

Vacant Property and the Right of Redemption in Pennsylvania

By: Suzanne Prybella

Real Estate Alert

2.10.16

In Pennsylvania, pursuant to the Municipal Claims and Tax Liens Act (53 P.S. §7293(a)) (the Act), the owner of a property sold under a tax or municipal claim may redeem the sold property at any time within nine months after the date of acknowledgment of the sheriff's deed by, in general, paying the amount of the debt. However, there is a caveat contained in the Act with respect to vacant property, which states that "there shall be no redemption of vacant property by any person after the date of the acknowledgment of the sheriff's deed." (53 P.S. §7293(c)). In *Brentwood Borough School District v. HSBC Bank USA, N.A.*, 111 A.3d 807 (Pa. Commw. Ct. 2015), a case of first impression before the Commonwealth Court of Pennsylvania, the court addressed the definition of "vacant property" under the Act and the timing of a petitioner to invoke the right of redemption with respect to vacant property.

FACTUAL BACKGROUND

On June 6, 2011, pursuant to a tax sale initiated under the Act by the Brentwood Borough School District and Brentwood Borough for the payment of delinquent real estate and school taxes, certain real property was sold to a third-party purchaser. The sheriff's deed for the property was acknowledged on June 17, 2011. On November 11, 2011, a bank which, prior to the tax sale, held a mortgage encumbering the property, filed a redemption petition pursuant to the Act asserting its statutory right to redeem the property. In response, the third-party purchaser argued that the mortgagee had no right to redeem the property after the acknowledgment of the sheriff's deed because the property was "vacant property" pursuant to Section 7293(c) of the Act. The trial court denied the mortgagee's redemption petition on the grounds that (a) the mortgagee had no right to redeem the property after the acknowledgment of the sheriff's deed because the property was "vacant property," as defined by §7293(c) of the Act, and (b) the redemption petition was not timely filed because it was not filed within 90 days of acknowledgment of the sheriff's deed. The mortgagee appealed the decision to the Commonwealth Court of Pennsylvania.

REDEMPTION PERIOD AND VACANT PROPERTY

The Act defines "vacant property" as property which is not "continuously occupied by the same individual or basic family unit as a residence for at least 90 days prior to the date of the sale" and continues being unoccupied on the date of the acknowledgment of the sheriff's deed. (53 P.S. §7293(c)). The mortgagee contended that the property was not vacant because the former property owner never moved out. However, there was evidence that the former property owner was temporarily staying at the home of a friend due to inability to pay the property's utility bills. The mortgagee pointed out that the former property owner left all of her belongings at the property, a fact it argued as sufficient to show that the property was still occupied and could not be deemed vacant. However, applying the rules of statutory construction in light of the context of the Act, the court found that in order to invoke the right of redemption, the occupancy of the property must be as a residence, not simply as a storage unit. The court supported its reasoning by reference to the purpose of the Act, which the court stated was to "increase the collection of taxes and free the land to bear its share of the burden." *Brentwood Borough*, 111 A.3d at 812. In light of this purpose, the court reasoned that by strictly limiting a property owner's right to regain possession of a vacated property, the Act facilitated the prompt passage of title to a purchaser who would occupy the property and pay its share of the taxes. Since the record showed that no one was habitually and physically using the property, and that the property owner was financially unable to maintain the property, the court found that the property was indeed vacant.

Given the property's vacancy, the court determined that the shortened redemption period under the Act for vacant properties was applicable in this case. The court found that the trial court erred in reasoning the mortgagee's redemption petition was untimely for being filed more than 90 days from the date of acknowledgement of the sheriff's deed^[1]. However, the court concluded that the redemption petition was still untimely because it had not been filed before the date of acknowledgement of the sheriff's deed, as required by the Act for vacant properties. The court affirmed the order of the trial court denying the mortgagee's redemption petition. In addition, the court noted that whether a property is "continuously occupied by the same individual or basic family unit as a residence" is a factual determination to be made on a case-by-case basis, considering factors such as: habitual presence at the property, reason for any lack of physical presence, the condition of the property and whether basic and necessary utilities were operational. On October 7, 2015, the Supreme Court of Pennsylvania granted an appeal with respect to the issue of what constitutes a "vacant" property for purposes of the Act.

CONCLUSION

The *Brentwood Borough* case establishes that in order for a property to be occupied for purposes of redemption rights, it must be in use as a residence. Merely storing belongings without a habitual and physical presence in a property is insufficient to prevent it from being deemed vacant and subjecting it to the shorter redemption period for vacant properties. However, given the granted appeal of this case, the matter of what constitutes a "vacant property" under the Act is not quite resolved yet. Even so, lenders and property owners should first take prompt action to prevent a tax sale from occurring, particularly if the property might not be continually occupied as a residence before the scheduled sale date. These parties can exercise certain rights to prevent or defer a tax sale. Given the shortened redemption deadlines for vacant properties actually sold at tax sale, mortgage holders are at risk of losing of their collateral if they do not petition the court to redeem the property in a timely manner. Lenders and owners are advised to seek the assistance of legal counsel as early as possible to determine how best to protect their interests in such a situation.

For more information, please contact Suzanne Prybella (215.864.7188; prybellas@whiteandwilliams.com) or another member of our Real Estate Group.

[1] Apparently the trial court had inadvertently applied a 90 day deadline contained in the Second Class Treasurer's Sale and Collection Act (53 P.S. §27101 et seq.), which applies to sales held for the collection of municipal liens and taxes for properties located in the City of Pittsburgh. The property in question is located in the Borough of Brentwood, in the greater Pittsburgh area.

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal questions.