

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

THE CITY OF WILMINGTON,
a municipal corporation of the
State of Delaware,

Plaintiff,

v.

PETER T. KOSTYSHYN, PATRICIA R.
KOSTYSHYN, JOHN J. KOSTYSHYN,
MIROSLAW E. KOSTYSHYN and
TAX PARCEL NO. 26-027.30-277,

Defendants.

C.A. No. N18J-02078

Address: 505 N. Broom St.
Wilmington, Delaware 19805

ORDER PERMITTING SHERIFF'S SALE TO PROCEED

On March 13, 2018, the City of Wilmington ("the City") initiated the subject action through a monition for unpaid debts owed to the City. These debts included unpaid real property taxes, utility charges and vacant registration fees from 2015-2018.

The property at issue, 505 N. Broom Street, ("this Property") is owned by four siblings: Defendants Peter T. Kostyshyn, Patricia Kostyshyn, Mirosław Kostyshyn and John Kostyshyn.

Two of the four siblings, Peter and Patricia Kostyshyn, filed motions and other documents challenging the assessed taxes, charges and fees and seeking to stay the Sheriff's Sale of this Property. A hearing was held on June 7, 2018 to address those court submissions. At the hearing, a third sibling, Defendant Mirosław Kostyshyn, appeared and orally challenged the assessed taxes, charges and fees on the grounds that he was not properly notified of the existence of these debts.

The Sheriff's Sale was scheduled to take place on June 12, 2018. Given Mirosław's contention that he was not properly notified of the existence of these debts prior to the initiation of the monition action, the Sheriff's Sale was stayed so that the notice issue could be fully briefed and considered. Following full briefing on this issue, a second hearing was held on July 18, 2018.

While the notice issue raised by Mirosław was being briefed, Defendants Peter and Patricia Kostyshyn continued to file a number of additional motions and documents with the court raising a number of issues and seeking a variety of forms of relief including, but not limited to, staying the Sheriff's Sale.

This is the Court's decision that the Defendants have failed to identify any entitlement to relief from the City's Writ of Monition for unpaid taxes and fees, their objections fail, and the stay of the Sheriff's Sale is lifted. The City may proceed with the Sheriff's Sale.

FACTS

The four defendants in this action are siblings. They inherited this Property when their mother passed in 2001. In addition to this Property, they also inherited various other properties, including 1127 Brandywine Boulevard, Bellefonte, Delaware.

On April 6, 2010, one of the Kostyshyns called the City and informed the City that the proper billing address for this Property was 1127 Brandywine Boulevard, Bellefonte, Delaware. From that moment on, the City sent all notices of outstanding bills and all other correspondence related to this Property to the 1127 Brandywine Boulevard address, as instructed.

On May 21, 2013, the City filed an action against these four defendants, through two Writs of Monition, involving three of the properties that they inherited.¹ This Property was one of the three properties in the prior litigation.

In that prior action, for this Property, the Kostyshyns owed real property taxes, utility charges and vacant property fees for the years 2009-2013.² All the bills for these outstanding debts were sent to 1127 Brandywine Boulevard, as instructed. The City never sent any of these bills or correspondence pertaining to these bills to Mirosław's residence. Mirosław never contacted the City, at any

¹ *City of Wilmington v. Kostyshyn*, C.A. No. N13J-01723 (Del.Super. May 21, 2013).

² *New Castle County v. Patricia Kostyshyn et al.*, 2014 WL 1347745, * 1, fnt. 3 (Del.Super. 2014), *dismissed*, 2015 WL 3551986 (Del. 2015).

time, to request that the City also send copies of the bills to his residence or to any place other than the 1127 Brandywine Boulevard address.

In the prior action, Miroslaw actively participated in that monition action and vehemently contested the City's entitlement to proceed with that Sheriff's Sale. Although he raised a number of issues objecting to that Sheriff's Sale, he never once contended that the sending of notices only to the 1127 Brandywine Boulevard address was deficient.³

After considerable motion practice and appeals, all of the Kostyshyns' objections to the prior monition action were denied, and the City was permitted to proceed with the Sheriff's Sale.⁴ The Sheriff's Sale was held on May 12, 2015.⁵

This Property now before the Court was sold at the May 12, 2015 Sheriff's Sale for \$32,000. Miroslaw confirmed that this Property was sold at the Sheriff's sale and had no further involvement whatsoever with this Property since then. He made no effort to redeem this Property and made no effort to determine whether any of his siblings had redeemed this Property.

In fact, his siblings redeemed this Property on or about June 15, 2015.⁶ The fact that this Property had been redeemed is a matter of public record. If Miroslaw

³ See, *New Castle County v. Patricia Kostyshyn et al.*, 2014 WL 1347745, *3.

⁴ *New Castle County v. Patricia Kostyshyn et al.*, 2014 WL 1347745 (Del.Super. 2014), *dismissed*, 2015 WL 3551986 (Del. 2015).

⁵ *City of Wilmington v. Kostyshyn*, C.A. No. N13J-01723, at *1 (Del.Super. June 24, 2015).

was at all interested in whether this Property had been redeemed, all he had to do was ask the City. He never inquired with his siblings, with the Sheriff's Office, or with the City as to whether this Property had been redeemed.

Miroslaw never contributed any money toward the costs attendant with ownership of this Property from at least 2010 to the present. He never paid anything towards the real property taxes, utility charges, vacant registration fees, or towards any maintenance or upkeep of this Property.

After Miroslaw's siblings redeemed this Property, they again fell behind on payments owed to the City. Over the last few years, Miroslaw's siblings have submitted partial payments for which the City has accounted, but have accrued significant additional debts on the Property. Presently, for this Property, the Kostyshyns owe outstanding property taxes from 2015-2017, utility bills from 2015-2018, and vacant property registration fees from 2015-2018.

On March 13, 2018, the City initiated the subject action through a motion for unpaid debts owed to the City. As noted above, these debts include unpaid property taxes, utility charges and vacant registration fees. Notice of the subject motion was also posted on this Property on March 27, 2018.⁷

⁶ See, June 24, 2015 Sheriff's Notice of Redemption filed in Case No. 13J-01723; 9 Del. C. § 8729 (property may be redeemed by the owner of any real estate within 60 days from the day the sale is approved by the Court.).

⁷ The City sent all bills and notices regarding this Property to the 1127 Brandywine Boulevard address when conducting its regular course of business. The City complied with the more extensive notice provisions set forth at Superior Court Civil Rule 69(g) when proceeding with

The Sheriff's Sale was scheduled to be held on June 12, 2018. At the hearing held on June 7, 2018, Mirosław contended that the Sheriff's Sale should be stayed and that he should be permitted to contest the assessment of the vacant property fees at this late date because he never received notice of these assessments at his residence.

The Sheriff's Sale was stayed so that a determination could be made as to whether there was any entitlement to relief from the City's Writ of Monition. A second hearing was held on July 18, 2018. The matter is now ripe for consideration.

DISCUSSION

The Court will first discuss the sufficiency of the notification provided by the City to the Kostyshyns. The Court will then address the motions and other submissions filed by Peter and Patricia Kostyshyn.

1) The Notice Provided by the City was Sufficient

Mirosław contends that the Sheriff's Sale should not go forward and he should be permitted to contest the assessment of the vacant property fees at this late date because the City did not send notice of these assessments to his residence.

the Sheriff's Sale. Rule 69(g) requires notice to each and every record owner by certified mail, return receipt requested. The City complied with the more extensive notification requirements of Rule 69(g) when proceeding with this Sheriff's Sale and sent notice to each of the four siblings to multiple addresses by certified mail, return receipt requested. See, Superior Court Docket No. 22- Affidavit of Counsel regarding proof of mailing filed June 7, 2018.

Since 2010, the City sent all notices of outstanding bills and assessments to 1127 Brandywine Boulevard, as instructed to do so on April 6, 2010 by one of the Kostyshyns. At no time prior to the June 7, 2018 hearing had Miroslaw ever directed the City to send notices to any other place in addition to the 1127 Brandywine Boulevard address. Miroslaw, along with his three siblings, own 1127 Brandywine Boulevard. The City was not aware that any of the Kostyshyns wanted notices sent anywhere else.

In the prior monition action, all the bills had also only been sent to 1127 Brandywine Boulevard, as instructed, and yet there is no question that Miroslaw was aware of the existence of the outstanding debt obligations to the City, since he actively participated in that litigation challenging the debts. He was also well aware of the fact that no notices of these outstanding debt obligations were ever sent to any other residence, yet he never asked the City to start doing so. He never contended that the notification being provided by the City was insufficient. He never claimed that he was unaware of the existence of the outstanding debt obligations.

The City had no reason to believe that Miroslaw was not receiving the bills or that he wanted the bills sent any place else. The City followed the same procedure for this monition that it followed in the first monition. The City sent correspondence on multiple occasions to the address of record to provide notice of

the outstanding bills and to ensure payment. The Sheriff also posted the monition on the property. This monition was performed according to the procedures that Delaware courts have long recognized as valid mechanisms for recovering delinquent taxes.⁸

Mirolaw is well aware that there are financial obligations attendant with home ownership. From the prior monition action, Mirolaw had actual knowledge that vacant registration fees had accrued, that property taxes continued to accrue and that other debts were incurred and were not being paid. He actively participated in that prior litigation involving this Property. From the first monition action, Mirolaw was on notice that the debts associated with this Property were not being paid. There is no question that Mirolaw knew that taxes accrue on an annual basis.⁹

Mirolaw, as an owner of this Property, is legally responsible for all the debts associated with this Property.¹⁰ The obligation to pay property taxes, as well as water and sewer utilities arises from the fact of ownership. This is an involuntary obligation attendant to the fact of having a specific legal status of a

⁸ *New Castle County v. Patricia Kostyshyn et al.*, 2014 WL 1347745, * 7 (Del.Super. 2014), *dismissed*, 2015 WL 3551986 (Del. 2015).

⁹ See, *New Castle County v. Patricia Kostyshyn et al.*, 2014 WL 1347745, * 7 (Del.Super. 2014), *dismissed*, 2015 WL 3551986 (Del. 2015) (in the prior monition action involving this Property the Superior Court stated that real property taxes accrue on this Property on an annual basis).

¹⁰ See, *McAbee v. McAbee*, 277 Fed.Appx. 223, 226 (3rd Cir. 2008).

property owner. Yet, since at least 2010, Miroslaw has not paid anything towards this Property.

Miroslaw took no steps to determine if this Property had been redeemed after the first monition action. He personally made no effort to redeem this Property and did not inquire at all as to whether his siblings had redeemed this Property. His representation that he did not know this Property could be redeemed is unavailing. First, ignorance of the law is no excuse.¹¹ Second, it was a matter of public record, all he had to do was contact the City and ask. Miroslaw cannot be deemed blameless as to his ignorance that he still owned this Property. Any lack of knowledge was due to his culpable neglect.¹²

It is the common prudence for all those who have any interest in a property to guard and protect that interest.¹³ In other words, reasonable property owners are expected to take action to protect their property. Yet, here, the bottom line is that Miroslaw did nothing to guard and protect this Property.

A prudent person who nearly lost his property once to Sheriff Sale because he and his siblings did not pay the debts associated with the property, would take some action to ensure that did not happen again. Miroslaw did nothing.

¹¹ *Morrison v. Unemployment Insurance Appeal Board*, 2013 WL 5786417, *4 (Del.Super. 2013)(ignorance of the law is no excuse even if the claimant relied on false or misleading advice); *Clark v. State*, 287 A.2d 660, 664 (Del. 1972) (citizens of this state are presumed to know the statutes and existing rules of law of this state).

¹² *Barbosa v. Bob's Canine Acad., Inc.*, 2017 Del. Ch. LEXIS 104, *16-17 (Del. Ch.).

¹³ *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 316 (U.S. 1950).

Miroslaw is not permitted at this late date to contest the assessment of the vacant property fees. The appeal period for the contesting of those fees has already elapsed and will not be reopened at this late date. Tolling doctrines will not aid a claimant who turned a blind eye to a known problem. Miroslaw knew that the vacant property fees had been assessed annually since 2009.

A claimant's delay in seeking relief will not be excused on claimed lack of knowledge, where such lack of knowledge is actually due to culpable neglect. Miroslaw had never received any notices from the City regarding this Property at his residence at any time from at least 2010. All notices were sent only to 1127 Brandywine Boulevard, a property he also owned. The City had a right to believe that the way it always sent notice was sufficient because Miroslaw never directed the City to do anything any different. Any alleged ignorance as to the status of this Property and/or the existence of the outstanding debts is due to his culpable neglect and is not blameless.¹⁴

The City complied with the proper procedure for this monition. It sent correspondence on multiple occasions to the address of record providing notice of the outstanding bills. It then complied with the notification requirements of Superior Court Civil Rule 69(g) for proceeding with the monition action and the Sheriff's Sale. Notice of the Sheriff's Sale was posted on this Property and sent by

¹⁴ *Barbosa v. Bob's Canine Acad., Inc.*, 2017 Del. Ch. LEXIS 104, *16-17 (Del. Ch.).

certified mail, return receipt requested to all interested persons of record to multiple addresses.¹⁵

Mirosław has failed to identify an entitlement to relief from the City's Writ of Monition for unpaid taxes and fees. His objection based on the sufficiency of notice fails.

2) Peter and Patricia Kostyshyns' Motions and Other Court Submissions

Peter Kostyshyn and Patricia Kostyshyn filed a number of motions and other court submissions seeking various forms of relief. Among the forms of relief, these Kostyshyns seek to stay the Sheriff's Sale, have the matter removed to Chancery Court, contest the vacant property fee assessments, obtain discovery, seek recusals of members of the judiciary, have the monition action declared procedurally deficient, sanction the City, and proceed with a jury trial for this monition action.

All of their motions and court submissions, whether or not specifically addressed herein, were fully and thoroughly considered, and are found to be without merit and are denied.

Their motion seeking a jury trial is denied. A writ of monition is an *in rem* action where the City has statutory authority to seize property in order to recoup

¹⁵See, Superior Court Docket No. 22- Affidavit of Counsel regarding proof of mailing filed June 7, 2018.

unpaid property taxes. Monition is a unique statutory remedy. There is no right to a jury trial.¹⁶

Their multiple motions and subpoenas for discovery and to compel discovery are denied. The issues presented herein are limited to whether the Kostyshyns paid their financial obligations and/or took the proper appeal. The City produced all required notices in the prosecution of this matter. The City produced its entire vacant property file for this Property and all the relevant bills and an accounting of the financial obligations related to this Property. The City produced all records related to the debts incurred from 2015 onward for this Property that are included in this monition. Any further discovery is denied.

The request for consolidation of this monition action with other filings against the City for extortion and ongoing RICO acts is denied. The City is not aware of any pending actions for extortion or RICO. However, even if those actions existed, they would be criminal actions. There is nothing to consolidate. This motion is denied.

The Kostyshyns filed some type of motion having to do with a court escrow account. This is a debt action. To the extent that the Kostyshyns have funds to satisfy this existing debt through legal means, they may do so.

¹⁶ *City of Wilmington v. Janeve Co.*, 2014 Del.Super. LEXIS 298, *13-15 (Del.Super.), *aff'd*, 2015 Del.LEXIS 620 (Del.).

The Kostyshyns filed claims regarding unclaimed proceeds from the sale of other properties: 2619 Naamans Road and 1201 Brandywine Boulevard. These properties are outside the City of Wilmington. These claims have nothing to do with this monition action. Again, to the extent that the Kostyshyns have funds to satisfy this existing debt through legal means, they may do so.

The Kostyshyns contend that payments made were not credited and/or that the billing is inaccurate. The City has provided an accounting showing what was owed and crediting everything that was paid. All partial payments were accounted for in the debt calculation. The Kostyshyns have not met their burden to support the specifics of their claim. They have not shown what exactly they contend was paid but remains unaccounted for by the City.

The motion to transfer this monition action to Chancery Court is denied. The Superior Court has jurisdiction over Sheriff Sales.¹⁷ The City properly filed this monition in the appropriate court, Superior Court.

Their various contentions that the City has not provided required notices is denied. The City sent correspondence on multiple occasions to provide notice of the outstanding bills and ensure payment. The City has provided all required notices in the prosecution of this matter.

¹⁷ 9 Del. C. § 8722 (the tax collecting authority may file a praecipe in the office of the prothonotary of the Superior Court in and for the county where the property is located). See also, Wilm.Rel.Laws §4-181, 36 Del.L.Ch. 143, § 1 (For the collection of taxes and assessments for the City of Wilmington, a praecipe may be filed in the Superior Court in and for New Castle County.)

The motion to investigate all sheriff sales by the City against Peter Kostyshyn is denied. Prior Sheriff Sales were the subject of prior protracted litigation, and involved extensive motion practice and appeals. The decisions from the prior Sheriff's Sales are final decisions and will not be revisited in this monition action. The City met its obligation to provide notice of the outstanding debts in this monition action and this Sheriff Sale may proceed.

The motions for continuances and "accountability" are denied. The City followed the proper procedures and the monition action may proceed to a Sheriff's Sale.

The Supplemental Motion from Peter Kostyshyn to Recall, Vacate Judgments and Award Damages for claimed constitutional violations is denied. There is no basis in law or fact to support this motion.

The claim that payments were refused is without merit. No payments were refused and all payments appear to have been properly credited. Other than to allege in broad strokes that payments made have not been credited, they have not established the specifics of their claim. They have not shown what specific payment(s) has been made that was not credited.

The claim that there was fraudulent billing of the vacant property fees is denied. A motion to stay a Sheriff's Sale is not the proper time to challenge a vacant property registration fee. The City Code provides an appeal right to the

imposition of the vacant property registration fee, which procedurally would have been the proper time to challenge the fee.¹⁸ Given the Kostyshyns failure to appropriately and timely appeal these bills, the fees at issue are now final and nonappealable and have become a lien against this Property.¹⁹

Any other motions and/or court submissions seeking an award of damages to the Kostyshyns, to impose punitive damages against the City, and/or to otherwise sanction the City are denied. The City followed the proper procedure to proceed with this motion and the Sheriff's Sale.

Any additional claims that notice provided by the City was not proper is denied. The City provided proper notice, all appeals were not timely, and the matter is ripe for a motion action.

To the extent there are any other outstanding motions and/or court submissions that were pending, that were not specifically addressed herein, they are also denied as lacking in merit.

¹⁸ Wilm. Rel.Laws §4-181, 36 Del.L.Ch. 143, §1.

¹⁹ 25 Del. C. § 2901(a)(1)(j).


CONCLUSION

The Defendants have failed to identify an entitlement to relief from the City's Writ of Monition for unpaid taxes and fees. All objections to proceeding with the Sheriff's Sale are without merit and denied. The stay of the Sheriff's Sale is hereby lifted and the Sheriff's Sale may proceed.

Moving forward, all notices from the City regarding this Property shall be sent to 1127 Brandywine Boulevard and also to Mirosław's residence at 617 Cranhill Drive, Wilmington, Delaware 19808.

IT IS SO ORDERED.

Dated: September 18, 2018


Commissioner Lynne M. Parker