UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re:

BRYANT LEE,	:	**Chapter 13**
	:	
Debtor	:	**Bky. No. 18-13108 ELF**
	:	
BRYANT LEE and JUANITA GASTON, a/k/a JUANITA GASTON LEE,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	**Adv. No. 20-110**
	:	
6209 MARKET STREET, LLC, *et al.*,	:	
	:	
Defendants	:	
	:	

M E M O R A N D U M

I. INTRODUCTION

In this adversary proceeding, Plaintiff-Debtor Bryant Lee and Co-Plaintiff Juanita Gaston ("Plaintiffs") seek to regain ownership of the properties located at 6205 and 6207 Market Street, Philadelphia, PA 19139 ("the Properties"). Defendant 6209 Market Street, LLC ("Defendant") currently holds title to the Properties.

The Plaintiffs purchased the Properties in November 1998. In May 2009, allegedly unbeknownst to the Plaintiffs, a deed was recorded in the Department of Records that transferred title to these Properties to a man described in the transfer filings as their grandson, Neekoo Gumby. Plaintiffs have no such grandson and allege that their signatures on the transfer filings

were forged. Years after this 2009 transfer, the City of Philadelphia subjected the Properties to a sheriff's sale due to unpaid taxes. Defendant purchased the Properties at tax sales in 2015 and 2017.

Relying on Harris v. Harris, 239 A.2d 783 (Pa. 1968), Plaintiffs argue that the original transfer of the Properties was void as a forgery and that any subsequent transfers of the Properties are also void. Accordingly, Plaintiffs assert that the Defendant did not acquire valid title to the Properties at the tax sales, and that title should therefore be restored to them.

Defendant has filed a Motion for Summary Judgment, arguing that Harris does not apply because the judgment underlying the tax sales of the Properties was not void.

For the reasons explained below, I agree with the Defendant. I will grant Defendant's Motion and enter judgment in its favor.

II. PROCEDURAL HISTORY

The Debtor filed his chapter 13 petition on May 9, 2018.

This court issued an order confirming the Debtor's second amended chapter 13 plan on November 26, 2019. This plan specified that the Debtor would make plan payments of $300.00 for 12 months, then payments would increase to $642.00 for an additional thirty-two (32) months.

On March 12, 2020, the Plaintiffs initiated the instant adversary proceeding by filing an adversary complaint ("Complaint"). The Complaint named ten (10) defendants[1] and contained five (5) Counts.

[1] In addition to 6209 Market Street, LLC, the Complaint named as defendants: Dan A.M. Achek; Adnan Achek; Neekoo Gumby, a/k/a Neeko Gumby; Pamela Wood, Notary Public; Bey Brown Wood

Though somewhat imprecise as to the exact nature of the claims, Counts I and II alleged forgery and a scheme among various defendants to divest the Plaintiffs of title to the Properties. These Counts also sought a declaration that the transfers of the Properties to Neeko Gumby and then 6209 Market Street were void and that Plaintiffs retained title to the Properties. Count III sought avoidance of the 2009 transfer under 11 U.S.C. §362(a)(3) and §549. Count IV alleged violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law and sought damages thereunder. The final count, Count V, sought damages for Defendant 6209 Market Street's refusal to return title to the Plaintiffs upon demand.

Various defendants filed an initial round of motions to dismiss the Complaint, citing both jurisdictional grounds and the Complaint's failure to state a claim.

This court held a hearing on whether counts I, II, IV, and V should be dismissed for lack of subject matter jurisdiction on May 21, 2020. By bench opinion dated June 8, 2020, I noted that a material provision of the plan was the commencement of this litigation to recover the Properties in order to generate additional income necessary to fund the plan.[2] Accordingly, I concluded that the instant litigation had a sufficient nexus to the confirmed chapter 13 plan to warrant the exercise of bankruptcy jurisdiction.[3]

Paralegal Community Services; ABC [unknown] Corporation/LLC; Goehring Rutter & Boehm, a/k/a GRB Law; Jewell Williams, Sheriff of Philadelphia County; and the City of Philadelphia.

[2] I also noted that, in retrospect, the Debtor's confirmed chapter 13 plan may have been subject to a valid objection for lack of feasibility. Nevertheless, because the plan was confirmed, it was binding on all parties. See 11 U.S.C. §1327(a); United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260 (2010).

[3] In the bench opinion, I also held that both the Rooker-Feldman doctrine and the Tax Injunction Act, 28 U.S.C. §1341, were inapplicable in this matter.

On July 24, 2020, the court issued an additional bench opinion ruling on the merits of the remaining motions to dismiss filed by defendants 6209 Market Street, Adnan Achek, Dan Achek, and GRB Law.[4]

Finding Count I to state a plausible action in quiet title under Pa. R. Civ. P. 1061(b)(3),[5] I denied the motion as to Defendant 6209 Market Street, LLC, the party with a present interest in the Properties. I dismissed Count I as to the other defendants.

I determined that Count II, which appeared to assert a forgery claim under 18 Pa. C.S. §4101, was either a supplement to Count I or asserted private right of action on the basis of that criminal statute. Since case law suggested that no such private right of action existed, I dismissed Count II.

I also dismissed Counts III and IV as to the moving defendants based on fundamental flaws in the claims themselves or the Plaintiffs' theory of recovery.

Similar to Claim II, Claim V appeared to be nothing more than a restatement of Count I. Because, standing alone, it was unrecognizable as a cause of action under Pennsylvania or federal law, I also dismissed Count V as to the moving defendants.[6]

On August 17, 2020, the Plaintiffs filed an amended complaint ("Amended Complaint"). The Amended Complaint whittled the Complaint's five (5) Counts down to two (2).

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[4] This bench opinion also delivered the court's decision denying one defendant's motion for abstention.

[5] Of course, a rule of civil procedure "neither creates a new action nor changes the substantive rights of the parties or jurisdiction of the courts." Siskos v. Britz, 567 Pa. 689, 700 (Pa. 2002). The availability of quiet title actions in Pennsylvania, however, is firmly established. See Montgomery Cty. v. MERSCORP, Inc., 904 F. Supp. 2d 436, 445-49 (E.D. Pa. 2012) (discussing the complicated history of quiet title actions under Pennsylvania law).

[6] All of the parties consented to the entry of a final order by the bankruptcy court. (See Adv. No. 20-110, Doc. #'s 33, 34).

Count I again set forth an action sounding in quiet title, alleging that any transfer of title to the Properties after the original 2009 fraudulent transfer was void. Accordingly, Count I asserts that the Plaintiffs are entitled to restoration of title to the Properties as well as the "value of the use and income from the Properties" during the period in which Neeko Gumby and 6209 Market Street have held nominal title to them. Count I further asserts entitlement to damages and attorneys' fees resulting from 6209 Market Street's refusal to return title to the Plaintiffs upon demand.

Count II states a cause of action due to violation of the automatic stay at 11 U.S.C. §362(a)(3).

In response to the Amended Complaint, defendants 6209 Market Street, Adnan Achek, Dan Achek, GRB Law, the Sheriff of Philadelphia, and the City of Philadelphia all filed additional motions to dismiss. Plaintiffs failed to respond to these motions.

On October 16, 2020, I entered an order addressing the moving defendants' motions to dismiss the Amended Complaint.[7] I dismissed with prejudice all Counts as to defendants Adnan Achek, Dan Achek, GRB Law, the Sheriff of Philadelphia, and the City of Philadelphia. As to Defendant 6209 Market Street, I granted the motion to dismiss with prejudice with respect to Count II but denied the motion to dismiss with respect to Count I.

Defendant 6209 Market Street filed an answer to the Amended Complaint on November 13, 2020.[8]

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[7] Although the Plaintiffs had failed to respond to any of the motions, I independently evaluated the legal sufficiency of the claims in the Amended Complaint asserted against the moving parties.

[8] Defendants Pamela Wood, Neeko Gumby, and Bey Brown Wood Paralegal Community Services have not responded to this adversary proceeding. Plaintiffs have requested and received entries of default against these defendants. See Fed. R. Civ. P. 55(a) (incorporated by Fed. R. Bankr. P. 7055).

On June 17, 2021, Defendant 6209 Market Street filed a Motion for Summary Judgment.

Plaintiffs filed a "Limited Response" to this Motion on July 8, 2021, in which they raised a number of alleged deficiencies in Defendant's discovery responses.

I issued an Order dated July 22, 2021 directing Plaintiffs' counsel to file a statement setting forth the factual bases for these alleged deficiencies. Plaintiffs filed a Supplemental Statement on July 28, 2021 in response to the July 22 Order. That same day, Defendant's counsel also filed a Response to Plaintiff's Supplemental Statement.

On August 11, 2021, I issued an Order finding that discovery had closed and no motions to compel discovery would be considered on the merits. This Order also granted Plaintiffs' counsel leave to file a supplemental response to the Defendant's Motion for Summary Judgment.

Plaintiffs filed a Supplemental Response to Defendant's Motion for Summary Judgment on September 1, 2021.

Defendant's Motion for Summary Judgment is now ready for decision.

III. SUMMARY JUDGMENT STANDARD

Defendant has filed a Motion for Summary Judgment pursuant to Fed. R. Civ. P. 56, made applicable to adversary proceedings by Fed. R. Bankr. P. 7056. I have previously discussed the legal standard for summary judgment motions:

> Summary judgment is appropriate only when, drawing all reasonable inferences in favor of the nonmoving party, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. E.g., Tri–M Group, LLC v. Sharp, 638 F.3d 406, 415 (3d Cir. 2011); In re Bath, 442 B.R. 377, 387 (Bankr. E.D. Pa. 2010). In other words, summary judgment may be entered if there are no disputed issues of material fact and the undisputed facts would require a directed verdict in favor of the movant. See Fitzpatrick v. City of Atlanta, 2 F.3d 1112, 1115 (11th Cir. 1993).

In evaluating a motion for summary judgment, the court's role is not to weigh the evidence, but to determine whether there is a disputed, material fact for resolution at trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). A genuine issue of material fact is one in which sufficient evidence exists that would permit a reasonable fact finder to return a verdict for the non-moving party. Id. at 248. In evaluating the record, the court must view the underlying facts and make all reasonable inferences therefrom in the light most favorable to the party opposing the motion. Montone v. City of Jersey City, 709 F.3d 181, 189 (3d Cir. 2013); United States v. 717 South Woodward St., 2 F.3d 529, 533 (3d Cir. 1993). On the other hand, if it appears that the evidence "is so one-sided that one party must prevail as a matter of law," the court should enter judgment in that party's favor. Anderson, 477 U.S. at 252.

Proper resolution of a motion for summary judgment also requires consideration of the parties' respective burdens.

As a threshold matter, the moving party's initial burden is to demonstrate that there are no disputed issues of material fact. E.g., U.S. v. Donovan, 661 F.3d 174, 185 (3d Cir. 2011); Aman v. Cort Furniture Rental Corp., 85 F.3d 1074, 1080 (3d Cir. 1996); Chipollini v. Spencer Gifts, Inc., 814 F.2d 893, 896 (3d Cir. 1987). How the movant meets this burden and how the respondent may rebut the movant's showing is affected by the allocation of the evidentiary burden of persuasion if the dispute were to proceed to trial.

If the moving party bears the burden of proof, the movant must "support its motion with credible evidence ... that would entitle it to a directed verdict if not controverted at trial." Fitzpatrick, 2 F.3d at 1115 (citation omitted). The evidence must establish "all the essential elements of its case on which it bears the burden of proof at trial, [such that] no reasonable jury could find for the non-moving party." Id. (citation omitted); see also Bath, 442 B.R. at 387. If the movant (with the burden of proof at trial) meets this initial burden, the responding party may not rest on the pleadings, but must designate specific factual averments through the use of affidavits or other permissible evidentiary material which demonstrate a genuine issue of material fact to be resolved at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986); Anderson, 477 U.S. at 247–50.

If the moving party does ***not*** bear the burden of proof at trial, the analysis is more complicated. The movant must still demonstrate the absence of a disputed issue of material fact, but an entitlement to judgment in its favor may be established in either of two (2) ways.

First, and most simply, if the movant (who does not bear the burden of proof) presents evidence establishing that the undisputed facts negate at least one (1) element of the respondent's claim, the movant is entitled to summary judgment. See Quaker State Minit–Lube, Inc. v. Fireman's Fund Ins. Co., 868 F. Supp. 1278, 1287 n.5 (D. Utah 1994).

Alternatively, the movant may obtain summary judgment by demonstrating that the responding party (with the burden of proof at trial) lacks evidence to support an essential element of its claim. See, e.g., Orson, Inc. v. Miramax Film Corp., 79 F.3d 1358, 1366 (3d

> Cir. 1996); Chipollini, 814 F.2d at 896. . . . See Celotex, 477 U.S. at 322 ("[Rule 56] mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial"); see also In re Roemmele, 2011 WL 4804833, at *4 (Bankr. E.D. Pa. Oct. 11, 2011).

In re Polichuk, 506 B.R. 405, 420-22 (Bankr. E.D. Pa. 2014) (first and third alterations in original) (footnotes omitted).

IV. FACTS

The parties do not dispute the material facts in this adversary proceeding.

Plaintiffs purchased the Properties in 1998. The property at 6205 Market Street is a vacant lot, and the property at 6207 Market Street is a three-story mixed-use building with a storefront on the first floor and residential space on the second and third floors.

Plaintiffs operated a food and entertainment business at 6207 Market Street and rented out the upstairs apartments from 2000 until 2003. Plaintiffs closed the business following the murder of Plaintiff's son at 6207 Market Street in 2003. After the then-extant leases expired, Plaintiffs also stopped renting the upstairs apartments. Both the store and apartments at 6207 Market Street sat vacant for more than a decade.

Other than taxes paid at closing in 1998, the Plaintiffs have never paid any property taxes on the Properties. (Def. Mot. for Summ. J., Ex. G, at 11).

By deed dated May 1, 2009 and recorded on June 30, 2009, title to the Properties was transferred from the Plaintiffs to named defendant Neeko Gumby. The Philadelphia Real Estate Transfer Tax Certification for this transfer contains a statement — purportedly signed by Plaintiffs — indicating that Neeko Gumby is the Plaintiff's grandson. (Def. Mot. for Summ. J., Ex. B).

In or around January 2014, pursuant to Pennsylvania's Municipal Claims and Tax Liens Act ("MCTLA"), 53 P.S. §7101 et seq., the City of Philadelphia filed claims against the 6207 Market Street property resulting from non-payment of real estate taxes. (Def. Mot. for Summ. J., Ex. C). Delinquent taxes at that time totaled $13,942.97. (Id. at 7). Pursuant to 53 P.S. §7283(a), the City of Philadelphia subsequently filed a petition in the Court of Common Pleas seeking to have 6207 Market Street sold free and clear of all interests. (Id.). This petition named interested respondents as including Neeko Gumby (the then-present record owner of 6207 Market Street) and any current occupant/tenants. (Id. at 3). The Plaintiffs do not appear on the list of respondents upon which the petition asked the court to issue a rule to show cause why the property should not be sold clear of all interests.

On September 10, 2014, the Court of Common Pleas entered a Decree finding that service had been provided consistent with the MCTLA and authorizing the sheriff's sale of 6207 Market Street. (Def. Mot. for Summ. J., Ex. K). The sheriff's sale occurred on April 21, 2015. Defendant bid on and purchased the property for $30,500.00. The sheriff acknowledged the deed on June 3, 2015. (Def. Mot. for Summ. J., Ex. E).

The City of Philadelphia employed the same MCTLA process against 6205 Market Street in November 2016 for unpaid real estate taxes totaling $2,940.23. (Def. Mot. for Summ. J., Ex. D at 8). Once again, the City of Philadelphia identified Neeko Gumby as the record owner and included him in the list of respondents who should receive notice of the foreclosure proceeding. (Id. at 3). The City of Philadelphia did not identify Plaintiffs as parties to receive such notice.

The Court of Common Pleas issued a Decree finding service in this execution proceeding to comply with the MCTLA and authorizing the sale on January 18, 2017. (Def. Mot. for Summ. J., Ex. L). The sheriff sale of 6205 Market Street occurred on May 18, 2017, and Defendant bid

on and purchased this property for $6,200.00. (Def. Mot. for Summ. J., Ex. F). The sheriff acknowledged the deed on May 24, 2017. (Id.).

After the sheriff's sale of 6207 Market Street had been recorded in June 2015, Defendant began some repairs to the property. (Def. Mot. for Summ. J., Ex. J). These repairs continued through January 2019. (Id.).

Plaintiffs have alleged that they first learned that someone had been working on the Properties in or around April 2018. (Amended Complaint ¶50). In response, Plaintiff-Debtor contacted his attorney and the City of Philadelphia Department of Records, eventually learning that the Properties had been transferred to Neeko Gumby and subsequently sold at tax sales. (Def. Mot. for Summ. J., Ex. G at 12, 55-58).

On May 9, 2018, Plaintiff-Debtor filed a petition for chapter 13 bankruptcy, listing the Properties on Schedule A as real estate he owned. The Plaintiffs filed the Complaint initiating the present adversary proceeding on March 12, 2020.

V. DISCUSSION

As I indicated in my July 24, 2020 bench opinion, Plaintiffs' quiet title action — presently contained in Count I of the Amended Complaint — turns on the applicability and limits of the Pennsylvania Supreme Court's decision in Harris v. Harris, 239 A.2d 783 (Pa. 1968).[9]

[9] I reject Plaintiffs' assertion, (see Pls. Suppl. Resp. at 8), that this court's bench opinions on the various motions to dismiss constituted a definitive ruling on this issue and is the law of the case. But even if the law of the case doctrine applied here, it would not preclude consideration of the Defendant's arguments on their merits. See Int'l Poultry Processors, Inc. v. Wampler Foods, Inc., 1999 WL 213369, at * 1–2 (E.D. Pa. April 8, 1999) (there are circumstances that may warrant a departure from the law of the case doctrine which, in any event is a prudential doctrine and not one that limits a court's power); aff'd, 215 F.3d 1314 (3d Cir. 2000). Also, courts have an inherent power to reconsider prior orders. E.g., In re Energy Future Holdings Corp., 904 F.3d 298, 310–11 (3d Cir. 2018); Lesende v. Borrero, 752 F.3d 324, 338–39 (3d Cir. 2014).)

For purposes of this Summary Judgment Motion, Defendant contends that it is irrelevant whether the title to the Properties was fraudulently conveyed to Neeko Gumby. Thus, I analyze the Defendant's Motion under the assumption that such forgery occurred and the recorded transfer of title from Plaintiffs to Neeko Gumby was void.

Put simply, the Defendant contends that its title to the Properties, obtained through tax sales effected under the MCTLA is unaffected by any prior void transfers of those Properties between record owners.

In response, the Plaintiffs argue that the void transfer of title from Plaintiffs to Neeko Gumby rendered any subsequent transfer of title also void.

I agree with Defendant that under Pennsylvania law it obtained valid title to the Properties.

A. Sale of the Properties under the MCTLA

Analysis of the validity of the Defendant's title to the Properties begins with the undisputed fact that the Properties were sold pursuant to the MCTLA.

Under the MCTLA, a city of the first class with a properly filed tax claim against a property can petition a court to sell the property clear of all liens and interests. See 53 P.S. §7283(a). The court shall order a sale of the property if, upon a hearing, the city satisfies the court that service has been provided consistent with the MCTLA's requirements and the facts alleged — justifying the right to sell — are true. Id.

For cities of the first class, the MCTLA requires three types of service prior to sale: (1) a posting at the property to be sold; (2) first class mail delivery to any registered interest holders of the property; and (3) first class or certified mail, return receipt requested or registered mail

delivery to any unregistered interest holders of the property discovered after a search of certain public documents. See 53 P.S. §7193.2(a); City of Phila. v. Labrosciano, 202 A.3d 145, 151 (Pa. Cmwlth. 2018). Upon completion of a sheriff's sale, the MCTLA provides that a buyer of such property will acquire "an absolute title to the property . . . subject only to the right of redemption as provided by law." See 53 P.S. §7283(a).

The MCTLA permits parties to challenge the validity of completed MCTLA sheriff's sales. Parties claiming deficiencies in any notice required or asserting an interest in the premises that has not been discharged by the sale "must file a petition seeking to overturn the sale or to establish the interest within three months of the acknowledgment of the deed to the premises by the sheriff." 53 P.S. §7193.3. In the absence of any constitutional due process violations, the MCTLA does not permit a court to set aside a sheriff's sale where a party has filed a petition outside of this three-month period. City of Phila. v. Jones, 221 A.3d 737, 742 (Pa. Commwlth. 2019) (holding that, because the petitioner filed more than six months after acknowledgment of the deed by the sheriff, the trial court lacked jurisdiction to act upon the petition).

Application of the MCTLA to the undisputed facts of this case is relatively straightforward. Despite asserting that they did not receiving actual notice — an issue I will address shortly — Plaintiffs have made no allegation or offered any evidence demonstrating a flaw in the MCTLA sheriff's sales of the Properties. There is no dispute that the City of Philadelphia held and filed a valid property tax claim against the Properties. The City of Philadelphia petitioned the Court of Common Pleas to issue a rule to show cause under 53 P.S. §7283(a) for the sale of the Properties clear of all liens and interests. The Court of Common Pleas entered a Decree authorizing the sale, finding notice to comply with the MCTLA's requirements. And, Defendant purchased the Properties at the resulting sheriff's sales.

Based on the express terms of 53 P.S. §7283(a), the Defendant appears to emerge from the sheriff's sales of the Properties with absolute title to them, subject only to any applicable right of redemption. Further, because the Plaintiffs have failed to file a petition contesting the validity of the sales under 53 P.S. §7193.3 within three months of the acknowledgement of the deeds to the premises by the sheriff, the statutory remedy under MCTLA is unavailable to the Plaintiffs.

B. Harris v. Harris

Despite this apparently straightforward application of the MCTLA, the Plaintiffs argue that the rule set forth in Harris v. Harris undermines the Defendant's claim to valid title to the Properties. 239 A.2d 783 (1968).

In Harris, the Pennsylvania Supreme Court held that an execution sale based upon a void judgment would not transfer title to a purchaser. See Harris, 239 A.2d at 784 (citing treatises).

In Harris, a wife owned real property together with her husband as tenants by the entireties. In reliance upon a judgment note apparently signed by both spouses, a creditor foreclosed on the premises. A foreclosure sale occurred without the wife's knowledge. Upon learning of the sale, she filed a petition to open the judgment on the basis that her signature on the judgment note was a forgery. She also instituted an action in equity to set aside the sheriff's sale. Id.

The Pennsylvania Supreme Court held that "[w]hether title will pass at an execution sale depends upon the validity of the underlying judgment." Id. An execution sale based on a voidable judgment would result in a bona fide purchaser acquiring title; however, an execution sale based on a void judgment would not pass title to a bona fide purchaser. Id. at 785. The

court ruled that if the judgment underlying the execution sale of the wife's property was void due to fraud, then title would not pass to the purchaser. Id.

The holding laid down in Harris has been applied by other Pennsylvania courts in similar contexts. See Flagler v. Templin, 2020 WL 3969291, at *3 (Pa. Super. Ct. July 14, 2020) (nonprecedential) (execution sale pursuant to a void judgment is a nullity); Baldwin v. Safeguard Inv. Co., 10 Pa. D. & C.3d 505, 516-17 (Pa. Com. Pl. 1977) (foreclosure and execution sale based on a void loan and mortgage did not pass title to purchaser), aff'd sub nom. Baldwin v. Safeguard Co., 393 A.2d 1271 (Pa. Super. 1978).

The Plaintiffs' asserted application of Harris to this matter is straightforward. They argue that Neeko Gumby's acquisition of title to the Properties was void as a forgery; therefore, any subsequent transfer of that interest also was void. Defendant could not have acquired valid title to the Properties through the MCTLA sheriff's sale, as that sale merely transferred the void title held by Gumby to the Defendant.

I find several problems with the Plaintiffs' suggested application of Harris.

Initially, I question the Plaintiffs' implicit premise that Harris is applicable to sheriff's sales conducted under the MCTLA. Harris appears to recognize a common law rule regarding transfers of property titles. Any such common law rules are subordinate to statutory law, such as that found in the MCTLA. Under the MCTLA, purchasers of real property at MCTLA sheriff's sales take "absolute title" to the property, subject only to available rights of redemption. Thus, to the extent that Harris could have been applicable here, it appears that the Pennsylvania legislature has determined that MCTLA sheriff's sales would not be subject to such a rule.

But even if Harris were applicable to MCTLA sheriff's sales, on the facts presented here, Harris is distinguishable.

I begin with the assumption that the 2009 transfer of the Properties from Plaintiffs to Neeko Gumby was fraudulent. Neeko Gumby therefore did not hold valid title to the Properties, and the Plaintiffs are correct to assert that any subsequent voluntary transfer of Neeko Gumby's interest in the Properties to 6209 Market Street would not have granted valid title. Neeko Gumby's interest in the Properties was void, and any interest he purported to transfer to a subsequent buyer would have also been void. See Baldwin, 10 Pa. D. & C.3d at 517 (noting that a bona fide purchaser of a void property interest would have a cause of action against the seller, but title remained with the original owner). Similarly, any foreclosure and execution sale of the Properties based on the interest Neeko Gumby purported to hold in the Properties — such as a mortgage premised on his record ownership — would also be void.

Here, however, the foreclosure and execution sales of the Properties were not based on the void interest that Neeko Gumby possessed. Instead, the MCTLA sheriff's sales were premised on the undisputed, *in rem* real estate tax claims and priority liens that the City of Philadelphia held on the Properties.

The rule stated in Harris would be applicable only if the municipal claims underlying the MCTLA sheriff's sales of the Properties were void. But, they are not. The Plaintiffs do not dispute the validity of the City's tax claims against the Properties. In other words, the underlying bases of the judgments (or orders) that authorized the execution against the Properties are not based on fraud. On the merits, they are valid. This fact distinguishes Harris. Therefore, the MCTLA sheriff's sales passed valid title to Defendant.[10]

[10] The Plaintiffs incorrectly frame the tax sale as "a further transfer of Neeko Gumby's void interest in the Plaintiff's Market Street Properties." (Pls. Supp. Resp. at 9). It is accurate to state that the public record shows ownership of the Properties transferring from Plaintiffs to Neeko Gumby to Defendant. However, it is inaccurate to state that the Defendant acquired Neeko Gumby's void interest.

At bottom, Plaintiffs' reading of Harris is overbroad. They contend that the existence of a fraudulent transfer of the Properties' titles renders any subsequent transfer of those titles void. But in each of the cases cited above, the voided execution sales were dependent in some way upon an interest in property that was ultimately determined to be a nullity. In Harris, the judgment underlying the execution sale was premised on a fraudulent signature. Harris, 239 A.3d at 784-85. In Flagler, the execution sale was based on a nullified judgment. Flagler, 2020 WL 3969291, at *3. And Baldwin involved an execution sale premised on a note subsequently found to be void and unenforceable. Baldwin, 10 Pa. D. & C.3d at 516-17. Plaintiffs have pointed to no cases in which a sheriff's sale based on an underlying, valid in rem debt did not transfer good title to the purchaser.

Moreover, applying Harris here would effectively nullify a valid interest in property based on an unrelated fraudulent transfer. The City's claims and priority liens against the Properties were valid and enforceable regardless of whether any fraudulent transfers had occurred between record owners. The MCTLA sheriff's sales lawfully satisfied those valid claims and priority liens against all other interest holders — including the Plaintiffs as the "true" owners. There is no legally proximate nexus between the fraudulent transfer of title from the Plaintiffs to Neeko Gumby and the MCTLA sheriff's sale of the Properties to Defendant.

Harris is therefore inapplicable to the present matter, and the clear terms of the MCTLA show that Defendant holds absolute title to the Properties. On the merits of the Amended Complaint's Count I, therefore, I find that there are no disputed material facts and Defendant is entitled to judgment as a matter of law.

C. Notice

In their Supplemental Response to the Defendant's Motion for Summary Judgment, Plaintiffs suggest that they are entitled to relief "since they received absolutely no notice of the Tax Sales due to . . . the failure of either GRB or the City to serve them with notice of the Tax Sales." (Pls. Suppl. Resp. at 11). This argument does not prevent the entry of summary judgment in the Defendant's favor.

As discussed, the MCTLA requires a city of the first class seeking to foreclose on a property in satisfaction of unpaid tax claims to post notice on the property itself in addition to mailing service to registered and certain non-registered property interest holders. See 53 P.S. §7193.2(a). The MCTLA further provides that this notice "shall constitute the only notice required before a court may enter a decree ordering a tax sale. 53 P.S. §7193.2(b); see also City of Phila. v. Rivera, 171 A.3d 1, 10 (Pa. Commwlth. Ct. 2017) (recognizing that adherence to MCTLA's service provisions sufficiently protects a property owner's due process rights).

The Plaintiffs have not alleged that the City of Philadelphia failed to comply with the MCTLA's notice requirements prior to sale of the Properties.[11] At most, they allege that they did not receive actual notice of the impending foreclosure sale — an unrebutted averment that is unsurprising given that they were no longer record owners of the Properties when tax sale notices were served by the City. However, a lack of actual notice by mail, standing alone, is insufficient to substantiate a claim that the Plaintiffs' due process rights were violated. Other means, such as posting, are adequate to provide notice and satisfy minimal requirements of due process. See Rivera, 171 A.3d at 9 (citing Jones v. Flowers, 547 U.S. 220, 226 (2006)).

[11] The Court of Common Pleas found that the City's service in connection with the tax sales complied with the MCTLA. (See Def. Mot. for Summ. J., Exs. K, L).

Thus, to the extent that Plaintiffs contend that, notwithstanding the City's compliance with the MCTLA and the Plaintiffs' failure to challenge the validity of the tax sale within the time deadline set by 53 P.S. §7193.3, due process mandates setting aside the tax sale, they have not presented any facts or articulated a legal theory to sustain such a claim.

Granted, the notion that a due process violation occurs upon a failure to name the "true" property owner as a respondent and serve the "true" owner by mail before selling a property by judicial sale has some initial, intuitive appeal. But the correct due process analysis is not so simple.

Due process requires a balancing of the interests of the governmental activity against the interests of the affected individual. See, e.g., Sallie v. Tax Sale Invs., Inc., 998 F. Supp. 612, 618 (D. Md. 1998). The City's interest in the tax sale process is substantial. It seeks to raise revenue as well as restore the productivity of properties so that they may contribute to the local economy. To accomplish these ends, it is critical that a tax sale convey good title. When this governmental interest is balanced against the rights of an individual property owner, the due process test is determined by examining the procedures required by applicable law and the government's adherence to those procedures.

To satisfy due process, notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306, 314 (1950).

The sufficiency of the notice, for due process purposes, is not determined by whether the individual receives actual notice of a proceeding. As our Court of Appeals has observed:

> The [Supreme] Court has never employed an actual notice standard in its jurisprudence. Rather, its focus has always been on the procedures in place to effect notice.

United States v. One Toshiba Color Television, 213 F.3d 147, 155 (3d Cir. 2000). Put bluntly, "[d]ue process does not require that a property owner receive actual notice before the government may take his property." Jones, 547 U.S. at 226; see also Madar v. City of Philadelphia, 2021 WL 2156362, at *8 (E.D. Pa. May 27, 2021).

The "chosen method [of service] may be defended on the ground that . . . it is in itself reasonably certain to inform those affected." Jones, 547 U.S. at 226 (quoting Mullane, 339 U.S. at 315); see also Dusenbery v. United States, 534 U.S. 161, 170 (2002); Rago v. City of Pittsburgh, 2010 WL 2991202, at *8 (W.D. Pa. July 29, 2010), aff'd, 429 F. App'x 86 (3d Cir. 2011).

To some degree, the determination whether the procedures are reasonably certain to provide notice depends on the information available to the governmental entity. Thus, in Jones, where the government was aware that the notice it mailed was returned unclaimed, due process required the government "to do something more before real property may be sold in a tax sale." Jones, 547 U.S. at 227. But where the government has provided reasonable notice and has "heard nothing back indicating that anything had gone awry," id. at 226, the determination whether due process has been satisfied is made solely by examining the reasonableness of the notice procedures.

This is a case where the notice procedures in place and exercised — first class mail to the record owner and posting — are undoubtedly reasonable. Unfortunately for the Plaintiffs, they apparently did not receive notice because they were not the record owners due to the alleged fraudulent deed (and they assert they were unaware of the notice posted on the Properties). But

the City had no reason to know of the alleged fraud and it is unreasonable to expect the City to ferret out cases of unrecorded ownership in order to provide notice to persons other than the record owner of a property. See Sallie, 998 F. Supp. at 618 (rejecting claim that tenants holding unrecorded leasehold interests are entitled to mail notice of tax sale of landlord's real property). Consequently, the sale processes in this case satisfied due process and was valid.

VI. CONCLUSION

For the reasons stated, I find that Defendant has demonstrated entitlement to summary judgment. Defendant's Motion for Summary Judgment will therefore be granted. Judgment will be entered in favor of the Defendant and against the Plaintiffs.

Date: March 15, 2022

ERIC L. FRANK
U.S. BANKRUPTCY JUDGE