax Claim Bureau

Civil Other-COUNT

Date	Judge	
4/23/2008	Opinion and Order, NOW, this 22nd day of April, 2008, it is Ordered: (see original). By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty: Smith, F. Cortez Bell; 1CC Clfd. Co. Tax Claim Bureau; 1CC Law Library, D. Mikesell (without memo)	Fredric Joseph Ammerman
5/22/2008	Filing: Notice of Appeal to High Court Paid by: Smith Coal Company Receipt number: 1924168 Dated: 5/22/2008 Amount: \$50.00 (Check) 1 Cert. to Superior Court w/\$60.00 Check One CC Attorney Smith Request for Transcript, filed. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attorney Smith One CC Superior Court	Fredric Joseph Ammerman
6/2/2008	Appeal Docket Sheet # 902 WDA 2008 from Superior Court, filed.	Fredric Joseph Ammerman
6/6/2008	Order, this 5th day of June, 2008, it is Ordered that Peter F. Smith, 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 Plff., 1CC Def.	Fredric Joseph Ammerman
6/25/2008	Concise Statement of Matters Complained of, filed by s/ Peter F. Smith Esq. 4CC Atty Smith.	Fredric Joseph Ammerman
6/27/2008	June 27, 2008, Appeal Mailed to Superior Court. June 27, 2008, Letters, Re: Notification of mailing appeal mailed to Peter F. Smith, Esq.; Clearfield County Tax Claim Bureau; F. Cortez Bell, III, Esq. with certified copies of docket sheet and Document listing required by P.A.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.

JUN 27 2008

Attest.


William L. Hudson
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

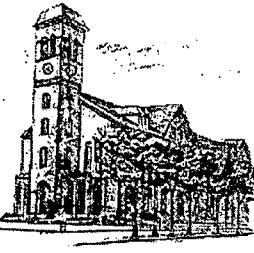
No. 07-1865-CD

Peter F. Smith

vs.

Clearfield County Tax Claim Bureau

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	11/14/07	Petition to Disapprove Private Sale	04
02	11/14/07	Order, Re: proposed sale disapproved	01
03	11/15/07	Certificate of Service	01
04	12/31/07	Motion to Rescind Court Order and Motion to Disqualify Bidder	09
05	01/02/08	Rule, Re: Motion to Rescind Court Order, Rule granted; Rule Returnable for Answer and hearing	01
06	01/18/08	Certificate of Service	01
07	01/18/08	Response to Mr. Rudella's Motions	04
08	02/25/08	Motion for Judgment on Pleadings as to Motion to Disqualify Bidder	20
09	02/28/08	Order, Re: hearing scheduled for Motion for Judgment on the Pleadings as to the Motion to Disqualify Bidder	01
10	03/06/08	Order, Re: briefs to be submitted	01
11	03/25/08	Certificate of Service	01
12	04/23/08	Opinion and Order	09
13	05/22/08	Notice of Appeal to High Court and Request for Transcript	14
14	06/02/08	Appeal Docket Sheet, 902 WDA 2008	03
15	06/06/08	Order, Re: Concise Statement to be filed	01
16	06/25/08	Concise Statement of Matters Complained Of	02
17	06/27/08 ✓	Letters, Re: Notification of mailing appeal mailed to Peter F. Smith, Esq.; Clearfield County Tax Claim Bureau; 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, President Judge
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

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

Peter F. Smith, Esq.
PO Box 130
Clearfield, PA 16830

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

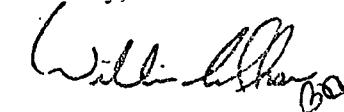
Peter F. Smith
Vs.
Clearfield County Tax Claim Bureau

Court No. 07-1865-CD; Superior Court No. 902 WDA 2008

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on June 27, 2008.

Sincerely,



William A. Shaw
Prothonotary/Clerk of Courts

FILED

06/27/08
JUN 27 2008

W.A.S.
William A. Shaw
Prothonotary/Clerk of Courts

6

417

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 07-1865-CD

Peter F. Smith

Vs.

Clearfield County Tax Claim Bureau

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
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14	06/02/08	Appeal Docket Sheet, 902 WDA 2008	03
15	06/06/08	Order, Re: Concise Statement to be filed	01
16	06/25/08	Concise Statement of Matters Complained Of	02

Date: 6/27/2008
Time: 02:36 PM
Page 1 of 2

Clearfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2007-01865-CD

Current Judge: Fredric Joseph Ammerman

Peter F. Smith vs. Clearfield County Tax Claim Bureau

Civil Other-COUNT

Date	Judge
11/14/2007	New Case Filed.
	Filing: Petition to Disapprove Private Sale Paid by: Smith, Peter F. (plaintiff) Receipt number: 1921462 Dated: 11/14/2007 Amount: \$85.00 (Check) 2CC Atty P. Smith.
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11/15/2007	Certificate of Service, filed. That a true and correct copy of a Petition to Disapprove Private Sale and Order was hand delivered to Clearfield County Tax Claim Bureau on November 15, 2007 filed by s/ Peter F. Smith Esq. No CC.
12/31/2007	Motion to Rescind Court Order and Motion to Disqualify Bidder, filed by Att. Bell 6 Cert. to Atty.
1/2/2008	Rule, this 2nd day of Jan., 2008, upon consideration of the Motion to Rescind Court Order, a Rule is granted on the Petitioner, Peter F. Smith, to show cause why said Motion should not be granted. Rule Returnable for Answer by the Petitioner and hearing on said Motion to be held on the 3rd day of March, 2008, at 9:00 a.m. in Courtroom 1. by The court, /s/ Fredric J. Ammerman, Pres. Judge. 5CC to Atty. Bell
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Date: 6/27/2008

Time: 02:36 PM

Page 2 of 2

Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2007-01865-CD

Current Judge: Fredric Joseph Ammerman

Peter F. Smith vs. Clearfield County Tax Claim Bureau

Civil Other-COUNT

Date	Judge	
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5/22/2008	Filing: Notice of Appeal to High Court Paid by: Smith Coal Company Receipt number: 1924168 Dated: 5/22/2008 Amount: \$50.00 (Check) 1 Cert. to Superior Court w/\$60.00 Check One CC Attorney Smith	Fredric Joseph Ammerman
	Request for Transcript, filed. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attorney Smith One CC Superior Court	Fredric Joseph Ammerman
6/2/2008	Appeal Docket Sheet # 902 WDA 2008 from Superior Court, filed.	Fredric Joseph Ammerman
6/6/2008	Order, this 5th day of June, 2008, it is Ordered that Peter F. Smith, 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 Plff., 1CC Def.	Fredric Joseph Ammerman
6/25/2008	Concise Statement of Matters Complainted of, filed by s/ Peter F. Smith Esq. 4CC Atty Smith.	Fredric Joseph Ammerman

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

PETER F. SMITH, :
Petitioner : No. 07-1865-CD
vs. :
CLEARFIELD COUNTY TAX :
CLAIM BUREAU, :
Respondent :
:

CONCISE STATEMENT OF MATTERS COMPLAINED OF

COMES NOW Plaintiff, who pursuant to this Court's Order entered June 6, 2008 and pursuant to P.A.R.A.P. 1925(b) states:

The Court disapproved a Private Sale under 72 P.S. §5860.613 but erred as a matter of law and abused its discretion by:

- A) Failing to fix a minimum price; and,
- B) Disqualifying the property owner from bidding; and,
- C) Failing to order, in the first instance an auction-style bid among the parties, and if the property is not so sold, then direct that a private sale be arranged, and if the property is not so sold, then to sell it at public judicial sale, all to start at the minimum price fixed by the Court;

All as directed by the statute at 72 P.S. §5860.613.

WHEREFORE, Plaintiff submits these matters for appeal.

Respectfully submitted,



Peter F. Smith, Esquire
Attorney for Petitioner
P. O. Box 130,
30 South Second St.
Clearfield, PA 16830
(814) 765-5595

FILED 4CC Atty
07/10/08
JUN 25 2008
LM

William A. Shaw
Prothonotary/Clerk of Courts

Date: June 25, 2008

12

116

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

PETER F. SMITH, :
Petitioner :
: :
Vs. : NO: 07- 1865-CD
: :
CLEARFIELD COUNTY TAX CLAIM :
BUREAU, :
Respondent :
:

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, certify that an original was filed and a certified copy of the **CONCISE STATEMENT OF MATTERS COMPLAINED OF** was delivered to Honorable Fredric J. Ammerman via the Court Administrator, and true and correct copies were sent by U.S. First Class Postage Prepaid to F. Cortez Bell, III, Attorney for Michael Rudella, Kim C. Kesner, Attorney for the Clearfield County Tax Claim Bureau on **June 25, 2008** at the following addresses:

<i>HAND DELIVER</i>	<i>U.S. First Class</i>	<i>U.S. First Class</i>
Honorable Fredric J. Ammerman Clearfield Co Courthouse 230 East Market Street Clearfield, PA 16830	F. Cortez Bell, III, Esquire 318 E. Locust Street P.O. Box 1088 Clearfield, PA 16830	Kim Kesner, Esquire Solicitor for Clfd Co. 212 South 2 nd Street Clearfield, PA 16830

Respectfully submitted,



Date: June 25, 2008

Peter F. Smith, Esquire
Attorney for Plaintiff
P. O. Box 130, 30 South Second St.
Clearfield, PA 16830
(814) 765-5595

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

PETER F. SMITH,
Plaintiff
vs.
CLEARFIELD COUNTY TAX
CLAIM BUREAU,
Defendant

*
*
* NO. 07-1865-CD
*
*
*

ORDER

NOW, this 5th day of June, 2008, this Court having been notified of Appeal to the Superior Court of Pennsylvania in the above-captioned matter; it is the ORDER of this Court that **PETER F. SMITH**, 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
00:50 P.M. GK
JUN 06 2008 1CC PLEF
1CC DEF.
William A. Shaw
Prothonotary/Clerk of Courts
(6K)

1115

20 A.M.

Appeal Docket Sheet

Docket Number: 902 WDA 2008

age 1 of 3

ay 29, 2008

2007.1865-C0

Superior Court of Pennsylvania



Peter F Smith, Appellant

v.

Clearfield County Tax Claim Bureau

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: May 28, 2008

Awaiting Original Record

Journal Number:

Case Category: Civil

Case Type: Civil Action Law

Consolidated Docket Nos.:

Related Docket Nos.:

RECEIVED
FILED
JUN 02 2008
11:55 AM
William A. Shaw
Prothonotary/Clerk of Courts

SCHEDULED EVENT

Next Event Type: Receive Docketing Statement

Next Event Due Date: June 12, 2008

Next Event Type: Original Record Received

Next Event Due Date: July 21, 2008

20 A.M.

Appeal Docket Sheet

Docket Number: 902 WDA 2008

Page 2 of 3

May 29, 2008

Superior Court of Pennsylvania



COUNSEL INFORMATION

Appellant Smith, Peter F

Pro Se: Appoint Counsel Status:

IFP Status: No

Appellant Attorney Information:

Attorney: Smith, Peter F.

Bar No.: Law Firm:

Address: Po Box 130 30 S. 2nd St.
Clearfield, PA 16830

Phone No.: (814)765-5595 Fax No.:

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

Appellee Clearfield County Tax Claim Bureau

Pro Se: Appoint Counsel Status:

IFP Status: No

Appellee Attorney Information:

Attorney: Kesner, Kim C.

Bar No.: 28307 Law Firm:

Address: PO Box 1
Clearfield, PA 16830

Phone No.: (814)765-8972 Fax No.:

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

Attorney: Bell III, F. Cortez

Bar No.: 30183 Law Firm: Clearfield County District Attorney's Office

Address: 318 E Locust St
PO Box 1088
Clearfield, PA 16830

Phone No.: (814)765-5537 Fax No.: (814)765-9730

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

Fee Information

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
5/22/08	Notice of Appeal	60.00	60.00	2008SPRWD000541

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield Division: Civil

Appeal Docket Sheet

Docket Number: 902 WDA 2008

Page 3 of 3

May 29, 2008

Superior Court of Pennsylvania



Date of OrderAppealed From: April 22, 2008

Judicial District: 46

Date Documents Received: May 28, 2008

Date Notice of Appeal Filed: May 22, 2008

Order Type: Order Entered

OTN:

Judge: Ammerman, Fredric J.
President Judge

Lower Court Docket No.: No.07-1865-CD

ORIGINAL RECORD CONTENTS

Original Record Item

Filed Date

Content/Description

Date of Remand of Record:

BRIEFS

DOCKET ENTRIES			
Filed Date	Docket Entry/Document Name	Party Type	Filed By
May 28, 2008	Notice of Appeal Filed	Appellant	Smith, Peter F
May 29, 2008	Docketing Statement Exited (Civil)		Western District Filing Office

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

PETER F. SMITH,
Petitioner

Vs.

NO: 07- 1865-CD

CLEARFIELD COUNTY TAX CLAIM
BUREAU,
Respondent

FILED

MAY 22 2008

0111:30 (wmt)

William A. Shaw
Prothonotary/Clerk of Courts

1 CERT. TO SUPERIOR
COURT w/60- C.R.

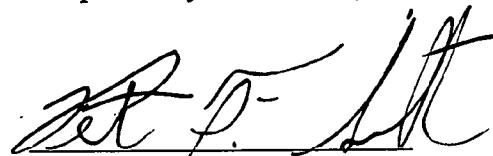
ICC Atty Smith

NOTICE OF APPEAL

Notice is hereby given that PETER F. SMITH, Plaintiff, above named, hereby appeals to the Superior Court of Pennsylvania from the Opinion and Order entered in this matter on the 22nd day of April, 2008. This Order has been entered in the docket on April 23, 2008 as evidenced by the attached certified copy of the docket entry.

Respectfully submitted,

Date: 5/22/08



Peter F. Smith, Esquire
Attorney for Plaintiff
P.O. Box 130, 30 S. 2nd St.
Clearfield, PA 16830
(814) 765-5595

18

#13

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

PETER F. SMITH,

Petitioner

Vs.

NO: 07- 1865-CD

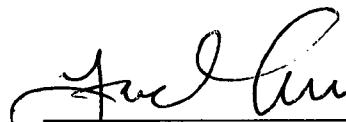
CLEARFIELD COUNTY TAX CLAIM
BUREAU,

Respondent

REQUEST FOR TRANSCRIPT

A Notice of Appeal having been filed in this matter, the official court report is hereby ordered to produce, certify and file the transcript in this matter in conformity with Rule 1922 of the Pennsylvania Rules of Appellate Procedure.

By The Court,



Honorable Frederic J. Ammerman, P.J.

FILED
05/14/08
MAY 22 2008
Atty Smith


William A. Shaw
Prothonotary/Clerk of Courts
1CC Sep. Crt.

Date: 4/28/2008

Time: 03:35 PM

Page 1 of 2

Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2007-01865-CD

Current Judge: Fredric Joseph Ammerman

Peter F. Smith vs. Clearfield County Tax Claim Bureau

Civil Other-COUNT

Date	Judge
11/14/2007	New Case Filed.
	Filing: Petition to Disapprove Private Sale Paid by: Smith, Peter F. (plaintiff) Receipt number: 1921462 Dated: 11/14/2007 Amount: \$85.00 (Check) 2CC Atty P. Smith.
	Order AND NOW, this 13 day of November 2007, upon consideration of the Fredric Joseph Ammerman foregoing Petition, IT IS ORDERED AND DECREED that the proposed private sale by the Clearfield County Tax Claim Bureau of 100 coal rights assessed to Smith Coal Company and identified by Clearfield Assessment Map Number 115-N06-000-0000MN for the sum of \$200.00 is disapproved. Respondent shall conduct an auction-style bid of said 100 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 \$1,928.11. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Atty Smith (will serve)
11/15/2007	Certificate of Service, filed. That a true and correct copy of a Petition to Disapprove Private Sale and Order was hand delivered to Clearfield County Tax Claim Bureau on November 15, 2007 filed by s/ Peter F. Smith Esq. No CC.
12/31/2007	Motion to Rescind Court Order and Motion to Disqualify Bidder, filed by Att. Bell 6 Cert. to Atty.
1/2/2008	Rule, this 2nd day of Jan., 2008, upon consideration of the Motion to Rescind Court Order, a Rule is granted on the Petitioner, Peter F. Smith, to show cause why said Motion should not be granted. Rule Returnable for Answer by the Petitioner and hearing on said Motion to be held on the 3rd day of March, 2008, at 9:00 a.m. in Courtroom 1. by The court, /s/ Fredric J. Ammerman, Pres. Judge. 5CC to Atty. Bell
1/18/2008	Certificate of Service, filed. That a true and correct copy of a Response to Mr. Rudella's Motion has been served upon: Mary Anne Wesdock (hand delivery) and by first class mail to Kim C. Kesner Esq., and F. Cortez Bell III Esq., filed by s/ Peter F. Smith Esq. No CC.
	Response to Mr. Rudella's Motions, filed by s/ Peter F. Smith, Esquire. No CC
2/25/2008	Motion For Judgment on Pleadings as to Motion to Disqualify Bidder, filed by s/ F. Cortez Bell, III, Esquire. 5CC Atty. Bell
2/28/2008	Order, this 28th day of Feb., 2008, upon consideration of the Motion for Judgment on the Pleadings as to the Motion to Disqualify Bidder, argument on said Motion is scheduled for the 3rd day of March, 2008 at 9:00 a.m. in Courtroom 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Smith, F. Bell; 1CC Def.
3/6/2008	Order, this 3rd day of March, 2008, following argument on the Petitioner's Motion to Rescind Court Order and Motion to Disqualify Bidder, it is Ordered that counsel have no more than 20 days from this date in which to submit appropriate letter brief. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: P. Smith, F. Bell; 1CC Tax Claim
3/25/2008	Certificate of Service, filed. That a true and correct copy of the Requested Letter Brief has been served upon Honorable Fredric Ammerman (hand delivery) and Kim C. Kesner Esq. and F. Cortez Bell III Esq. (first class mail), filed by s/ Peter F. Smith Esq. No CC.

Date: 4/28/2008

Time: 03:35 PM

Page 2 of 2

Clearfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2007-01865-CD

Current Judge: Fredric Joseph Ammerman

Peter F. Smith vs. Clearfield County Tax Claim Bureau

Civil Other-COUNT

Date	Judge
4/23/2008	Opinion and Order, NOW, this 22nd day of April, 2008, it is Ordered: (see original). By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Smith, F. Cortez Bell; 1CC Clfd. Co. Tax Claim Bureau; 1CC Law Library, D. Mikesell (without memo)

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

APR 28 2008

Attest.

William L. Brown
Prothonotary/
Clerk of Courts

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

PETER F. SMITH,
Petitioner

*

*

*

vs.

*

NO. 07-1865-CD

CLEARFIELD COUNTY TAX CLAIM BUREAU,
Respondent

*

OPINION and ORDER

Smith Coal Company is the owner of 100 acres of coal rights identified by Clearfield County Assessment No. 115-N06-000-00008 MN. The company had failed or forgotten to pay real estate taxes on the assessment. The rights were not purchased at public sale and on or about February 7, 2007 Michael A. Rudella ("Rudella") submitted a private bid of \$200.00 to the Tax Claim Bureau to purchase the coal rights. Rudella's bid was to be accepted at a private sale to be held on December 27, 2007 at the Tax Claim Bureau. On November 14, 2007 Peter F. Smith ("Smith") filed a Petition to Disapprove the Private Sale. Mr. Smith is a shareholder of Smith Coal Company. As a result of Smith's petition, the Court issued an Order dated November 13, 2007 (filed November 14, 2007) disapproving the private sale to Mr. Rudella for \$200.00 and ordering the Tax Claim Bureau to conduct an auction style bid sale between Mr. Smith and Mr. Rudella with the starting price to be not less than \$1,928.11. This was the amount of all taxes, penalties and interest due on the tax assessment at that time.

Rudella thereafter filed a Motion to Rescind Court Order and Motion to Disqualify Bidder. In the said Motion Rudella requested a hearing on the disapproval of the private sale and asked the Court to make a determination that Smith, as an individual having an interest in Smith Coal Company, is not qualified to bid at an auction sale pursuant to the provisions of 72 P.S. §5860.618 and §5860.619. Thereafter Smith filed a Response to

Mr. Rudella's motion where in paragraph 14 he in essence admitted that he was not eligible under the provisions of §5860.618 to bid at the auction sale. On February 25, 2008 Rudella filed a Motion for Judgment on the Pleadings relative his Motion to Disqualify Bidder, and the Court ultimately scheduled argument on the various motions for March 3, 2008. Rudella appeared at the hearing represented by counsel. Mr. Smith also appeared and the Court notes that he is a Clearfield County attorney. The Tax Claim Bureau was represented by the county solicitor. At the hearing Smith changed his position and claimed that he may have the right to bid at an auction style sale. The Court ordered briefs which have now been received and the matter is set for decision.¹

The first option available to the Court in this case is to approve the proposed sale to Rudella for his bid of \$200.00 notwithstanding Smith's Petition to Disapprove and his offer to pay the upset price. Section 613 requires the Court to exercise its independent judgment as to whether a proposed sale is both just and proper under the circumstances of the case and allows the Court great latitude in making this determination. Fieg vs. Somerset County Tax Claim Bureau, 658 A.2d 476 (Pa. Cmwlth. 1995). The fact that the property owner offers to pay all back taxes after a proposed purchaser makes a lesser offer at private sale does not mandate that the Court disapprove the private sale. Getson vs. Somerset County Tax Claim Bureau, 696 A.2d 903 (Pa. Cmwlth. 1997); Mehalic vs. Westmoreland County Tax Claim Bureau, 534 A.2d 157 (Pa. Cmwlth. 1987).

While the Court has the power to approve the private sale to Rudella, the Tax Claim Bureau is not requesting that this Court do so if through the bidding process the Tax Claim Bureau can receive full payment of the taxes. Here, under the provisions of

¹ This Court notes that the provisions of 72 P.S. §5860.619 are clearly inapplicable to the Court's review of this case. Therefore, the Court will not further consider that statute and will confine its' analysis to §5860.618.

72 P.S. §5860.613(a), it would not be "just and proper" for the Court to approve the \$200.00 offer by Rudella. This amount is only 10% of the total tax liability and is clearly insufficient. In fact, this Court has routinely disapproved sales and ordered an auction where there are competitive bidders and the initial offer is inadequate.

The primary issue to be decided is whether the Court may allow a property owner who has filed a petition to disapprove a private sale under 72 P.S. §5860.613 to participate in a court ordered auction sale notwithstanding 72 P.S. §5860.618, which reads:

§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.

It is apparent from a review of decisional authority that this Court has broad discretion under Section 613. However, does this discretion include authority to permit an owner to participate in an auction under Section 613?

In this regard Section 613 provides:

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. (emphasis added)

Section 613 requires notice of the proposed private sale to the owner and permits the owner "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." Certainly, an owner who files a petition to disapprove a private sale is a party to the proceedings. However, Rudella

argues that the owner cannot participate in the auction because Section 618 provides that the owner "shall have no right to purchase his own property at a judicial sale, private sale or from the bureau repository. . ."

A Court ordered auction sale is not a judicial sale which is a separate option available to the Court if it disapproves the private sale. However, is a Court ordered auction a private sale within Section 5860.618?

On one side of this issue, it is hard to distinguish between a judicial sale, a private sale and a court ordered auction. However, it can be argued that Section 618 limits the rights of the owner not the authority of the Court. Getson and Mehalic confirm that an owner has no right to block a private sale by offering to cure the delinquency. In a Court ordered auction, the owner is not participating by right but by permission of the Court. Moreover, as Smith points out in his brief, what is the sense of allowing the owner to challenge the bid price if the owner may not submit a bid? How are the taxing districts benefited by prohibiting an owner's bid rather than allowing the Court to determine the issue? If the owner is prohibited from participating in a Court ordered auction, one would expect to see that as a determining factor in the Mehalic and Getson cases cited above.

In Mehalic the tax delinquency was \$5,374.90 and an offer to purchase the property at private sale for \$3,250.00 was made. The owners filed a petition to disapprove upon the basis that they were able to begin to pay all taxes and costs. The lower court approved the proposed private sale and the Commonwealth Court affirmed. The Appellants placed great emphasis on the fact that they were willing to enter into an agreement with the Bureau to now begin repaying the delinquent taxes. The

Commonwealth Court held that the decision to accept any compromise of delinquent taxes, however, is wholly in the discretion of the taxing authorities.

While affirming the decision of the lower court to uphold the private sale, the Commonwealth Court noted that the bid offered by the prospective purchaser represented 76% of the taxes due and "the Appellants did not submit a bid of their own to purchase the property at the private sale . . ." Mehalic, page 159. This language seems to confirm the ability of an owner to bid during a private sale but also conflicts with the language of § 5860.618 wherein an owner is prohibited from purchasing his own property at a private sale.

In Getson, after the private sale bid was received and advertised by the Tax Claim Bureau, the owner filed a petition "for redemption of tax sale" challenging the sale; this petition was denied by the lower court. The Commonwealth Court affirmed, holding that the authority under which the owner filed her petition was applicable to an upset sale not a private sale which is governed by Section 613 and which restricts the owner to filing a petition to disapprove the sale. However, the Court wrote:

Under Section 613, once a property had been offered at private sale and a proposed purchaser had made an offer, the original property owner cannot thwart the sale by offering all back taxes and penalties. Because that right was certainly extinguished by time Brandt had made her offer for the property, if not before, all that Section 613 gives the property owners the right to challenge the sufficiency of the sale price. Just because Getson was willing to pay back the taxes did not require that the proposed private sale be disapproved. Mehalic v. Westmoreland County Tax Claim Bureau, 534 A.2d 157 (1987). Rather, the decision to accept or reject any proposed compromise of delinquent taxes is wholly within the discretion of the taxing authority. Getson, pages 905-906.

If the Bureau can accept a proposed compromise of the taxes from the owner after a private sale bid is received, accepted and advertised, why can't the Court allow

the owner to participate in a Section 613 auction? Why did the Courts in Mehalic and Getson not merely state that the owner was prohibited from repurchasing the property?

In his brief Smith points to the case of Feig v. Somerset County Tax Claim Bureau, supra, as standing for the proposition that an owner is permitted to bid at the auction sale. Smith references the Commonwealth Court's statement on page 477 that ". . . if more than one party appeared to offer the price set by the court " and claims that since owners are parties to the proceeding the conclusion to be drawn is that owners can bid. Smith then points out the Commonwealth Court's reference on page 479 of the decision where the bid in Mehalic was upheld when ". . . the owners that petitioned for disapproval offered no bid of their own. . .".

In Feig, the appellant offered to purchase the property at private sale for an amount equal to one hundred percent of all outstanding taxes due on the property as well as the Tax Claim Bureau's processing costs. The Bureau approved the sale. The appellees filed a petition to disapprove the tax sale alleging that the property's value exceeded the amount of the appellant's bid and that the appellee was willing to pay a much greater amount. The Court of Common Pleas of Somerset County disapproved the private sale, ordered an auction sale with the minimum bid to be \$15,000.00. An auction sale was to take place "if more than one party appeared to offer the price set by the court." It is significant to note that in Feig, neither the appellant or the appellee was the owner of the property in question. The Commonwealth Court held that the trial court acted correctly in disapproving the sale and noted that even where the taxing bodies will be made whole by a proposed bid, when a property owner or other interested person petitions for disapproval the trial court should look at all of the circumstances. A determination to approve or disapprove should be made based upon what is just and

proper. The Commonwealth Court confirmed that where another party has made a bid which is more equivalent with the actual value of the real estate and would provide potential financial return to lien holders and/or the property owner under 72 P.S. § 5860.205(d) the lower court may disapprove a private bid equal to the upset price. This Court notes that other than the reference to Mehalic, the Feig decision does not stand for the proposition that an owner may bid at an auction sale ordered by the court.

It is certainly true that neither Mehalic or Getson are on all fours here and this Court has been unable to find any decisional authority directly on point. This being said, the Court believes that the Commonwealth Court's language in Getson is determinative. Section 5860.618 clearly indicates that an owner has no right to purchase his own property at a private sale. An auction sale ordered by the court to take place between the parties to the legal proceedings following the filing of a petition to disapprove clearly is a private sale, whether it involves an auction style bid or not. Any interested individual, partnership or corporation can file a petition to disapprove a private sale under the provisions of § 5860.618, not just an owner to the property. The decision in Getson states quite clearly that once a property has been offered at a private sale and an offer has been made, the property owner cannot reacquire the property by offering all back taxes and penalties, as this right has been extinguished by the time the proceedings reach a private sale. It makes no sense to this Court that a property owner's rights which have been extinguished can be regained merely by filing a petition with the court and obtaining another private sale in the form of an auction. Under this scenario, the owner of the property would almost always be in a position to prevail due to the statutory distribution scheme mandated in § 5860.205(d). This would directly conflict with the statutory language set forth in § 5860.618. Such a result should be

disapproved, as the legislature is presumed to have no intention to adopt conflicting provisions in the same statute. In re Annexation Ordinance No. 242 of the Bureau of Lemoyne, 107 A.2d 149 (Pa.Super. 1954).

Lastly, Smith claims that he is entitled to have a hearing before the Court to present information as to the actual value of the coal rights to be sold. The only possible purpose of submitting such information to the Court would be to request the Court to set a minimum bid price equivalent to the value of the property rights. Smith has set forth no statute or legal precedent for this position. This Court has been unable to find any legal authority permitting this procedure. While it is true that in Feig the appellee submitted a bid well above that of the upset price and costs, Feig clearly does not stand for the proposition that the court can accept evidence from the owner as to value and set the minimum price based thereon. This position, if adopted by the Court, would seem to nullify the right of third parties to realistically bid on property following the failure of the owner to pay the real estate taxes.

ORDER

NOW, this 22nd day of April, 2008, it is the ORDER of this Court as follows:

1. The Court's Order of November 13, 2007 is hereby rescinded.
2. The private sale to Michael Rudella for \$200.00 is disapproved.
3. This Court interprets the provisions of 72 P.S. §5860.613 as not allowing an owner of property to participate in an auction style sale as being one of the "parties to the proceeding".

4. The Motion to Rescind Court Order and to Disqualify Bidder filed on behalf of Michael Rudella is hereby granted.
5. The Motion for Judgment on the Pleadings filed by Michael Rudella is dismissed as procedurally incorrect.
6. Michael Rudella, as the only remaining party qualified to buy the property, shall have the right to purchase the coal rights for an amount equal to the full upset price as of the date of purchase, plus all additional costs incurred by the Tax Claim Bureau.

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.

APR 23 2008

Attest.

William E. Bunn
Prothonotary/
Clark of Courts

Date: April 22, 2008

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

PETER F. SMITH,

Petitioner

Vs.

NO: 07- 1865-CD

CLEARFIELD COUNTY TAX CLAIM
BUREAU,

Respondent

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, certify that four true and correct copies of the **NOTICE OF APPEAL and REQUEST FOR TRANSCRIPT** was hand delivered to the Judge Ammerman's Chambers, F. Cortez Bell, Attorney for Michael Rudella, Kim C. Kesner, Attorney for the Clearfield County Tax Claim Bureau and by U.S. First Class Postage Prepaid to ASAP Court Reporting on **May 22, 2008** at the following addresses:

Hand Delivered

Honorable Judge Ammerman
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Hand Delivered

F. Cortez Bell, III, Esquire
318 E. Locust Street
P.O. Box 1088
Clearfield, PA 16830

Hand Delivered

Kim Kesner, Esquire
Solicitor for Clearfield County
P.O. Box 1
Clearfield, PA 16830

U.S. First Class

ASAP Court Reporting
167 South McKean St.
Kittanning, PA 16201

Date: May 22, 2008

Respectfully submitted,



Peter F. Smith, Esquire
Attorney for Plaintiff
P. O. Box 130, 30 South Second St.
Clearfield, PA 16830
(814) 765-5595

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

PETER F. SMITH,
Petitioner

vs.
CLEARFIELD COUNTY TAX CLAIM BUREAU,
Respondent

CA
FILED
9/9/08
APR 23 2008

William A. Shaw
Prothonotary/Clerk of Courts
ICC Atty: Smith
F. Carter Bell
ICC Clfd. Co. Tax Claim
Bureau
ICC: Law Library
D. Milesell
(without memo)

OPINION and ORDER

Smith Coal Company is the owner of 100 acres of coal rights identified by Clearfield County Assessment No. 115-N06-000-00008 MN. The company had failed or forgotten to pay real estate taxes on the assessment. The rights were not purchased at public sale and on or about February 7, 2007 Michael A. Rudella ("Rudella") submitted a private bid of \$200.00 to the Tax Claim Bureau to purchase the coal rights. Rudella's bid was to be accepted at a private sale to be held on December 27, 2007 at the Tax Claim Bureau. On November 14, 2007 Peter F. Smith ("Smith") filed a Petition to Disapprove the Private Sale. Mr. Smith is a shareholder of Smith Coal Company. As a result of Smith's petition, the Court issued an Order dated November 13, 2007 (filed November 14, 2007) disapproving the private sale to Mr. Rudella for \$200.00 and ordering the Tax Claim Bureau to conduct an auction style bid sale between Mr. Smith and Mr. Rudella with the starting price to be not less than \$1,928.11. This was the amount of all taxes, penalties and interest due on the tax assessment at that time.

Rudella thereafter filed a Motion to Rescind Court Order and Motion to Disqualify Bidder. In the said Motion Rudella requested a hearing on the disapproval of the private sale and asked the Court to make a determination that Smith, as an individual having an interest in Smith Coal Company, is not qualified to bid at an auction sale pursuant to the provisions of 72 P.S. §5860.618 and §5860.619. Thereafter Smith filed a Response to

#12

-3-

Mr. Rudella's motion where in paragraph 14 he in essence admitted that he was not eligible under the provisions of §5860.618 to bid at the auction sale. On February 25, 2008 Rudella filed a Motion for Judgment on the Pleadings relative his Motion to Disqualify Bidder, and the Court ultimately scheduled argument on the various motions for March 3, 2008. Rudella appeared at the hearing represented by counsel. Mr. Smith also appeared and the Court notes that he is a Clearfield County attorney. The Tax Claim Bureau was represented by the county solicitor. At the hearing Smith changed his position and claimed that he may have the right to bid at an auction style sale. The Court ordered briefs which have now been received and the matter is set for decision.¹

The first option available to the Court in this case is to approve the proposed sale to Rudella for his bid of \$200.00 notwithstanding Smith's Petition to Disapprove and his offer to pay the upset price. Section 613 requires the Court to exercise its independent judgment as to whether a proposed sale is both just and proper under the circumstances of the case and allows the Court great latitude in making this determination. Fieg vs. Somerset County Tax Claim Bureau, 658 A.2d 476 (Pa. Cmwlth. 1995). The fact that the property owner offers to pay all back taxes after a proposed purchaser makes a lesser offer at private sale does not mandate that the Court disapprove the private sale. Getson vs. Somerset County Tax Claim Bureau, 696 A.2d 903 (Pa. Cmwlth. 1997); Mehalic vs. Westmoreland County Tax Claim Bureau, 534 A.2d 157 (Pa. Cmwlth. 1987).

While the Court has the power to approve the private sale to Rudella, the Tax Claim Bureau is not requesting that this Court do so if through the bidding process the Tax Claim Bureau can receive full payment of the taxes. Here, under the provisions of

¹ This Court notes that the provisions of 72 P.S. §5860.619 are clearly inapplicable to the Court's review of this case. Therefore, the Court will not further consider that statute and will confine its' analysis to §5860.618.

72 P.S. §5860.613(a), it would not be "just and proper" for the Court to approve the \$200.00 offer by Rudella. This amount is only 10% of the total tax liability and is clearly insufficient. In fact, this Court has routinely disapproved sales and ordered an auction where there are competitive bidders and the initial offer is inadequate.

The primary issue to be decided is whether the Court may allow a property owner who has filed a petition to disapprove a private sale under 72 P.S. §5860.613 to participate in a court ordered auction sale notwithstanding 72 P.S. §5860.618, which reads:

§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.

It is apparent from a review of decisional authority that this Court has broad discretion under Section 613. However, does this discretion include authority to permit an owner to participate in an auction under Section 613?

In this regard Section 613 provides:

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. (emphasis added)

Section 613 requires notice of the proposed private sale to the owner and permits the owner "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." Certainly, an owner who files a petition to disapprove a private sale is a party to the proceedings. However, Rudella

argues that the owner cannot participate in the auction because Section 618 provides that the owner "shall have no right to purchase his own property at a judicial sale, private sale or from the bureau repository. . ."

A Court ordered auction sale is not a judicial sale which is a separate option available to the Court if it disapproves the private sale. However, is a Court ordered auction a private sale within Section 5860.618?

On one side of this issue, it is hard to distinguish between a judicial sale, a private sale and a court ordered auction. However, it can be argued that Section 618 limits the rights of the owner not the authority of the Court. Getson and Mehalic confirm that an owner has no right to block a private sale by offering to cure the delinquency. In a Court ordered auction, the owner is not participating by right but by permission of the Court. Moreover, as Smith points out in his brief, what is the sense of allowing the owner to challenge the bid price if the owner may not submit a bid? How are the taxing districts benefited by prohibiting an owner's bid rather than allowing the Court to determine the issue? If the owner is prohibited from participating in a Court ordered auction, one would expect to see that as a determining factor in the Mehalic and Getson cases cited above.

In Mehalic the tax delinquency was \$5,374.90 and an offer to purchase the property at private sale for \$3,250.00 was made. The owners filed a petition to disapprove upon the basis that they were able to begin to pay all taxes and costs. The lower court approved the proposed private sale and the Commonwealth Court affirmed. The Appellants placed great emphasis on the fact that they were willing to enter into an agreement with the Bureau to now begin repaying the delinquent taxes. The

Commonwealth Court held that the decision to accept any compromise of delinquent taxes, however, is wholly in the discretion of the taxing authorities.

While affirming the decision of the lower court to uphold the private sale, the Commonwealth Court noted that the bid offered by the prospective purchaser represented 76% of the taxes due and "the Appellants did not submit a bid of their own to purchase the property at the private sale . . ." Mehalic, page 159. This language seems to confirm the ability of an owner to bid during a private sale but also conflicts with the language of § 5860.618 wherein an owner is prohibited from purchasing his own property at a private sale.

In Getson, after the private sale bid was received and advertised by the Tax Claim Bureau, the owner filed a petition "for redemption of tax sale" challenging the sale; this petition was denied by the lower court. The Commonwealth Court affirmed, holding that the authority under which the owner filed her petition was applicable to an upset sale not a private sale which is governed by Section 613 and which restricts the owner to filing a petition to disapprove the sale. However, the Court wrote:

Under Section 613, once a property had been offered at private sale and a proposed purchaser had made an offer, the original property owner cannot thwart the sale by offering all back taxes and penalties. Because that right was certainly extinguished by time Brandt had made her offer for the property, if not before, all that Section 613 gives the property owners the right to challenge the sufficiency of the sale price. Just because Getson was willing to pay back the taxes did not require that the proposed private sale be disapproved. Mehalic v. Westmoreland County Tax Claim Bureau, 534 A.2d 157 (1987). Rather, the decision to accept or reject any proposed compromise of delinquent taxes is wholly within the discretion of the taxing authority. Getson, pages 905-906.

If the Bureau can accept a proposed compromise of the taxes from the owner after a private sale bid is received, accepted and advertised, why can't the Court allow

the owner to participate in a Section 613 auction? Why did the Courts in Mehalic and Getson not merely state that the owner was prohibited from repurchasing the property?

In his brief Smith points to the case of Feig v. Somerset County Tax Claim Bureau, supra, as standing for the proposition that an owner is permitted to bid at the auction sale. Smith references the Commonwealth Court's statement on page 477 that ". . . if more than one party appeared to offer the price set by the court " and claims that since owners are parties to the proceeding the conclusion to be drawn is that owners can bid. Smith then points out the Commonwealth Court's reference on page 479 of the decision where the bid in Mehalic was upheld when ". . . the owners that petitioned for disapproval offered no bid of their own. . .".

In Feig, the appellant offered to purchase the property at private sale for an amount equal to one hundred percent of all outstanding taxes due on the property as well as the Tax Claim Bureau's processing costs. The Bureau approved the sale. The appellees filed a petition to disapprove the tax sale alleging that the property's value exceeded the amount of the appellant's bid and that the appellee was willing to pay a much greater amount. The Court of Common Pleas of Somerset County disapproved the private sale, ordered an auction sale with the minimum bid to be \$15,000.00. An auction sale was to take place "if more than one party appeared to offer the price set by the court." It is significant to note that in Feig, neither the appellant or the appellee was the owner of the property in question. The Commonwealth Court held that the trial court acted correctly in disapproving the sale and noted that even where the taxing bodies will be made whole by a proposed bid, when a property owner or other interested person petitions for disapproval the trial court should look at all of the circumstances. A determination to approve or disapprove should be made based upon what is just and

proper. The Commonwealth Court confirmed that where another party has made a bid which is more equivalent with the actual value of the real estate and would provide potential financial return to lien holders and/or the property owner under 72 P.S. § 5860.205(d) the lower court may disapprove a private bid equal to the upset price. This Court notes that other than the reference to Mehalic, the Feig decision does not stand for the proposition that an owner may bid at an auction sale ordered by the court.

It is certainly true that neither Mehalic or Getson are on all fours here and this Court has been unable to find any decisional authority directly on point. This being said, the Court believes that the Commonwealth Court's language in Getson is determinative. Section 5860.618 clearly indicates that an owner has no right to purchase his own property at a private sale. An auction sale ordered by the court to take place between the parties to the legal proceedings following the filing of a petition to disapprove clearly is a private sale, whether it involves an auction style bid or not. Any interested individual, partnership or corporation can file a petition to disapprove a private sale under the provisions of § 5860.618, not just an owner to the property. The decision in Getson states quite clearly that once a property has been offered at a private sale and an offer has been made, the property owner cannot reacquire the property by offering all back taxes and penalties, as this right has been extinguished by the time the proceedings reach a private sale. It makes no sense to this Court that a property owner's rights which have been extinguished can be regained merely by filing a petition with the court and obtaining another private sale in the form of an auction. Under this scenario, the owner of the property would almost always be in a position to prevail due to the statutory distribution scheme mandated in § 5860.205(d). This would directly conflict with the statutory language set forth in § 5860.618. Such a result should be

disapproved, as the legislature is presumed to have no intention to adopt conflicting provisions in the same statute. In re Annexation Ordinance No. 242 of the Bureau of Lemoyne, 107 A.2d 149 (Pa.Super. 1954).

Lastly, Smith claims that he is entitled to have a hearing before the Court to present information as to the actual value of the coal rights to be sold. The only possible purpose of submitting such information to the Court would be to request the Court to set a minimum bid price equivalent to the value of the property rights. Smith has set forth no statute or legal precedent for this position. This Court has been unable to find any legal authority permitting this procedure. While it is true that in Feig the appellee submitted a bid well above that of the upset price and costs, Feig clearly does not stand for the proposition that the court can accept evidence from the owner as to value and set the minimum price based thereon. This position, if adopted by the Court, would seem to nullify the right of third parties to realistically bid on property following the failure of the owner to pay the real estate taxes.

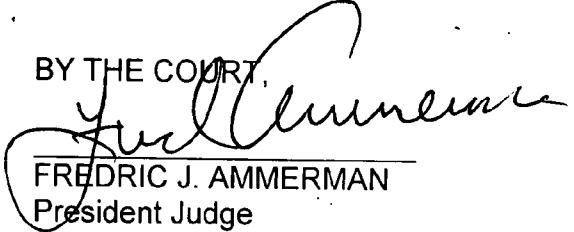
ORDER

NOW, this 22nd day of April, 2008, it is the ORDER of this Court as follows:

1. The Court's Order of November 13, 2007 is hereby rescinded.
2. The private sale to Michael Rudella for \$200.00 is disapproved.
3. This Court interprets the provisions of 72 P.S. §5860.613 as not allowing an owner of property to participate in an auction style sale as being one of the "parties to the proceeding".

4. The Motion to Rescind Court Order and to Disqualify Bidder filed on behalf of Michael Rudella is hereby granted.
5. The Motion for Judgment on the Pleadings filed by Michael Rudella is dismissed as procedurally incorrect.
6. Michael Rudella, as the only remaining party qualified to buy the property, shall have the right to purchase the coal rights for an amount equal to the full upset price as of the date of purchase, plus all additional costs incurred by the Tax Claim Bureau.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

Date: April 22, 2008

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

PETER F. SMITH,
Petitioner
vs.
CLEARFIELD COUNTY TAX
CLAIM BUREAU,
Respondent

No. 07-1865-CD

FILED No. C.
0/11/05 LM
MAR 25 2008

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for the Petitioner in the above-captioned matter, certify that a true and correct copy of the REQUESTED LETTER BRIEF has been served upon the following and in the manner indicated below:

Service by hand delivery addressed as follows:

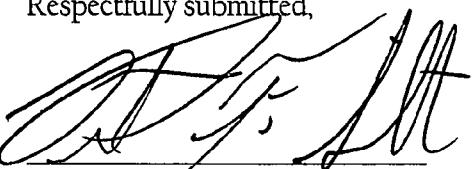
Honorable Frederic Ammerman
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Service by first class mail, postage prepaid addressed as follows:

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

F. Cortez Bell, III, Esquire
P.O. Box 1088
Clearfield, PA 16830

Respectfully submitted,


Peter F. Smith, Esquire
Attorney for Petitioner
P. O. Box 130,
30 South Second St.
Clearfield, PA 16830

Date: March 24, 2008

#1141

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

PETER F. SMITH

:

VS.

: NO. 07-1865-CD

CLEARFIELD COUNTY TAX

:

CLAIM BUREAU

:

O R D E R

AND NOW, this 3rd day of March, 2008, following argument on the Petitioner's Motion to Rescind Court Order and Motion to Disqualify Bidder, it is the ORDER of this Court that counsel have no more than twenty (20) days from this date in which to submit appropriate letter brief.

BY THE COURT,



President Judge

FILED

03:49 PM
MAR 06 2008

ICC Atty's
P. Smith
F. Bell

William A. Shaw
Prothonotary/Clerk of Courts

ICC Tax Clerk

(6)

#10

11

FILED

MAR 06 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 3/6/08

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 - **Attorney Bell**
 Defendant(s) Defendant(s), Attorney
____ Special Instructions:

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

PETER F. SMITH,
Plaintiff

vs.
CLEARFIELD COUNTY TAX CLAIM BUREAU ,
Defendant

*
*
* NO. 07-1865-CD
*
*

ORDER

NOW, this 28th day of February, 2008, upon consideration of the Motion for Judgment on the Pleadings as to the Motion to Disqualify Bidder filed by F. Cortez Bell, III, Esquire, counsel for Petitioner Michael A. Rudella, argument on said Motion is hereby scheduled for the 3rd day of March, 2008 at 9:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED 014-00301
FEB 28 2008
Smith
F. Bell
William A. Shaw
Prothonotary/Clerk of Courts
ICC Def.

(6K)

(#9)

FILED

FEB 28 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 2/28/08

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 - *Any Bedell*
 Defendant(s) Defendant(s) Attorney
 Special Instructions:

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

PETER F. SMITH, :
Petitioner : No.: 07-1865-CD
: Type of Case: Civil
vs. :
CLEARFIELD COUNTY TAX : Type of Pleading:
CLAIM BUREAU, : Motion For Judgment on Pleadings as to
Respondent : Motion to Disqualify Bidder
: Filed on Behalf of:
: Michael A. Rudella
: Petitioner
: 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 *sec*
01/34/08 Atty Bell
FEB 25 2008

William A. Shaw
Prothonotary/Clerk of Courts

(68)

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

PETER F. SMITH,	:	
	Petitioner	:
		:
V.	:	NO. 07-1865-CD
		:
CLEARFIELD COUNTY TAX CLAIM	:	
BUREAU	:	
	Respondent	:

MOTION FOR JUDGMENT ON PLEADINGS AS TO
MOTION TO DISQUALIFY BIDDER

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 for Judgment on Pleadings as to Motion to Disqualify Bidder avers as follows:

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, Peter F. Smith. Said Petition was filed on November 14, 2007.
2. That the Court by Order of November 13, 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. 115-N06-000-00008 MN consisting of 100 acres coal rights for the sum of \$200.00 was disapproved.
3. That the Court further Ordered that auction style bidding be conducted with the Court setting the minimum bid acceptable to be in the amount of \$1,928.11.
4. That the instant Petitioner, Michael A. Rudella was the individual who on February 7, 2007, had submitted a private bid of \$200.00 to purchase the coal rights assessed at 115-N06-000-00008 MN.
5. That the original Petitioner, Peter F. Smith, timely filed a Petition to Disapprove

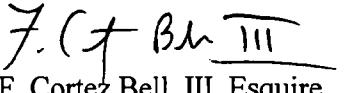
Private Sale challenging the sale pursuant to the provisions of 72 P.S. §5860.613.

Said Petition is that Petition referred to within Paragraph 1 above.

6. That Michael A. Rudella , on or about December 31, 2007, filed a Motion to Rescind Court Order and Motion to Disqualify Bidder. That hearing on said Motions is currently scheduled for March 3, 2008 at 9:00 A.M..
7. That the original Petitioner, Peter F. Smith, timely filed a Response to Mr. Rudella's Motions on or about January 18, 2008.
8. That within Paragraph 14 of the Motion to Disqualify Bidder, Michael A. Rudella averred that the original Petitioner, Peter F. Smith, was disqualified and precluded from bidding pursuant to the provisions of 72 P.S. §5860.618 and 72 P.S. §5860.619. (A copy of the Motion to Rescind Court Order and Motion to Disqualify Bidder is attached hereto and incorporated herein as Exhibit A.)
9. That within Paragraph 14 of the Response to Mr. Rudella's Motions, original Petitioner, Peter F. Smith admits to his disqualification as to 72 P.S. §5860.618. (A copy of the Response to Mr. Rudella's Motions is attached hereto and incorporated herein as Exhibit B.)
10. That based upon the above admission by original Petitioner, Peter F. Smith, as set forth above, the Court is now in a position to issue an Order disqualifying the original Petitioner, Peter F. Smith from participation in the bidding. Should said Order be entered, Mr. Rudella may be in a position to withdraw the balance of his Motions and in specific, the Motion to Rescind Court Order such that the hearing on March 3, 2008, might be canceled.

WHEREFORE, the petitioner, Michael A. Rudella, would respectfully request that your Honorable Court grant Judgment on the Pleadings as to the Motion to Disqualify Bidder only, by issuing an Order that the original Petitioner, Peter F. Smith is disqualified as a bidder.

Respectfully Submitted,


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

VERIFICATION

I verify that the statements made within the foregoing Motion for Judgment on Pleadings as to Motion to Disqualify Bidder 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: February 25, 2008

F. Cortez Bell III
F. Cortez Bell, III, Esquire

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

PETER F. SMITH,

Petitioner

vs.

CLEARFIELD COUNTY TAX
CLAIM BUREAU,

Respondent

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

DEC 31 2007

William L. Bell
Prothonotary/
Clerk of Courts

: No. 07-1865-CD
: Type of Case: Civil
: Type of Pleading: Attest.
: Motion to Rescind Court Order and
: Motion to Disqualify Bidder
: Filed on Behalf of:
: Michael A. Rudella
: Petitioner
: 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
:

EXHIBIT

tabbed

A

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

PETER F. SMITH, :
Petitioner :
V. : NO. 07-1865-CD
CLEARFIELD COUNTY TAX CLAIM :
BUREAU :
Respondent :
:

MOTION TO RESCIND COURT ORDER AND
MOTION TO DISQUALIFY BIDDER

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 to Disqualify Bidder avers as follows:

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, Peter F. Smith. Said Petition was filed on November 14, 2007.
2. That the Court by Order of November 13, 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. 115-N06-000-00008 MN consisting of 100 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, Peter F. Smith and the individual who had originally offered the private bid.
4. That the instant Petitioner, Michael A. Rudella was the individual who on February 7, 2007, had submitted a private bid of \$200.00 to purchase the coal rights assessed at 115-N06-000-00008 MN.
5. That notice was provided to the instant Petitioner, Michael A. Rudella, by letter

from the ~~Clearfield~~ County Tax Claim Bureau that the ~~private~~ bid had been accepted by the Bureau.

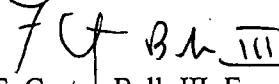
6. That advertisement of the bid and private sale was made by publication within the Clearfield Progress and the Clearfield County Legal Journal on two separate occasions.
7. That the original Petitioner, Peter F. Smith, timely filed a Petition to Disapprove Private Sale challenging the sale pursuant to the provisions of 72 P.S. §5860.613. Said Petition is that Petition referred to within Paragraph 1 above.
8. That the Court, previous to the filing of the Petition with the Court, executed 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, Peter F. Smith, evidences that the Certificate of Service which was attached thereto evidences a copy only having been served on the Tax Claim Bureau and not any of the other 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 was a telephone call received from a member of the staff of the

Clearfield County Tax Claim Bureau on December 2007, indicating that the sale had been disapproved by the Court. The Petitioner herein, Michael A. Rudella ultimately went to the Tax Claim Bureau and asked for copies of the Petition to Disapprove of Private Sale and the Court Order Disapproving the Private Sale on December 19, 2007. As of the date of this Motion, no Pleadings, Documents or Orders have ever been formally served on Michael A. Rudella..

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, the Order of Court dated August 21, 2007 by which the sale was disapproved must be rescinded.
13. That pursuant to the Court Order entered into as to this matter on November 13, 2007, there is to be a private auction between the Petitioner, Peter F. Smith and the Petitioner, Michael A. Rudella with a starting price of bidding to be the minimum set by the Court of \$1,928.11.
14. That the Petitioner, Peter F. Smith is not qualified to bid at said action as he is precluded from bidding pursuant to the provisions of 72 P.S. §5860.618 and 72 P.S. §5860.619. Attached hereto and incorporated herein by reference as Exhibit "B" is a complete copy of said sections.

WHEREFORE, the Petitioner, Michael A. Rudella, would respectfully request that your Honorable Court grant the Motion to Rescind Court Order and/or the Motion to Disqualify Bidder.

Respectfully Submitted,


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

Discretion of commissioners
Resale 2

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

Notes of Decisions

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 Com'rs v. Prothonotary*, 14 D. & C.2d 89, 27 L.R.2d 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

350

Exhibit "A"

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

(b) When an offer is received, and the price is not received, the bureau shall, on the written motion of the court, submit by petition of the court affording the owner an opportunity to file tax judgments against such notice, as the court directs. If the court directs, with like effect as though by all taxing districts by Act 1947, July 7, P.L. 1368, am. No. 157, § 2, and effective Jan. 1, 1982; 1986, July

¹ Sections 5860.610 to 5860

Hist

The 1973 amendment substituted the opening phrase of subsection 1986 amendment, post) previous words "the bureau may" in any time within one year after property has been exposed to public sale is continued because it was made equal to the upset price herein before provided."

The 1981 amendment, in the place of subsec. (a), substituted "Fifteen (45)" for "Fifteen (15)".

Section 7 of Act 1981, Sec. 274, No. 92, provides that amendment to this section "shall become effective January 1, 1982 and be applicable to sales agreed to on or after that date".

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

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

72 P.S. § 5860.618

TAXATION AND FISCAL AFFAIRS

(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,

TAXATION AND FISCAL AFFAIRS

limited liability company or corporation, trust, business association.

"Uncorrected housing code violation," any conviction building, housing, property maintenance or fire code which months of conviction.

"Violation," any conviction under a building, housing, code which posed a threat to health, safety or property, b a court to be de minimis.

1947, July 7, P.L. 1368, No. 542, § 2, added 1998, Jan. 29, 1 60 days.

¹ 72 P.S. § 5860.610 et seq.

Historical and Statutory Notes

1998 Legislation

Section 3 of Act 1998, Jan. 29, No. 5 provides that the addition of this section shall apply to all

sales conducted under that act.

Cross References

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

Notes of Decisions

Certification of nondelinquency 1

tax sale purchaser not provide certification and any reason had to be given for tax payment. In 1998, A.2d 532, A.2d 912, 568 1 2991

1. Certification of nondelinquency

Tax sale of property on which delinquent taxes were owed was not invalid based on the purchaser's failure to provide certification that he did not owe any other property taxes, as required for

(f) REPOSITORY FOR UNSOLD PROPERTY

§ 5860.619a. Additional restrictions

(a) Within twenty (20) days following any sale under this section, the purchaser shall be required to provide certification to the bureau that the person is not paying real estate taxes to any of the taxing districts where the person has no municipal utility bills that are more than 30 days past due.

(b) As used in this section, the following terms shall have the following meanings:

"Certification," shall mean proof via receipts of paid real estate taxes within the jurisdiction or a notarized affidavit of payment of such real estate taxes and municipal utility bills.

"Municipal utility bills," shall mean bills for services wholly owned and operated by a municipality or municipality, including, but not be limited to, water, sewer and solid waste.

"Municipality," refers to any county, city, borough, town, 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.

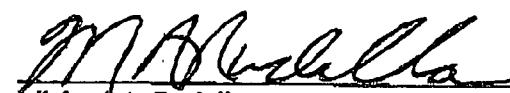
"Person," includes a corporation; partnership; limited liability company; other association; government entity, other than trust; foundation; or natural person.

1947, July 7, P.L. 1368, No. 542, § 619.1, added 1998, Dec. 29, 1 60 days.

VERIFICATION

I, Michael A. Rudella, Petitioner herein, verify that the statements made within the foregoing Motion to Rescind Court Order and Motion to Disqualify Bidder 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 falsification to authorities.

Dated: December 31, 2007


Michael A. Rudella

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

PETER F. SMITH, :
Petitioner :
V. : NO. 07-1865-CD
CLEARFIELD COUNTY TAX :
CLAIM BUREAU, :
Respondent :

CERTIFICATE OF SERVICE

I hereby certify this 31st day of December, 2007, a copy of the Motion to Rescind Court Order and Motion to Disqualify Bidder has been served upon the following and in the manner indicated below:

Service by personal delivery addressed as follows:

Peter F. Smith, Esquire
30 South Second Street
P.O. Box 130
Clearfield, PA. 16830

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

Service by first class mail, postage prepaid addressed as follows:

Kim C. Kesner, Esquire
Belin, Kubista & Ryan
P.O. Box 1
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, CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

PETER F. SMITH,

Petitioner

No. 07-1865-CD

vs.

CLEARFIELD COUNTY TAX
CLAIM BUREAU,

Respondent

Type of Case: CIVIL

Type of Pleading: RESPONSE TO MR.
RUDELLA'S MOTIONS

Filed on behalf of
Petitioner

Counsel of Record for this Party:

Peter F. Smith, Attorney
Supreme Court ID No. 34291
30 South Second Street
P.O. Box 130
Clearfield, PA 16830
(814) 765-5595

Counsel of Record for
Mr. Rudell:

F. Cortez Bell, III, Esquire
Supreme Court ID No. 30183
318 East Locust Street
P.O. Box 1088
Clearfield, PA 16830
(814) 765-5537

Counsel for Clearfield County T.C.B:

Kim Kesner, Esquire
Belin, Kubista & Ryan
P.O. Box 1
Clearfield, PA 16830

EXHIBIT

B

tabiles

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

PETER F. SMITH, : Petitioner : No. 07-1865-CD

vs. :

CLEARFIELD COUNTY TAX :
CLAIM BUREAU, :
Respondent :

RESPONSE

COMES NOW, the Petitioner Peter F. Smith, who responds to the motion submitted on behalf of Michael A. Rudella as follows:

1-8. Admitted.

9. This paragraph asserts a legal principal to which no response is required. Petitioner further avers that the Court conducted such proceedings as it determined was appropriate under the circumstances.

10. Admitted.

11. Petitioner was not required by the governing statute to serve Mr. Rudella, and this averment is admitted.

Additionally, Smith Coal Company was not served with a copy of Mr. Rudella's bid or other official evidence of his identity. Therefore, petitioner did not have a name and address to which service could be made even if it were required.

12. Denied for the reasons said forth in paragraphs 10 and 11 above.

Mr. Rudella's rights have not been prejudiced or his day in court unduly delayed. Either way, he would still be filing these Motions to rescind the Courts November 13th

order.

13. Admitted. The statue is designed to protect both the taxing district, the property owner and those having liens or claims against the property by creating a mechanism which requires would-be purchasers, like Mr. Rudella, to pay a fair price for the subject property.

14. Admitted, as to 72 P.S. §5860.618. Petitioner will not bid at the scheduled sale but does plan to attend.

Petitioner is confident that other bidders, who are not disqualified from bidding, will attend the sale when they hear that Sky Haven Coal Company, Inc. is strip mining adjacent properties and that the mining is heading in the direction of the subject property.

Denied, as to 72 P.S. §5860.619. Neither Petitioner nor Smith Coal Company is culpable of any of the anti-social behavior described by this section.

WHEREFORE, Petitioner prays this Honorable Court to enter an order denying Mr. Rudella's Motions and scheduling a date, time and place for the private auction.

Respectfully submitted,



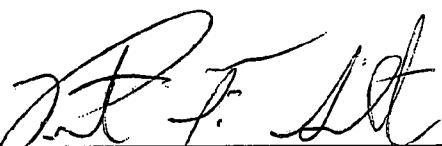
Dated: 1-18-08

Peter F. Smith
Attorney for the Petitioner
30 South Second Street
P.O. Box 130
Clearfield, PA 16830
(814) 765-5595

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.

Date: 1-18-08


Peter F. Smith

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

PETER F. SMITH,

Petitioner

No. 07-1865-CD

vs.

CLEARFIELD COUNTY TAX
CLAIM BUREAU,

Respondent

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for the Petitioner in the above-captioned matter, certify that a true and correct copy of a Response to Mr. Rudella's Motion has been served upon the following and in the manner indicated below:

Service by hand delivery addressed as follows:

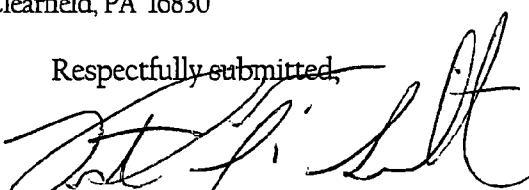
Mary Anne Wesdock, Director
Clearfield County Assessment Office and Tax Claim Bureau
Clearfield County Courthouse Annex
230 East Market Street
Clearfield, PA 16830

Service by first class mail, postage prepaid addressed as follows:

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

F. Cortez Bell, III, Esquire
P.O. Box 1088
Clearfield, PA 16830

Respectfully submitted,


Peter F. Smith, Esquire
Attorney for Petitioner
P. O. Box 130,
30 South Second St.
Clearfield, PA 16830

Date: January 18, 2008

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

PETER F. SMITH, :
Petitioner :
V. : NO. 07-1865-CD
: :
CLEARFIELD COUNTY TAX :
CLAIM BUREAU, :
Respondent :
:

CERTIFICATE OF SERVICE

I hereby certify this 25th day of February, 2008, a copy of the Motion for Judgment on
Pleadings as to Motion to Disqualify Bidder has been served upon the following and in the
manner indicated below:

Service by personal delivery addressed as follows:

Peter F. Smith, Esquire
30 South Second Street
P.O. Box 130
Clearfield, PA. 16830

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

Service by first class mail, postage prepaid addressed as follows:

Kim C. Kesner, Esquire
Belin, Kubista & Ryan
P.O. Box 1
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, CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

PETER F. SMITH, :
Petitioner : No. 07-1865-CD
: Type of Case: CIVIL
vs. : Type of Pleading: RESPONSE TO MR.
CLEARFIELD COUNTY TAX : RUDELLA'S MOTIONS
CLAIM BUREAU, :
Respondent : Filed on behalf of:
: Petitioner
: Counsel of Record for this Party:
: Peter F. Smith, Attorney
: Supreme Court ID No. 34291
: 30 South Second Street
: P.O. Box 130
: Clearfield, PA 16830
: (814) 765-5595
: Counsel of Record for
: Mr. Rudell:
: F. Cortez Bell, III, Esquire
: Supreme Court ID No. 30183
: 318 East Locust Street
: P.O. Box 1088
: Clearfield, PA 16830
: (814) 765-5537
: Counsel for Clearfield County T.C.B:
: Kim Kesner, Esquire
: Belin, Kubista & Ryan
: P.O. Box 1
: Clearfield, PA 16830

FILED NO
01/21/2008
JAN 18 2008
(GK)

William A. Shaw
Prothonotary/Clerk of Courts

#7

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

PETER F. SMITH,	:	
	Petitioner	No. 07-1865-CD
	:	
	:	
vs.	:	
	:	
CLEARFIELD COUNTY TAX	:	
CLAIM BUREAU,	:	
	Respondent	
	:	

RESPONSE

COMES NOW, the Petitioner Peter F. Smith, who responds to the motion submitted on behalf of Michael A. Rudella as follows:

1-8. Admitted.

9. This paragraph asserts a legal principal to which no response is required. Petitioner further avers that the Court conducted such proceedings as it determined was appropriate under the circumstances.

10. Admitted.

11. Petitioner was not required by the governing statute to serve Mr. Rudella, and this averment is admitted.

Additionally, Smith Coal Company was not served with a copy of Mr. Rudella's bid or other official evidence of his identity. Therefore, petitioner did not have a name and address to which service could be made even if it were required.

12. Denied for the reasons said forth in paragraphs 10 and 11 above.

Mr. Rudella's rights have not been prejudiced or his day in court unduly delayed. Either way, he would still be filing these Motions to rescind the Courts November 13th

order.

13. Admitted. The statue is designed to protect both the taxing district, the property owner and those having liens or claims against the property by creating a mechanism which requires would-be purchasers, like Mr. Rudella, to pay a fair price for the subject property.

14. Admitted, as to 72 P.S. §5860.618. Petitioner will not bid at the scheduled sale but does plan to attend.

Petitioner is confident that other bidders, who are not disqualified from bidding, will attend the sale when they hear that Sky Haven Coal Company, Inc. is strip mining adjacent properties and that the mining is heading in the direction of the subject property.

Denied, as to 72 P.S. §5860.619. Neither Petitioner nor Smith Coal Company is culpable of any of the anti-social behavior described by this section.

WHEREFORE, Petitioner prays this Honorable Court to enter an order denying Mr. Rudella's Motions and scheduling a date, time and place for the private auction.

Respectfully submitted,



Peter F. Smith
Attorney for the Petitioner
30 South Second Street
P.O. Box 130
Clearfield, PA 16830
(814) 765-5595

Dated: 1-18-08

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.

Date: 1-18-08



Peter F. Smith

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

PETER F. SMITH, :
Petitioner : No. 07-1865-CD
vs. :
CLEARFIELD COUNTY TAX :
CLAIM BUREAU, :
Respondent :
:

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for the Petitioner in the above-captioned matter, certify that a true and correct copy of a Response to Mr. Rudella's Motion has been served upon the following and in the manner indicated below:

Service by hand delivery addressed as follows:

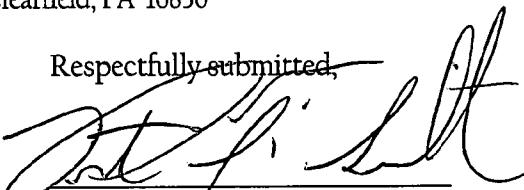
Mary Anne Wesdock, Director
Clearfield County Assessment Office and Tax Claim Bureau
Clearfield County Courthouse Annex
230 East Market Street
Clearfield, PA 16830

Service by first class mail, postage prepaid addressed as follows:

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

F. Cortez Bell, III, Esquire
P.O. Box 1088
Clearfield, PA 16830

Respectfully submitted,


Peter F. Smith, Esquire
Attorney for Petitioner
P. O. Box 130,
30 South Second St.
Clearfield, PA 16830

Date: January 18, 2008

FILED
01/17/08
JAN 18 2008
NO CC
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William A. Shaw
Prothonotary/Clerk of Courts
#6, 8

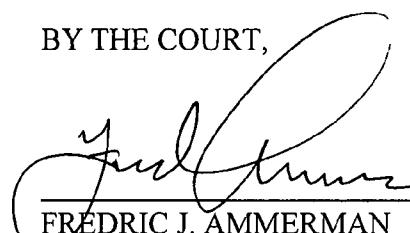
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
CIVIL DIVISION

PETER F. SMITH, :
Petitioner :
V. : NO. 07-1865-CD
CLEARFIELD COUNTY TAX CLAIM :
BUREAU :
Respondent :

RULE TO SHOW CAUSE

NOW, this 2 day of January, 2008 upon consideration of the Motion to Rescind Court Order a Rule is hereby granted on the Petitioner, Peter F. Smith to show cause why said Motion should not be granted. Rule Returnable for Answer by the Petitioner and hearing on said Motion to be held on the 3rd day of March, 2008, at 9:00 o'clock A.M. in Courtroom No. 1 at the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,


FREDRIC J. AMMERMAN

PRESIDENT JUDGE

FILED

JAN 02 2008
0141001
William A. Shaw
Prothonotary/Clerk of Courts
5 Cents to Party Billed

#5 69

<p><input checked="" type="checkbox"/> You are responsible for serving all appropriate parties.</p> <p>William A. Shaw Prothonotary/Clerk of Courts</p>	<p><input type="checkbox"/> The Prothonotary's office has provided service to the following parties:</p> <p>Plaintiff(s) _____ Plaintiff(s) Attorney _____ Other _____</p> <p>Defendant(s) _____ Defendant(s) Attorney _____ Other _____</p> <p>Defendant(s) _____ Defendant(s) Attorney _____ Other _____</p>	<p>Special Instructions:</p>
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JAN 02 2008

FILED

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

PETER F. SMITH,

Petitioner

vs.

CLEARFIELD COUNTY TAX
CLAIM BUREAU,

Respondent

FILED
DEC 31 2007
0/11:55 AM
William A. Shaw
Prothonotary/Clerk of Courts
6 Cent toatty Bar
: No. 07-1865-CD
: Type of Case: Civil
: Type of Pleading:
: Motion to Rescind Court Order and
: Motion to Disqualify Bidder
:
:
: Filed on Behalf of:
: Michael A. Rudella
: Petitioner
:
: 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
:
:

#4 10

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

PETER F. SMITH,	:	
	Petitioner	:
	:	
V.	:	NO. 07-1865-CD
	:	
CLEARFIELD COUNTY TAX CLAIM	:	
BUREAU	:	
	Respondent	:

MOTION TO RESCIND COURT ORDER AND
MOTION TO DISQUALIFY BIDDER

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 to Disqualify Bidder avers as follows:

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, Peter F. Smith. Said Petition was filed on November 14, 2007.
2. That the Court by Order of November 13, 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. 115-N06-000-00008 MN consisting of 100 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, Peter F. Smith and the individual who had originally offered the private bid.
4. That the instant Petitioner, Michael A. Rudella was the individual who on February 7, 2007, had submitted a private bid of \$200.00 to purchase the coal rights assessed at 115-N06-000-00008 MN.
5. That notice was provided to the instant Petitioner, Michael A. Rudella, by letter

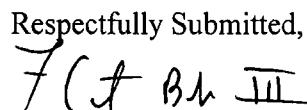
from the Clearfield County Tax Claim Bureau that the private bid had been accepted by the Bureau.

6. That advertisement of the bid and private sale was made by publication within the Clearfield Progress and the Clearfield County Legal Journal on two separate occasions.
7. That the original Petitioner, Peter F. Smith, 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, previous to the filing of the Petition with the Court, executed 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, Peter F. Smith, evidences that the Certificate of Service which was attached thereto evidences a copy only having been served on the Tax Claim Bureau and not any of the other 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 was a telephone call received from a member of the staff of the

Clearfield County Tax Claim Bureau on December 14, 2007, indicating that the sale had been disapproved by the Court. The Petitioner herein, Michael A. Rudella ultimately went to the Tax Claim Bureau and asked for copies of the Petition to Disapprove of Private Sale and the Court Order Disapproving the Private Sale on December 19, 2007. As of the date of this Motion, no Pleadings, Documents or Orders have ever been formally served on Michael A. Rudella..

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, the Order of Court dated August 21, 2007 by which the sale was disapproved must be rescinded.
13. That pursuant to the Court Order entered into as to this matter on November 13, 2007, there is to be a private auction between the Petitioner, Peter F. Smith and the Petitioner, Michael A. Rudella with a starting price of bidding to be the minimum set by the Court of \$1,928.11.
14. That the Petitioner, Peter F. Smith is not qualified to bid at said action as he is precluded from bidding pursuant to the provisions of 72 P.S. §5860.618 and 72 P.S. §5860.619. Attached hereto and incorporated herein by reference as Exhibit "B" is a complete copy of said sections.

WHEREFORE, the Petitioner, Michael A. Rudella, would respectfully request that your Honorable Court grant the Motion to Rescind Court Order and/or the Motion to Disqualify Bidder.

Respectfully Submitted,

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

Notes of Decisions

Discretion of commissioners 1
Resale 2

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 L.J. 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 Com'rs v. Prothonotary*, 14 D. & C.2d 89, 27 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

taxing district, the owner person who has joined in hearing, the court may appear just and proper. at the same time fix a pr sold and order that, if not be sold at public judici party agrees to pay the shall direct the burea property among the par agrees to pay the minim sell the property to that

(b) When an offer is received, and the price bureau shall, on the written motion of the court affording the owner and tax judgments against such notice, as the court the sale. If the court is with like effect as though by all taxing districts b 1947, July 7, P.L. 1368, art No. 157, § 2, imd. effectiv Jan 1, 1982; 1986, July

¹ Sections 5860.610 to 5860.

History

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

The 1981 amendment, in the place of subsec. (a), substitut five (45)" for "Fifteen (15)".

Section 7 of Act 1981, Se 274, No. 92, provides that i ment to this section "shall January 1, 1982 and be appl sales agreed to on or after t date".

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

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

(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,

TAXATION AND FISCAL AFFAIRS

limited liability company or corporation, trust, business association.

"Uncorrected housing code violation," any conviction building, housing, property maintenance or fire code which months of conviction.

"Violation," any conviction under a building, housing, I code which posed a threat to health, safety or property, by a court to be de minimis.

1947, July 7, P.L. 1368, No. 542, § 2, added 1998, Jan. 29, P 60 days.

¹ 72 P.S. § 5860.610 et seq.

Historical and Statutory Notes**1998 Legislation**

Section 3 of Act 1998, Jan. 29, No. 5 provides sales conducted that act.

Cross References

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

Notes of Decisions**Certification of nondelinquency**

tax sale purchases not provide certification and any reasonable reason had to be given to the taxpayer. In re 777 A.2d 532, A.2d 912, 568 P.2d 2991

1. Certification of nondelinquency

Tax sale of property on which delinquent taxes were owed was not invalid based on the purchaser's failure to provide certification that he did not owe any other property taxes, as required for

(f) REPOSITORY FOR UNSOLD PROPERTY**§ 5860.619a. Additional restrictions**

(a) Within twenty (20) days following any sale under this section, the person shall be required to provide certification to the bureau that the person is paying real estate taxes to any of the taxing districts where the person has no municipal utility bills that are more than 30 days past due.

(b) As used in this section, the following terms shall have the following meanings:

"Certification," shall mean proof via receipts of paid real estate taxes within the jurisdiction or a notarized affidavit of payment of such real estate taxes and municipal utility bills.

"Municipal utility bills," shall mean bills for services provided by a municipality or a county, city, borough, town, township, incorporated town, or a 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.

"Municipality," refers to any county, city, borough, town, township, incorporated town, or a 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.

"Person," includes a corporation; partnership; limited partnership; other association; government entity, other than the state; trust; foundation; or natural person.

1947, July 7, P.L. 1368, No. 542, § 619.1, added 1998, Dec. 2, effective in 60 days.

VERIFICATION

I, Michael A. Rudella, Petitioner herein, verify that the statements made within the foregoing Motion to Rescind Court Order and Motion to Disqualify Bidder 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 falsification to authorities.

Dated: December 31, 2007


Michael A. Rudella

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

PETER F. SMITH, :
Petitioner :
: :
V. : NO. 07-1865-CD
: :
CLEARFIELD COUNTY TAX :
CLAIM BUREAU, :
Respondent :
:

CERTIFICATE OF SERVICE

I hereby certify this 31st day of December, 2007, a copy of the Motion to Rescind Court Order and Motion to Disqualify Bidder has been served upon the following and in the manner indicated below:

Service by personal delivery addressed as follows:

Peter F. Smith, Esquire
30 South Second Street
P.O. Box 130
Clearfield, PA. 16830

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

Service by first class mail, postage prepaid addressed as follows:

Kim C. Kesner, Esquire
Belin, Kubista & Ryan
P.O. Box 1
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, CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

PETER F. SMITH, Petitioner

Vs.

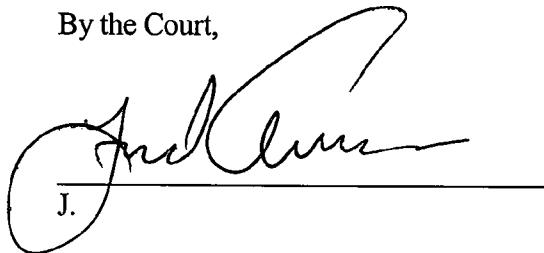
NO: 2007-1865CD

CLEARFIELD COUNTY TAX CLAIM
BUREAU, Respondent

ORDER

AND NOW this 13 day of November, 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 100 coal rights assessed to Smith Coal Company and identified by Clearfield County Assessment Map Number 115-N06-000-00008 MN for the sum of \$200.00 is disapproved. Respondent shall conduct an auction-style bid of said 100 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 \$1,928.11.

By the Court,


J.

FILED *acc*
OCT 11 2007 Atty Smith
NOV 14 2007 (will serve)
William A. Shaw
Prothonotary/Clerk of Courts
80
#2

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

PETER F. SMITH,

Petitioner

No. 2007-*1865*CD

vs.

CLEARFIELD COUNTY TAX
CLAIM BUREAU,

Respondent

FILED
OCT 5 2007
NOV 15 2007
CC

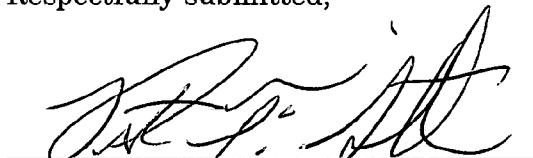
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for the Petitioner in the above-captioned matter, certify that a true and correct copy of a PETITION TO DISAPPROVE PRIVATE SALE and ORDER was hand delivered to the Clearfield County Tax Claim Bureau on November 15, 2007 at the following address:

HAND DELIVER
Clearfield County Tax Claim Bureau
Clearfield County Annex Building
230 East Market Street
Clearfield, PA 16830

Respectfully submitted,



Date: November 15, 2007

Peter F. Smith, Esquire
Attorney for Petitioner
P. O. Box 130, 30 South Second St.
Clearfield, PA 16830
(814) 765-5595

#3
99

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

PETER F. SMITH,
Petitioner
vs.
CLEARFIELD COUNTY TAX
CLAIM BUREAU,
Respondent

No. 2007-1865-CD

Type of Case: CIVIL

Type of Pleading: PETITION TO
DISAPPROVE PRIVATE SALE

Filed on behalf of:
Petitioner

Counsel of Record for this Party:
Peter F. Smith, Attorney
Supreme Court ID No. 34291
30 South Second Street
P.O. Box 130
Clearfield, PA 16830
(814) 765-5595

FILED 2CC
NOV 14 2007 Atty P. Smith
Atty pd. 85.00
William A. Shaw
Prothonotary/Clerk of Courts
#1

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

PETER F. SMITH, :
Petitioner : No. 2007- CD
: :
: :
vs. : :
: :
CLEARFIELD COUNTY TAX :
CLAIM BUREAU, :
Respondent : :
: :

PETITION TO DISAPPROVE PRIVATE SALE

TO: The Honorable Fredric J. Ammerman, President Judge

COMES NOW, the Petitioner Peter F. Smith, who files this Petition to Disapprove Private Sale and in support thereof avers:

1. Petitioner is an adult individual residing at 102 Elizabeth Street, Clearfield, Clearfield County, Pennsylvania 16830
2. Respondent is a bureau of Clearfield County, a government agency, with offices at 230 East Market Street, Clearfield, Clearfield County, Pennsylvania 16830.
3. Respondent notified Smith Coal Company by letter dated October 26, 2007 sent by U. S. Certified Mail of a proposed private sale of 100 acres coal rights assessed to Smith Coal Company and identified by Clearfield County Assessment Number 115-N06-000-00008 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 December 27, 2007 at 9:00 a.m. in the Tax Claim Bureau, 230 East Market Street, Clearfield, Pennsylvania 16830.

5. The bid of \$200.00 is insufficient since the amount of outstanding taxes and costs as of November 1, 2007 is the sum of \$1,928.11, and your Petition 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,

Dated: 11/5/07



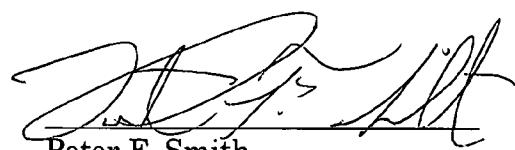
Peter F. Smith
Attorney for the Petitioner

30 South Second Street
P.O. Box 130
Clearfield, PA 16830
(814) 765-5595

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.

Date: 11/57/87



Peter F. Smith

07-1865-CD

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Peter F. Smith,
Appellant

v.

Clearfield County Tax Claim Bureau

No. 1580 C.D. 2008
Argued: May 5, 2009

BEFORE: HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge
HONORABLE JIM FLAHERTY, Senior Judge

FILED

1/12/51/2010
JAN 06 2010

William A. Shaw
Prothonotary/Clerk of Courts

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: June 17, 2009

Peter F. Smith (Smith) appeals from the April 22, 2008 order of the Court of Common Pleas of Clearfield County (trial court) ultimately qualifying Michael Rudella (Rudella) as the only remaining party eligible to buy the property at issue for an amount equal to the upset value as of the date of purchase, plus all additional costs incurred by the Tax Claim Bureau (Bureau). The issues before this Court are whether the trial court erred as a matter of law or abused its discretion in determining that Smith was not qualified to participate in an auction-style sale for the coal rights, and whether the trial court erred as a matter of law or abused its discretion in failing to fix a minimum price as required by statute. For the reasons that follow, we affirm the trial court.

Smith Coal Company (Company) owns 100 acres of coal rights in Clearfield County. The Company failed to pay real estate taxes for approximately thirteen years. Multiple public sales did not result in the purchase of the rights but,

that this section also makes him a “party to the proceedings” which allows him to bid on the property. We disagree.

Finding that an owner is allowed to participate in an auction-style sale as established in Section 613 of the Tax Sale Law simply because he is a “party to the proceedings,” would defeat the purpose of Section 618 of the Tax Sale Law. In addition, Section 613(a) of the Tax Sale Law states: “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.*” (Emphasis added). Section 618 of the Tax Sale Law specifically states that an owner may not purchase his own property *at a judicial sale under the provisions of this act.* Since the only types of sales allowed under Section 613(a) of the Tax Sale Law are judicial or private sales, the owner will never be allowed to participate in the purchase of the property.⁴ The auction-style sale is merely a means of carrying out either the judicial or private sale required in Section 613(a) of the Tax Sale Law. Therefore, the trial court did not err as a matter of law or abuse its discretion in determining that Smith was not eligible to participate in the auction-style sale of the coal rights at issue.

Smith also argues that the trial court’s order did not fix a minimum sale price as required by Section 613(a) of the Tax Sale Law. Section 613(a) of the Tax Sale Law states, in relevant part:

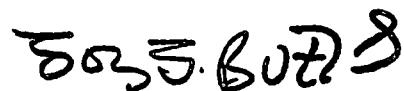
If the sale is disapproved, the court shall at the same time fix a price below which such property shall not be sold and order that, if no private sale can be arranged, the property be sold at public judicial sale under this act. If more than one party agrees to pay the minimum price set by the court, the court shall direct the bureau to conduct an auction-style

⁴ According to Section 618 of the Tax Sale Law, an owner is also prohibited from purchasing his own property from the Bureau’s repository of unsold property.

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.

(Emphasis added). In the present case, the trial court did set a minimum price, although it is not spelled out in the order. The trial court's order included that following instruction: "Michael Rudella, as the only remaining party qualified to buy the property, shall have the right to purchase the coal rights *for an amount equal to the full upset price* as of the date of purchase, plus all additional costs incurred by the Tax Claim Bureau." R.R. at 60a (emphasis added). The trial court determined that Smith was ineligible to purchase the coal rights. In doing so, the only interested party remaining was Rudella. While the trial court did not specifically use language such as "the minimum price will be . . .," it did indicate that Rudella would have to purchase the coal rights at the full upset price plus costs. That is the lowest amount the Bureau would accept for the purchase of the coal rights and, since there were no other parties to participate in an auction-style sale, it is the price that will have to be paid by Rudella if Rudella is to purchase the coal rights. Therefore, the trial court did not fail to fix a minimum price as required by statute.

For the reasons stated, the trial court's order is affirmed.



JOHNNY J. BUTLER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Peter F. Smith,

Appellant

v.

No. 1580 C.D. 2008

Clearfield County Tax Claim Bureau

ORDER

AND NOW, this 17th day of June, 2009, the April 22, 2008 order of the Court of Common Pleas of Clearfield County is hereby affirmed.

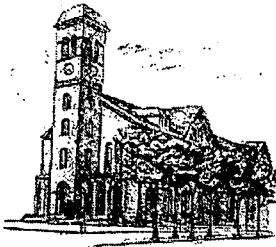
5035.BUT

JOHNNY J. BUTLER, Judge

FILED

JAN 06 2010

William A. Shaw
Prothonotary/Clerk of Courts



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, President Judge
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

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

Peter F. Smith, Esq.
PO Box 130
Clearfield, PA 16830

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

Peter F. Smith
Vs.
Clearfield County Tax Claim Bureau

Court No. 07-1865-CD; Superior Court No. 902 WDA 2008

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on June 27, 2008.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 07-1865-CD
Peter F. Smith
Vs.
Clearfield County Tax Claim Bureau

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	11/14/07	Petition to Disapprove Private Sale	04
02	11/14/07	Order, Re: proposed sale disapproved	01
03	11/15/07	Certificate of Service	01
04	12/31/07	Motion to Rescind Court Order and Motion to Disqualify Bidder	09
05	01/02/08	Rule, Re: Motion to Rescind Court Order, Rule granted; Rule Returnable for Answer and hearing	01
06	01/18/08	Certificate of Service	01
07	01/18/08	Response to Mr. Rudella's Motions	04
08	02/25/08	Motion for Judgment on Pleadings as to Motion to Disqualify Bidder	20
09	02/28/08	Order, Re: hearing scheduled for Motion for Judgment on the Pleadings as to the Motion to Disqualify Bidder	01
10	03/06/08	Order, Re: briefs to be submitted	01
11	03/25/08	Certificate of Service	01
12	04/23/08	Opinion and Order	09
13	05/22/08	Notice of Appeal to High Court and Request for Transcript	14
14	06/02/08	Appeal Docket Sheet, 902 WDA 2008	03
15	06/06/08	Order, Re: Concise Statement to be filed	01
16	06/25/08	Concise Statement of Matters Complained Of	02

Date: 6/27/2008
Time: 02:36 PM
Page 1 of 2

Clearfield County Court of Common Pleas

ROA Report
Case: 2007-01865-CD

User: BHUDSON

Current Judge: Fredric Joseph Ammerman

Peter F. Smith vs. Clearfield County Tax Claim Bureau

Civil Other-COUNT

Date	Judge	
11/14/2007	New Case Filed. Filing: Petition to Disapprove Private Sale Paid by: Smith, Peter F. (plaintiff) Receipt number: 1921462 Dated: 11/14/2007 Amount: \$85.00 (Check) 2CC Atty P. Smith. Order AND NOW, this 13 day of November 2007, upon consideration of the Fredric Joseph Ammerman foregoing Petition, IT IS ORDERED AND DECREED that the proposed private sale by the Clearfield County Tax Claim Bureau of 100 coal rights assessed to Smith Coal Company and identified by Clearfield Assessment Map Number 115-N06-000-0000MN for the sum of \$200.00 is disapproved. Respondent shall conduct an auction-style bid of said 100 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 \$1,928.11. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Atty Smith (will serve)	No Judge No Judge
11/15/2007	Certificate of Service, filed. That a true and correct copy of a Petition to Disapprove Private Sale and Order was hand delivered to Clearfield County Tax Claim Bureau on November 15, 2007 filed by s/ Peter F. Smith Esq. No CC.	No Judge
12/31/2007	Motion to Rescind Court Order and Motion to Disqualify Bidder, filed by Att. Bell 6 Cert. to Atty.	No Judge
1/2/2008	Rule, this 2nd day of Jan., 2008, upon consideration of the Motion to Rescind Court Order, a Rule is granted on the Petitioner, Peter F. Smith, to show cause why said Motion should not be granted. Rule Returnable for Answer by the Petitioner and hearing on said Motion to be held on the 3rd day of March, 2008, at 9:00 a.m. in Courtroom 1. by The court, /s/ Fredric J. Ammerman, Pres. Judge. 5CC to Atty. Bell	Fredric Joseph Ammerman
1/18/2008	Certificate of Service, filed. That a true and correct copy of a Response to Mr. Rudella's Motion has been served upon: Mary Anne Wesdock (hand delivery) and by first class mail to Kim C. Kesner Esq., and F. Cortez Bell III Esq., filed by s/ Peter F. Smith Esq. No CC. Response to Mr. Rudella's Motions, filed by s/ Peter F. Smith, Esquire. No CC	Fredric Joseph Ammerman
2/25/2008	Motion For Judgment on Pleadings as to Motion to Disqualify Bidder, filed by s/ F. Cortez Bell, III, Esquire. 5CC Atty. Bell	Fredric Joseph Ammerman
2/28/2008	Order, this 28th day of Feb., 2008, upon consideration of the Motion for Judgment on the Pleadings as to the Motion to Disqualify Bidder, argument on said Motion is scheduled for the 3rd day of March, 2008 at 9:00 a.m. in Courtroom 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Smith, F. Bell; 1CC Def.	Fredric Joseph Ammerman
3/6/2008	Order, this 3rd day of March, 2008, following argument on the Petitioner's Motion to Rescind Court Order and Motion to Disqualify Bidder, it is Ordered that counsel have no more than 20 days from this date in which to submit appropriate letter brief. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: P. Smith, F. Bell; 1CC Tax Claim	Fredric Joseph Ammerman
3/25/2008	Certificate of Service, filed. That a true and correct copy of the Requested Letter Brief has been served upon Honorable Fredric Ammerman (hand delivery) and Kim C. Kesner Esq. and F. Cortez Bell III Esq. (first class mail), filed by s/ Peter F. Smith Esq. No CC.	Fredric Joseph Ammerman

Date: 6/27/2008
Time: 02:36 PM

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Clearfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2007-01865-CD

Current Judge: Fredric Joseph Ammerman

Peter F. Smith vs. Clearfield County Tax Claim Bureau

Civil Other-COUNT

Date	Judge	
4/23/2008	Opinion and Order, NOW, this 22nd day of April, 2008, it is Ordered: (see original). By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty: Smith, F. Cortez Bell; 1CC Clfd. Co. Tax Claim Bureau; 1CC Law Library, D. Mikesell (without memo)	Fredric Joseph Ammerman
5/22/2008	Filing: Notice of Appeal to High Court Paid by: Smith Coal Company Receipt number: 1924168 Dated: 5/22/2008 Amount: \$50.00 (Check) 1 Cert. to Superior Court w/\$60.00 Check One CC Attorney Smith Request for Transcript, filed. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attorney Smith One CC Superior Court	Fredric Joseph Ammerman
6/2/2008	Appeal Docket Sheet # 902 WDA 2008 from Superior Court, filed.	Fredric Joseph Ammerman
6/6/2008	Order, this 5th day of June, 2008, it is Ordered that Peter F. Smith, 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 Plff., 1CC Def.	Fredric Joseph Ammerman
6/25/2008	Concise Statement of Matters Complainted of, filed by s/ Peter F. Smith Esq. 4CC Atty Smith.	Fredric Joseph Ammerman

Date: 5/29/2008

Time: 11:30 AM

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Clearfield County Court of Common Pleas

User: GLKNISLEY

ROA Report

Case: 2007-01865-CD

Current Judge: Fredric Joseph Ammerman

Peter F. Smith vs. Clearfield County Tax Claim Bureau

Civil Other-COUNT

Date	Judge
11/14/2007	New Case Filed. No Judge
①	Filing: Petition to Disapprove Private Sale Paid by: Smith, Peter F. (plaintiff) Receipt number: 1921462 Dated: 11/14/2007 Amount: \$85.00 (Check) 2CC Atty P. Smith. 4 No Judge
②	Order AND NOW, this 13 day of November 2007, upon consideration of the Fredric Joseph Ammerman foregoing Petition, IT IS ORDERED AND DECREED that the proposed private sale by the Clearfield County Tax Claim Bureau of 100 coal rights assessed to Smith Coal Company and identified by Clearfield Assessment Map Number 115-N06-000-0000MN for the sum of \$200.00 is disapproved. Respondent shall conduct an auction-style bid of said 100 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 \$1,928.11. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Atty Smith (will serve) /
11/15/2007	③ Certificate of Service, filed. That a true and correct copy of a Petition to Disapprove Private Sale and Order was hand delivered to Clearfield County / Tax Claim Bureau on November 15, 2007 filed by s/ Peter F. Smith Esq. No CC. No Judge
12/31/2007	④ Motion to Rescind Court Order and Motion to Disqualify Bidder, filed by Att. Bell 6 Cert. to Atty. 9 No Judge
1/2/2008	⑤ Rule, this 2nd day of Jan., 2008, upon consideration of the Motion to Rescind Court Order, a Rule is granted on the Petitioner, Peter F. Smith, to / show cause why said Motion should not be granted. Rule Returnable for Answer by the Petitioner and hearing on said Motion to be held on the 3rd day of March, 2008, at 9:00 a.m. in Courtroom 1. by The court, /s/ Fredric J. Ammerman, Pres. Judge. 5CC to Atty. Bell / Fredric Joseph Ammerman
1/18/2008	⑥ Certificate of Service, filed. That a true and correct copy of a Response to Mr. Rudella's Motion has been served upon: Mary Anne Wesdock (hand delivery) and by first class mail to Kim C. Kesner Esq., and F. Cortez Bell III Esq., filed by s/ Peter F. Smith Esq. No CC. 1 Fredric Joseph Ammerman
	⑦ Response to Mr. Rudella's Motions, filed by s/ Peter F. Smith, Esquire. No 4 Fredric Joseph Ammerman CC
2/25/2008	⑧ Motion For Judgment on Pleadings as to Motion to Disqualify Bidder, filed by s/ F. Cortez Bell, III, Esquire. 5CC Atty. Bell 20 Fredric Joseph Ammerman
2/28/2008	⑨ Order, this 28th day of Feb., 2008, upon consideration of the Motion for Judgment on the Pleadings as to the Motion to Disqualify Bidder, argument / on said Motion is scheduled for the 3rd day of March, 2008 at 9:00 a.m. in Courtroom 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Smith, F. Bell; 1CC Def. Fredric Joseph Ammerman
3/6/2008	⑩ Order, this 3rd day of March, 2008, following argument on the Petitioner's Motion to Rescind Court Order and Motion to Disqualify Bidder, it is Ordered that counsel have no more than 20 days from this date in which to submit appropriate letter brief. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty: P. Smith, F. Bell; 1CC Tax Claim Fredric Joseph Ammerman
3/25/2008	⑪ Certificate of Service, filed. That a true and correct copy of the Requested Letter Brief has been served upon Honorable Fredric Ammerman (hand delivery) and Kim C. Kesner Esq. and F. Cortez Bell III Esq. (first class mail), filed by s/ Peter F. Smith Esq. No CC. 1 Fredric Joseph Ammerman

Date: 5/29/2008

Time: 11:30 AM

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Clearfield County Court of Common Pleas

User: GLKNISLEY

ROA Report

Case: 2007-01865-CD

Current Judge: Fredric Joseph Ammerman

Peter F. Smith vs. Clearfield County Tax Claim Bureau

Civil Other-COUNT

Date	Judge
4/23/2008 (12) Opinion and Order, NOW, this 22nd day of April, 2008, it is Ordered: (see original). By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: 9 Smith, F. Cortez Bell; 1CC Clfd. Co. Tax Claim Bureau; 1CC Law Library, D. Mikesell (without memo)	Fredric Joseph Ammerman
5/22/2008 (13) Filing: Notice of Appeal to High Court Paid by: Smith Coal Company Receipt number: 1924168 Dated: 5/22/2008 Amount: \$50.00 (Check) 1/4 Cert. to Superior Court w/\$60.00 Check One CC Attorney Smith (14) Request for Transcript, filed. BY THE COURT: /s/Fredric J. Ammerman, Fredric Joseph Ammerman P.J. One CC Attorney Smith One CC Superior Court	Fredric Joseph Ammerman

Date: 6/27/2008
Time: 02:17 PM

Clearfield County Court of Common Pleas

User: BHUDSON

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ROA Report

Case: 2007-01865-CD

Current Judge: Fredric Joseph Ammerman

Peter F. Smith vs. Clearfield County Tax Claim Bureau

Civil Other-COUNT

Date	Selected Items	Judge
6/2/2008	14 Appeal Docket Sheet # 902 WDA 2008 from Superior Court, filed.	3 Fredric Joseph Ammerman
6/6/2008	15 Order, this 5th day of June, 2008, it is Ordered that Peter F. Smith, 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 Plff., 1CC Def.	1 Fredric Joseph Ammerman
6/25/2008	16 Concise Statement of Matters Complainted of, filed by s/ Peter F. Smith Esq. 4CC Atty Smith.	2 Fredric Joseph Ammerman