IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

TREASURER OF CUYAHOGA COUNTY, OHIO	)	**CASE NO. CV 10 724807**
Plaintiff,	)	
vs.	)	
	)	
JAMES L. COCKRELL, *et al.*	)	
Defendants.	)	
TREASURER OF CUYAHOGA COUNTY, OHIO	)	**CASE NO. CV 10 730810**
Plaintiff,	)	**JUDGE JOHN P. O'DONNELL**
vs.	)	
	)	**JOURNAL ENTRY IN CASE**
ERNEST STANFORD, SR., *et al.*	)	**NUMBERS 724807, 730810 AND**
Defendants.	)	**732344**
TREASURER OF CUYAHOGA COUNTY, OHIO	)	**CASE NO. CV 10 732344**
Plaintiff,	)	
vs.	)	
	)	
JAMES D. BODDY, *et al.*	)	
Defendants.	)	

John P. O'Donnell, J.:

STATEMENT OF THE CASE

The issue in each of these cases is identical: whether a land bank can attest, under oath, that its inspection of property has revealed that the property qualifies as nonproductive land that the land bank wants to acquire, and then disavow that attestation after the property has been transferred to the land bank.

STATEMENT OF FACTS

These are three tax foreclosure cases filed by the Treasurer of Cuyahoga County in 2010.[1] Each case involves a parcel of land in the City of Cleveland.[2] In each case, within a short time after the lawsuit was filed, a land bank filed an affidavit pursuant to Section 5722.03(C) of the Ohio Revised Code to notify the treasurer and other interested parties of its wish to acquire the parcel.[3]

Each affidavit was made under oath and attests that the affiant inspected the parcel and determined that the land should be classified as nonproductive land under R.C. §5722.01.

The court granted foreclosure in all three cases and the parcels were all ordered to a sheriff's sale. All three parcels were offered for sale at two separate sheriff's sales and none of them sold. Therefore, on April 22, 2011, the court ordered the parcels transferred as sold to the land banks pursuant to R.C. §5722.03(D).

Now, in each of these three cases, the plaintiff has filed motions to vacate the confirmations of sale. Each motion includes an amended affidavit by the applicable land bank disavowing its earlier sworn statement that, upon inspection, each parcel was found to be nonproductive land.

The amended affidavits all use the same form and read as follows:

---

[1] The elected treasurer's office has since been abolished in Cuyahoga County. The treasurer's functions are now the responsibililty of an elected county executive who appoints a treasurer to carry out the functions previously performed by the elected treasurer. Section 5.07 of the Cuyahoga County Charter.

[2] Case number 724807 involves 10100-10104 Folk Avenue, permanent parcel no. 108-24-062; case no. 730810 involves 821 East 143rd Street, permanent parcel no. 115-01-026; and case no. 732344 involves 10221 Linn Drive, permanent parcel no. 109-21-082.

[3] The affidavits in cases 724807 and 730810 were made by Joseph Sidoti, the commissioner of real estate of nt of community development, and were filed on June 7 and September 14, 2010, respectively. The affidavit in case 732344 was made by Dennis Roberts of the Cuyahoga County Land Reutilization Corporation and filed on October 13, 2010.

AMENDED AFFIDAVIT OF THE CITY OF CLEVELAND

> Now comes [affiant] and states that . . . the Prosecuting Attorney . . . has notified the City of Cleveland . . . of a certain parcel of land to which foreclosure proceedings . . . have been initiated. **AFFIANT** further states they have . . . **INSPECTED** said parcel and determined, pursuant to Section 5722.01(F) of the Ohio Revised Code, that the parcel is unoccupied delinquent land;
>
> ***
>
> **AND**
> the parcel does not fall under any of the above definitions of Nonproductive Land. **OTHER LAND**
>
> ***
> The City of Cleveland[4] DOES NOT wish to acquire [the parcel] into its land reutilization program.[5]

Based upon the reclassification, supposedly after inspection, of each property from "nonproductive" land to "other" land, the land banks have now decided they do not want the properties.

LAW AND ANALYSIS

Cleveland and Cuyahoga County have established land reutilization programs for the purpose of acquiring, managing, and disposing of nonproductive land in their jurisdictions. Cleveland's program is administered through its department of community development. Cuyahoga County's program is handled by the Cuyahoga County Land Reutilization Corporation, an entity organized under Chapter 1724 of the Ohio Revised Code.

Land reutilization programs and corporations are known informally as land banks. The basic mission of a land bank is to take ownership of abandoned, vacant, blighted, or otherwise nonproductive property and return it to productive use. This purpose is codified at R.C. §5722.02(A) which allows a political subdivision to create a land bank where "the existence of

[4] And the CCLRC in case number 732344.

[5] community development, and both dated January 19, 2012. The amended affidavit in case number 732344 is attested to by Dennis Roberts and signed August 1, 2011.

nonproductive land within its boundaries is such as to necessitate the implementation of a land reutilization program to foster either the return of such nonproductive land to tax revenue generating status or the devotion thereof to public use."

Where a tax lien foreclosure proceeding has been initiated, a land bank can acquire the property for the costs of the foreclosure proceeding if the property remains unsold after being offered for bid at two separate sheriff's sales.[6]

But a land bank is only eligible to receive such a property if it has expressed an interest in acquiring that property.[7] A land bank shows its interest by filing an affidavit in the foreclosure case attesting that it has inspected the property, determined that it should be classified as nonproductive land, and that it would like to acquire the property.

By statute, only nonproductive lands may be transferred to a land bank. Nonproductive land is defined at R.C. §5722.01 as follows:

> (F) "Nonproductive land" means any parcel of delinquent vacant land with respect to which a foreclosure proceeding pursuant to section 323.25 or sections 323.65 to 323.79, a foreclosure proceeding pursuant to division (A) or (B) of section 5721.18, or a foreclosure and forfeiture proceeding pursuant to section 5721.14 of the Revised Code has been instituted; and any parcel of delinquent land with respect to which a foreclosure proceeding pursuant to section 323.25, sections 323.65 to 323.79, or division (A) or (B) of section 5721.18 of the Revised Code has been instituted, and upon which there are no buildings or other structures, or upon which there are either:
>
> (1) Buildings or other structures that are not in the occupancy of any person and as to which the township or municipal corporation within whose boundaries the parcel is situated has instituted proceedings under section 505.86 or 715.26 of the Revised Code, or Section 3 of Article XVIII, Ohio Constitution, for the removal or demolition of such buildings or other structures by the township or municipal corporation because of their insecure, unsafe, or structurally defective condition;

[6] See, generally, R.C. §5722.03.

[7] R.C. §5722.03(C): the electing subdivision shall select . . . nonproductive lands that it wishes to acquire, and shall notify the prosecuting attorney of its selection prior to the advertisement and sale of the nonproductive lands.

> (2) Buildings or structures that are not in the occupancy of any person at the time the foreclosure proceeding is initiated and whose acquisition the municipal corporation, county, township, or county land reutilization corporation determines to be necessary for the implementation of an effective land reutilization program.

Generally, then, nonproductive land means vacant land, delinquent on real property tax, that either has no buildings or has buildings that have been condemned or are unoccupied. There is nothing in the statute that precludes industrial or commercial property from being classified as nonproductive land.

The procedure prescribed by statute was followed in each of these cases. A tax lien foreclosure action was instituted and the prosecuting attorney, representing the treasurer, notified the City of Cleveland and the Cuyahoga County Land Reutilization Corporation of the lawsuits. In turn, the land banks inspected the land and, based upon those inspections, classified each parcel as nonproductive. In case number 732344, the land bank's inspection affidavit further explicitly said that "there are buildings and structures that are not in the occupancy of any person . . . and whose acquisition the CCLRC determines to be necessary for the implementation of an effective land reutilization program." The land banks then filed the inspection affidavits to notify the parties to the foreclosure actions of their interest in acquiring the parcels if they were not sold after being offered twice at a sheriff's sale. Ultimately, none of the properties in these cases were sold at a sheriff's sale and they were all ordered sold, for costs of the lawsuit, to the land banks.

Now, well after the court confirmed each sale, the land banks seek to disavow their affidavits attesting to each parcel as nonproductive land. In case numbers 724807 and 730810, the City of Cleveland, through affidavits of Daryl Rush, has asserted that it has a policy of not

industrial, multi-family, retail)" because of the "large costs of demolition and environmental liability."[8] In case number 732344, a similar affidavit was offered by Dennis Roberts, who averred "it is the policy of the CCLRC . . . that abandoned land which consists of large structures (commercial, industrial, large multi-family, retail) are (*sic*) never acquired due to large demolition costs exposure and environmental liability exposure."[9]

However, none of these affidavits contain evidence or reasons why the "large structures" that cooled the land banks' interest in the properties were not seen during the initial inspections that resulted in the properties being classified as nonproductive land that the land banks wished to acquire. The closest thing the land banks offer by way of explanation for the claimed misclassifications is that "the high volume of land affidavits requested strained the available resources" of the land bank and resulted in some parcels being "inadvertently and mistakenly indicated on the land affidavit as nonproductive land."[10]

While just about anything might have led to the land banks' mistakes, there are two extremes of those possibilities. Either the inspections were perfunctory because the land banks were confident they could later reject the parcels if closer inspection revealed that they were more trouble than they were worth, or the inspections were never done at all. While the fact that three inspections on this court's docket alone missed large commercial structures strongly suggests the second possibility, the court will assume the less serious possible scenario: that the inspections were cursory because the inspectors were too busy. Even then, vacating confirmation of the sheriff's sales is not justified.

[8] See Exhibit B to the motions to vacate in case nos. 724807 and 730810, affidavit of Daryl Rush at ¶5.
[9] Motion to vacate in Case No. 732344, Exhibit B, affidavit of Dennis Roberts at ¶5.
[10] See the February 8, 2012 affidavits of Daryl Rush attached as Exhibit B to the motions to vacate in the first two cases. Dennis Roberts produced a similar affidavit in the third case.

The land banks cite the large volume of tax foreclosures as a reason the parcels here were misclassified. But it is that very volume of cases that prevents the court from excusing the land banks' indifference to the accuracy of their affidavits. The high number of tax foreclosures has made the land banks recurring participants in litigation before this court. Like all cases, the court is responsible, above all, for adjudicating tax foreclosure cases fairly. But the court must also administer the cases efficiently, and that end cannot be accomplished where a frequent affiant swears to affidavits cavalierly, trusting that they can be "amended" at any time – even almost two years later to say the complete opposite. If the land banks can always change their minds then they have no incentive to do accurate inspections in the first place and the court and other parties are left with no assurance that any given tax foreclosure has been correctly, and finally, adjudicated. And all of this is without even considering the implications of the possibility that no inspections were done and the affidavits were false to begin with.

The current posture of the case is another reason the motions should be denied. Section 5722.03(F) requires the sheriff to "execute and file for recording a deed conveying title to the land upon the filing of the entry of the confirmation of sale." Since the sales here were all confirmed (two of them almost a year ago) the court assumes that the land banks currently hold title and the county has recovered its costs under §5722.03(E). These parcels which couldn't be sold to a private buyer have therefore been successfully placed on the path to productive use, presumably soon to be restored to tax revenue generating status. The county should be pleased. Yet it is the county, not the land banks, that has petitioned the court to vacate the sales. While the court is not entirely sure what to make of this blurring of lines between parties, it is a circumstance that cautions counsel in granting the motions.

CONCLUSION

In consideration of the foregoing, the motions to vacate the confirmation of sale in each of case numbers 724807, 730810 and 732344 are denied.

IT IS SO ORDERED:

_____ Date: _____

SERVICE

A copy of this journal entry was sent by email (where an email address is shown) or regular U.S. mail, this 23rd day of April, 2012, to the following:

Judith Miles, Esq.
Assistant Prosecuting Attorney
jmiles@cuyahogacounty.us
Attorney for Plaintiff
Treasurer of Cuyahoga County, Ohio

James L. Cockrell
10922 Hampden Avenue
Cleveland, OH 44108
Defendant pro se
Case No. CV 10 724807

Ernest Stanford, Sr.
16000 Terrace Road, Apt. 2104
Cleveland, OH 44112
Defendant pro se
Case No. CV 10 730810

James D. Boddy
15324 Oakdale Avenue
Cleveland, OH 44128
Defendant pro se
Case No. CV 10 732344

_____