

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

City of Philadelphia :
 :
 v. :
 :
 James Spina, Joann Spina, :
 Sing Nguyen and Zung Nguyen :
 :
 Appeal of: Sing Nguyen and : No. 685 C.D. 2010
 Zung Nguyen : Argued: October 13, 2010

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: November 18, 2010

Sing Nguyen and Zung Nguyen (Tax Sale Purchasers) appeal from the Order of the Court of Common Pleas of Philadelphia County (trial court) which granted James and Joann Spina's (Owners) Petition to Set Aside a Tax Sale.

Owners operated an auto parts and truck sales business on a parcel of land they owned in Philadelphia (Property).

On May 21, 2008, the City of Philadelphia (City) filed a Tax Claim against Owners in the amount of \$4,926 due for real estate taxes owed on the Property for 2004.

On May 27, 2008, the trial court issued a Rule to Show Cause Why the Property Should not be Sold.

On July 24, 2009, the trial court scheduled the Tax Sale for September 16, 2009. On July 24, 2009, after the Decree was entered, the City filed an Affidavit of Service pursuant to the Tax Liens Act (Act)¹, 53 P.S. §7193.2(a).²

On September 16, 2009, the Owners and City entered into an agreement whereby Owners hand-delivered a check to the City for \$4,000 and, in return, the City agreed to postpone the tax sale. Owners still owed a balance of \$926.

On October 6, 2009, the City sent Owners a Notice “Sale of Property ... Re-postponed from the September 16, 2009 Sheriff’s Tax Sale...Tax sales are held the third Wednesday of each month at 10:00 AM at the First District Plaza...” It was the understanding of Owners and their counsel that since they had delivered the \$4,000 check, the sale would be postponed and they would receive notice of the new tax sale date.

On October 20, 2009, the City faxed a letter to Owner’s counsel at 5:16 p.m. which stated “[t]his letter is to advise you that we have not heard from you or your client regarding the above referenced property re-scheduled for October 21, 2009.” Owners’ counsel testified that he did not receive this fax and did not learn of the sale until after it had taken place. Notes of Testimony, March 9, 2010, at 41-47; Reproduced Record at 181a-187a.

¹ Section 39.2(a) of the Act, Act of May 16, 1923, P.L. 207, *as amended*, was added by the Act of December 14, 1992, P.L. 859.

² Section 39.2(a) of the Act, 53 P.S. §7193.2(a), requires that the City file an Affidavit of Service that they served the Rule **prior to seeking a Decree** ordering the sale of the Property.

On the morning of October 21, 2009, the Tax Sale took place and Tax Sale Purchasers purchased the Property for \$153,000. Owners did not appear.

The trial court concluded that the City, in violation of 53 P.S. §7193.2(a), failed to file its Affidavit of Service of the petition and rule until after the decree ordering the sale was entered. The trial court also concluded that the City failed to comply with subsection (c), as mandated by the decision in City of Philadelphia v. Schaffer, 974 A.2d 509 (Pa. Cmwlth. 2009), because no Affidavit of Service was filed pertaining to the rescheduled October 21, 2009, sale.

On appeal³, Tax Sale Purchasers raise five issues: (1) whether the trial court erred to the extent that it found that strict compliance with the procedural requirements of Section 39.2(a) of the Act, 53 P.S. §7193.2(a), was required even when the Owners had actual and adequate notice of the tax sale; the city complied with all statutory notice requirements; and because the City complied with all notice requirements the Owners were afforded an opportunity to be heard; (2) whether the trial court erred to the extent it found that Pa.R.C.P. No. 126 or 1 Pa.C.S. §1928 did not apply to excuse the City's procedural mishap in failing to ensure that the Affidavit of Service of the Petition and Rule to Show Cause was entered on the docket prior to the entry of the Decree even though both entries were docketed on the same day, hours apart; (3) whether the trial court erred to the extent that it found that the City was

³ In tax sale cases, this Court's scope of review is limited to determining whether the trial court abused its discretion, committed an error of law or rendered a decision unsupported by the evidence. Lancaster County Tax Claim Bureau v. Valenti, 601 A.2d 445 (Pa. Cmwlth. 1991), appeals denied, 533 Pa. 621, 619 A.2d 702 (1993) and 533 Pa. 647, 622 A.2d 1378 (1993). As the finder of fact, the trial court has exclusive authority to weigh the evidence, make credibility determinations and draw reasonable inferences from the evidence presented. Picknick v. Washington County Tax Claim Bureau, 936 A.2d 1209 (Pa. Cmwlth. 2007).

required to file a new Affidavit of Service and a new notice relating to the October 21, 2009, tax sale, under Section 39.2(c) of the Act, 53 P.S. §7193.2(c); (4) whether the trial court erred to the extent that it found that the scales of equity did not favor the Tax Sale Purchasers as innocent third party purchasers; and (5) whether the trial court erred to the extent that it found that the Owners were entitled to equitable relief?

These issues were raised and argued before the trial court and ably disposed of in the opinion of the Honorable Idee C. Fox. Therefore, this Court shall affirm on the basis of that opinion. City of Philadelphia v. James Spina, et al and Sing Nguyen and Zung Nguyen, (No. T0094, May Term 2008), filed March 31, 2010.

BERNARD L. MCGINLEY, Judge

Judge McCullough concurs in the result only.

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ORDER

AND NOW, this 18th day of November, 2010, the Order of the Court of Common Pleas of Philadelphia County in the above-captioned case is hereby affirmed.

BERNARD L. McGINLEY, Judge