

STATE OF INDIANA

STATE OF INDIANA
LAKE COUNTY LAKE CIRCUIT COURT
FILED FOR RECORD

COUNTY OF LAKE
2012 041902

2012 JUN 26 AM 8:39 CROWN POINT, INDIANA

MICHAEL J. FAJMAN
RECORDER

IN THE MATTER OF THE 2009
LAKE COUNTY, INDIANA
REAL ESTATE TAX SALE

CAUSE NO.
45C01-0907-MI-00064
PARCEL NO. 45-07-12-454-003.000-004

PEACHES & PEACHES, INC.
Petitioner

-vs-

LAKE COUNTY AUDITOR, et al
Respondents

RECEIVED

Filed in Open Court

MAR 30 2011

MAR 29 2011

Michael Faerman
CLERK LAKE CIRCUIT COURT

Michael Faerman
CLERK LAKE CIRCUIT COURT

ORDER GRANTING MOTION FOR RELIEF

FROM ORDER TO ISSUE TAX DEED

Petitioner Peaches & Peaches, Inc., appeared by its attorney Robert Golding, Respondent Lake County Auditor appeared by attorney James Wieser, and Respondent City of Gary Housing Authority appeared by attorney Nicholas Snow, on March 17, 2011. Cause submitted to the Court on the issues of Gary Housing Authority's Motion to Intervene, Motion to Strike Previous Filing, and Motion for Relief from Order to Issue Tax Deed, all of which were filed on January 14, 2011, as well as Petitioner Peaches & Peaches, Inc.'s Responses thereto, filed on January 21, 2011. Petitioner Peaches & Peaches, Inc. filed its Request for Findings of Fact and Conclusions of Law pursuant to Trial Rule 52 on March 15, 2011, and said request is hereby granted.

Upon careful consideration of the evidence and arguments presented the Court hereby finds as follows:

FINDINGS OF FACT

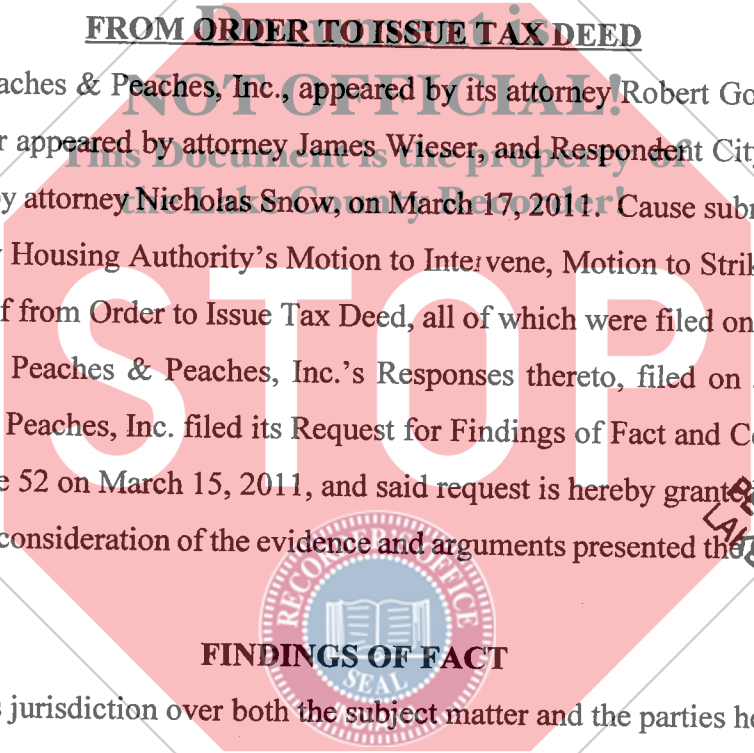
1. The Court has jurisdiction over both the subject matter and the parties herein.
2. This dispute centers around a parcel of real estate located at 5075 West 20th Avenue, Gary Indiana 46406, referred to as "the Real Estate", which is legally described as follows:

West 6 feet Lot 17, all Lot 18, and the East 19 feet Lot 19, Block 7, Osborne's 1st

Robert Golding
P.O. Box 175
Dser, IN 46311

013005

17th
2238
Rv



NON-TAXABLE
JUN 26 2012
REGG WOLINGA KATOWA
LAKE COUNTY AUDITOR

Addition to East Chicago, in the City of Gary, as shown in Plat Book 2, page 23, in Lake County, Indiana.

Parcel Number: 45-07-12-454-003.000-004

3. This property was included in a group of parcels included in a Conveyance of Trust recorded on January 20, 1972 for the benefit of the Gary Housing Authority.
4. Ownership of the Real Estate was conveyed to the Gary Housing Authority outright by way of Trustee's Deed recorded on February 27, 2006.
5. At all times relevant hereto, the Real Estate was part of the Concord public housing development owned and operated by the Gary Housing Authority.
6. In 2009, the Real Estate was placed on the list of Lake County properties for sale for unpaid taxes.
7. Petitioner Peaches & Peaches, Inc., purchased the tax sale certificate for the Real Estate at the 2009 Tax Sale for the amount of \$8,908.92 on November 24, 2009.
8. On May 11, 2010, Petitioner filed its Petition for an Order Directing Lake County Auditor to Issue a Tax Deed.
9. Petitioner gave notice as required by statute to all person and entities entitled thereto.
10. Hearing was held on Petitioner's Petition on June 25, 2010; at that time there were no objections to Petitioner's Petition.
11. Petitioner's Petition for a Tax Deed was granted at the June 25, 2010 hearing, and an order was entered by the Court on July 15, 2010.
12. The Lake County Auditor issued a Tax Deed to Petitioner on December 20, 2010, which was recorded in the Office of the Lake County Recorder.
13. On January 11, 2011, Gary Housing Authority filed its Motion for Relief from Order to Issue Tax Deed.
14. On January 14, 2011, Gary Housing Authority appeared by attorneys Nicholas Snow and Tony Walker and filed its Motion to Intervene, Motion to Strike Previous Filing and revised Motion for Relief from Order to Issue Tax Deed.

15. Petitioner filed its responses to Gary Housing Authority's Motion to Intervene and Motion for Relief for Order to Issue Tax Deed on January 21, 2011.
16. **The Court hereby GRANTS Gary Housing Authority's Motion to Intervene.**
17. **The Court also GRANTS Gary Housing Authority's Motion to Strike Previous Filing,** and strikes the Motion for Relief from Order to Issue Tax Deed filed on January 11, 2011, which was filed prior to the filing of the Motion to Intervene.
18. Gary Housing Authority was given proper notice of Petitioner's Petition for Order to Issue Tax Deed and the hearing thereon, and did not appear nor file an objection or response.
19. The tax exempt status of Real Estate was not properly recorded and notated in the county records.
20. Gary Housing Authority failed to properly record documentation to preserve the tax exempt status of the Real Estate.
21. Petitioner failed to view the Real Estate or to make contact with the tenants thereof to ascertain the ownership and status of the Real Estate.

CONCLUSIONS OF LAW

1. Pursuant to IC §36-7-18-25, the property of a housing authority is exempt from all taxes and special assessments of the state or any political subdivision.
2. Pursuant to IC §36-7-18-25, the Real Estate was not subject to the unpaid taxes for which it was sold.
3. 42 USCA §1437(d), which applies to all housing authorities receiving HUD funds, requires that all such public low-income housing project property must be exempt from all real and personal property taxes.
4. Gary Housing Authority receives funding through HUD and is therefore subject to 42 USCA §1437(d).
5. Case law confirms that city property is exempt from property taxes regardless of whether or not the interest of the city has been properly recorded. *Bank One Trust #386 vs Zem, Inc.*, 809 NE2d 873 (Ind Ct App 2004); *City of Gary vs. Belovich*, 504 NE2d 286 (Ind Ct App

1987).

6. Any tax deed arising from the erroneous sale of tax exempt city property is void *ab initio*.
7. Actions that are void *ab initio* can be challenged at any time.
8. Under Indiana law, the burden is on the prospective tax sale purchaser to ascertain the ownership status of the property. *Kessen vs. Graft*, 694 NE2d 317 (Ind Ct app 1998).

Accordingly, the Court rules as follows:

1. The tax sale of the Real Estate was void *ab initio*.
2. The resulting tax deed issued to Petitioner for the Real Estate is void.
3. The Auditor is hereby ordered to cancel the tax deed issued to Petitioner for the Real Estate.
4. The Treasurer of Lake County is hereby ordered to refund to Petitioner the funds Petitioner paid for the Real Estate at the tax sale.
5. In view of Gary Housing Authority's failure to properly record the tax exempt status of the Real Estate, failure to act when said Real Estate was listed for tax sale and failure to respond to notice of Petitioner's Petition for Order to Issue Tax Deed, Gary Housing Authority is hereby ordered to reimburse Petitioner for its expenses incurred in connection with the voided purchase of the real estate, including title search fees, court costs, costs of notice and attorney fees.

CLERK: TR 72 NOTICE.

SO ORDERED, this 29th day of March, 2011.





GEORGE C. PARAS, JUDGE
LAKE CIRCUIT COURT

DISTRIBUTION:

R. Golding
J. Wieser
N. Snow / T. Walker