

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

T. Henley Graves  
Resident Judge

SUSSEX COUNTY COURTHOUSE  
THE CIRCLE  
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GEORGETOWN, DE 19947  
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December 17, 2003

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**RE: Department of Finance v. LaRosa Corporation  
C. A. No. 00T-03-004 - THG**

Gentlemen:

Before the Court is a "Motion to Set Aside Sale" filed by LaRosa Corporation. This is the Court's decision denying that application.

1. On June 20, 2000, real property owned by the LaRosa Corporation was sold at a monition sale due to the failure to pay Sussex County taxes for the years 1985 to 1999. There has been no attack raised as to the procedures or process in which the property was exposed to sale by Sussex County. Gregory O'Bier was the successful bidder at the tax monition sale. He bid \$300.00. The assessed value of the tax parcel 2-34-6.00-59.10, the property sold, is \$6,200.00. The 1974 appraised value for tax purposes was \$12,400.00. It is obvious that the property is worth much more than the tax appraisal value, but no appraisal was provided the Court.

2. The tax monition sale was approved by Superior Court on July 7, 2000. David DeRiemer, president of LaRosa, and a principal shareholder in the corporation, was present and objected to the approval of the monition sale. The basis for his objection was Mr. DeRiemer's long-held belief that there is no such entity as the State of Delaware, much less the entity of Sussex County, and therefore these fictitious entities had no right to tax nor expose his property to sale for the failure to pay taxes.

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3. The time period for which LaRosa could redeem the property it lost at the tax sale was sixty (60) days from the date the sale was approved by the Court. Therefore, LaRosa corporation had the opportunity to redeem its property for a period of sixty (60) days following July 7, 2000. LaRosa did not redeem the property. See 9 Del. C. §8728.

4. If an owner of property sold at tax sale, in this case LaRosa, fails to redeem the property, then the purchaser of the property, Mr. O'Bier, "may present a petition to Superior Court setting forth appropriate facts in conformity with the subchapter" seeking an order directing the Sheriff to execute a deed to the property. See 9 Del. C. §8727. In this case, it is acknowledged that Mr. O'Bier never sought a deed to the property.

5. Subsequently, because the property was not deeded to Mr. O'Bier, County tax bills continued to be sent to the LaRosa Corporation. At some point in time, the LaRosa Corporation decided to pay the new tax bills, even though it knew Mr. O'Bier had purchased the property. LaRosa didn't protest the billing, but paid it and then filed the present motion.

6. In its motion, LaRosa argues it should regain its property due to Mr. O'Bier's "laches in failing to petition for deed and leaving the property titled in LaRosa Corporation's name". LaRosa in its subsequent brief in support of its application complains that the sale price of \$300.00 is grossly inadequate and therefore should shock the conscience of the Court.

7. Mr. O'Bier acknowledges that he probably should have petitioned the Court for a deed, but he argues 9 Del. C. §8727 does not require that action. The statute states he "may" petition the Court for a deed.

8. LaRosa argues that because a deed has not been executed by the Sheriff passing title to Mr. O'Bier, that the case has remained open. LaRosa argues that because the case remains open it cannot be tardy in filing an application to set aside the approval of the monition sale even though the filing is approximately 2 ½ years following the sale and the approval by the Court. Mr. O'Bier argues that the approval of the Court of the monition sale was the last formal act necessary and that this took place on July 7, 2000. Mr. O'Bier argues res judicata in that it is his position that the Court's approval of the monition sale was the last formal act in the process required by statute. He argues that since LaRosa, by way of Mr. DeRiemer, appeared and objected to the sale, but did not appeal this Court's ruling, the issue is now over and res judicata should prevent LaRosa from continuing to litigate the matter.

9. At oral argument for the first time, LaRosa Corporation argued that even if the final act was July 7, 2000, it should be permitted to seek to have the sale set aside by way of Superior Court Civil Rule 60(b).

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10. It is appropriate for the Court to make a determination as to whether or not the failure to petition for a deed results in this case remaining "open" until a petition for a deed is presented to the Court. I am satisfied that the finality required by both the statutes and recognized in the case law leads to the result that the case should be considered final at the confirmation. Confirmation is when the clock begins to run for redemption. The confirmation is that time set by the Court for any objections to the sale to be made known to the Court. Deibler v. Atlantic Properties Group, Inc., 652 A.2d 553 (Del. 1995). That is the date on which it is reasonable for a party to take an appeal from an adverse ruling. It is not reasonable to affix the appeal date to the date a petition for a deed is acted upon by the Court because that petition for deed is not required by the statute. It is also noteworthy that a petition for a deed could not have been presented to the Superior Court until after the period of redemption has run its course.

\_\_\_\_\_ While there is no formal 60(b) motion before the Court, based upon the comments of LaRosa's counsel at argument, I think it is appropriate for the Court to address a potential 60(b) motion. While it may be true that the price obtained for this parcel of land was very low, it is also noteworthy that this occurred with LaRosa Corporation's eyes wide open. The corporation, through its officer, was aware that the property was sold. The corporation, through Mr. DeReimer, objected to the sale but not because of the bid. His objection was that the Courts of Delaware had no jurisdiction over the property because the county and state were fictitious entities. Then the corporation sat for 2 ½ years before doing anything. This is not a case where the property was sold out from under LaRosa without their knowledge. This is not even a case of reckless indifference. This is a case of intentional conduct on the part of LaRosa in basically throwing away its property. But that's the course of action that LaRosa chose; and with no good reason presented, the Court should not now save LaRosa from its folly. In Robbins v. Garvine, 136 A.2d 549 (Del. 1957), our Supreme Court upheld a tax monition sale where the purchase bid was \$200.00 and the value was \$5,000. In Robbins, there was an additional claim of lack of notice of the sale, but the Supreme Court still upheld the sale because it is the process which must be protected. Otherwise, nothing is final.

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LaRosa's Motion to Set Aside the sale is denied. Mr. O'Bier shall reimburse LaRosa, within sixty (60) days, for the tax bills paid by LaRosa for the taxes accruing since July 7, 2000.

Yours very truly,

T. Henley Graves

THG:baj  
cc: Prothonotary