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JAN 22 2016

IN THE CIRCUIT COURT OF SAINT LOUIS CITY
22nd JUDICIAL CIRCUIT, STATE OF MISSOURI

22ND JUDICIAL CIRCUIT
CIRCUIT CLERK'S OFFICE
BY _____ DEPUTY

IN THE MATTER OF FORECLOSURE OF LIENS)
FOR DELINQUENT LAND TAXES BY ACTION)
IN REM COLLECTOR OF REVENUE CITY)

Plaintiffs,)

vs.)

PARCELS OF LAND ENCUMBERED WITH)
DELINQUENT TAX LIENS, LAND TAX SUIT)
NO. 178)

Defendants.)

Case No. 1422-LT00178

Parcel No. 178-167-464

División 24

ORDER AND JUDGMENT
DENYING CONFIRMATION OF LAND TAX SALE

Before the Court is Plaintiff Kenny King's (Purchaser) Motion to Confirm Land Tax Sale¹ on parcel 178-167-464, and homeowner Kenneth Riddick, Sr.'s (Homeowner) Motion to Set Aside Tax Sale, Against Confirmation Due to Inadequate Price, and For Trespass.

A bench trial on the motions was conducted on December 17, 2015. Purchaser appeared by counsel Jonathan A. McAllister, and Homeowner appeared by counsel Bettye Battle-Turner. The record was left open to December 31, 2015, at which time the matter was taken under advisement. Having now examined all exhibits, considered the testimony of the expert witnesses as to the value of the Property and its improvements, having examined the documentary evidence presented, and having determined the credibility of all the witnesses, the Court finds and concludes as follows:

On July 14, 2015, Purchaser was the high bidder at Land Tax Sale 178 with a bid of \$5,000 for the four units of mixed-use property located at 4120-4126 Shreve Ave. St. Louis MO 63115 (Property), which is more particularly described as follows:

Lots 6 and 7 in Block 3 of J. Chas Mueller & Son Trust subdivision and in Block

¹ This matter is brought pursuant to the Municipal Land Reutilization Law, §§ 92.700–92.920 RSMo

4405-C of the City of St. Louis, having an aggregate Front of 86.20 Feet of the East Line of Shreve Avenue, by a depth Eastwardly of 120 Feet to an alley, on which they have an aggregate width of 85.50 Feet; bounded North by Lee Avenue.

Purchaser's expert witness, Steven Goldman, opined that the value of the Property was \$4,500. (Exhibit J). However, the comparable sales used by Purchaser's expert had little to no similarities to the Property. The expert was not able to locate and failed to choose the best comparable real estate sales under forced tax sale conditions. The comparables he used were smaller in size and had a higher value than the subject property. The expert testified that he could not find comparables similar in size that were in as good condition as the subject property. His testimony revealed that although the subject property was mixed-use with four separate store fronts and four separate apartments above each store, he found no similar comparable sales to be used. He elected to perform an exterior inspection only. The Court finds that Purchaser's expert was not credible, and that the value he placed on the Property is inaccurate. Purchaser's expert based part of his opined value of the Property on the belief that the Property was not located on an arterial road however, the court disagrees.

The Court finds that Homeowner's expert witness, Lawrence Netterville, testimony was credible and the comparable sales he chose were more appropriate than those selected by Purchaser's expert. Homeowner's expert offered evidence that the City of St. Louis assessed the value of the residential portion of the Property at \$49,400, and the assessed value of the commercial portion at \$29,300. (Exhibit 3). This amounted to a total assessed value of \$78,700. Homeowner's expert inspected the exterior of the Property² and physically measured its dimensions. The expert opined that the value of the Property under forced tax sale conditions was \$14,000. (Exhibit 2). The court believes this figure underestimates the forced sale value of

² The credible testimony from Shaun Simms indicates the Homeowner's Expert could not inspect the interior because the locks had been tampered with to prevent their being opened.

the Property which is mixed-use with four store fronts with four residential units above on a high capacity urban road. The credible testimony from Shaun Simms indicates the Property was occupied by a paying tenant.

To confirm the sale of a parcel of land at a land tax sale, the court must find that adequate consideration has been paid for the property. Section 92.840.1. The term "adequate consideration" is not defined in the statute; however, our Supreme Court has held that adequate consideration is "such an amount as the court is satisfied is substantial, and fairly and reasonably commensurate with the value of the land in the circumstances of a forced-tax sale in a proceeding wherein, the sale having been confirmed, the purchaser procures a marketable title." Brasker v. Cirese, 269 S.W.2d 62, 67 (Mo. banc 1954) (construing the Land Tax Collection Law, § 141.580, RSMo. 1949). Adequate consideration does not require the sale price to mirror the full value or the reasonable market value of the land. Hatten v. Parcels of Land Encumbered with Delinquent Tax Liens, 217 S.W.2d 511, 514 (Mo. 1949). In the present case, the Court finds that the \$5,000 price Purchaser paid for the Property was grossly inadequate, well below that which this Court considers adequate even under forced tax sale conditions, and that it would be inequitable to confirm this tax sale.

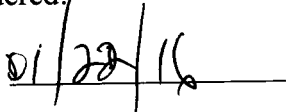
Purchaser's final argument is that should the Court find that the consideration paid was inadequate, under § 92.840(2) Purchaser must be given the opportunity to pay what the Court deems to be adequate consideration. Purchaser is mistaken. Section 92.840(2) RSMo provides: "If the court finds that the consideration paid is inadequate, the purchaser *may* increase his bid to such amount as the court may deem to be adequate whereupon the court *may* confirm the sale." (emphasis added). "The language of the statute indicates permissive action by the court not mandatory action." City of St. Louis, Collector of Revenue v. Parcel 107 of Land, 702 S.W.2d

123, 126 (Mo.App. E.D. 1985). This Court need not, and will not, determine an amount it would deem adequate so as to permit Purchaser to increase his bid and acquire confirmation. Id.

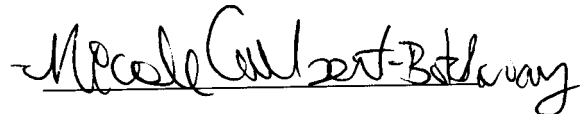
This court need not reach the homeowner's other grounds for seeking relief, Due to Movant's Disability and Due to Trepass, as this order is dispositive of the claim.

WHEREFORE, it is Ordered, Adjudged and Decreed that the Land Tax Sale 178-167-464 is hereby set aside. Homeowner, Kenneth Riddick, Sr., is ordered to pay the outstanding tax balance under this case owed to the Collector of Revenue on the subject property within ninety (90) days of the issuance of this Order and Judgment. The Sheriff of the City of St. Louis is hereby ordered to reimburse to Purchaser Kenny King the sale price of \$5,000.00, at his last known address.

So Ordered:



January 2016



Judge Nicole Colbert-Botchway-Division 29

CERTIFICATE OF SERVICE

The above signed hereby certifies the foregoing was sent via U.S. Mail, facsimile, and/or email and via the Court's electronic filing system on this 22nd day of January, 2016 to:

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