

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

In Re: Public Sale of Properties	:	
Pursuant to Section 610 and	:	
Section 703 (B) of the Real	:	
Estate Tax Sale Law	:	
	:	No. 635 C.D. 2013
Bryn Mawr Trust Company	:	Argued: October 8, 2013
	:	
Purfield Properties, LLC	:	
Delaware County Tax Claim Bureau	:	
	:	
Appeal of: Purfield Properties, LLC	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE SIMPSON**

**FILED: November 7, 2013**

Bryn Mawr Trust Company (Mortgagee) challenges a judicial sale of property on which it held a mortgage because the Delaware County Tax Claim Bureau (Bureau) did not serve it with notice in compliance with the Real Estate Tax Sale Law (Tax Sale Law).<sup>1</sup> At the judicial sale, Purfield Properties LLC (Purchaser) bought the property for the amount of taxes due, free and clear of the mortgage lien. After a hearing, the Delaware County Court of Common Pleas (trial court) set aside the judicial sale. Purchaser argues Mortgagee had actual notice, obviating the need for strict compliance with statutory notice procedures. Predicated on alleged actual notice, Purchaser contends Mortgagee is estopped from pursuing

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<sup>1</sup> Act of July 7, 1947, P.L. 1368, as amended, 72 P.S. §§5860.101-5860.803.

reinstatement of its mortgage. For the following reasons, we vacate and remand, and direct the trial court to confirm that the mortgage remains intact on the property.

### **I. Background**

In 1959, Spencer and Catherine Hand purchased a residential property at 2836 Haverford Road, Haverford Township in Delaware County (Property). When Spencer died, his interest passed to his wife, Catherine (Hand). Hand executed a mortgage on the Property to secure a home equity line of credit for \$160,000 from Mortgagee. The mortgage was recorded in the Delaware County Recorder of Deeds Office.

As a result of Hand's failure to pay real estate taxes, the Bureau scheduled an upset sale. The Property was not sold at the upset tax sale. As a result, on January 17, 2012, the Bureau filed a petition for public sale of properties that included the Property.

In accordance with the Tax Sale Law, the Bureau petitioned the trial court for a rule to be granted on each interested party as appeared of record to show cause why a decree should not be made to permit the Property to be sold free and clear of its respective tax and municipal claims, liens, mortgages, charges and estates (Rule). In its Petition for Judicial Tax Sale (Petition), the Bureau identified Mortgagee's mortgage against the Property. The trial court then issued the Rule, returnable at a hearing to be held March 30, 2012. Mortgagee was not served with a copy of the Petition or Rule. Having no knowledge of it, Mortgagee did not appear at the hearing. An order was entered permitting the judicial sale of the Property. The Bureau scheduled the Property for judicial sale on May 10, 2012.

The day before the scheduled sale, an attorney representing Mortgagee called the Bureau inquiring as to the tax status of the Property (Attorney Guthrie). Kathy Wike, manager for the Bureau (Manager), returned Attorney Guthrie's call. During that call, Manager typed the following into the Bureau's call log regarding the Property: "Talked to Don Guthrie from [Mortgagee]. The Bank was never served for the mtg. due on this. Catherine Bell [sic] has passed not sure if any estate has been opened yet. We are going to continue this sale so that we can give notice to the Bank as well as to any executor of the estate." Reproduced Record (R.R.) at 99a (emphasis added). Manager also placed a "post-it" on the physical property file in her handwriting that "Bank Regist." with the word "will" inserted and under-slashed after Bank. *Id.* Manager also handwrote Mortgagee's address on another "post-it." R.R. at 59a, 89a.

Attorney Guthrie's call was the Bureau's first notice that Mortgagee was not served with the Petition or Rule and had no notice of the Property's listing for judicial sale. Consequently, Manager informed Attorney Guthrie that the judicial sale would be continued so the Bureau could provide notice "To tell them (Mortgagee) how much was owed[,] to tell them that there's a sale." R.R. at 63a.

The Bureau had no proof that the Petition and Rule were sent to the Sheriff for service upon Mortgagee. The Bureau's property file showed the Sheriff made three unsuccessful attempts to serve the Petition and Rule upon Spencer and Catherine Hand, and one unsuccessful attempt to serve the Haverford Township solicitor, whose office address changed. There were no letters to the Sheriff regarding service on Mortgagee, nor any notations regarding attempts at service.

The Bureau continued the sale to the next judicial sale scheduled for September 13, 2012 (Judicial Sale). The Bureau did not attempt to notify Mortgagee. After returning Attorney Guthrie's call, the Bureau had no further contact with Mortgagee, including Attorney Guthrie, between May 9, 2012, and the rescheduled date of the Judicial Sale, September 13, 2012.

Mortgagee did not appear for the Judicial Sale in September. At the Judicial Sale, the Property sold to Purchaser, free of all liens, for \$53,000. Therefore, the Property was not taken subject to Mortgagee's \$160,000 mortgage. On October 22, 2012, the Bureau issued a deed accompanied by a Realty Transfer Tax Statement of Value that identified the fair market value of the Property as \$208,166.40. R.R. at 86a-87a.

Mortgagee then filed a Petition to Set Aside the Judicial Sale with the trial court. The trial court conducted a brief hearing where Mortgagee called Manager on cross-examination. Manager testified the Bureau did not have any evidence that it provided for service of the Petition or Rule upon Mortgagee. Manager confirmed the Bureau did not have a record of any communications between Mortgagee and the Bureau other than her telephone call with Attorney Guthrie. Manager testified there was no indication in the Bureau's property file that the Bureau provided any notice of the rescheduled Judicial Sale to Mortgagee.

During the telephone call with Attorney Guthrie, Manager typed the entry into the computer log regarding the necessity for notice to Mortgagee, and to an estate of any rescheduled sale. She also handwrote the address and "Attn. Wm.

B. Shirdan” on a “post-it” in the file at that time. R.R. at 97a; see also R.R. at 59a. The trial court admitted the log into evidence as a business record. R.R. at 55a.

Manager admitted that the Bureau did not have knowledge of Hand’s passing and did not know who was in charge of any estate. R.R. at 62a. Manager also acknowledged that she did not note a date for the continued sale in her notations on the file, or that the Judicial Sale would be continued until the next sale date. R.R. at 62a-63a.

Purchaser argued Manager provided notice of the rescheduled Judicial Sale to Mortgagee during that telephone call, because she noted “Bank will/ Regist.” for the new sale. R.R. at 71a, 99a. However, when asked what that entry meant, Manager equivocated, “I’m thinking I wrote that because probably Mr. Guthrie probably told me that.” R.R. at 72a; see also R.R. at 89a. Further, Manager was not certain she advised Attorney Guthrie the sale would be rescheduled for September. The post-it does not specify a month or date.

Purchaser argued to the trial court that the lack of notice of the date of the rescheduled Judicial Sale, and lack of statutory notice was immaterial because the Bureau advised Mortgagee that the Property would be sold at a judicial sale. At that point, Purchaser contends, Mortgagee had the obligation to discover the date of the rescheduled judicial sale.

Mortgagee argued the record reflected that the Bureau did not comply with statutory notice provisions of the Tax Sale Law, requiring sheriff service of the

Petition and Rule regarding the Judicial Sale. Mortgagee also asserted Purchaser could not take the Property clear of the mortgage lien because the trial court never gained jurisdiction over Mortgagee through service of the Petition and Rule.

The trial court set aside the Judicial Sale. Subsequent to Purchaser's appeal, the trial court issued an opinion. The trial court found that the Bureau did not provide statutory notice to Mortgagee, and that Mortgagee had no notice of the judicial sale when Purchaser bought the Property. The trial court reasoned that Mortgagee could not be deprived of its legally protected property interest without due process, and the Bureau failed to prove compliance with the Tax Sale Law.

Purchaser appealed the trial court's order to this Court.<sup>2</sup>

## **II. Discussion**

Purchaser argues the trial court erred in setting aside the sale for the Bureau's noncompliance with the Tax Sale Law notice provisions.<sup>3</sup> Rather, the remedy is the mortgage remains undischarged and Purchaser takes the property subject to it. However, Purchaser asserts the mortgage does not survive divestiture by the Judicial Sale because Mortgagee had sufficient notice.

Mortgagee counters that the Bureau did not provide actual or statutory notice; therefore, the proper remedy is to confirm its mortgage on the Property.

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<sup>2</sup> In tax sale cases, this Court's review is limited to determining whether the trial court abused its discretion, clearly erred as a matter of law or rendered a decision with a lack of supporting evidence. Rice v. Compro Distrib., Inc., 901 A.2d 570 (Pa. Cmwlth. 2006).

<sup>3</sup> The Bureau did not participate in argument and joined in Purchaser's brief.

### **A. Notice Required for Judicial Sale**

Unlike an upset sale, property purchased at a judicial sale is bought free and clear of all liens. Tax Claim Bureau of Westmoreland Cnty. (Money Store), 613 A.2d 634 (Pa. Cmwlth. 1992). Therefore, sale of property at a judicial sale may divest interested parties of their liens against the property. Id.

Section 610 of the Tax Sale Law provides for the petition for judicial sale to set forth:

(1) the tax claim upon which the property was exposed for sale, (2) that neither the owner, his heirs or legal representatives or any lien creditor, his heirs, assigns or legal representatives or other person interested has caused stay of sale, discharge of tax claim or removal from sale, (3) that the property was exposed to public sale and the date of such sale, (4) that before exposing the property to public sale the bureau fixed an upset price, as herein provided, and (5) that it was unable to obtain a bid sufficient to pay said upset price. Upon the presentation of such petition, accompanied with searches, showing the state of the record and the ownership of the property and all tax and municipal claims, liens, mortgages, ground rents, charges and estates against the same, the court shall grant a rule upon all parties thus shown to be interested to appear and show cause why a decree should not be made that said property be sold, freed and cleared of their respective tax and municipal claims, liens, mortgages, charges and estates, except separately taxed ground rents. The rule shall be made returnable in not more than thirty (30) days from the date the petition was presented or as otherwise determined by the court.

72 P.S. §5860.610 (emphasis added).

Notice provisions for a judicial sale appear in Section 611 of the Tax Sale Law, 72 P.S. §5860.611. Section 611 specifies the “[s]ervice of the rule shall be made in the same manner as writs of *scire facias*” requiring personal service by the sheriff. 72 P.S. §5860.611. If personal service is unsuccessful, service shall be made by sending registered mail, postage prepaid, return receipt requested at least 15 days before the return date on the rule. Id.

Here, the Bureau had no proof of any service by the sheriff.

Precedent is clear that strict compliance with the Tax Sale Law’s notice requirements is necessary to ensure citizens are not stripped of their property rights without due process. Rivera v. Carbon Cnty. Tax Bureau, 857 A.2d 208 (Pa. Cmwlt. 2004). The notice requirements for judicial tax sales are less onerous than those for upset tax sales. In re Serfass, 651 A.2d 677 (Pa. Cmwlt. 1994). “[H]owever, they must be strictly complied with.” Shipley v. Tax Claim Bureau of Delaware Cnty., \_\_ A.3d \_\_, \_\_ (Pa. Cmwlt., No. 2143 C.D. 2012, filed July 25, 2013); see Mfrs. & Traders Trust Co. v. Luzerne Cnty. Tax Claim Bureau, 56 A.3d 36 (Pa. Cmwlt. 2012). “Whatever mechanism is used, it must be reasonably calculated to apprise the interested parties of the pendency of the action and afford them an opportunity to present their objections. This is why strict compliance is required.” In re Tax Claim Bureau of Lehigh Cnty., 507 A.2d 1294, 1296 (Pa. Cmwlt. 1986). The Bureau bears the burden of proving adequacy of the notice provided. McElvenny v. Bucks Cnty. Tax Claim Bureau, 804 A.2d 719 (Pa. Cmwlt. 2002).



In this case, there is no dispute the Bureau did not comply with the strict notice provisions of the Tax Sale Law despite its knowledge of the mortgage, and of the address for Mortgagee. Further, the Bureau offered no excuse or explanation for its non-compliance, and none is clear in the record.

Purchaser contends the trial court applied an inappropriate remedy. When a lienholder receives no notice of a judicial sale, the proper remedy is not to set aside the sale as the trial court did here.<sup>4</sup> In support, Purchaser cites Westmoreland County, Lehigh County, Plank v. Montgomery County Tax Claim Bureau, 735 A.2d 178 (Pa. Cmwlth. 1999), and Muhlenberg Township Authority v. Fisher, 503 A.2d 1022 (Pa. Cmwlth. 1986), for the principle that the trial court lacked authority to set aside the sale. We address each case in turn.

Purchaser cites Westmoreland County for the proposition that purchasers at a judicial sale take property subject to a mortgagee's undischarged lien where the trial court failed to give mortgagee notice of the hearing on the rule to show cause. In Westmoreland County, the mortgagee, Money Store, petitioned to set aside a judicial sale of property on which it held a mortgage. When the owner became delinquent in his property taxes, the tax bureau exposed the property to an upset sale. When the property did not sell for the upset sale price, the tax bureau petitioned the trial court to sell the property at a judicial sale. As in this case, the tax bureau listed the mortgagee as having a mortgage. However, unlike this case, Money Store received notice of the rule to show cause and admitted to proper service.

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<sup>4</sup> Rather, if notice is legally insufficient, the property remains subject to the lien. As a result, Purchaser would be responsible for the \$160,000 mortgage held by Mortgagee.

Upon receipt of service, Money Store advised the tax bureau that the owner was in bankruptcy and protected by an automatic stay. Money Store did nothing further.

Similar to Mortgagee here, Money Store did not receive notice of a rescheduled hearing on the rule to show cause. Money Store also did not receive notice of the order scheduling the judicial sale. After the judicial sale, Money Store petitioned to set it aside, asserting it had no notice of the hearing on the rule, and thus was deprived of its opportunity to object to the sale, or to receive notice of the sale date. The trial court dismissed the petition, holding Money Store had notice by personal service of the rule. By failing to respond to the rule duly served upon it, Money Store had no one but itself to blame for missing the hearing.

This Court disagreed that service of the rule to show cause was sufficient, reasoning it does not serve as a proper substitute for original process. The divestiture of the lien may be accomplished by a hearing on the rule returnable day. Therefore, notice of hearing on the return day where the trial court fixes the date of the free and clear judicial sale is important, and must be provided to the lienholders. In Westmoreland County, the trial court did not hold the hearing on the initial rule returnable day. Instead, it rescheduled the hearing for a later date. The trial court did not furnish the Money Store with the date of the rescheduled hearing, thus depriving Money Store of its property without due process. Because the trial court failed to give adequate notice of the rescheduled hearing, the mortgage lien was not discharged, and the purchasers took the property subject to the lien.

In Plank, successful bidders at a judicial sale appealed from a denial of their petition. Due to a reassignment of mortgage, the tax bureau provided notice of the judicial sale to the prior mortgagee. The current mortgagee received no notice of the judicial sale. Therefore, the bidders took the property subject to the mortgage and became responsible for the lien. Relevant to this case, the bidders argued the tax bureau's failure to notify the current mortgagee required the sale be voided. This Court held the purchasers lacked standing to attack validity of the notice (and lack thereof) because they were not aggrieved. Only owners and lienholders could file exceptions. Here, Mortgagee is a lienholder, so it is not precluded from setting aside the sale under the reasoning in Plank. Also, in Plank, there was no dispute that the mortgage remained attached to the property, and the purchasers were subject to it. Here, Purchasers disclaim any responsibility for the mortgage lien, thus divesting Mortgagee of its property interest.

Lehigh County pertains to actual notice regarding an upset sale, not a judicial sale, and again, involves non-mortgagees pointing to lack of notice on a mortgagee as basis for voiding the sale. There, this Court explained: "Notice to the mortgagee was intended for the due process protection of that lienholder. Failure of such notice does not inure to the benefit of the owner. It does not vitiate the sale. Its effect is not to discharge the lien, and the purchaser takes the property subject thereto." Id. at 1297.

In Muhlenberg Township Authority, the authority held sewer lien claims on a series of lots. The rule to show cause for the judicial sale of the lots was served upon the township as opposed to the proper party, the township

authority. The trial court determined the authority, a separate legal entity, did not receive notice. Because it did not receive notice, the authority contended its liens were not discharged. This Court agreed and held: “Failure to give notice does not discharge the lien and purchasers take the property subject thereto.” Id. at 1024. This Court vacated the decision of the trial court and remanded. This Court noted that by issuing a rule to show cause, the trial court discharged the liens of those the rule was served upon. As a result, the lien on the property was not discharged.

Here, the Bureau did not comply with any of the notice provisions under the Tax Sale Law. Significantly, the Bureau did not establish service of the Petition or Rule upon Mortgagee. There is no indication in the record that Mortgagee had notice of the Rule or the hearing on the Rule when the trial court set the date for the initial judicial sale. Since the record supports the trial court’s conclusion that Mortgagee had no notice of the Judicial Sale, the issue becomes one of remedy, and whether the trial court erred in setting aside the sale.

All of the cases set forth above show Purchaser takes the Property subject to the mortgage. Accordingly, Mortgagee was never divested of its mortgage lien because it received no notice of the Rule or the hearing on the Rule. Westmoreland. Constitutional due process requires notice and an opportunity to object to all parties with a property interest, including lienholders like Mortgagee. See Mennonite Bd. of Missions v. Adams, 462 U.S. 791 (1983); First Pa. Bank, N.A. v. Lancaster Cnty. Tax Claim Bureau, 504 Pa. 179, 470 A.2d 938 (1983).

As Mortgagee was not divested of its lien, there is no need to set aside the sale to Purchaser. Regardless of whether the trial court correctly determined Mortgagee did not receive sufficient notice of the Judicial Sale, the trial court erred as a matter of law in formulating the remedy here, in setting aside the sale.<sup>5</sup>

### **B. Actual Notice**

Purchaser asserts that during the telephone call between Attorney Guthrie and Manager, Mortgagee received actual notice of the Judicial Sale. Purchaser argues that Mortgagee had actual notice that the Property was being put up for judicial sale. Purchaser also contends that the Bureau's failure to inform Mortgagee of the rescheduled Judicial Sale was not material. Purchaser posits that Mortgagee had the duty to follow-up and to discover the date of the rescheduled Judicial Sale once it knew the Property was listed for sale.

Purchaser argues that once Mortgagee learned the Property would be subject to judicial sale it had actual notice, and the burden of learning the date of that sale was on Mortgagee. According to Purchaser, the Tax Sale Law does not require a tax bureau to provide notice of the rescheduled judicial sale to interested parties like Mortgagee. However, the case law does not support its position.

Mortgagee responds that the record evidence does not show sufficient actual notice to overcome the lack of statutory notice. Mortgagee refutes the cases Purchaser cites to support its actual notice claim as distinguishable on their facts.

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<sup>5</sup> Mortgagee agrees the trial court applied an improper remedy and asks this Court "to enter an order dismissing the Petition to Set Aside the Judicial Sale and direct the lower court to enter an order that the subject property remains subject to the mortgage." Appellee's Br. at 25.

Strict compliance with statutory notice under the Tax Sale Law is unnecessary when a party in interest has actual notice of a pending sale. Stanford-Gale v. Tax Claim Bureau of Susquehanna Cnty., 816 A.2d 1214 (Pa. Cmwlth. 2003) (receipt of notice by co-administrator of estate constituted notice to other co-administrator as they had joint and several authority, and each one may bind the estate).

Primarily, Purchaser relies on City of McKeesport v. Delmar Leasing Corp., 656 A.2d 180 (Pa. Cmwlth. 1995). McKeesport is distinguishable from this case on its unique set of facts and the applicable service rules. In McKeesport, this Court interpreted the Pennsylvania Rules of Civil Procedure, namely mailing under Rules 3129.1 and 3129.2. Under the Rules, notice by mail, accompanied by U.S. Postal Form 3817, is presumed unless returned. Therefore, by law, notice was presumed received by mortgagee despite its disclaimer.

In addition, the mortgagee did not dispute proper service upon the property owner of the sale notice. This Court reasoned that notice on the property owner was sufficient to put mortgagee on notice because the property owner and mortgagee had the same president. Therefore, the mortgagee was deemed to have actual notice of the sale date. Id.

Although this Court stated in McKeesport that actual notice did not require notice of the specific date of the sale, that case does not excuse lack of notice of the date here, for the following reasons.

First, unlike McKeesport, here there is no admission of any proper notice on anyone associated with Mortgagee. Purchaser characterizes the telephone conversation between Attorney Guthrie and Manager as constituting actual notice to Mortgagee of the sale because Mortgagee learned about the Bureau scheduling the Property for judicial sale. However, a telephone conversation about the status of the Property, and that a judicial sale was scheduled, does not substitute for strict compliance with the notice provisions of the Tax Sale Law.

Second, McKeesport involved a sheriff's sale and different notice provisions, not the Tax Sale Law notice provisions here. The Tax Sale Law requires notice and an opportunity to object to judicial sale, and proper notice contains the date of sale. See Montg. Cnty. Tax Claim v. Mermelstein, 836 A.2d 1010 (Pa. Cmwlth. 2003) (holding actual notice of judicial sale date does not overcome strict compliance because Tax Sale Law entitled trust to the rule and hearing date).

For these reasons, McKeesport is too dissimilar to this case to analogize its reasoning or holding. Other actual notice cases are also easily distinguishable on their facts. See, e.g., Donofrio v. Northampton Cnty. Tax Claim Bureau, 811 A.2d 1120 (Pa. Cmwlth. 2002) (bureau's failure to provide notice in proper font size when notice is admitted does not vitiate sale for improper notice).

Purchaser misplaces reliance on In re Serfass, that a lienholder is not entitled to notice of a sale date, to also uphold notice that a property would be subject to judicial sale at an undefined future date. Although Serfass holds notice of the specific date of a judicial sale is not required, the circumstances differ materially.

In Serfass, the tax bureau gave notice of the rule and complied with other provisions of the Tax Sale Law. Therefore, this Court held due process was afforded. Importantly, after noting Section 612 of the Tax Sale Law did not require notice of the precise date, this Court reasoned “[w]hat was required, however, was that he be personally served with the [r]ule to [s]how [c]ause why his property should not be sold at a judicial sale, and this was complied with ....” Id. at 680. Here, in stark contrast, Mortgagee had no notice of the rule. Further, In re Serfass precedes this Court’s decision in Fernandez v. Tax Claim Bureau, 925 A.2d 207 (Pa. Cmwlth. 2007), noting a tax bureau must provide additional notification efforts under Section 607.1(a) of the Tax Sale Law<sup>6</sup> in a judicial sale.

There is no evidence that the Bureau provided proper notice of the Judicial Sale to Mortgagee. Moreover, Manager did not testify she advised Mortgagee of the next scheduled judicial sale or of a specific date. Manager’s testimony and log entries reflect that she stated she would continue the judicial sale so the Bureau could provide proper notice to Mortgagee and any estate for Hand. The trial court found Mortgagee had no notice of the Judicial Sale, and that is why it did not attend. Substantial evidence supports this determination.

### **C. Estoppel**

Finally, Purchaser asserts Mortgagee is estopped from holding the Bureau accountable for strict compliance with notice requirements of the Tax Sale Law. Purchaser bases its argument on its claim that Attorney Guthrie advised Manager that Mortgagee would register for the sale.

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<sup>6</sup> Added by Act of July 3, 1986, P.L. 351, as amended, 72 P.S. §5860.607a.



Mortgagee counters that it had no actual notice of the Judicial Sale. Further, the record does not support Purchaser's defense of actual notice. Therefore, Purchaser cannot establish estoppel.

To show that statements give rise to an estoppel, they must be clear and reasonably certain in their intendment. Lehigh County. The burden is on the party asserting the estoppel to establish it. Id. The party with the burden must "establish the estoppel by clear, precise and unequivocal evidence." Northcraft v. Edward C. Michener Assocs., Inc., 466 A.2d 620, 627 (Pa. Super. 1983) (quoting Blofsen v. Cutaiar, 460 Pa. 411, 417, 333 A.2d 841, 844 (1975)).

To establish equitable estoppel, the party asserting the defense must show that the other party (1) misrepresented a material fact; (2) knew or had reason to know the other party would rely justifiably on the misrepresentation; and, (3) induced the other party to act to its detriment due to its reliance on the misrepresentation. Baker v. U. Southampton Twp. Zoning Hearing Bd., 830 A.2d 600 (Pa. Cmwlth. 2003).

In Lehigh County, this Court held the owner and her counsel did not establish estoppel by the tax bureau because they were not misled by the tax bureau's statements. Accordingly, a statement by the party seeking to be estopped must induce action or inaction by the other party.

Purchaser bears the burden of proving Mortgagee is estopped from requiring strict compliance with the Tax Sale Law's notice provisions. Purchaser

relies upon Manager's testimony as "clear, precise and unequivocal evidence," claiming the Bureau relied upon Attorney Guthrie's statements that "Bank will/Regist." for the judicial sale. R.R. at 71a, 99a. Purchaser predicates the estoppel argument upon this purported misrepresentation.

Contrary to Purchaser's assertions, Manager's testimony regarding whether Mortgagee advised the Bureau that it would register for the sale is unclear. Manager is not definitive regarding the meaning of her handwritten note. When asked to confirm the conversation, Manager repeatedly said she "probably" wrote the note regarding registration for the sale because Attorney Guthrie "probably" told her that. R.R. at 72a, 89a. Therefore, her testimony does not qualify as unequivocal. See, e.g., Terrell v. Workmen's Comp. Appeal Bd. (McNicholas), 535 A.2d 310 (Pa. Cmwlth. 1988) (holding testimony regarding probability does not qualify as unequivocal in workers' compensation context).

More importantly, Manager did not indicate that the Bureau relied upon Attorney Guthrie's alleged statements regarding registration in order to forego the promised notice and service on Mortgagee. Manager did not provide any excuse for the Bureau's failure to provide notice to Mortgagee. Therefore, Purchaser cannot point to any detrimental reliance by the Bureau based on Mortgagee's alleged misrepresentation. Consequently, even assuming such a misrepresentation occurred, there is no proof of detrimental reliance.

### **III. Conclusion**

The Bureau failed to strictly comply with the statutory notification requirements under the Tax Sale Law. There is no evidence Mortgagee had actual notice of the sale, and Purchaser cannot establish the prerequisites for estoppel. Mortgagee is entitled to payment of its mortgage, and the trial court should have confirmed that lien. For these reasons and the foregoing analysis, the trial court's order is vacated. We further remand to the trial court to issue an order directing that the mortgage lien remains in force, such that Purchaser takes the Property subject to the mortgage.

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ROBERT SIMPSON, Judge

Senior Judge Friedman concurs in the result only.

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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Pursuant to Section 610 and :  
Section 703 (B) of the Real :  
Estate Tax Sale Law :  
: No. 635 C.D. 2013  
Bryn Mawr Trust Company :  
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Purfield Properties, LLC :  
Delaware County Tax Claim Bureau :  
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Appeal of: Purfield Properties, LLC :

**ORDER**

**AND NOW**, this 7<sup>th</sup> day of November, 2013, the order of the Delaware County Court of Common Pleas is **VACATED**, and the case is **REMANDED** in accordance with the foregoing opinion.

Jurisdiction is relinquished.

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ROBERT SIMPSON, Judge