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Taxation—Validity of Tax Deeds

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to another. By declaring the necessity of a bona fide offer by a third party and its presentation to the lessee before sale, the Court gives meaning and substance to the agreement between the lessor and lessee, and establishes a fair price which can be presented to the holder of the first option to purchase.

TAXATION

Validity of Tax Deeds

Section 69 of the Tax Law¹ specifies the notice requirements to be given by the tax collector prior to his collection of taxes. The Court in *Working v. Amity Estates*² held that failure by the collector to comply substantially with the provisions of the statute was a jurisdictional defect and rendered a subsequent tax sale void.³ This was so even though the property owner received actual notice of the tax assessment in compliance with section 69(a),⁴ for the actual posting is one of the steps by which jurisdiction is obtained to sell the property.⁵

Section 131 of the Tax Law⁶ provides that the conveyance of the tax deed is presumptive evidence that all prior proceedings were regular and in accordance with the law. This presumption merely places the burden on the taxpayer to prove the contrary. Once he introduces evidence of this, the pre-

1. N. Y. TAX LAW §69 Notice by collector; general. Every collector, upon receiving a tax-roll and warrant, shall forthwith cause notice of the reception thereof to be posted in five conspicuous places in the tax district, specifying one or more convenient places in such tax district where he will attend . . . at least three days . . . in each week for thirty days from the date of the notice . . . which days shall be specified in such notice, for the purpose of receiving the taxes assessed upon such roll.

2. 2 N. Y. 2d 43, 137 N. E. 2d 321 (1956).

3. *Olds v. City of Jamestown*, 280 N. Y. 281, 20 N. E. 2d 756 (1939).

4. N. Y. TAX LAW §69(a) Statement of Taxes. The collector shall immediately after the receipt of a tax-roll and warrant mail to each owner of real property included in such tax-roll . . . a statement of the amount of taxes assessed against his property with a notice of the dates and places fixed by him for receiving taxes. . . .

5. *Seafire, Inc. v. Ackerson*, 193 Misc. 965, 76 N. Y. S. 2d 805 (Sup. Ct. 1947), *aff'd.*, 275 App. Div. 717, 87 N. Y. S. 2d 438 (2d Dep't 1949), *aff'd.*, 302 N. Y. 668, 98 N. E. 2d 478 (1951).

6. N. Y. TAX LAW §131 Deed and application therefor. The owner of any certificate of sale of land sold by the comptroller or the department of taxation and finance for taxes . . . and not redeemed . . . must make application in writing to the department of taxation and finance for a conveyance of the land . . . within four years after the expiration of one year from the last day of the sale. . . . Every such conveyance shall be presumptive evidence that the sale and all proceedings prior thereto, from and including the assessment of lands sold . . . were regular and in accordance with all the provisions of law relating thereto. After two years from the date of record of such conveyance such presumption shall be conclusive.

sumption disappears.⁷ The problem then in the instant case was for the plaintiff to come forward with proof. At the trial the tax collector testified that he posted a notice in only one place but that he saw the other five notices posted, which he thought had been posted by the postmaster. He was not able to produce a copy of the notice posted, but only one which was similar to the statements being used at that time and which did not contain provisions for the requisite number of collection days. This was evidence of habit from which it might be inferred that the actual posters used were also lacking in the requisite statements. In both instances the Court held that the plaintiff presented enough evidence to prove lack of substantial compliance with the statutory requirements by the tax collector.

The trial court through an official referee as fact finder, and the Appellate Division⁸ and three dissenting judges of the Court of Appeals, upholding the referee's findings as supported by the evidence, found that the plaintiff failed to prove his allegations. In reversing the findings of the referee, the majority must have found a compelling case for the plaintiff. One reason might be that as part of the basis of their decisions, the lower courts held the action barred by application of the wrong statute of limitations.⁹ In addition to this, there is a strong statutory policy against forfeiture of title in tax sale proceedings¹⁰ and here the plaintiff was a victim of circumstances since he had no notice of the tax sale until the period for redemption had run.¹¹

This decision seems to be an attempt to resolve a conflict of policies, holding the policy against forfeiture of title stronger to that of the presumption of regularity and resultant stability of title in tax proceedings. In any event it serves as notice to tax officials to strictly comply with statutory proceedings.

Assessment Review Proceedings

Under the Tax Law, section 292-b, as amended last year,¹² tax assess-

7. *People ex rel Wallington Apts. v. Miller*, 288 N. Y. 31, 41 N. E. 2d 445 (1942).

8. *Werking v. Amity Estates*, 1 A. D. 2d 731, 147 N. Y. S. 2d 474 (3d Dep't 1955).

9. N. Y. TAX LAW §37 allows a period of three years after the tax sale for redemption by an owner-occupant who has not been given notice of the sale by the grantee. However this was not an action for redemption but rather one aimed at avoiding the tax sale by reason of jurisdictional defects and so the Court held this three year limitation inapplicable. Instead, the two year limitation from the date of record in section 131 applies. See note 6 *supra*.

10. MCKINNEY'S STATUTES §313. Where it is sought to divest one's title to property through tax sale proceedings, the statute must be strictly pursued. Every requisite of the statute having a semblance of benefit to the owner must be substantially complied with. In such a case, the statute is construed strongly against forfeiture of title and in favor of the retention of title by the owner and of a right to redeem.

11. See note 9 *supra*.

12. N. Y. Sess. Laws 1955, c. 651, §1.