STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(Filed: December 13, 2012)

MANDA PANDA, LLC	)	
	)	
v.	)	**C.A. No. PM-2011-4255**
	)	
THE PIOUS SOCIETY OF THE MISSIONARIES OF ST. CHARLES BORROMEO, INC.	)	
	)	
v.	)	
	)	
THE CITY OF PROVIDENCE, A MUNICIPAL CORPORATION	)	

DECISION

CARNES, J. Before this Court is a motion to void tax sale submitted by Pious Society of the Missionaries of St. Charles Borromeo, Inc., ("Society") and an objection filed by the City of Providence ("City"). The Society owns a parcel of land on which the City claims property taxes accrued and which the City sold through a tax sale. Manda Panda, LLC, ("Manda Panda") purchased the parcel and eventually instituted this action by filing a petition to foreclose redemption. Jurisdiction is pursuant to G.L. 1956 § 44-9-24. For the reasons set forth below, this Court denies the Society's motion.

Facts and Travel

The Society is a nonprofit, tax-exempt religious organization. On March 31, 2009, the Society purchased a parcel of ratable real property located at 33-35 Terrace Avenue, Providence, Rhode Island, and designated as Assessor's Plat 104, Lot 21 ("Property"). The Society purchased the Property from Aurora Loan Services, LLC, ("Aurora") a mortgage lender and

servicer, and the Warranty Deed was recorded on the date of purchase at Book 9377, Page 238, in the Providence land records.

Property taxes were outstanding at the time of purchase: a Municipal Lien Certificate—recorded at Book 9386, Page 26—indicated a balance of $1,170.68, which stemmed from Aurora's failure to pay a portion of its 2008 taxes. The Society paid this sum to the City on April 8, 2009. In August 2009, the City sent a bill to the Society for 2009 taxes totaling $4,783.48. The Society failed to pay any of the 2009 taxes and, on March 29, 2010, the City notified the Society of a tax sale for the delinquent 2009 taxes. On April 14, 2010, the Society remitted to the City a partial payment of $1,341.54; this amount represented the taxes due from the first quarter of 2009, i.e., the taxes accrued up until the purchase date of March 31, 2009.[1]

On June 29, 2010, the City sold the Property for $4,760.32, which represented the balance of unpaid taxes for the remaining three quarters of 2009, plus interest and fees associated with the tax sale. The buyer was Manda Panda. The Society did not redeem, and on July 26, 2011, Manda Panda filed a petition to foreclose redemption in accordance with § 44-9-25.

The question central to this dispute is whether the Property was ratable for 2009 notwithstanding its purchase by the tax-exempt Society.[2] Pursuant to § 44-9-43, the Society argues that the tax sale was illegal—and therefore this Court should exercise its equity powers to void the sale—because the Society is a nonprofit organization that was not subject to taxation for the final three quarters of 2009. The Society also argues that the City failed to issue proper

[1] Although the Society has not requested remuneration, the City in its brief characterized the Society's motion as a request for remuneration pursuant to § 44-9-43. The City did not specify underlying facts, but presumably the characterization relates to the payments made by the Society for the taxes outstanding from Aurora's ownership of the Property. This issue is outside the scope of the present matter because "a party should not be granted relief that it did not request." Nye v. Brousseau, 992 A.2d 1002, 1011 (R.I. 2010) (quoting Providence Journal Co. v. Convention Center Authority, 824 A.2d 1246, 1248 (R.I. 2003)).

[2] The City in its brief argued that the Property also was ratable for tax year 2010 and was not tax-exempt until tax year 2011. At oral argument, however, the Society retreated from this position. The only issue before this Court is the Society's motion to void the tax sale as to tax year 2009.

notice of the tax sale and that the City voided all outstanding taxes on the Property during the pendency of this action.

The City acknowledges that the Society generally is not subject to property taxation. Pursuant to §§ 44-5-1 and 44-5-13, however, the City contends that in the instant matter, the Society's tax-exempt status is not dispositive because the Property's 2009 tax liability accrued prior to the purchase from Aurora. Specifically, the City argues that the Society's purchase did not strip the Property of its 2009 ratability; under § 44-4-8.1, rather, the 2009 tax liability was an issue to be negotiated between Aurora and the Pious Society. The City also argues that it provided proper notice, and that the taxes at issue remain outstanding.

Standard of Review

The Rhode Island Rules of Civil Procedure do not apply to "[p]etitions for foreclosure of redemption of interests in land sold for nonpayment of taxes[.]" Rule 81(a)(2); Murray v. Schillace, 658 A.2d 512, 514 (R.I. 1995). Instead, practice relating to tax sales follows the course of equity. Sec. 44-9-33; Albertson v. Leca, 447 A.2d 383, 389 (R.I. 1982). The tax sale statutes vest Superior Court justices with discretion to allow or deny redemption of property sold for nonpayment of taxes. Karayiannis v. Ibobokiwe, 839 A.2d 492, 496 (R.I. 2003); Albertson, 447 A.2d at 388-89; Sec. 44-9-29. The authority for the sale of real estate for delinquent taxes "must be found in the statutes and such statutes will not be enlarged by judicial construction but will be strictly construed in favor of the owner." First Bank and Trust Co. v. City of Providence, 827 A.2d 606, 610 (R.I. 2003).

Analysis

"Taxes assessed against any person in any town for either personal property or real estate shall constitute a lien on the real estate." Sec. 44-9-1. When payment for taxes is "overdue, the

tax collector, after proper notice and advertisement, may sell the property or some portion of it at public auction for the amount of taxes and other costs due." Albertson, 447 A.2d at 388-89; Secs. 44-9-8, 44-9-9. The notice provision concerning tax sales requires that "the collector shall [. . .] notify the taxpayer of the time and place of sale either by registered or certified mail." Sec. 44-9-10. The owner is entitled to redeem the real estate at any time prior to the filing of a petition to foreclose the right of redemption. Sec. 44-9-21. In this case, an outstanding tax lien on the Property resulted in a tax sale. At issue is the legality of the taxation subsequent to the Society's acquisition of the Property.

Tax-exempt property, by its nature, is not ratable, assessable, or liable to taxation; tax-exempt status of property accords with the status of its owner. Delta Airlines, Inc. v. Neary, 785 A.2d 1123, 1127-29 (R.I. 2001) (citing St. Clare Home v. Donnelly, 117 R.I. 464, 468-69, 368 A.2d 1214, 1217 (1977)). It is undisputed that the Property was subject to property taxation while held by Aurora. It is likewise undisputed that the Society is an organization not subject to taxation; indeed, the Legislature explicitly exempted the Society from taxation. 2006 R.I. Pub. Laws H-6021. Tax-exempt status, however, is not determinative of the instant matter because examination of the pertinent statutes reveals that the tax liability accrued prior to—and was not extinguished by—the Society's purchase of the Property.

The ultimate goal in statutory interpretation is to give effect to the purpose of the act as intended by the Legislature. Sycamore Properties, LLC v. Tabriz Realty, LLC, 870 A.2d 424, 427-28 (R.I. 2005); Pres. Soc. of Newport County v. Assessor of Taxes of City of Newport, 99 R.I. 592, 597, 209 A.2d 701, 704 (1965). A statute must be examined in its entirety, and its words must be accorded their plain and ordinary meaning. Matter of Falstaff Brewing Corp. re: Narragansett Brewery Fire, 637 A.2d 1047, 1049 (R.I. 1994). A statute may not be construed,

however, in a way that either would result in "absurdities or would defeat [its] underlying purpose." Brennan v. Kirby, 529 A.2d 633, 637 (R.I. 1987). When necessary, statutes must be read in conjunction with one another because, for example, a tax liability may arise through one provision yet be limited by another. See Antuono v. Faraone, 106 R.I. 721, 727, 263 A.2d 111, 115 (1970).

Any doubt about the meaning or scope of a revenue statute generally must be resolved in favor of the taxpayer and against the taxing authority. Weybosset Hill Investments, LLC v. Rossi, 857 A.2d 231, 239 (R.I. 2004) (quoting deZahara v. Weiss, 516 A.2d 879, 880 (R.I. 1986)). Tax exemptions, however, "exist solely by virtue of legislative grace" and cannot be read into a statute by implication. Kent County Water Authority v. State Dept. of Health, 723 A.2d 1132, 1135 (1999); Society for Preservation of New England Antiquities v. Tax Assessors of City of Newport, 62 R.I. 302, 5 A.2d 293, 296 (1939). Statutes exempting property from taxation therefore should be strictly construed in favor of taxation, but should not be interpreted unreasonably. 3A Sutherland Statutory Construction § 66:9, n.10 (7th ed.) (citing First Bank and Trust Co. v. City of Providence, 827 A.2d 606, 610-11 (R.I. 2003)).

Applying these principles to tax assessments and tax sales, this Court examines the plain language of state and local tax provisions. Although our General Assembly possesses "entire control" over taxation, it delegated to municipalities the power to tax real property within their borders. City of Providence v. Killoran, 447 A.2d 369, 370 (R.I. 1982) (quoting Providence & Worcester Railroad Co. v. Wright, 2 R.I. 459, 464-65 (1853)); § 44-5-1. Property tax is "apportioned upon the assessed valuations as determined by the assessors of the city or town as of December 31 in each year at 12:00 A.M. midnight, the date being known as the date of

assessment of city or town valuations." Sec. 44-5-1. Section 44-5-13, relating to assessment and apportionment of taxes, echoes the December 31 date of assessment:

> "The assessors shall assess all valuation and apportion any tax levy on the [. . .] ratable property in the city or town according to law, and the assessed valuation of the ratable property is made as of the date of assessment[, midnight of December 31] provided in § 44-5-1."

Section 44-9-1 further provides that real property taxes assessed against a taxpayer shall constitute a tax lien, and that the lien shall arise and attach as of the date of assessment of the taxes, "as defined in § 44-5-1." In the context of when real property is "sold and conveyed to a purchaser[,]" the tax assessed on the real estate as of any December 31

> "shall, except as otherwise provided by contract of the parties involved, be apportioned as if the assessment were made in advance for the immediate following calendar year and shall be adjusted between the seller and the purchaser as of the date of delivery of the deed of conveyance, the seller paying for the period commencing January 1st to an including the date of delivery of the deed of conveyance, and the purchaser paying the balance of the taxes." Sec. 44-4-8.1 (emphasis added).

This particular statute does not work to automatically abate taxes on property on which a tax lien has already accrued. There is nothing in statutory or case law that suggests such a result. Rather, the existing taxes need to be apportioned between seller and purchaser by agreement, even when the purchaser is a tax-exempt organization. A tax-exempt purchaser may attempt to structure the transaction to provide that the seller pay all taxes, but if the seller balks then the tax-exempt purchaser will be responsible for the existing taxes unless it elects to forego the purchase. Such are the four state statutes germane to this case: they uniformly refer to December 31, and together they address assessment, tax liens, and transfers.

The same holds true for the City ordinance which provides for the assessment and collection of 2009 taxes:

> "Section 2. The Providence City Assessor shall assess and apportion said tax on [. . .] ratable real estate [. . .] of said City as of the 31st day of December AD 2008 midnight, Eastern Standard Time[.]" City of Providence Ordinance No. 374, § 2.

Aurora held title to the Property on December 31, 2008. The Property therefore was ratable and assessed as of December 31, 2008. See §§ 44-5-1, 44-5-13. The tax lien accrued and attached as of that date. See § 44-9-1. And, critically, the Legislature anticipated the need for apportionment of taxes upon the sale of real estate: since there was no agreement between Aurora and the Society regarding apportionment, the Society as purchaser was liable for the balance of the outstanding calendar year taxes, beginning on the date of delivery. See § 44-4-8.1.

No reading of these provisions—or of the authorities cited by the Society—supports the Society's contention that the annual tax burden on the Property was relieved upon the March 31, 2009 conveyance. To the contrary, the Rhode Island and Providence provisions are clear and unambiguous: there is no conflict as to the operative date and there is no suggestion that an exempt organization such as the Society is entitled to different treatment. Cf., Annotation, Tax Exemption of Real Property as Affected by Time of Acquisition of Title by Private Owner Entitled to Exemption, 54 A.L.R.2d 996 §§ 1-4 (Originally published in 1957) (summarizing cases from states in which a tax-exempt purchaser's property tax liability depended on date of assessment but not date of lien attachment, and vice-versa). Although our Supreme Court has not explicitly ruled on whether acquisition extinguishes a tax burden, other state supreme courts have. See, e.g., Episcopal School of Cincinnati v. Levin, 117 Ohio St. 3d 412, 417 (2008) (holding that taxable or exempt status of property should be determined as of tax lien date, which is January 1 of each tax year); In re Federated Dept. Stores, Inc., 270 F.3d 994, 1002 (6th Cir. 2001) ("tax exempt organizations that purchase property after the tax status date are still responsible for the property taxes assessed on that property") (applying New York law); City of

East Orange v. Palmer, 47 N.J. 307, 326-327 (1966) (holding that a tax exemption does not take effect at the moment of acquisition). Where, as here, state and municipal provisions are in agreement, and the Legislature anticipated the issue of apportionment of tax liabilities upon transfer, the Society cannot avoid its tax liability. The City properly determined that the 2009 tax year liability accrued on December 31, 2008, without regard to the 2009 date of acquisition.

The Society seemingly suggests that this Court should void the tax sale because the City failed to provide proper notice. The Society offers scant argument on this point and merely contends that it is "unknown" whether it received notice. Section 44-9-10(a) provides that the requirement of notice to the taxpayer may be satisfied through personal service "on the taxpayer not less than thirty (30) days before the date of sale[.]" Sec. 44-9-10(a) (2010 & Supp. 2011). Here, the City produced certified mail receipts and the notification letter; the Society offered no objection to this proof. The tax sale therefore was not illegal for lack of notice. See, e.g., Harvey Realty v. Killingly Manor Condo. Ass'n, 787 A.2d 465, 468 (R.I. 2001) (notice by certified mail satisfies requirement of actual notice).

The Society finally maintains that all taxes on the Property were abated during the pendency of this action. The Society relies on a letter, dated March 14, 2012, from an attorney of the City Solicitor's Office, which states that all outstanding taxes on the Property were abated, leaving no balance on the account. At oral argument, the Society suggested that its disregard of the tax sale was due to the attorney's letter.

First, the letter could not have misled the Society regarding the tax sale because the tax accrual, conveyance, and tax sale all occurred well prior to 2012. Moreover, the City is not bound to honor its attorney's ultra vires communication. See Casa DiMario v. Richardson, 763 A.2d 607, 610 (R.I. 2000) (town solicitor lacked actual authority to settle lawsuit, so his actions

could not obligate town). "The authority of a public agent to bind a municipality must be actual." Warwick Teachers' Union Local No. 915 v. Warwick Sch. Comm., 624 A.2d 849, 850-51 (R.I. 1993). Thus, "any representations made by such an agent lacking actual authority are not binding on the municipality." Id. (quoting Sch. Comm. of Providence v. Bd. of Regents for Educ., 429 A.2d 1297, 1302 (R.I. 1981)); see also Martel Inv. Group, LLC v. Town of Richmond, 982 A.2d 595, 600 (R.I. 2009) (finding that a town was not bound to honor a building permit because the town's building official lacked the actual authority to ignore a zoning ordinance provision when he originally granted the permit). Thus, the solicitor's letter could not have induced reliance and lacked binding authority. This argument also fails.

Conclusion

After due consideration, this Court denies the Society's motion to void the tax sale. The tax sale was valid, and the Society was not subjected to illegal taxation. Counsel shall submit an appropriate Order for entry.