M-5812.2
5522

OFFICE OF THE ATTORNEY GENERAL
State of California

EVELLE J. YOUNGER
Attorney General

OPINION

of

No. CV 74/212

JANUARY 2, 1975

EVELLE J. YOUNGER
Attorney General
EDWARD P. HOLLINGSHEAD
Deputy Attorney General

HONORABLE HOUSTON I. FLOURNOY, CONTROLLER OF THE STATE OF CALIFORNIA, has requested an opinion on the following questions:

1. What is the effect of a certificate of redemption of tax delinquent property issued pursuant to sections 4105-4106, Revenue and Taxation Code, on innocent third parties when the tax collector has erroneously omitted certain delinquent taxes from the redemption amount?

2. Can the tax collector refuse to issue a certificate of redemption when, on the basis of an erroneous estimate of the amount necessary to redeem, the title to the property has been transferred and the escrow holder has tendered the amount in reliance on the erroneous estimate?

The conclusions are:

1. If the tax collector has furnished an erroneous estimate of the amount necessary to redeem and the title to the property has been transferred to an innocent third party in reliance on the erroneous estimate, payment of the amount so estimated and the issuance of a certificate of redemption renders the tax sale or deed that may have been made to the state null and void.

2. Under the circumstances set forth in the second question, where the parties have changed their position in reliance on the tax collector's error, issuance of a certificate of redemption is required by section 4105.2, Revenue and Taxation Code. The tax collector may not refuse to issue a certificate of redemption merely because he finds his mistake after title has passed to an innocent third person.

ANALYSIS

Two factual situations have been presented by the Controller to illustrate the problem presented.

In the first situation, Assessor's Parcels Nos. 03819002 and 03827008 were assessed to the assessee for the fiscal year 1966-67. The taxes for that year were not paid and became delinquent. The property was, accordingly, sold to the state on June 30, 1967, under Sale Nos. 03819002 and 03827008. Delinquent tax abstracts were prepared for these parcels pursuant to sections 4371-4379, Revenue and Taxation Code.1/ The property remained delinquent for the fiscal years 1967-68, 1968-69, and 1969-70 and the amounts of these delinquencies were added to the abstract sheets.

In fiscal year 1970-71, Assessor's Parcels Nos. 03819002 and 03827008 were not shown on the secured roll because of changes in the parcel numbers occasioned by changes in the tax rate code areas affecting the parcels. The changes in the tax rate code areas were accompanied by the assignment of new parcel numbers to the property by the assessor. Parcel 03819002 became Parcels 03819018, 03819019, and 03819020. Parcel 03827008 became Parcels 03827013 and 03827014. In fiscal year 1970-71, by reason of the new parcel numbers, the property was assessed and the tax collector erroneously sold these parcels to the state a second time under their new numbers on June 30, 1971, and prepared a new delinquent abstract sheet for each new parcel number. In so doing, he failed to reflect the prior delinquencies for the years 1966-67 through 1969-1970. The assessee then entered into an agreement to sell the property. The title company handling the escrow requested an estimate of the amount necessary to redeem the

---

1. All section references in this opinion are to the Revenue and Taxation Code unless otherwise indicated.

subject properties as provided in section 4105 and withheld the amounts estimated by the tax collector on the basis of the new parcel numbers. The escrow closed and the deed to the purchaser was recorded. The escrow paid the estimated redemption amount and the tax collector prepared certificates of redemption for each parcel as provided in section 4105.2. The title company thereupon issued a policy of title insurance to the purchaser.

Subsequently, it was discovered that the tax collector had overlooked the prior delinquencies and that the taxes, penalties, and costs for the years 1966-67 through 1969-70 remained unpaid. The question presented is whether these taxes can now be enforced by issuing a tax deed to the state.

In the second factual situation, the title company requested an estimate of the amount necessary to redeem two parcels and, through the tax collector's own error, the amount for one parcel was erroneously understated due to a clerical error in transcribing the amount necessary to redeem from the tax collector's computation sheet to a title company form. Instead of the correct figure being transcribed, the redemption estimate from a third unrelated parcel was set forth. The redemption amount thus estimated was substantially less than the proper redemption amount.

After several days, the title company closed the escrow, caused the deeds to be recorded, and sent a check to the tax collector for the estimated amount for both parcels. Upon double-checking the records, the tax collector returned the check and refused to issue a certificate of redemption as to the one parcel for which the redemption amount was understated. In this situation, the question is whether the tax collector may now refuse to issue a certificate of redemption.

In Jones v. Sturzenberg, 59 Cal.App. 350 (1922), land was assessed in 1913 to Miller and following delinquency was duly sold to the state in 1914. In 1914 the same parcel was again assessed, this time to Walker and Parker and following delinquency was erroneously sold to the state a second time in 1915 contrary to the provisions of former section 3814 of the Political Code, the predecessor of section 3436, Revenue and Taxation Code. All subsequent taxes were allowed to become delinquent until 1918 when the owner applied to the county auditor for an estimate of the amount necessary to redeem under the procedure then in effect. In making the estimate, the auditor

overlooked the sale to the state in 1914 for the 1913 taxes and the owner paid the amount estimated to the county treasurer. The property was thereafter sold to the defendant. On July 8, 1919, the tax collector purported to sell the property for the delinquent 1913 taxes to the plaintiffs' grantor.

In passing on the action of the county officials, the court held that former section 3817 of the Political Code meant that the redemption on the basis of the estimate by the county auditor for the 1914 delinquent taxes necessarily included all prior delinquencies. Section 3817, Political Code, was the predecessor to sections 3707, 4103, 4105, 4105.1, 4105.2, 4106, and 4112 of the Revenue and Taxation Code. Under that section as it then read, it was the auditor's duty to make the estimate and prepare the certificates. The amount so estimated was then payable to the county treasurer. The court stated that the auditor was held to the duty of keeping informed concerning the status of taxes and delinquencies upon every parcel of land on the assessment book. To the extent that he was required to examine the assessment book and obtain from it the data upon which to base a correct estimate, the auditor was held to be "a searcher of records." Jones v. Sturzenberg, supra, 59 Cal.App. at 356. The taxpayer was not required to specify a particular delinquent tax sale. "'Having been misled by the erroneous estimate given him by the authorized agent of the state, he is entitled in equity to receive the full benefit of his attempted redemption.'" Jones v. Sturzenberg, supra, 59 Cal.App. at 357.

In the context of the Jones decision, defendants did not restrict themselves to a mere defense of their title, but also prayed for affirmative relief declaring title in themselves. In that circumstance the court held that as a condition of quieting title in defendants they would be obliged to pay the delinquent taxes and other charges, less rents received, which the tax purchaser had paid at the tax sale. In so doing, the court relied on the case of Holland v. Hotchkiss, 162 Cal. 366 (1912), which stated the rule to be that:

> "Where the owner comes into equity asking equitable relief to remove or cancel a tax-deed or sale as a cloud upon his title, or to obtain a judgment which, in effect, will invalidate such sale or deed, the court should refuse any relief except upon the condition that he first repay to the tax purchaser, or his grantee or assignee, the

taxes, penalties, interest, and costs justly chargeable upon the land and which the purchaser has paid at the sale, or afterward upon the faith of it, with legal interest from the time of such payment, less rents received, if any, if the purchaser has been in possession." Holland v. Hotchkiss, supra, 162 Cal. at 375.

There is presently a statutory requirement that an owner who obtains an interlocutory decree invalidating a tax sale or tax deed pay the amount of the tax delinquency as a condition of obtaining a final quiet title decree. §§ 3631-3635, 3728.

On the other hand, the Supreme Court in Holland v. Hotchkiss, supra, at pages 373-74, pointed out that a different rule obtains where the tax purchaser is the actor who seeks to quiet his title. If the purchaser at a tax sale sues the owner to recover the tax paid, as money paid to his use, the general rule is that he cannot prevail, since there is no contract implied between the owner to refund a tax paid by a purchaser where tax sale is held void.

By way of contrast to Jones v. Sturzenberg, in Krienke v. State of California, 69 Cal.App.2d 353 (1945), the court refused to extend any protection to an assessee who redeems the property on the basis of an erroneous estimate of the amount necessary to redeem when he has not changed his position in reliance on the information mistakenly furnished to him, who is advised of the mistake at a time when it could easily be corrected, and who comes into a court of equity seeking affirmative relief while refusing to pay the amount justly due. In such case, he who seeks equity must do equity.

Under the present law the tax collector has the duty to prepare a correct estimate of the amount necessary to redeem. § 4105.1. If such estimate is incorrect and an innocent purchaser buys the property in reliance upon the amount so estimated, the redemption thus effected is binding on the county and the state. The tax collector may not thereafter attempt to deed the property to the state for the prior delinquent taxes not included in the estimate or the certificate of redemption. Should an owner sue to quiet title against the state or against the purchaser from the state, the secondary rule of Jones v. Sturzenberg would come into play. But absent any such action on the part of the owner, the tax collector must

regard the property as redeemed in full and the sale to the state null and void. § 4112.

Moreover, once the tax collector has induced a change of position in reliance upon the estimate, he may not refuse to issue a certificate of redemption merely because he has later double-checked the abstract list and found his error. In such circumstances, the title company is not liable to the county as agent of the seller. Liability could only be predicated on the title policy issued to the buyer, who under the factual situation presented is an innocent purchaser for value without notice of the unpaid delinquent taxes. This is not to say, however, that in an unusual case, where the estimate is so low that it would put a reasonable person on notice, that a court would permit a title company which handled the sale of the property to escape liability. Such a decision would, of course, require a finding that the estimate of the redemption amount was so low that the redemptioner in effect profited from a mistake that he knew or should have known about at the time he received the erroneous estimate.

It has been suggested that the foregoing rules of law have been abrogated by the passage of section 4114 in 1953. Section 4114 is a section dealing with relief from accountability of the tax collector and cannot properly be read as a condition of obtaining a certificate of redemption by the innocent purchasers or the title company acting on their behalf. The taking of action under section 4114 cannot properly be imposed as a condition precedent to the issuance of a certificate of redemption to the purchaser under the circumstances described in this opinion.

* * * * *