

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Zion Bullitt Avenue Limited	:	
Partnership,	:	
Appellant	:	
	:	
v.	:	No. 1396 C.D. 2014
	:	Argued: April 13, 2015
Westmoreland County Tax Claim	:	
Bureau, Westmoreland County	:	
Industrial Development Corporation,	:	
and City of Jeannette	:	

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROBERT SIMPSON, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: June 4, 2015

In this tax sale case, Zion Bullitt Avenue, L.P. (Owner) appeals from an order of the Court of Common Pleas of Westmoreland County (trial court)¹ that denied Owner's amended objections and exceptions to a September 2012 tax sale of Owner's real property located in the City of Jeannette, Westmoreland County. Owner contends the trial court erred by denying Owner's objections and exceptions to the tax sale where the Westmoreland County Tax Claim Bureau (Bureau) failed to comply with mandatory requirements in the Real Estate Tax Sale Law (Tax Sale Law)² for providing the property owner with notice of return and claim and notice of public sale. Owner also contends trial court abused its

¹ The Honorable Anthony G. Marsili presided.

² Act of July 7, 1947, P.L. 1368, as amended, 72 P.S. §§5860.101-5860.803.

discretion by denying Owner's objections and exceptions where the Bureau failed to establish by admissible evidence that it complied with mandatory requirements for providing notice of return and claim, and notice of public sale. For the reasons that follow, we affirm.

I. Background

A. Generally

Owner's registered address is 4630 Fieldstone Road, Bronx, New York, 10471. Owner owns approximately 13.2 acres of land, buildings and equipment situated in Jeannette, Westmoreland County (subject property).

Owner is a Delaware limited partnership comprised of Abraham Zion, 89 years old at the time of the tax sale, and his three children, Mark Zion, Joshua Zion and Adina Zion, who are all in their fifties. Mark Zion is currently the managing partner of Zion Pennsylvania Corp., which is a general partner of Owner. Abe Zion resided at Owner's registered address in the Bronx at all times relevant to this case.

Abe Zion purchased the subject property approximately 30 years ago. Mark Zion has been involved with the subject property virtually since his father purchased it.

Owner owed delinquent taxes for tax years 2010 and 2011, which the local tax collectors forwarded to the Bureau. In 2011, Infocon Corporation (Infocon) began generating and mailing the Bureau's notices. Infocon, a company

located in Ebensburg, PA, provides printing and mailing services for government offices and private businesses. In April 2011, the Bureau (respondent in the trial court proceeding) sent out the notice of return and claim by certified mail to Owner's registered address. See Tr. Ct. Hr'g, Notes of Testimony (N.T.), 3/24/14, Resp't Ex. No. 1; Reproduced Record (R.R.) at 90a. The notice indicated the tax amount due at that time - \$81,365.60. Id. The notice, which was subsequently submitted as a hearing exhibit, included an attached Infocon document which indicated the U.S. Postal Service (USPS) delivered the notice to Owner's registered address on April 11, 2011. R.R. at 91a.

In May 2012, the Bureau sent the notice of public sale by certified mail, restricted delivery to Owner's registered address in the Bronx. See N.T., Tr. Ct. Hr'g, Resp't Ex. No. 2; R.R. at 92a. This notice indicated an amount of \$171,413.14 as the sum for taxes due on or before June 1, 2012 that would remove the subject property from the September 2012 tax sale. Id. This trial exhibit included a USPS/Infocon document that indicated USPS delivered the notice on May 14, 2012. R.R. at 93a. An individual signed for the document with a signature of "Zion." Id. Underneath the signature, the recipient printed "Zion." Id.

Thereafter, as stipulated by the parties at trial, a deputy sheriff posted the subject property with a sales notice on July 18, 2012. See N.T. at 4-5; R.R. at 57a. The parties also stipulated that the publication requirements for notice of sale in a newspaper of general circulation and the appropriate law journal were met. See N.T. at 25, R.R. at 62a.

On September 10, 2012, the Bureau exposed the subject property for sale, and a non-profit corporation, the Westmoreland County Industrial Development Corp. (Purchaser) purchased it for the amount of \$305,078.24.

In response, Owner filed objections and exceptions to the tax sale in the trial court. Thereafter, the trial court permitted Purchaser and the City of Jeannette (Intervenors) to intervene. Respondent Bureau and Purchaser filed answers to Owner's objections and exceptions. Ultimately, in March 2014, Owner filed amended objections and exceptions.

After discovery, which included depositions, the trial court in late March 2014 held a hearing at which the parties presented testimony and submitted exhibits, some of which are described above. On July 30, 2014, the trial court entered an opinion and order denying Owner's amended objections and exceptions, and confirming the September 2012 tax sale.

B. Trial Court Opinion

In its opinion, the trial court determined that the Bureau met the notice requirements of Section 308 of the Tax Sale Law by proving mailed notice of return and claim to Owner at its registered address. Tr. Ct., Slip Op., 7/30/14, at 4-5. Notably, the trial court accepted as credible the testimony of the Bureau's Director, Yvonne Hayes (Bureau Director) and Joseph Huber (Infocon Representative) and determined the electronic tracking process used by the USPS,

the Bureau and Infocon established that the Bureau met the notice requirements of Section 308 of the Tax Sale Law.

In particular, Bureau Director testified that under Section 308 of the Tax Sale Law, notice of return and claim is not required to be sent by certified mail. N.T. at 9; R.R. at 58a. However, Bureau Director testified that the Bureau sent the notice by certified mail, return receipt requested, to Owner at its registered address in the Bronx. Owner does not dispute this fact.

Infocon Representative testified that Infocon worked together with the Bureau to create a template for tax sale notices. N.T. at 67; R.R. at 73a. The Bureau provides Infocon with a data file with all the information needed for the notice. Id. Infocon is then able to produce a tax sale notice. N.T. at 67-69; R.R. at 73a.

Infocon Representative further testified that Infocon is certified by the USPS to assign a certified mail number to the notices. N.T. at 69; R.R. at 73a. Infocon trained with a USPS team in Memphis, Tennessee, and then submitted test files and documents. Id. Therefore, Infocon is able to track, on a daily basis, any documents it delivered to USPS for certified mail. N.T. at 70-71; R.R. at 74a. In addition, USPS provides Infocon with the signature pages on a weekly basis. Id.

Further, USPS provides Infocon a website, known as an FTP (file transfer protocol) site, to check on the status of what is delivered. N.T. at 71; R.R.

at 74a. Infocon is also able to copy or “scrape” tracking information, including signatures, after the document is delivered. Id.

In the present case, USPS did not obtain a signature page for the notice of return and claim. N.T. at 73; R.R. at 74a. However, Infocon did obtain tracking information directly from USPS. N.T. at 74; R.R. at 75a. On April 8, 2012, Infocon delivered the notice of return and claim to the USPS at its Ebensburg, PA post office. N.T. at 74-75; R.R. at 75a. On April 10, the notice arrived at the Bronx, N.Y. sorting facility. N.T. at 75; R.R. at 75a. On April 11, the notice arrived at the Bronx local post office. Id. That same day, it was delivered in the field to the address on the notice – Owner’s registered address at 4630 Fieldstone Road, Bronx, New York. Id. The fact of delivery indicated that someone signed the certified mail return receipt. Id.

On cross-examination, Infocon Representative testified he is Infocon’s project manager on electronic certified mail; he is also the custodian of Infocon’s records. N.T. at 84-85; R.R. at 77a. Most of the information Infocon receives comes from the Bureau or USPS. N.T. at 85; R.R. at 77a. In sending information, Infocon relies on the Bureau’s approval. Id. In receiving information, Infocon relies on what USPS sends it. Id.

In its opinion, the trial court accepted Infocon Representative’s testimony as “detailed, straightforward and credible.” Tr. Ct., Slip Op., at 5. In particular the trial court stated (with emphasis added):

The witness provided logical and step by step information regarding the process used. The [Bureau]

provides the data file to [Infocon]; [Infocon] processes the data and then processes and tracks the electronic files involved with certified and registered mail; with the [USPS] approving and certifying for [Infocon] to proceed in the manner that they do. As a result, [Infocon] obtains from [USPS] on a daily basis the tracking history of their mailings, and on a weekly basis, the electronic signature pages of those mailings. All of that data is generated by and obtained directly from the [USPS].

As such, this Court accepts the process that is used electronically by the [Bureau] and [Infocon] as outlined above and acknowledges the modern business world of electronic signing by the recipients of mailings and packages, as opposed to the traditional green return receipt card ... used previously by businesses and the [USPS]. Therefore, this Court has determined the service of the Notice of Public Sale and the Notice of Return and Claim as required by the [Tax Sale Law] were completed in such a manner that the procedural requirements for the sale of the property were met.

Tr. Ct., Slip. Op., at 5-6.

More importantly, despite Mark Zion's testimony that neither he nor his father, Abe Zion, signed the receipt for the May 2012 notice of tax sale, the trial court determined under the straightforward circumstances of this case, Owner had, at the very minimum, implied actual notice of the sale. Tr. Ct., Slip. Op., at 10-12. Where actual notice is established, the formal requirements of notice need not be met. Citimortgage, Inc. v. KDR Investments, LLP, 954 A.2d 755 (Pa. Cmwlth. 2008); Cruder v. Westmoreland Cnty. Tax Claim Bureau, 861 A.2d 411 (Pa. Cmwlth. 2004); Stanford-Gale v. Tax Claim Bureau of Susquehanna Cnty.,

816 A.2d 1214 (Pa. Cmwlth. 2003); Sabbeth v. Tax Claim Bureau of Fulton Cnty., 714 A.2d 514 (Pa. Cmwlth. 1998). Owner appeals.³

II. Discussion

A. Notice of Return and Claim

Owner first contends the trial court erred or abused its discretion by denying Owner's objections and exceptions where the Bureau failed to comply with the mandatory notice provisions in Section 308 of the Tax Sale Law. Owner also contends the trial court erred or abused its discretion by denying Owner's objections and exceptions where the Bureau: (i) failed to present evidence that anyone signed for the notice of return and claim sent to Owner; (ii) failed to produce a certified mail, return receipt signature card for the notice of return; and, (iii) relied upon an unauthenticated document containing inadmissible hearsay to prove delivery of the notice of return and claim.

Owner asserts, the purpose of the Tax Sale Law is to ensure the collection of taxes, not to deprive citizens of their property. In re: Sale of Real Estate by Lackawanna County Tax Claim Bureau, 22 A.3d 308 (Pa. Cmwlth. 2011). For that reason, Pennsylvania courts strictly construe the notice provisions of the Tax Sale Law. Id.

³ In tax sale cases, our review is limited to determining whether the trial court abused its discretion, rendered a decision without supporting evidence, or clearly erred as a matter of law. Husak v. Fayette County Tax Claim Bureau, 61 A.3d 302 (Pa. Cmwlth. 2013).

1. Recipient's Signature

a. Argument

Owner first contends the Bureau failed to prove it complied with Section 308 of the Tax Sale Law (relating to notice of filing of returns and entry of claim). Section 308(a) provides in pertinent part (with emphasis added):

(a) Not later than the thirty-first day of July each year, the [B]ureau shall give only one notice of the return of said taxes and the entry of such claim in one envelope for each delinquent taxable property, by United States registered mail or United States certified mail, return receipt requested, postage pre-paid, addressed to the owners at the same address listed on the form returned by the tax collector for taxes that are delinquent. ... If no post office address of the owner is known or if a notice mailed to an owner at such last known post office address is not delivered by the postal authorities, then notice as herein provided shall be posted on the property affected.

72 P.S. §5860.308(a).

Owner argues the Bureau failed to prove delivery of the notice of the return and claim because it failed to produce a signed U.S. certified mail receipt. Owner argues the Bureau chose to use certified mail, return receipt requested, but failed to prove that the notice of return and claim were ever delivered to Owner. Citing Horton v. Washington County Tax Claim Bureau, 81 A.3d 883 (Pa. 2013), Owner asserts, where the legislature uses USPS-specific terms in the Tax Sale Law, the legislature intends for such terms to be interpreted pursuant to USPS definitions. According to the USPS, the term “certified mail” requires the signature of the recipient. See Horton, 81 A.3d at 890. Further, the term “return receipt” entails “proof of delivery sent by email or postcard showing the recipient’s

signature.” Id. Here, the Bureau failed to provide any document or other evidence showing the recipient’s signature, which is required for certified mail. Therefore, Owner urges, the Bureau failed to prove delivery of the notice of return and claim.

b. Analysis

We disagree. Section 308(a) of the Tax Sale Law permits notice of return and claim to be sent either by U.S. registered mail or U.S. certified mail. 72 P.S. §5860.308(a). Registered mail, which also permits tracking, does not require a signature from the recipient. Here, the tracking information clearly reflects that USPS delivered the notice of return and claim to Owner’s registered address on April 11, 2011 at 14:37:00 (2:37 p.m.). R.R. at 91a. At a minimum, this tracking information is sufficient to meet the requirements of U.S. registered mail. Therefore, it satisfies the requirements of Section 308 of the Tax Sale Law.

In addition, unlike Section 602 of the Tax Sale Law regarding notice of sale, the certified mail option in Section 308 does not require restricted delivery. Consequently, anyone at that address can sign it. As such, proof of who signed the receipt is unnecessary.

Further, we believe Owner’s reliance on the Supreme Court’s decision in Horton is misplaced. Horton dealt with the requirement for proof of mailing of the notice of sale by first class mail under Section 602(e)(2) of the Tax Sale Law, 72 P.S. §5860.602(e)(2), where notice to each owner by certified mail, restricted delivery, return receipt requested, failed. Where no return receipt is received from an owner of record, the notice of sale may be sent by first class mail with proof of

delivery. Essentially, the Supreme Court held that the Bureau is not exclusively limited to the USPS Form 3817 certificate of mailing. Rather, the Board may use other proof of first class mailing, such as the actual envelopes. Therefore, Horton is inapplicable here where the Bureau did not use first class mail.

2. Tracking Information (Authentication)

a. Argument

Owner next argues that in the absence of a certified mail return receipt, the Bureau relied on a one-page document containing tracking information. See Resp't Ex. No. 1; R.R. at 91a. Owner contends this document was not admissible because it was not authenticated and contained inadmissible hearsay. For a document to be admissible, it must be authenticated by "evidence sufficient to support a finding that the item is what the proponent claims it is." Pa. R.E. 901(a); Keystone Dedicated Logistics, LLC v. JGB Enterprises, Inc., 77 A.3d 1(Pa. Super. 2013); see also Zuk v. Zuk, 55 A.3d 102, 112 (Pa. Super. 2012) ("the requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims").

Here, Owner asserts, the tracking information in Respondent's Exhibit No. 1, which bears an Infocon header, contains purported tracking information prepared by the USPS. Infocon merely copied this information from the USPS website. The information in the document recites particulars regarding the transmission of a piece of mail by USPS activities in which neither the Bureau nor Infocon were involved. The Bureau offered no witness from the USPS to verify

that the tracking information related in any manner to the notice of return and claim Infocon prepared and sent to Owner. As such, the tracking information was never properly authenticated. Thus, Owner urges, the trial court erred in not sustaining Owner's objection to the document. See Keystone (Superior Court rejected attempt by Keystone, a logistics provider, to authenticate United Parcel Service (UPS) invoices on the ground that UPS, not Keystone, prepared the invoices, and that Keystone's witness lacked any personal knowledge that the invoices were what they were represented to be). In the present case, the Bureau could have called a USPS witness to authenticate the tracking information. Therefore, Owner concludes, the trial court erred in admitting it at trial. Pa. R.E. 901(a); Keystone.

b. Analysis

To authenticate an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is. Pa. R.E. 901(a); Keystone. A document may be authenticated by direct proof or by circumstantial evidence. Zuk. Proof of any circumstances that will support a finding that the writing is genuine will suffice to authenticate the writing. Id. Contrary to Owner's argument, it is not necessary that the originator or sender of information must authenticate it; rather, the person receiving the document or information can also authenticate what he received. See Keystone.

Further, the standard of review regarding a trial court's admission or exclusion of evidence is very deferential. Zuk; Keystone. The admission of evidence is within the sound discretion of the trial court and may only be reversed

upon a showing of an abuse of discretion or error of law. Id. An abuse of discretion may not be found merely because an appellate court might have reached a different conclusion. Id. Rather, it must be manifestly unreasonable or the result of partiality, bias, ill-will, or such lack of support to be clearly erroneous. Id.

Here, the trial court determined Infocon Representative properly authenticated the tracking information. Infocon received computer-stored data from USPS at a special site provided by USPS. N.T. at 69, R.R. at 73a. After training and testing, USPS certified Infocon to work with it by assigning its own certified mail numbers. See N.T. at 76-78; R.R. at 75a-76a. Moreover, Infocon Representative is custodian of Infocon's records and familiar with its business practices.

Additionally, we perceive no impediment to *Owner's* ability to call a witness from USPS, or some other knowledgeable person, to dispute authenticity if there was a genuine question. Owner's failure to do so, even after discovery, is a circumstance the trial court could weigh.

Given these circumstances, we discern no abuse of discretion in the trial court's determination that Infocon Representative properly authenticated the tracking information. Zuk.

3. Tracking Information (Inadmissible Hearsay)

4. USPS Agent

a. Argument

Owner also argues the tracking information remained inadmissible because it constituted hearsay to which no exception applied. “Hearsay is defined as ‘an extra judicial declaration offered to prove the truth of the matter asserted.’” Keystone, 77 A.3d at 12 (quoting Aldridge v. Edmunds, 750 A.2d 292, 296 (Pa. 2000)); see also Pa. R.E. 801(c) (“hearsay” means a statement the declarant did not make while testifying at current trial or hearing and said statement offered in evidence to prove the truth of the matter asserted in the statement). A document itself qualifies as hearsay when it contains hearsay statements. In the present case, Owner contends the tracking information clearly constituted hearsay. To that end, Infocon Representative, a software developer for Infocon, testified that the tracking information was obtained from the USPS website.

Owner argues that to meet the requirements under the hearsay exception in Pa. R.E. 803(6) (relating to records of a regularly conducted business activity), the Bureau needed to produce the following evidence: (a) the record was made at or near the time by or from information transmitted by someone with knowledge; (b) the record was kept in the course of a regularly conducted activity or business; (c) making the record was a regular practice of that activity; (d) all these conditions are shown by the testimony of a custodian or another witness; and, (e) neither the source of information nor other circumstances indicate a lack of trustworthiness.

Here, Owner maintains, Infocon Representative acknowledged he did not work for the USPS and lacked any authority to certify the accuracy of any information the USPS provided to Infocon. Further, neither Infocon Representative nor any other Bureau witness provided any of the evidence required by Pa R.E. 803(6). Although a qualified witness need not have personal knowledge, the witness must be able to provide sufficient information as to the preparation and maintenance of the records to justify a presumption of trustworthiness. Keystone. Here, Owner urges, the Bureau failed to provide such a witness. Therefore, the trial court erred in admitting the tracking information into evidence.

In a related argument, Owner asserts the Bureau failed to establish Infocon Representative's qualifications as a USPS agent for the purpose of admitting documents containing USPS information. Owner argues that a party alleging the existence of an agency relationship must establish, by a fair preponderance, the fact of the agency and its extent. The basic elements required to prove agency are the manifestation by the principal that the agent shall act for him, the agent's acceptance of the undertaking, and the understanding of the parties that the principal is to be in control of the undertaking. B&L Asphalt Indus. v. Fuso, 753 A.2d 264 (Pa. Super. 2000). In establishing agency, proof of specific authority is not required. Id. Agency may be inferred from the fact that at least an implied intention to create the agency relationship existed. Id.

Here, Owner asserts, viewing the record in a light most favorable to the Bureau, Infocon Representative testified USPS only certified Infocon to assign

certified mail numbers. See N.T. at 68-69; R.R. at 73a. Infocon Representative further testified on cross-examination that he cannot certify as truthful information provided by USPS. N.T. at 87-88; R.R. at 78a. Given these circumstances, Owner argues the Bureau failed to provide sufficient evidence that Infocon Representative or Infocon was an agent of the USPS capable of authenticating or certifying any USPS documents, including the tracking information in Respondent's Ex. 1.

b. Analysis

As discussed above, the trial court overruled Owner's hearsay and authenticity objections to the admission of the tracking information. N.T. at 76-78; R.R. at 75a-76a. The tracking information here is admissible under the business records exception to the hearsay rule contained in Pa.R.E. 803(6). As established by the testimony of Infocon Representative, Infocon is a business that relies on its training and certification by USPS in tracking items sent by certified mail.

The record shows Infocon Representative possesses sufficient special training and knowledge of USPS delivery and tracking operations to credibly and competently testify as to when the USPS delivery record was made; that the record was kept as part of a regularly conducted business activity; that making the record was a regular part of that activity; and, that neither the source of the information nor other circumstances indicate a lack of trustworthiness. Pa. R.E. 803(6).

Owner's related argument, that the Bureau was required to offer testimony from a USPS agent in order to authenticate the tracking information and establish its reliability, is unpersuasive. It is not necessary that the originator or

sender of information must authenticate it; rather, the person receiving the document or information can also authenticate what he received. See Keystone. Similarly, a USPS agent is not necessary to establish the reliability of information in an Infocon business record; instead, the record custodian or other knowledgeable person may establish the foundation for receipt of an Infocon business record as an exception to the hearsay rule. Pa. R.E. 803(6)(D). We also note that Owner did not offer any witness of its own to dispute the reliability of the tracking information although it was afforded discovery before the hearing.

For these reasons, we discern no abuse of discretion in the trial court's overruling of Owner's hearsay objection to the admission of the tracking information in Respondent's Exhibit No. 1. Keystone.

5. Set Aside Tax Sale

a. Argument

Summarizing, Owner contends the Bureau failed to prove the USPS delivered the notice of return and claim as required by Section 308 of the Tax Sale Law. In addition, Owner asserts there is no evidence indicating the Bureau posted a notice of return and claim on the subject property as required by Section 308 when notice is not delivered to the property owner. Therefore, Owner urges, the September 2012 tax sale must be set aside. See, e.g., In re: Consolidated Return of Sale of Properties for Delinquent Taxes by Fayette County Tax Claim Bureau, 416 A.2d 636 (Pa. Cmwlth. 1980) (where the record indicated the local tax collector had the right address, but the tax claim bureau sent the notice of return to an older wrong address, the trial court properly invalidated the tax sale).

b. Analysis

As discussed above, we discern no abuse of discretion in the trial court's determination that the Bureau established by sufficient proof that it mailed the notice of return and claim to Owner's registered address in the Bronx, N.Y., and that USPS delivered it to that address in compliance with Section 308 of the Tax Sale Law. Therefore, the Bureau did not need to post the notice of return and claim on the subject property. Section 308(a) of the Tax Sale Law; 72 P.S. §5860.308(a).

B. Notice of Public Sale

Owner further contends the trial court erred by denying its objections and exceptions to the tax sale where the Bureau failed to comply with the mandatory notice provisions of Section 602 of the Tax Sale Law, 72 P.S. §5860.602. Owner also asserts the trial court abused its discretion by denying its objections and exceptions to the tax sale where the Bureau presented evidence regarding the purported restricted delivery to Owner of the notice of sale, which consisted of a post office document: (i) that was not authenticated; (ii) that contained inadmissible hearsay; (iii) that bore mismatching and incorrect certified mail receipt numbers at the time of the tax sale; (iv) that contained a scanned signature card image that was an incomplete and inadmissible reproduction; and, (v) that failed to establish that an authorized representative of Owner signed the receipt.

1. Requirements of Section 602 of the Tax Sale Law

Owner asserts the Bureau failed to prove it complied with Section 602 of the Tax Sale Law (relating to notice of sale), which provides in pertinent part (with emphasis added):

(a) At least thirty (30) days prior to any scheduled sale the [B]ureau shall give notice thereof, not less than once in two (2) newspapers of general circulation in the County, if so many are published therein, and once in the legal journal, if any, designated by the court for the publication of legal notices. Such notice shall set forth (1) the purposes of such sale, (2) the time of such sale, (3) the place of such sale, (4) the terms of the sale including the approximate upset price, (5) the descriptions of the properties to be sold as stated in the claims entered and the name of the owner.

* * * *

(e) In addition to such publications, similar notice of the sale shall also be given by the [B]ureau as follows:

(1) At least thirty (30) days before the date of the sale, by United States certified mail, restricted delivery, return receipt requested, postage prepaid, to each owner as defined by this act.

(2) If return receipt is not received from each owner pursuant to the provisions of clause (1), then, at least ten days before the date of the sale, similar notice of the sale shall be given to each owner who failed to acknowledge the first notice by United States first class mail, proof of mailing, at his last known post office address

72 P.S. §5680.602(a), (e)(1), (e)(2).

Owner first asserts the Bureau submitted Respondent's Exhibit No. 2 (R.R. at 92a-93a), to prove it complied with Section 602(e)(1)'s requirements for mail notice of sale. Attached to the notice of public sale is a document representing that USPS delivered a piece of certified mail on May 14, 2012 at 2:23 p.m. to Owner's registered address at 4630 Fieldstone Road, Bronx, New York. See R.R. at 93a. The document also contains a scanned image of recipient information, including the recipient's signature, "Zion." Id.

Owner argues this document fails to establish that notice of sale was delivered in accordance with Section 602 of the Tax Sale law because: (i) the document was not properly authenticated; (ii) the document constitutes inadmissible hearsay; (iii) the document bore mismatching and incorrect certified mail receipt numbers at the time of the tax sale; (iv) the image of the purported signature is inadmissible as an inaccurate reproduction of an original image in violation of 42 Pa. C.S. §6109; and, (v) the Bureau failed to establish that an authorized representative of Owner signed the receipt.

2. Proof of Delivery (Authentication)

a. Argument

Owner argues that similar to the tracking information document concerning delivery of the notice of return and claim, the proof of delivery of the notice of sale was not sufficiently authenticated to be submitted into evidence. Infocon Representative, Owner asserts, testified the information contained in the proof of delivery was obtained from USPS, not from Infocon. Owner further asserts the Bureau did not offer a USPS representative to lay a foundation for

authentication of the document. To that end, Infocon Representative cannot be considered a USPS agent because he is not authorized to certify as true and correct any information provided by USPS. Therefore, the Bureau failed to properly authenticate the proof of delivery. Keystone; Zuk. Consequently, Owner urges, the trial court erred or abused its discretion in overruling Owner's objection to its admissibility. Id.

b. Analysis

The trial court's decision to overrule Owner's objection to authentication is supported by the record. Infocon Representative, the records custodian for Infocon, credibly testified USPS certified Infocon to assign a certified mail number to Bureau tax notices. See N.T. at 69; R.R. at 73a. In essence, Infocon Representative testified Infocon acts as an agent for USPS. To that end, Infocon trained with the USPS and is able to track, on a daily basis, any documents it delivered to USPS for certified mail. USPS provides Infocon an FTP website to check on the status of what is being delivered. Infocon is also able to obtain, on a weekly basis, signatures at the point in which the document is delivered.

Infocon Representative testified he obtained the proof of delivery information directly from the USPS' FTP site. See N.T. at 80-83; R.R. at 76a-77a. He further testified the image was a "true and accurate depiction of the image that was available from [USPS]." N.T. at 83; R.R. at 77a. A document may be authenticated by circumstantial evidence. Zuk. Further, as noted above, it is not necessary that the originator or sender of information must authenticate it; rather,

the person receiving the document or information can also authenticate what he received. See Keystone. Here, there are sufficient circumstances to determine the trial court did not abuse its discretion in overruling Owner's objection that a USPS witness needed to authenticate the proof of delivery. Id.

Also, Infocon Representative admitted there was a one-digit difference between the certified number it assigned to the actual notice of sale and a previous version of notice of sale it sent to the Bureau for approval. See N.T. at 78-80; R.R. at 76a. Infocon ultimately provided the Bureau with the correct number for its records prior to trial. Id. Regardless, Infocon Representative testified within a reasonable degree of certainty that the certified numbers on Respondent's Exhibit No. 2 (notice of sale) are the correct numbers. N.T. at 80; R.R. at 76a. This discrepancy goes to the weight rather than the admissibility of the document. As such, the issue falls within the broad discretion of the fact-finder, and no abuse of that discretion is evident here.

3. Proof of Delivery (Inadmissible Hearsay)

a. Argument

Owner further contends the proof of delivery contains inadmissible hearsay. Owner asserts the proof of delivery document, which purported to establish USPS delivered a piece of certified mail to Owner's Bronx address, is an out of court statement offered to prove the truth of the matter asserted and is therefore hearsay. Even assuming the delivery information qualifies as a USPS business record, no one with knowledge of USPS practices testified. Owner again asserts Infocon Representative could not provide sufficient information as to the

preparation and maintenance of USPS records to justify a presumption of trustworthiness. Keystone.

b. Analysis

Similar to the tracking information contained in Respondent's Exhibit No. 1 (notice of return and claim), the proof of delivery information in Respondent's Exhibit No. 2 (notice of public sale) is admissible under the business records exception to the hearsay rule contained in Pa. R.E. 803(6). As established by the testimony of Infocon Representative, Infocon is a business that relies on its training and certification by USPS in tracking items sent by certified mail. Infocon Representative possesses sufficient knowledge of USPS delivery and tracking operations to credibly and competently testify as to when the USPS delivery record was made; that the record was kept as part of a regularly conducted business activity; that making the record was a regular part of that activity; and that neither the source of the information nor other circumstances indicate a lack of trustworthiness. Pa. R.E. 803(6). Keystone.

4. Inaccurate Reproduction (Violation of 42 Pa. C.S. §6109(b))

a. Argument

Owner next contends the signature image in the proof of delivery information contained in Respondent's Exhibit No. 2 was an inadmissible reproduction in violation of the Pennsylvania Uniform Photographic Copies of Business and Public Records as Evidence Act, 42 Pa. C.S. §6109(b). This provision states in pertinent part (with emphasis added):

(b) General Rule.—If any business, institution, member of a profession or calling, or any department or

agency of government, in the regular course of business or activity, has kept or recorded any memorandum, writing, entry, print, representation, or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business, unless its preservation is required by law. Any such reproduction in order to comply with this section must accurately reproduce all lines and markings which appear on the original. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether original is in existence or not, and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under the direction of the tribunal. The introduction of a reproduced record, enlargement or facsimile does not preclude admission of the original.

42 Pa. C.S. §6109(b).

Owner argues the scanned image in the proof of delivery is inaccurate because it does not accurately reproduce all lines and markings that appear on the original. To that end, Owner asserts there is text and information cut off the left side and top of the scanned document. In addition, the Bureau did not call anyone from the USPS to identify, authenticate or otherwise certify the scanned image.

b. Analysis

For several reasons, 42 Pa. C.S. §6109(b), a 1976 uniform statute, has little, if any, relevance to the present case. First, this case does not deal with original business documents reproduced by photographic means and then

destroyed in the regular course of business. Rather, the present case deals with electronically stored information.

Second, more recent legal sources favor admission of electronically stored data, such as the signature here. Pa. R.E. 1001(d), rewritten in January 2013 and made effective in March 2013, provides in pertinent part: “For electronically stored information, ‘original’ means any printout – or other output readable by sight – if it accurately reflects the information.” Thus, under current rules of evidence, an electronically received and stored signature which is printed out is an original, not a reproduction.

Third, the comment to Pa. R.E. 1003 (relating to admissibility of duplicates), also rewritten in 2013, is instructive. Because of the trend of modern practice to treat all accurate copies as admissible, and the existence of opportunities in pleading and discovery to discover fraudulent copies, Rule 1003 “should tend to eliminate purely technical objections and unnecessary delay.” Pa. R.E. 1003 Comment. Therefore, even if the proof of delivery document in Respondent’s Exhibit No. 2 was viewed as a duplicate, the clear trend is toward admissibility of apparently accurate copies, and away from technical objections.

Further, Owner does not allege the scanned image in the proof of delivery document is blurry or illegible. See O’Hara v. Dep’t of Transp., Bureau of Driver Licensing, 624 A.2d 266 (Pa. Cmwlth. 1993) (illegible or blurred photocopy of driving citation could not be used as basis to suspend driver’s license under 42 Pa. C.S. §6109); Dep’t of Transp., Bureau of Driver Licensing v. Hoover,

543 A.2d 191 (Pa. Cmwlth. 1988) (illegible documents are inadmissible under 42 Pa. C.S. §6109).

Notably, Owner does not challenge the accuracy of the printout of the electronically stored information which consists of the signature of the recipient, the printed name of the recipient, and the address of the recipient. Rather, Owner argues the document is inadmissible because some of the lines and markings were cut off in the scanned image. Owner, however, fails to assert how this affected the accuracy of the information contained in the document or how it prejudiced Owner.

As discussed above, the trial court did not abuse its discretion in overruling Owner's objection to the admissibility of the proof of delivery of the notice of public sale in Respondent's Exhibit No. 2. Infocon Representative testified he obtained the proof of delivery information directly from the USPS' FTP site. See N.T. at 80-83; R.R. at 76a-77a. He further testified the image was a "true and accurate depiction of the image that was available from [USPS]." N.T. at 83; R.R. at 77a.

For these reasons, we reject Owner's contention that the scanned image in the proof of delivery is inadmissible under 42 Pa. C.S. §6109(b).

5. Restricted Delivery; Identity of Recipient

a. Argument

Owner also contends Section 602(e)(1) of the Tax Sale Law requires that the notice of sale be sent by U.S. certified mail, restricted delivery, return receipt requested. Owner asserts the USPS term “restricted delivery” requires that the piece of mail be signed by a specific addressee. Horton.

Here, the addressee on the notice of sale was: “ZION BULLIT AVE LMTD PART.” R.R. at 92a. The scanned signature card bore the word “Zion” in both printed and cursive forms. Id. at 93a. At the hearing, Bureau Director testified she relied on the signature “Zion” to establish that Owner received the notice of sale. N.T. at 49; R.R. at 68a. However, she did not know who “Zion” was. N.T. at 50 R.R. at 50; N.T. at 69a.

Even where a return receipt is signed, the signature must belong to someone authorized by the owner to accept certified mail. Husak v. Fayette County Tax Claim Bureau, 61 A.3d 302 (Pa. Cmwlth. 2013) (mailed notice to Fannie Mae signed by “Pierce,” whose identity and authority were unknown, required additional notification efforts).

In circumstances raising a significant doubt as to the actual receipt of the notice of sale, Section 607.1(a) of the Tax Sale Law,⁴ 72 P.S. §5860.607a, requires a tax claim bureau to undertake additional notification efforts to provide

⁴ Added by the Act July 3, 1986, P.L. 51.

the taxpayer with notice of sale. However, Owner asserts, the Bureau made no such additional efforts in this case.

Testimony on behalf of Owner indicated that Abe Zion, the only resident at Owner's address, and his son Mark Zion, were at an alternate residence in the Virgin Islands celebrating Mark's birthday on May 14, 2012, the date the USPS purportedly delivered the notice of sale to Owner's address in the Bronx. See N.T. at 110-11; R.R. at 84a. Nevertheless, the trial court, in denying Owner's amended objections and exceptions, reasoned that Mark Zion failed to explain how it was impossible for someone else named Zion to be at the residence and sign the receipt. Owner argues that in so doing, the trial court misapplied the burden of proof in tax sale cases.

The Tax Sale Law "impose duties, not on owners, but on the agencies responsible for sales; and such of those duties as relates to the giving of notice to owners of impending sales of their properties must be strictly complied with." In re Return of Tax Sale by Indiana Cnty. Tax Claim Bureau v. Clawson, 395 A.2d 703, 706 (Pa. Cmwlth. 1979). Thus, Owner asserts, it did not have the burden to prove it did not receive notice. Rather, the Bureau bore the burden to prove that Owner did receive notice.

For this additional reason, Owner maintains the Bureau failed to comply with the notice requirements in Section 602 of the Tax Sale Law. Therefore, Owner urges, the tax sale should be voided.

b. Analysis

Here, Owner does not dispute that the Bureau, through Infocon, mailed the notice of sale to Owner's registered address at 4630 Fieldstone Road, Bronx, New York. The attached proof of delivery contains a scanned image of the recipient's signature, "Zion." R.R. at 93a. Consequently, the Bureau had no reason to contemplate that there were any notification problems or that the notice did not effectively reach the owners of record.

This case is different from those few cases where completely unknown persons sign for a certified mail notice. In Husak, mail notice to Fannie Mae was signed by "Pierce," an individual whose relationship to Fannie Mae and authority were not determined. Similarly, in Ali v. Montgomery County Tax Claim Bureau, 557 A. 2d 35, 37 (Pa. Cmwlth. 1989), mail notices to Ali c/o "J. Colehower, Esq." and to Ali c/o "Saul, Ewing, Remick and Saul" were signed by "S. Croom," an individual whose relations to Ali, to the law firm, and to a particular lawyer could not be determined. Thus, the courts in those cases correctly determined the signatures bore no obvious relation to the restricted addressees. In contrast, the signature of "Zion" in this case is sufficiently similar to the restricted addressee, "ZION BULLITT AVE LMTD PART," R.R. at 92a, as not to put the Bureau on notice of a possible delivery issue.

Mark Zion testified that he and his father, Abe Zion, did not receive that mailed notice of sale because they were in St. Thomas, U.S. Virgin Islands, on the day the USPS delivered the notice of sale to Owner's Bronx address. N.T. at 107-08, 110-11; R.R. at 83a-84a. However, it is well-settled that credibility

determinations are within the exclusive province of the fact finder. Sabbeth. As such, we are bound by the credibility determinations of the trial court.

As the trial court recognized, Mark Zion testified Owner is a limited partnership and that his brother and sister, Josh Zion and Adina Zion, are limited partners living in Manhattan. N.T. at 100, 114; R.R. at 81a, 85a. The trial court further observed that Mark Zion did not testify that Owner's limited partners were unable to be present at his father's residence while he was away. Tr. Ct., Slip Op., at 8. The trial court further noted that Mark Zion did not testify as to whether anyone collected the mail at Owner's address while he and his father were away. Id. at 8-9.

"Most importantly," the trial court noted, "at no time during his testimony did [Mark Zion] indicate he did not know about the tax sale, but only that it could not have been his father or he who signed the document on May 14, 2012." Id. at 8.

For these reasons, the trial court was very skeptical of the evidence offered by Mark Zion. Ultimately, the trial court, citing Sabbeth and other actual notice cases, determined Owner received actual notice of the tax sale. In Sabbeth, a tax sale notice was sent to the owner by certified mail and sat unopened on the owner's desk for 53 days until the date of the sale. In determining the owner in Sabbeth had actual notice, this Court reasoned (with emphasis added):

The record is replete with facts which show that Sabbeth had implied actual notice of the tax sale and therefore had a duty to undertake further inquiry.

Sabbeth was certainly aware of the jeopardy that the subject property was facing. Sabbeth had previously paid taxes on the subject property, but then failed to pay the taxes for a period of two years. That Sabbeth had previously paid the taxes leads to the conclusion that she knew taxes were assessed on the property. Knowing such, Sabbeth would have had to conclude that non-payment of assessed taxes would result in consequences of some sort.

Additionally, the circumstances under which Sabbeth asserts that she was without actual notice of the tax sale are nothing short of incredible. Sabbeth received notices for two years stating that the taxes assessed on the subject property were in arrears. ... Most importantly, Sabbeth regularly went to her office to review the mail. It was in this office where a certified letter of notice from the Bureau remained upon her desk unattended for fifty-three days until its discovery the very day of the tax sale.

The trial court found that Sabbeth had inquiry notice of the tax sale, but erred when it found that Sabbeth had no actual notice. In essence, the trial court held that actual notice only exists if an individual receives *express* notice. We do not agree. As implied notice is encompassed in the definition of actual notice, the trial court erred when it concluded that Sabbeth's implied notice did not constitute actual notice.

Because the circumstances of the instant action show that Sabbeth had actual notice of the tax sale of the subject property but sought to avoid the consequences of her inaction by claiming complete ignorance, strict compliance with the statutory notice requirements was waived and the tax sale of the subject property was valid.

Sabbeth, 714 A.2d at 517-18.

The trial court also cited In re Upset Sale Held 11/10/97, 784 A.2d 834 (Pa. Cmwlth. 2001), a tax sale case where a wife signed her name and her

husband's name to a certified mail receipt, but did not give her husband the certified letter containing notice from the Bucks County Tax Claim Bureau of a pending tax sale of their property. The trial court set aside the tax sale on the ground that the husband did not have either implied or express actual notice. On appeal, this Court reversed, noting that having received a receipt bearing husband's signature, "the Bureau was required to do no more" Id. at 837 (emphasis added). We further noted in Upset Sale Held 11/10/97 that Section 602(h) of the Tax Sale Law expressly provides (with emphasis added):

No sale shall be defeated and no title to property sold invalidated because of proof that mail notice as herein required was not received by the owner, provided such notice was given as prescribed by this section.

72 P.S. §5860.602(h).

In the present case, the trial court properly determined the Bureau complied with all the requirements of the Tax Sale Law. The trial court further determined that even assuming Abe Zion did not personally sign the return receipt for the notice of the tax sale, Owner received implied notice of the sale, which is sufficient to establish actual notice. Sabbeth.

We agree. Similar to the owner in Sabbeth, Mark Zion, Owner's managing general partner, was familiar with the subject property for nearly 30 years. Owner paid the real estate taxes for all years prior to the 2010 and 2011 delinquencies. Because Westmoreland County provided notice of the tax delinquencies before turning them over to the Bureau, Mark Zion, as managing partner, should have been aware that the 2010 and 2011 taxes were not paid.

Further, Owner kept the Bronx address as its registered mailing address despite Abe Zion's advanced age and declining health. In addition, someone signed the certified mail return receipt for the May 2012 notice of sale using the name "Zion." Therefore, the notice was received at Owner's correct mailing address and signed for under circumstances that support an inference that Owner, or some person authorized to sign Owner's name, received it.

As to Owner's argument regarding the burden of proof in tax sale cases, we reject it as unpersuasive. The trial court could properly consider that Owner's registered place of business was outside Pennsylvania. The trial court could also consider which party was in the superior position to investigate the signature on the mail receipt at Owner's out-of-state place of business. Additionally, the trial court could contrast Owner's superior position to investigate with the weak proofs Owner offered at the hearing. The trial court could consider all of these things without any alteration of the burden of proof.

In sum, given the address and signature circumstances, given Owner's superior position to investigate who at its out-of-state registered place of business signed the mail receipt, given the trial court's credibility observations, and reviewing the record in a light most favorable to the party prevailing below, we discern no abuse of discretion in the trial court's determination that Owner had implied actual notice of the tax sale. Sabbeth. To hold otherwise, as the trial court recognized, would essentially render the Tax Sale Law a nullity where an owner could void a tax sale by merely claiming that was not his or her signature on the

receipt. Tr. Ct., Slip. Op., at 9. However, as we recognized in Upset Sale Held 11/10/97, a tax sale will not be defeated by a claim the owner did not get mail notice where, as here, the Bureau satisfied the notice requirements of the Tax Sale Law.

6. Public Policy

a. Argument

Owner's final contention is that public and legal policy would be best served by overturning the procedurally defective tax sale in this case. Owner asserts interests in real property are entitled to the most rigorous due process protection in the Commonwealth. Sklar v. Harleysville Ins. Co., 587 A.2d 1386 (Pa. 1991). Here, the Bureau failed to produce a signed certified mail receipt for the notice of return and claim as required by Section 308 of the Tax Sale Law.

In addition, Owner asserts, the Bureau failed to make any effort whatsoever to provide the required Section 602 notice of sale to Owner when it became apparent it could not establish whether an authorized representative of Owner actually signed the restricted delivery receipt for the notice of sale. Under these circumstances, Owner urges, the law regarding tax sales requires that this sale be set aside.

b. Analysis

Contrary to Owner's argument, a signed certified mail receipt is not necessary here because the tracking information regarding the notice of return and claim indicated the piece of certified mail was delivered and received at Owner's

address. In short, the fact the notice was delivered indicated someone at Owner's address accepted the document. Section 308 does not require restricted delivery.

Finally, given the circumstances here, where the Bureau fully complied with the notice requirements in Section 602 of the Tax Sale Law and someone at Owner's registered address signed for the notice of sale using the name "Zion," the tax sale will not be defeated by Owner's claim that it did not get mail notice of the sale. Section 602(h) of the Tax Sale Law, Sabbeth; Upset Sale Held 11/10/97.

III. Conclusion

For the above reasons, we discern no error or abuse of discretion in the trial court's order denying Owner's amended objections and exceptions to the tax sale. Accordingly, we affirm.

ROBERT SIMPSON, Judge

