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IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART IV

Davidson County ORDER
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Fees:27.00 Taxes:0.00
20080812-0083048

KENNETH OTEY and
THEODORE OTEY,

Plaintiffs,

vs.

AMIR HAGHNEGAHDAR and
METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON
COUNTY,

Defendants.

F07, IV

CASE NO. 07-494-IV

FILED
2008 JUL 15 PM 3:36
CHANCERY CT.
BC&M

FINAL ORDER

This matter came before the Court on July 14, 2008, for a bench trial on the Petition of Plaintiffs, Kenneth Otey and Theodore Otey, to set aside a tax sale of real property located at 2618 Eden Street in Nashville, Davidson County, Tennessee. Defendant, Amir Haghnegahdar, purchased this property at a tax sale on November 16, 2005. Plaintiffs, who inherited the property on Eden Street from their late mother, Kathryn L. Chambers Otey ("Ms. Otey" or "Kathryn Otey"), assert that actual notice was required and that Defendant, Metropolitan Government of Nashville and Davidson County ("Metro"), did not give them actual notice of the tax sale proceedings.

FINDINGS OF FACT

After a review of the entire record and all the proof, the Court FINDS that:

1. Plaintiffs were not afforded actual notice of the tax sale proceedings pertaining the real property located at 2618 Eden Street in Nashville, Tennessee.
2. Metro attempted to personally serve the listed owner, Kathryn Otey, with notice of the tax sale proceeding and that service was returned on June 23, 2005, indicating that Ms. Otey was deceased.[1]
3. Metro took no further steps and made no further inquiry to determine the names and addresses of the owners after learning of Ms. Otey's death.[2]
4. Metro proceeded with the tax sale of the property on Eden Street through service by publication.
5. Kathryn Otey died testate on December 21, 2002, and her last will and testament was admitted to Probate in Davidson County on February 12, 2003.[3]
6. Plaintiffs, Kenneth Otey and Theodore Otey, the sons of Kathryn Otey, were essentially the sole heirs[4] of Ms. Otey's estate and are the legal owners of the property in question.
7. Plaintiffs' names and addresses could have been easily ascertained through a routine inquiry directed to the Davidson County Probate Clerk's office.[5]
8. On April 28, 2004, Kathryn Otey's estate was closed by Order of the Davidson County Probate Court.

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[1] *See* Trial Exhibit 1.
[2] Metro did not participate in the trial or offer any proof regarding efforts to identify or to personally serve Plaintiffs.
[3] *See* Collective Trial Exhibit 3.
[4] Ms. Otey left everything to Plaintiffs except for a specific devise of $500.00 to her grandson, Mario Mumphrey, which the estate paid on February 20, 2004. *See* Collective Trial Exhibit 3.
[5] *See* Collective Trial Exhibit 3; testimony of Kyle Sowell, Chief Deputy, Davidson County Probate Clerk's office.

... due to Defendant Amir

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9. After Ms. Otey's estate was closed, Plaintiffs, Kenneth Otey and Theodore Otey, did not register the Eden Street property with the Davidson County Assessor of Property.

10. Defendant, Amir Haghnegahdar, after purchasing the property on November 16, 2005, did not take possession of the property and did not make any improvements to the property.[6]

11. Plaintiff, Kenneth Otey, has managed the property on Eden Street for several years.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, as follows:

1. The Court determines that Metro should have given Plaintiffs actual notice and, accordingly, the Court sets aside the tax sale. *See Freeman v. City of Kingsport*, 926 S.W.2d 247 (Tenn. Ct. App. 1996); *Wilson v. Blounty County*, 207 S.W.3d 741 (Tenn. 2006).

2. The Court concludes that Plaintiffs, Kenneth Otey and Theodore Otey, are the owners in fee simple of improved real property in Nashville, Davidson County, Tennessee, known as 2618 Eden, also known as Parcel No. 261 on the tax map for Metropolitan Nashville No. 092-02, and more particularly described as follows:

> Land in Davidson County, Tennessee, being Lot No. 214 of Block 11 on the Map of Heffernan Place, as of record in Book 161, page 138, Register's Office for Davidson County, Tennessee.

[6] Mr. Haghnegahdar was present at the trial but did not testify. Plaintiff, Kenneth Otey, testified that he manages the Eden Street property and that Mr. Haghnegahdar has not made any improvements to it.

3. The Court grants Defendant, Amir Haghnegahdar, judgment for the sale price of $14,900.00, plus statutory prejudgment interest at the annual rate of ten percent from November 16, 2005 through July 15, 2008.[7] The Court grants Defendant, Amir Haghnegahdar, judgment in the amount of $1,078.69 for his payment of 2006 real property taxes on the Eden Street property,[8] plus statutory prejudgment interest at the annual rate of ten percent from February 28, 2007 through July 15, 2008.[9]

4. The Court orders that all rent currently pertaining to the property on Eden Street being held in trust by Robert E. Spann, Esquire, be released to Plaintiffs, Kenneth Otey and Theodore Otey, but only after all amounts due to Defendant, Amir Haghnegahdar, under this Final Order are paid.

Given that this dispute would likely have been avoided if Plaintiff had properly registered ownership of the real property in question under Tenn. Code Ann. § 67-5-2502(b), the Court taxes court costs, for which execution may issue, against Plaintiffs, Kenneth Otey and Theodore Otey.

IT IS SO ORDERED.

RUSSELL T. PERKINS
CHANCELLOR

cc: Robert E. Spann, Esq.
Elizabeth A. Sanders, Esq.
J. B. Fox, Esq.
Rachel L. Bell, Esq.
Margaret O. Darby, Esq.

RULE 58 CERTIFICATION
A Copy of this order has been served by U. S. Mail upon all parties or their counsel named above.

7-15-08
Date

Deputy Clerk and Master
Chancery Court

CHANCERY COURT SEAL

I HEREBY CERTIFY THIS IS A TRUE COPY OF ORIGINAL IN MY OFFICE THIS 15 DAY OF JULY 20 08
4 CRISTI SCOTT
BY _____ DEPUTY

[7] This interest amounts to $3,961.68 ($4.08 per day x 971 days).
[8] This amount was established by Trial Exhibit 4.
[9] This interest amounts to $150.60 ($0.30 per day x 502 days).