

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Tax Parcel Nos. J6-7-1-0520, :
J6-2-1-0520 and J6-3-6-0520 :
: :
Estate of Bernarden M. Filchner :
: :
Northampton County Tax Claim :
Francis M & Gail P Ackerman :
Susan Rajecki :
Thomas W & Linda A Stackhouse :
Ronald E & Brenda P Hockenberry :
Randy H Brunell :
Scott A Zukowski :
Philip Michael Ahearn Jr :
David Harka :
Eleanor & Carlson Fisher :
J Kimberly :
Patricia Geisler :
Jason & Anna Hyun :
Francis Schumacher & :
Doris Fillman :
Patricia K Talijan :
Pedro Torres :
Carlos & Olga Cruz :
Alvin S Kanofsky :
Iris Lugo Cotto :
Charles F Boyer III :
Rolando Fontanez :
Adrian M Perry :
Bernadette E Frable :
Robert I & Marian A Lindenberger :
Raymond Kunkle et al :
Mark A Chiles :
Arthur Wagner :
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Rafic A & Rowieda A Amro :
Eileen M Cowell :
Francis K Kariuki :
Paul Maderbach :
Melissa M Toma :
Bruce Allen Applegate :
James & Raquel Slaughter :

Donna Toncik :
Daniel F Mihalik :
Wayne C & Cynthia J Cicale :
Lisa & Barry N Hahn :
Robert & Jessica Sikorsky Jr :
Harold Sona :
James A Davis :
Louis & Virginia Varju :
Sean & David Fleming :
Jim & Mortarulo Elaine Watt :
Howard & Jan Shimer :
Susan Kish :
Henry C Schaadt :
Jacqueline Shotigian :
Albert J & William Houston :
Charles A & David S Price :
Gruenberg Properties LLP :
John E Savage Jr :
Jamie P Calles :
Pablo Jusino :
John Young Jr :
Joseph N Sardina :
Janice M Crawson :
Bonita Lee Smith :
Stephen F Kutz :
Tuan Trinh :
Richard & Kathy B Cook :
Roger S Gabriel :
Sabrina Harris :
Barbara Harris :
Dawn C Dereemer :
Gail J Johnson :
Melvin A & Kimberly A Ransom :
Eric & Santiago Collado :
Giovanni & Victoria Claudia Toro :
Barbara Sohn :
Ethel Sykes :
Wadlyne Jean-Baptiste :
John Lynch & Joann Sutton-Lynch :
Michael J Hanchick :
Jason M & Chris A Brower :
Barbara A Morrow :
Frederick M Sterner :

Jeffery P Gall :
Luciano & Elizabeth Baca :
Timothy P Werkheiser I :
Anna Louise & Gary Fronheiser :
Clayton R & Mary E Wieand :
David Shoemaker :
Dale S Petty Jr :
Cynthia A Kline & Dale R Heineman :
Cynthia Long :
: No. 2097 C.D. 2013
Appeal of: Edwin Filchner : Argued: September 8, 2014

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: March 9, 2015

Edwin Filchner (Filchner) appeals from the order of the Court of Common Pleas of Northampton County (trial court) which dismissed with prejudice his Amended Petition to Set Aside Tax Sale, sustained the Preliminary Objections to the Amended Petition filed by Thomas J. Krause and Penn Dixie .Estates, LLC (Purchaser), and overruled Filchner's Preliminary Objections to the Preliminary Objections filed by Purchaser.¹

Bernarden Filchner (Decedent) died on December 26, 2007. The sole heirs under Decedent's will included her two sons, Filchner and Joseph Hillacova

¹ The remaining parties in the caption represent the reputed owners of all other properties which were subject to an Upset Sale on September 25, 2012, which went unsold, and which were subject to a Petition for Rule to Sell Property at Judicial Sale filed by the Northampton County Tax Claim Bureau at underlying Docket No. C0048-CV-2012-7947. They are inactive parties in this appeal.

(Hillacova). At the time of her death, Decedent owned three tax parcels: J6-3-6-0520, J6-2-1-0520 and J6-7-1-0520 (collectively “Property”). Filchner resided and conducted a business on the Property.

Pursuant to Section 609 of the Real Estate Tax Sale Law (RETSL)², 72 P.S. §5860.609, the Northampton County Tax Claim Bureau (Tax Bureau) first petitioned to have the Property sold at a tax upset sale in 2006 when Decedent became delinquent on her real estate taxes. The petition was granted, but petitions to stay the sale were filed and granted over the course of the next five years.³

In 2010, Tax Bureau again petitioned for a tax upset sale of the Property. At that time, the unpaid taxes totaled \$77,830. The petition was granted and a sale was scheduled for September 23, 2010. In August 2010, counsel for Decedent’s estate filed a petition to stay the tax upset sale and the stay was granted.

The following year, the Tax Bureau filed another petition to sell the Property. The petition was granted and a tax upset sale was scheduled for September 25, 2012. On August 9, 2012, counsel for the Decedent’s estate again petitioned for a stay.

² Act of July 7, 1947, P.L. 1368, *as amended*.

³ It was undisputed that the Property consisted of a single family detached dwelling, service repair garage and fifteen acres with an appraised value of \$340,000, which Filchner intended to purchase from the remaining heir, and sixty acres of vacant land with an appraised value of \$650,000. According to the record, the petitions for stay were initiated by Decedent’s estate pending extensive litigation between the heirs, and to give the parties the opportunity to address the Property’s environmental issues and give Filchner the opportunity to obtain financing.

On September 24, 2012, the trial court denied the petition for stay. The tax upset sale took place on September 25, 2012, with no bidders.

The Tax Bureau then petitioned to have the Property sold free and clear of liens via a judicial tax sale pursuant to Section 610 of the RETSL, 72 P.S. §5860.610. After a hearing, the trial court granted the Tax Bureau's petition and scheduled the judicial tax sale for February 7, 2013.

The judicial tax sale took place as scheduled. Parcels J6-3-6-0520 and J6-2-1-0520 were sold to Purchaser free and clear of all liens. Parcel J6-7-1-0520 was not sold.

On April 15, 2013, Filchner filed an Amended Petition to Set Aside the judicial tax sale pursuant to Section 607 of the RETSL, 72 P.S. §5860.607. Filchner argued that the judicial tax sale must be set aside because the Tax Bureau did not strictly comply with the statutory mailing notice requirements of Section 602 of the RETSL, 72 P.S. §5860.602. Filchner also argued that the Tax Bureau failed to post notice of the judicial tax sale on the Property at least ten days before the sale. Filchner further averred that he was entitled to receive notice because he was an heir of the estate, and by virtue of Decedent's Last Will and Testament, he had an ownership interest in the Property. He further averred that he was an "owner" as that term is defined in Section 102 of the RETSL, 72 P.S. §5860.102, because he was, at all times, "in open, peaceable and notorious possession of the Property as apparent owner thereof, or the reputed owner or owners thereof" and that the Tax Bureau had first-hand knowledge of the protracted litigation over the Property which involved him, his brother and the Decedent's estate.

On May 7, 2013, Purchaser filed an “Answer” to the Amended Petition to Set Aside. Purchaser averred that Filchner “lacked standing” to file the petition because he was not a record “owner” of the Property; that the Tax Bureau was not required to provide Filchner with notice of the judicial tax sale as he was not the record “owner;” and that the Tax Bureau did, in any event, provide Filchner’s counsel with notice, and counsel appeared at the sale.

Purchaser attached several documents to its Answer including: deeds and tax records as proof that Decedent was the record owner; the Proof of Service of the tax sale that was sent to Filchner’s then-counsel, Gary Asteak, Esquire (Attorney Asteak), as proof that Filchner had actual notice of the tax sale; and a letter from the Estate’s counsel to Attorney Asteak which stated that she had conveyed all of the information regarding the tax upset sale to Attorney Asteak in January of 2013 via letter and over the telephone.

On the same date as it filed its Answer to Filchner’s Petition to Set Aside, Purchaser also filed “Preliminary Objections” to the Amended Petition to Set Aside. Purchaser reiterated its argument that Filchner “lacked standing” to object to the tax sale because he was not an “owner” as defined under the RETSL.

On May 22, 2013, Filchner filed Preliminary Objections to Purchaser’s Preliminary Objections. He argued that Purchaser’s Preliminary Objections were procedurally improper because the Pennsylvania Rules of Civil Procedure do not provide for the filing of Preliminary Objections to a “petition,” but rather require the filing of an Answer pursuant to Pa.R.C.P. No. 206.2. Filchner also argued that the simultaneous filing of both Preliminary Objections

and an Answer did not conform to the Rules of Civil Procedure. Pursuant to Pa.R.C.P. No. 1027(a), pleadings are strictly an “either or” proposition; a party may either file an Answer or a Preliminary Objection, but not both.

On October 22, 2013, the trial court sustained Purchaser’s Preliminary Objections, dismissed Filchner’s Petition to Set Aside with prejudice, entered an order *nisi* which inadvertently confirmed the sale of all three tax parcels (instead of just the two parcels that sold), ordered the Tax Bureau to transfer title to the three tax parcels to Purchaser, and ordered Filchner to pay Purchaser lost rent from the date of sale to the date of the October 22, 2013 Order.

With respect to Filchner’s procedural challenge to Purchaser’s Preliminary Objections, the trial court held that petitions filed under the RETSL are outside the scope of the Rules of Civil Procedure. Battisti v. Tax Claim Bureau of Beaver County, 76 A.3d 111 (Pa. Cmwlth. 2013). Therefore, Pa.R.C.P. No. 206.2, which require an “Answer” to a petition, did not apply. The trial court further held “sustaining Petitioner’s [Filchner’s] preliminary objections on purely technical grounds would simply delay the resolution of this already protracted matter without a practical benefit to either party.” Trial Court Opinion, October 22, 2013, at 8.

Turning to the merits of Purchaser’s Preliminary Objections, the trial court found that the latest owner of record, prior to the tax sale, was Decedent, and by operation of law, her estate. The court agreed with Purchaser that Filchner was not an “owner” within the meaning of the RETSL; therefore, he had no “standing” to object to the tax sale under the RETSL. Trial Court Opinion, October 22, 2013, at 8. The trial court held that Purchaser “documented the Petitioner’s [Filchner’s]

actual notice of the sale and averred his physical presence at the sale through his counsel. The Petitioner [Filchner] did not deny or challenge these averments in a responsive pleading.” Trial Court Opinion, October 22, 2013, at 11.

Finally, the trial court, exercising its “equitable jurisdiction,” directed Filchner to pay Purchaser lost rents.

On appeal⁴, Filchner raises ten issues including that (1) the trial court erred when it confirmed the sale of three tax parcels, Nos. J6-7-1-0520, J6-3-6-0520 and J6-2-1-0520, when only two tax parcels were sold as tax parcel No. J6-7-1-0520 was not sold at the judicial sale; (2) the trial court erred when it ordered the Tax Bureau to transfer title of the three tax parcels to Purchaser when only two of the tax parcels in question were actually sold at the judicial sale; (3) the trial court erred when it ordered Filchner to pay Purchaser for lost rent from February 7, 2013, through October 22, 2013, when no claim for rent was ever made by Interveners, no cause of action for the payment of rent was ever litigated, the topic of rent was never raised before the trial court and the trial court had no specific power to grant such relief; (4) the trial court lacked jurisdiction to grant Purchaser lost rent as there was no specific prayer for relief and no litigation commenced seeking lost rent from Filchner; (5) the trial court erred by ordering Filchner to pay Purchaser lost rent when Filchner’s right of possession was paramount to that of Purchaser, and Filchner had a valid lease for the Property; (6) the trial court erred when it accepted Purchaser’s averments as true when there was no testimony taken and there was no requirement for Filchner to file an Answer to Purchaser’s

⁴ This Court’s review is limited to determining whether the trial court abused its discretion, rendered a decision with lack of supporting evidence or clearly erred as a matter of law. Krumbine v. Lebanon County Tax Claim Bureau, 621 A.2d 1139 (Pa. Cmwlth. 1993).

Preliminary Objections when Filchner filed Preliminary Objections to Purchaser's Preliminary Objections; (7) the trial court erred when it overruled Filchner's Preliminary Objections to the Preliminary Objections filed by Purchaser; (8) the trial court erred when it overruled Filchner's Preliminary Objections to the Preliminary Objections of Purchaser solely because "sustaining the Petitioner's [Filchner's] Preliminary Objections on purely technical grounds would simply delay the resolution of this already protracted matter without a practical benefit to either party" as there clearly would be a practical benefit, i.e., assuring the Purchaser fully complied with the applicable rules of procedure in the instant matter, whether the Pennsylvania Rules of Civil Procedure or a set of rules under the RETSL; (9) the trial court erred when it sustained the Preliminary Objections filed by Purchaser as the record does not establish that the Tax Bureau strictly complied with the notice requirements of the RETSL, specifically the posting of notification, as the posting of notice of a tax sale serves the function of notifying the general public, as well as the owner of the sale, and the word "sale" in the RETSL imposes a mandatory duty upon the Tax Bureau; and (10) the trial court erred when it sustained Purchaser's Preliminary Objections and found that Filchner lacked standing because Filchner clearly had an interest in the Property as one of two beneficiaries of the Decedent's estate and because Filchner was an heir of Decedent who occupied the real estate owned by Decedent with her consent.⁵

**Did the Trial Court Err When It
Overruled Filchner's Preliminary Objections
And Sustained Purchaser's Preliminary Objections?**

In issues 6, 7 and 8, Filchner challenges the trial court's resolution of the parties' respective preliminary objections. He contends that nothing in the

⁵ For clarity, the Court has condensed and reorganized the issues.

Pennsylvania Rules of Civil Procedure, RETSL, or in the local rules of the Court of Common Pleas of Northampton County⁶ authorized Purchaser to file preliminary objections to his Petition to Set Aside which raised the factual issue of whether he was entitled to receive notice of the tax sale and whether the Tax Bureau satisfied the requirements of the RETSL. He contends this violated his due process rights. This Court must agree.

In Battisti, this Court held that the trial court erred when it granted a tax sale purchaser's motion for judgment on the pleadings and dismissed a taxpayer's petition to set aside the sale brought under the RETSL where there were disputed issues of fact.

There, Eileen Battisti (Taxpayer) paid her 2008 school district taxes six days late which caused her payment to be short \$6.30 in interest. Taxpayer paid her 2009 taxes but the shortfall remained unpaid the next year. This caused the local Tax Claim Bureau to sell her home to a third-party buyer in an upset tax sale. Taxpayer challenged the upset tax sale and asserted a lack of notice of either the sale or of the outstanding debt. She sued both the Tax Claim Bureau and the Buyer who answered the Petition to Set Aside. Buyer then filed a motion for judgment on the pleadings. Based on the "pleadings," the trial court concluded that Taxpayer received all notices required under the law, but her payments did not satisfy the full amount owed. Thus, Buyer's motion for judgment on the pleadings was granted. Battisti, 76 A.3d at 113.

⁶ Section 607(d) of the RETSL, 72 P.S. §5860.607(d) provides that "[i]n case any objections or exceptions are filed they shall be disposed of according to the practice of the court."

On appeal, Taxpayer argued that the trial court erred in granting the buyer's motion for judgment on the pleadings because there were facts in dispute and the pleadings had not "closed." She contended that the trial court erred when she was foreclosed from presenting evidence on whether the Tax Claim Bureau satisfied the requirements of the RETSL.

This Court held that by granting Buyer's motion for judgment on the pleadings, the trial court denied Taxpayer's objections without an evidentiary hearing, and thereby denied Taxpayer due process. Battisti, 76 A.3d at 116. This Court stated that due process under the United States and Pennsylvania Constitutions must be satisfied whenever the government subjects a citizen's property to forfeiture for nonpayment of taxes. Geier v. Tax Claim Bureau of Schuylkill County, 588 A.2d 480 (Pa. 1991). Once Taxpayer presented a *prima facie* challenge to the tax sale, the burden shifted to the Tax Claim Bureau to prove strict compliance with the notice provisions of the RETSL. Michener v. Montgomery County Tax Claim Bureau, 671 A.2d 285, 289-90 (Pa. Cmwlth. 1996). Because of the factual dispute, this Court concluded that Taxpayer was entitled to an evidentiary hearing and remanded the case to the trial court.

Here, as in Battisti, Filchner never received an opportunity to be heard on his Petition to Set Aside. Filchner alleged in his Petition to Set Aside that (1) he was one of two heirs who inherited the Property from Decedent; (2) that he at all times occupied and was in open, peaceable and notorious possession of the Property and represented himself as one with apparent ownership of the Property; (3) that the Tax Bureau was well-aware of his ownership interest in the Property by virtue of the records in the Orphans Court Division of the Northampton County Court of Common Pleas; (4) that the Tax Bureau was aware of his ownership

interest in the Property based on his participation in legal proceedings which pertained to the Property which involved the Tax Bureau; and (5) that he was deprived of his due process rights because the Tax Bureau failed to provide him with statutory notice of the tax sale. Amended Petition to Set Aside Tax Sale, ¶¶5-8, 9-14 at 2-3; R.R. at 3-4.

Without holding a hearing or taking evidence, the trial court summarily resolved disputed issues of fact when it accepted Purchaser's version of the facts as true and concluded that the Tax Bureau's notice was in accordance with the RETSL, that Decedent's estate was the "owner," that Filchner was not an "owner," and that Filchner had actual notice of the tax sale through his then-counsel. This was error.

Filchner presented a *prima facie* challenge to the tax sale. He alleged that he was not personally provided with statutory notice. Purchaser's Answer raised issues of fact as to the central issue, i.e., whether the Tax Bureau complied with the statutory notice requirements. Filchner was entitled to an evidentiary hearing on that issue. Battisti. The matter must be remanded.

Because the matter must be remanded, this Court will briefly address the remaining issues raised by Filchner because they will impact the proceedings on remand.

**Did the Trial Court Err
When It Concluded Filchner Had no
Standing to Object to the Tax Sale**

In Issue 10, Filchner contends that the trial court erred when it concluded that he had no “standing” to object to the tax sale because he was not an “owner.”

First, as this Court recently explained, whether a party has standing to object to a tax sale and the right to notice of a tax sale are two different questions. Moore v. Keller, 98 A.3d 1 (Pa. Cmwlth. 2014). In Moore, Grace Moore (Decedent) executed a will which named her granddaughters, Megan Moore (Moore) and Susan Gauntlett (Gauntlett) as co-executors of her will and co-heirs of property located in Dallas, Pennsylvania. Moore lived on the property. The taxes became delinquent for the year 2010.

In September 2012, the property was exposed to a tax upset sale and sold. Moore filed a petition to set aside the tax sale.

The trial court denied the petition to set aside because it concluded that Moore was neither an “owner” nor a “lien creditor” as defined in Section 102 of the RETSL, 72 P.S. § 5860.102. Moore, 98 A.3d at 3. The trial court held that Moore did not have standing to object to the tax sale. The trial court also summarily concluded that, even though Moore and Gauntlett were not provided with personal notice of the tax sale, notice of the sale had been provided in compliance with Section 602 of the RETSL, 72 P.S. § 5860.602.

On appeal, Moore argued, *inter alia*, that she had standing to object to the tax sale because she had legal title to the property as co-executrix and co-heir. Moore, 98 A.3d at 3-4. Moore argued that a devisee acquires legal title to specifically devised real property at the death of the testator subject to the powers of the personal representative under Section 2 of the Probate, Estate and Fiduciaries Code, 20 Pa.C.S. §301(b). She asserted that until distribution of Grace B. Moore's estate was accomplished full legal title was in both Moore and Gauntlett.

This Court agreed. Relying on Husak v. Fayette County Tax Claim Bureau, 61 A.3d 302 (Pa. Cmwlth. 2013)⁷, this Court explained “whether

⁷ In Husak, Richard and Susan Husak had purchased a property from the Federal National Mortgage Association (Fannie Mae) which in turn, executed a nonnotarized quitclaim deed. Afterwards, the Husaks’ attorney attempted to obtain a notarized original deed from Fannie Mae for recording purposes. In the meantime, the local tax claim bureau mailed a notice of an upset tax sale to Fannie Mae. The notice was signed and received by “J. Pierce.” Husak, 61 A.3d at 304. The property was eventually sold to a purchaser at a tax sale. The Husaks filed a petition to set aside the tax sale. The purchaser argued that the Husaks did not have standing to contest the validity of the tax sale. Following a hearing, the Court of Common Pleas of Fayette County (trial court) set aside the tax sale.

On appeal, this Court affirmed. Even though the Husaks were unable to record a quitclaim deed, they paid \$150,000 for the property and received a quitclaim deed for it. This Court found that the Husaks “acquired, at the very minimum, equitable title, a legally recognized interest in the subject property” and that “[c]onsequently, they were clearly aggrieved for purposes of standing to challenge the tax sale.” Husak, 61 A.2d at 310.

This Court next addressed whether the Husaks were entitled to personal mail notice under the RETSL and whether the tax bureau complied with the statutory notice requirements. The record established that the Husaks resided and raised crops on the property. The record further established that the notices were sent to Fannie Mae and signed by a “J. Pierce.” At the hearing, the tax bureau representative admitted that she did not know “J. Pierce” so there was no way to confirm that this individual was authorized to accept certified mail for Fannie Mae. Therefore, this Court found that the tax bureau was required “to make additional notification efforts to reach ‘any owner, mortgagee, lienholder or other person or entity whose property interests are likely to be significantly affected by such tax sale.....’ [Section 607(a), added by the Act of July 3, 1986, **(Footnote continued on next page...)**”

Appellant [Moore] had standing to challenge the tax sale is based upon whether she had the requisite substantial, direct and immediate interest in the sale of the property to qualify as an aggrieved party.” Moore, 98 A.3d at 4. This Court concluded that Moore, as devisee of Grace B. Moore, was an “equitable owner” and as such, she had the requisite substantial, direct and immediate interest in the sale of the property to challenge the tax sale. Moore, 98 A.3d at 4.

Here, Filchner was a devisee of Decedent and as such he was an “equitable owner” of the Property who had a substantial, direct and immediate interest in the sale of the property to object to the tax sale. Accordingly, to the extent that the trial court found that Filchner did not have “standing” to object to the tax sale, it erred as a matter of law.

Whether the Tax Bureau complied with the statutory mailing notice requirements by mailing the notice *to Decedent’s estate’s counsel* is a different question which will depend on the facts as developed at the evidentiary hearing. See Krawec v. Carbon County Tax Claim Bureau, 842 A.2d 520 (Pa. Cmwlth. 2004) (“ordinary common sense business practices” dictated that the tax bureau should have inquired of the Register of Wills, where the will clearly listed the Executrix’s information and the name and address of a taxpayer's specific devisee; this would have given the bureau all the information needed to effect proper notice of the tax sale of the property); In re Delinquent Tax by Elk County Tax Claim

(continued...)

P.L. 351] 72 P.S. §5860.607a(a).” Husak, 61 A.3d at 312. (Emphasis in original.) Because the bureau failed to make any additional notification efforts, the trial court did not err when it set aside the tax sale.

Bureau held on September 11, 2000 Parcel, 793 A.2d 1025 (Pa. Cmwlth. 2002) (where the assessment records listed the owner as “Heigel Minnie Estate Heirs c/o Martha Dowie” this Court held that the tax bureau used common sense business practices in attempting to identify and notify the Minnie Heigel heirs).

Finally, whether the Tax Bureau complied with the posting requirements of the RETSL, i.e., whether whatever manner of posting utilized by the Tax Bureau was reasonable and likely to inform the taxpayer as well as the public at large of an intended property sale, is a question that the trial court must only resolve after the evidentiary hearing. See In re Somerset County Tax Sale of Real Estate Assessed in the Name of Tub Mill Farms, Inc., 14 A.3d 180 (Pa. Cmwlth. 2010).

Whether the Trial Court Erred When it Awarded Lost Rents to Purchaser

In issues 3, 4, and 5, Filchner asserts that the trial court erred when it ordered Filchner to pay Purchaser for “lost rents” from the date of the judicial tax sale on February 7, 2013, through October 22, 2013.

In its Answer, Purchaser requested “equitable relief” in the form of past-due rents because Filchner’s actions prevented Purchaser from obtaining title and possession of the Property. The trial court agreed that equity demanded that Purchaser be permitted to recover an unspecified amount of “lost rents” from Filchner who remained on the Property during the pendency of the within proceedings.

This Court finds it was error for the trial court to award Purchaser consequential damages in an action which involved a petition to set aside a judicial tax sale under the RETSL. There is nothing in the RETSL's statutory scheme which authorizes a court to award a tax sale purchaser lost rents when disposing of a petition to set aside a judicial tax sale.

**Whether the Trial Court Erroneously Included
Parcel No. J6-7-1-0520 Within the Scope of its Order?**

Finally, the first two issues raised by Filchner address the trial court's determination that the sale of the *three* tax parcels should be confirmed and that title to the *three* tax parcels should be transferred to Purchaser.

It is not disputed, and the record is clear, that only *two* of the three tax parcels in question were, in fact, sold at the judicial sale on February 7, 2013. The parties agree that the trial court erred when it confirmed the sale of parcel No. J6-7-1-0520 and ordered the Tax Bureau to transfer title of that parcel to Purchaser. The trial court has also acknowledged this error in its Statement filed pursuant to Pa.R.A.P. No. 1925(a). Because this Court is vacating the order, this inadvertent error is of no moment. This Court trusts that any future orders entered by the trial court will reflect the correct parcels.

For the foregoing reasons, the order of the trial court is vacated. The matter is remanded for an evidentiary hearing in accordance with this opinion.

BERNARD L. MCGINLEY, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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Stephen F Kutz :
Tuan Trinh :
Richard & Kathy B Cook :
Roger S Gabriel :
Sabrina Harris :
Barbara Harris :
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ORDER

AND NOW, this 9th day of March, 2015, the order of the Court of Common Pleas of Northampton County in the above-captioned matter is hereby VACATED and this matter is REMANDED for further proceedings in accordance with the attached opinion.

Jurisdiction relinquished.

BERNARD L. McGINLEY, Judge