



# Georgia Department of Revenue

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**IN THE SUPERIOR COURT OF PUTNAM COUNTY  
STATE OF GEORGIA**

PAMELA LANCASTER, In Her Capacity as the  
TAX COMMISSIONER OF PUTNAM  
COUNTY and as EX-OFFICIO SHERIFF OF  
PUTNAM COUNTY,

Petitioner,

vs.

CIVIL ACTION

FILE NO. 2015-CV-104

FIVE TRACTS OF LAND LYING AND  
BEING IN LAND LOT 121, DISTRICT 3,  
PUTNAM COUNTY, GEORGIA BEING  
KNOWN AS FOLLOWS:

101 INDUSTRIAL BOULEVARD (TAX  
PARCEL NO. 062 044);

115 MILLEDGEVILLE ROAD (TAX PARCEL  
NO. 062 041);

186 INDUSTRIAL BOULEVARD (TAX  
PARCEL NO. 062 046);

0 INDUSTRIAL BOULEVARD (TAX  
PARCEL 062 048);

00 INDUSTRIAL BOULEVARD (TAX  
PARCEL 062 056);

And

HORTON HOMES, INC.; PERKY CAP  
COMPANY, INC.; GEORGIA DEPARTMENT  
OF REVENUE; UNITED STATES OF  
AMERICA, INTERNAL REVENUE SERVICE;  
BRANCH BANK & TRUST COMPANY;  
SUNTRUST BANK; TERRY CARTERETTE  
TINDALL; GEORGIAN BANK; ATEX  
DISTRIBUTING, INC.; DE LAGE LANDEN  
FINANCIAL SERVICES, INC.; UNIVERSAL  
FOREST PRODUCTS EASTERN DIVISION,  
INC.; 21<sup>ST</sup> MORTGAGE CORP.; DAVE  
CARTER & ASSOCIATES, INC.; FIRST-  
CITIZENS BANK AND TRUST COMPANY,

Respondent(s).

**FINAL ORDER TO DISBURSE PROCEEDS AND CONFIRM SALES**

This matter, having come before the Court on Petitioner's Report of Sale and Claim for  
Surplus Funds as well as First Citizens Bank and Trust Company's Motion for Disbursal of Surplus



Funds, and pursuant to this Court's Rule Nisi Notice, this Court hereby makes the following findings:

In accordance with this Court's Order dated June 23, 2015 authorizing five tax foreclosure sales, Petitioner conducted the tax foreclosure sales on September 1, 2015. Said tax foreclosure sales were advertised and conducted on the date, time, place, and manner which are required by law of sheriffs' sales. The publisher's affidavit of the Eatonton Messenger advertising said sales has been previously filed with this Court. Each sale was finalized and becomes binding on all parties following the elapsing of sixty days after the tax foreclosure sale without a redemption. As such, each sale, if not redeemed, became final and binding on December 1, 2015. The results of each individual sale is as follows:

Tax Parcel 062 041

At said tax foreclosure sale, the high bidder was UFP Eastern Division, Inc., which purchased the property for the opening bid of \$135,162.26, thereby generating no surplus funds. More than sixty (60) days have elapsed since said tax foreclosure sale without Horton Homes, Inc. (hereinafter "the Property Owner") tendering the statutory redemption amount. As such, fee simple title to this parcel has vested in UFP Eastern Division, Inc. by operation of law and as reflected in that Tax Foreclosure Deed issued by Petitioner as required by O.C.G.A. § 48-4-81(d).

Tax Parcel 062 046

At said tax foreclosure sale, the high bidder was Legacy Housing, Ltd., who purchased the property for \$70,000.00. However, prior to the elapsing of sixty (60) days from the date of said





tax foreclosure sale, the Property Owner redeemed this Tax Parcel by payment of the statutory redemption amount in accordance with O.C.G.A. § 48-4-81(c). Accordingly, and pursuant to O.C.G.A. § 48-4-81(c)(1), Petitioner's claim for tax foreclosure as against this parcel was dismissed without prejudice.

Tax Parcel 062 048

At said tax foreclosure sale, the high bidder was Oconee Investment Group, which purchased the property for \$80,000.00. However, prior to the elapsing of sixty (60) days from the date of said tax foreclosure sale, the Property Owner redeemed this Tax Parcel by payment of the statutory redemption amount in accordance with O.C.G.A. § 48-4-81(c). Accordingly, and pursuant to O.C.G.A. § 48-4-81(c)(1), Petitioner's claim for tax foreclosure as against this tax parcel was dismissed without prejudice.

Tax Parcel 062 056

At said tax foreclosure sale, the high bidder was Legacy Housing, Ltd., who purchased the property for the opening bid of \$251,301.81, thereby generating no surplus funds. More than sixty (60) days have elapsed since said tax foreclosure sale without the Property Owner tendering the statutory redemption amount. As such, fee simple title to this parcel has vested in Legacy Housing, Inc. by operation of law and as reflected in that Tax Foreclosure Deed issued by Petitioner as required by O.C.G.A. § 48-4-81(d).



Tax Parcel 062 044

At said tax foreclosure sale, the high bidder was Legacy Housing, Ltd., who purchased the property for \$1,200,000.00. More than sixty (60) days have elapsed since said tax foreclosure sale without the Property Owner tendering the statutory redemption amount. As such, fee simple title to this parcel has vested in Legacy Housing, Inc. by operation of law and as reflected in that Tax Foreclosure Deed issued by Petitioner as required by O.C.G.A. § 48-4-81(d).

This tax foreclosure sale generated \$952,610.37 in surplus funds, which Petitioner has delivered to the Clerk of the Putnam County Superior Court to be deposited into the Registry of the Court in accordance with O.C.G.A. § 48-4-81(f). In accordance with that statute, those surplus funds are to be distributed by further order of this Court to interested parties in order of their priority.

Several parties have made claims to these surplus funds, including Petitioner, the United States of America, Internal Revenue Service (“IRS”), the Georgia Department of Revenue (“DOR”), the Georgia Department of Labor (“DOL”), First Citizens Bank and Trust Company (“FCB”), and Bathcraft, LLC (“Bathcraft”). By joint stipulation of the parties, the following distributions are ordered by prior order of this Court:

To Petitioner: \$11,802.22 in satisfaction of 2014 personal property taxes and real property taxes owed by Property Owner;

To the IRS: \$316,955.77 in satisfaction of income taxes owed by Property Owner;

To the DOL: Nothing;

To the DOR: \$279,207.86 in satisfaction of taxes owed by Property Owner;

To Bathcraft: \$11,728.00 in satisfaction of its judgment lien against Property Owner;



To FCB: \$255,358.90, in partial satisfaction of its judgment lien against Property Owner.

After the foregoing distributions, there remains an additional \$77,557.62 of undisbursed funds to which the above-referenced parties have not consented and for which this Court reserved judgment on. Petitioner has made claim to said sum as being the amounts owed by Property Owner for various 2015 personal property taxes and real property taxes. Respondent FCB has objected to Petitioner's claims, denying that Petitioner is entitled to satisfy such amounts out of the surplus funds and instead has requested that said sum be disbursed to FCB as additional application to its judgment lien against Property Owner.

Having considered the filings in this matter and after hearing argument of counsel for Petitioner and FCB, this Court finds as follows:

This Court's duty to disburse arises under O.C.G.A. § 48-4-81(f) which provides in pertinent part "Such surplus shall be distributed by the superior court to the interested parties, including the owner, as their interests appear and in the order of priority in which their interests exist." Therefore the question becomes whether Petitioner's claim for the 2015 taxes can be considered in terms of priority.

The unequivocal answer to this question is yes. As stated succinctly by Daniel F. Hinkle in *Pindar's Georgia Real Estate Law and Procedure*, 7<sup>th</sup> Ed., Sec. 4:47, "The ad valorem real property tax becomes a lien on the land as of January 1 of each year, even though the valuation, rate, and amount remain to be fixed during the remainder of the year. Taxes must be paid before any other debt, lien or claim. The lien attaches not only to the specific property returned, but to all property of the taxpayer, ranking in priority between state, county and municipal taxes in the order named. The lien is not divested by a transfer of any kind, including a judicial sale." (*Citing*,



O.C.G.A. §§ 48-2-56, 48-5-10, 48-3-5, 48-5-28, 48-2-57, and *National Tax Funding, L.P. v. Harpagon Company, LLC*, 277 Ga. 41, 586 S.E.2d 235 (2003)).

Here, FCB contends that Petitioner is not able to collect the 2015 taxes which had not yet been reduced to a fifa recorded in the Putnam County Land Records by the time of the September 1, 2015 tax sale. However, such a position ignores that a lien for ad valorem property taxes attaches *by operation of law* as of January 1 on a given tax year.

This Court also finds persuasive the case of *Iglesia Del Dios Vivo Columna Y Apoyo De La Verdad La Luz Del Mundo, Inc. v. Downing*, 321 Ga.App. 778 (2013). In that case, the Georgia Court of Appeals held that the Cobb County Tax Commissioner, who conducted a non-judicial tax sale on January 2007 for the nonpayment of 2004-2006 taxes, could not claim the 2008-2010 taxes from the surplus generated after the sale. Notably, however, no dispute arose in that case as to the 2007 taxes which had already attached as a lien against the property as of January 1, 2007.

Most importantly, the Court in *Downing* relied on its prior decision in *Mulligan v. Security Bank of Bibb County*, 280 Ga.App. 248 (2006) which dealt with the disbursal of surplus funds following an October 2004 mortgage foreclosure of real property. There, the Court of Appeals held that the Bibb County Tax Commissioner was entitled to collect the amounts owing on the 2001-2004 taxes out of the surplus as “ad valorem taxes are chargeable either as a personal debt of the taxpayer or as a lien ‘which extends not only to the property giving rise to the tax obligation, but also to all other property owned by the taxpayer’...Thus, while a tax commissioner retains a lien on the property that is enforceable against a subsequent purchaser of the property, the prior owner *remains* liable for the taxes....As such, the tax commissioner was authorized to seek





payment of the outstanding taxes from the surplus proceeds.” (Emphasis in original). (Citing, *Nat. Tax Funding, L.P. v. Harpagon Co., id.*; *Teachers’ Retirement System of Ga. v. City of Atlanta*, 249 Ga. 196, 202, n. 6 (1982); *Jones v. Morse Bros. Lumber Co.*, 171 Ga. 753, 759 (1931)).

In both *Downing* and *Mulligan*, it would have been impossible for the taxes for the current year to have been reduced to a fifa at the time of the sale which generated the surplus (January in the case of *Downing* and October in the case of *Mulligan*). This goes to further show that the recording of a fifa is immaterial since the lien had already arisen and attached by operation of law. Accordingly, the timing of where a sale falls in the course of a year has no bearing on whether the taxes for that current year can be claimed by the county’s tax commissioner.

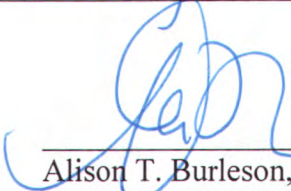
To the extent that FCB’s argument is predicated on a reliance of the recent Court of Appeals decision in *DLT List, LLC v. M7ven Supportive Housing & Devel. Group*, 779 S.E.2d 436 (2015) (reconsideration denied, Dec. 15, 2015, application for certiorari presently pending before the Georgia Supreme Court), this Court finds such reliance to be misplaced. The *DLT* case addressed a redeeming creditor’s claim for the surplus funds generated by a non-judicial tax sale. There the creditor’s claim against the surplus was pursuant to a statutory lien which arose following the creditor’s redemption of a property following a tax sale. Therefore, the Court reasoned, the lien could not arise until after the tax sale, and therefore could not be a valid claim against the surplus. Here, the Petitioner’s claim for the 2015 taxes arose and attached as liens against the various properties and became the personal obligation of the Property Owner on January 1, 2015. As such, it is properly payable from the surplus funds generated by the tax foreclosure sale in this matter.





As such, it is SO ORDERED that in addition to the distributions previously ordered by this Court, the Clerk of the Putnam County Clerk shall also disburse to Petitioner the amount of \$77,557.62 in satisfaction of those 2015 taxes owed to Petitioner by Property Owner.

SO ORDERED this 16<sup>th</sup> day of February 2016.

  
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Alison T. Burleson, Judge  
Superior Court of Putnam County

Order submitted by:

Allison C. Jett  
Georgia Bar No. 391444  
*Attorney for Petitioner*  
WEISSMAN, NOWACK, CURRY & WILCO, P.C.  
One Alliance Center, 4th Floor  
3500 Lenox Road  
Atlanta, GA 30326  
(404) 926-4500  
[alliejett@wncwlaw.com](mailto:alliejett@wncwlaw.com)