

**IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY,  
PENNSYLVANIA**

**CIVIL DIVISION - LAW**

**IN RE:           RETURN OF UPSET TAX SALE :**  
**OF SEPTEMBER 17, 2009       :**  
**NORTHAMPTON COUNTY       :       C-0048-CV-2009-7660**  
**TAX CLAIM BUREAU           :**  
**UNDER 72 P.S. Section 5860.607 :**

**STATEMENT OF REASONS**

This matter involves a property located at 11 W. 2<sup>nd</sup> Street, Bethlehem, Northampton County and bearing tax identification number P6-2-233-0204, one of several properties that was offered at a tax sale held September 17, 2009. On January 5, 2010 Respondent Tony Sovinski (“Mr. Sovinski”) filed a Petition to Intervene; a Petition for Leave of Court to File “Exceptions/Objections” Under P.S. Section 5860.607,” and a “Notice Under Pa.R.C.P. No. 235 to PA Attorney General that Petitioner is Attacking 72 P.S. Section 5860.607 as Unconstitutional in Violation of Due Process and Equal Protections Clauses of 14 Amendment of U.S. Constitution.” Simultaneously, he filed a Praecipe of Lis Pendens on the property, pursuant to 42 PA.CON.S. STAT.ANN. § 4302(a) noticing the Tax Claim Bureau, and on January 14, 2010 he filed the same, noticing Petitioner Yanhua Yi (“Mr. Yi”), and Roosevelt Mortgage Acquisition Company.

On March 29, 2010 while Mr. Sovinski’s petition to intervene was still pending, Mr. Yi filed a Petition to Intervene in this matter and the Court, the Honorable Paula A. Roscioli presiding, issued a Rule to Show Cause as to the same, returnable on April 9, 2010. Thereafter, on April 6, 2010, the Honorable Senior Judge Michael V. Franciosa issued an opinion denying Mr. Sovinski’s Petition to Intervene. Mr. Sovinski filed an appeal from Judge Franciosa’s ruling

with the Commonwealth Court on April 23, 2010. As indicated by the docket entries, the initial Petition to Intervene filed by

Mr. Yi was never heard. Rather, a new petition was filed on May 10, 2010 at which time the Honorable Senior Judge Lawrence J. Brenner issued a Rule to Show Cause, returnable May 21, 2010. The matter came to the undersigned via the Miscellaneous Hearing List of that date.

The sole matter before the Court is Mr. Yi's Petition to Intervene in the above-captioned matter. Mr. Yi, through his counsel, asserts that as record owner of the subject property, he has an interest to protect and should therefore be granted permission to intervene. Whereas, Mr. Sovinski argues that because his petition for intervention is currently on appeal to the Commonwealth Court, this Court is without jurisdiction to rule on Mr. Yi's petition. In support of his position, Mr. Sovinski cites to the Pennsylvania Rule of Appellate Procedure 1701, which states in pertinent part:

**(a) General rule.** Except as otherwise prescribed by these rules, after an appeal is taken or review of a quasijudicial order is sought, the trial court or other government unit may no longer proceed further in the matter.

**(b) Authority of a trial court or agency after appeal.** After an appeal is taken or review of a quasijudicial order is sought, the trial court or other government unit may:

(1) Take such action as may be necessary to preserve the status quo, correct formal errors in papers relating to the matter, cause the record to be transcribed, approved, filed and transmitted, grant leave to appeal in forma pauperis, grant supersedeas, and take other action permitted or required by these rules or otherwise ancillary to the appeal or petition for review proceeding.

(2) Enforce any order entered in the matter, unless the effect of the order has been superseded as prescribed in this chapter.

(3) Grant reconsideration of the order which is the subject of the appeal or petition  
...

(4) Authorize the taking of depositions or the preservation of testimony where required in the interest of justice.

(5) Take any action directed or authorized on the application by the appellate court.

(6) Proceed further in any matter in which a non-appealable interlocutory order

has been entered, notwithstanding the filing of a notice of appeal or a petition for review of the order.

**(c) Limited to matters in dispute.** Where only a particular item, claim, or assessment adjudged in the matter is involved in an appeal, or in a petition for review proceeding relating to a quasijudicial order, the appeal or petition for review proceeding shall operate to prevent the trial court or other government unit from proceeding further only with such item, claim or assessment, unless otherwise ordered . . . as necessary to preserve the rights of the appellant.

PA.R.A.P. 1701.

As per the rule, and the case law interpreting it, a stay of proceedings at the trial court level effected by an appeal to a higher court is limited to issues relative to the dispute. See Commw. v. Reading Group Two Properties, Inc., 922 A.2d 1029 (Pa. Commw. 2007) (A motion to withdraw as counsel remained within the jurisdiction of the trial court although the matter was on appeal, because the issue on appeal did not relate to the matter before the trial court.); Commw. v. Moyer, 617 A.2d 744 (Pa. Super. Ct. 1992) (Defendant's appeal of a murder conviction did not preclude the trial court from imposing sentence on Defendant's remaining charges).

The only provision in the Rules of Appellate Procedure relative to intervention is PA.R.A.P. 1531, relating to appeals from quasijudicial orders issued by government units. Thereunder, a party may file a notice of intervention directly to the Commonwealth Court. However, there is no such provision for matters on appeal from the Common Pleas Courts, which have their own power to grant intervention pursuant to PA.R.CIV.P. 2329. See also Cohen v. Jenkintown Cab Co., 446 A.2d 1284 (Pa. Super. Ct. 1982) (Holding that lower court's grant of petition to intervene while matter was on appeal was within the court's jurisdiction under

PA.R.A.P. 1701 because the petition was outside the scope of the subject matter of the appeal). Upon review and consideration of the applicable Rules of Appellate and Civil Procedure, and the case law interpreting them, the Court is satisfied that Yi's petition to intervene is outside the scope of the present appeal and therefore soundly within the jurisdiction of this Court. Accordingly, we move to a review of the petition on the merits. As per the Rules of Civil Procedure:

the court, if the allegations of the petition have been established and are found to be sufficient, shall enter an order allowing intervention; but an application for intervention may be refused if: (1) the claim or defense of the petitioner is not in subordination to and in recognition of the propriety of the action; or (2) the interest of the petitioner is already adequately represented; or (3) the petitioner has unduly delayed in making application for intervention or the intervention will unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties.

PA.R.CIV.P. 2329.

While the present petition was filed on May 10, 2010, Mr. Yi initially sought to intervene in this matter on March 29, 2010, seventy-four days subsequent to Mr. Sovinski's petition to intervene, but prior to any other action being taken in this matter. Irrespective of whether the court analyzes the timeliness of the petition by the date of the first filing or the second, it is clear from the record that a grant of intervention would cause no undue delay, embarrassment or prejudice to the parties. It is further clear that Mr. Yi has grounds for intervention on the basis of his averments that he is the current record owner of the subject property, supported by a copy of a deed executed in his favor. Finally, it is apparent that Mr. Yi's interests are not represented by any other party hereto. In light of the foregoing, the Court finds that Mr. Yi's stated interest in the present matter is sufficient to warrant a grant of the present petition to intervene.

**WHEREFORE**, we enter the following:



