

Renee Mitchell

v.

Town of Cornish

ORDER

Renee Mitchell's appeal of denial of RSA 72:38-a tax lien by the Town of Cornish is returned for not being timely filed with the board. An appeal for a denial of a tax lien must be filed within eight months of notice of tax (RSA 76:16-a [1994 Supp.]) The notice of date of tax was determined to be December 3, 1993 and therefore, the appeal deadline to the board was June 3, 1994. The appeal was filed with the board on July 8, 1994 and is, therefore, not timely.

Further, the board declines to accept the appeal under its general authority of RSA 71-B:16 II because the taxpayer did not state her taxes were in arrears to the extent the loss of her property was imminent by tax deed (RSA 80:38 or 80:76).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Valerie B. Lanigan, Clerk

CERTIFICATION

I hereby certify that copies of the within order have this date been mailed, postage prepaid, to Laura J. Milliken, counsel for Renee Mitchell, Taxpayer; and Michael Fuerst, Esq., counsel for the Town of Cornish.

Date:

0009

Valerie B. Lanigan, Clerk

Renee Mitchell

v.

Town of Cornish

Docket No.: 14982-93-PT

RECONSIDERATION ORDER

On September 23, 1994 the Taxpayer filed a motion for reconsideration of the board's order of September 15, 1994 (Order).

The board grants the motion for reconsideration and rules as follows.

There is no specific statutory appeal provision for a town's denial of an RSA 72:38-a tax lien. However, as the board ruled in its Order, the timelines contained in RSA 76:16-a (1994 Supp.) of filing within eight months of notice of tax provides the most appropriate provision for properly bringing such a denial before the board.

The board finds the Taxpayer's 1993 tax bill resulted from the Town's denial of the Taxpayer's request for an RSA 72:38-a tax lien and, therefore, triggers the RSA 76:16-a appeal timelines. The notice of tax date was determined to be December 3, 1993, and, therefore, the appeal deadline to the board was August 3, 1994 - - not June 3, 1994, as incorrectly found by the board in the Order. The appeal was filed with the board on July 8, 1994 and is therefore timely and accepted by the board.

Because there is no specific appeal statute for RSA 72:38-a, the confusion arose due to the board considering both the possible deadlines of six months as provided in RSA 72:34-a and eight months as provided in RSA 76:16-a (1994 Supp.).

Upon review of income expense information submitted with the application, the board waives the \$65.00 filing fee with this board.

Further, the board has scheduled this appeal for hearing as noticed in the separate enclosed hearing notice.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that copies of the within Order have this date been mailed, postage prepaid, to Laura J. Milliken, counsel for Renee Mitchell, Taxpayer; the Chairman, Selectmen of Cornish; and Michael Fuerst, Esq., counsel for the Town of Cornish.

Valerie B. Lanigan, Clerk

Date:

0009

Renee Mitchell

v.

Town of Cornish

Docket No.: 14982-93EX and 15026-94EX

DECISION

The "Taxpayer" seeks an RSA 72:38-a lien for tax years 1993 and 1994. For the reasons stated below, the board grants the liens for both tax years.

The "Town" agreed the Taxpayer, individually, met all of the RSA 72:38-a requirements to be eligible for the disability lien. The Town, however, was concerned that the Taxpayer owned the Property jointly with Nancy Noll (Noll), and Noll had not joined in the application. Specifically, the Town was unsure about whether one joint owner (the Taxpayer) could request a lien, and if so, whether the Town would be adequately protected should the other joint owner (Noll) who did not apply for the lien object at some point to the lien. As stated in the board's November 29, 1994 order, the Town has a legitimate concern. Because of this concern, the board asserted jurisdiction over Noll and had her served with an order concerning the board's assertion of jurisdiction. A similar order was sent to her for the 1994 tax year. Noll

objected to requests for the lien, but she did not provide any basis for the board denying the lien.

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Based on the above, the board finds the Taxpayer is entitled to the RSA 72:38-a disability lien subject to the provisions of RSA 72:38-a. In making this order, the board, having jurisdiction over the Taxpayer through this appeal and having jurisdiction over Noll through proper service and notice, orders that the lien shall apply to both the Taxpayer's and Noll's interest in the Property.

The Town may record a copy of this order with the lien at the registry of deeds. Upon the Town's request, the board will certify this order to the superior court, pursuant to RSA 71-B:13, and the superior court shall then enter final judgement, allowing the Town to obtain and record a copy of a superior court judgement should the Town conclude a board decision is insufficient to protect its interests.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a

prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if

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the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Laura J. Milliken, Esq., counsel for Renee Mitchell; Michael A. Fuerst, Esq., counsel for the Town of Cornish; and Nancy Marie Noll.

Dated: March 28, 1995

Valerie B. Lanigan, Clerk

Renee Mitchell

v.

Town of Cornish

Docket No.: 14982-93EX

ORDER

This order relates to "Mitchell's" appeal of the "Town's" denial of her request for an RSA 72:38-a disability tax lien. The parties submitted a stipulation of facts, and thus the board will not reiterate those facts, except to say Mitchell owns the property, for which the lien is sought, with Nancy Marie Noll. Noll, however, has not joined in applying for this lien or in this appeal.

Based on the record, Mitchell is entitled to the disability lien. However, the Town denied the lien because Noll did not join in the lien

application. The Town is concerned that a lien would not be enforceable against Noll if Mitchell were to predecease Noll.

The board researched the Town's concern, and we agree that an issue exists about the enforceability of the lien against Noll. Thompson, Commentaries on the Modern Law of Real Property, § 1776 at 18 ("One joint tenant *** does not share a liability arising against the other ***."), § 1780 at 31 ("One joint tenant cannot alienate the interest of the other joint tenant or in any way affect such interests."), § 1780 at 32 ("A mortgage lien

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created by one joint tenant terminates upon the death of such joint tenant leaving the other tenant surviving."); Patton On Land Titles § 236 at 620-621 (2 ed. 1957).

Noll is liable with Mitchell for the taxes, and clearly, any RSA chapter 80 tax lien would apply to both interests. The same, however, may not be so with a voluntary lien such as an RSA 72:38-a lien.

The board has concluded that to provide the requested relief to Mitchell, the board must assert and obtain jurisdiction over Noll. The board therefore names Noll as a necessary party, and thus she shall be served with an order of notice. Once jurisdiction has been obtained, the board will allow Noll an opportunity to make any presentation she deems necessary. Following that, the board will issue an order. If the board issues an order granting the lien, the lien will affect both Noll's and Mitchell's interest in the Property. See Thompson, supra, § 1780 at 32 ("A joint tenants' creditors can, by proper action brought before the joint tenants' death, reach the interest

or title to property held in joint tenancy ***.").

The board's clerk shall prepare an order of notice to Noll, which shall be served according to RSA 510:4. The clerk shall serve a copy of the Mitchell's petition and a copy of this order. The clerk shall set a date by which Noll shall respond, failing which the board shall act without her input.

Note: The Suffolk County Sheriff has informed the board that service will take eight (8) weeks.

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SO ORDERED.

BOARD OF TAX AND LAND APPEAL

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Laura J. Milliken, Esq., counsel for Renee Mitchell, Taxpayer; Nancy Marie Noll, Taxpayer; Michael A. Fuerst, Esq., counsel for the Town of Cornish; and Chairman, Board of Selectmen for Cornish.

Dated: November 29, 1994

Valerie B. Lanigan, Clerk

Renee Mitchell

v.

Town of Cornish

Docket No.: 14982-93EX

ORDER OF NOTICE FOR NANCY MARIE NOLL

This order is issued pursuant to the N.H. Board of Tax and Land Appeal's November 29, 1994 order (copy attached). The order was issued after the board received an appeal from Renee Mitchell (copy attached) who was seeking a disability tax lien pursuant to RSA 72:38-a (copy attached) on property owned by Mitchell and Noll. The board is serving this notice on you:

- 1) because the board has ordered that you be a named party; and,
- 2) to provide you with an opportunity to participate in the proceedings and to raise any issues you would like to raise.

If the board grants Mitchell's request for the lien, the lien would affect your rights in the property.

You are ordered to respond to this notice by notifying the board in writing that you wish to participate in this proceeding. Your notification must be made to the board in writing no later than February 28, 1995. If you fail to so notify the board, you will be finally defaulted, and the board will

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proceed without your input. This means that if the board grants the RSA
72:38-a lien, that lien would also affect your rights.

FAILURE TO ACT ON THIS NOTICE COULD ADVERSELY AFFECT YOUR RIGHTS.

If you have any questions please contact the undersigned.

BOARD OF TAX AND LAND APPEALS

Dated: November 29, 1994

Valerie B. Lanigan, Clerk

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this
date, postage prepaid, to Laura J. Milliken, Esq., counsel for Renee Mitchell,
Taxpayer; Nancy Marie Noll, Taxpayer; Michael A. Fuerst, Esq., counsel for the
Town of Cornish; and Chairman, Board of Selectmen for Cornish.

Dated: November 29, 1994

Valerie B. Lanigan, Clerk

0006

November 29, 1994

Sheriff Patrick A. Mahoney
Suffolk County Sheriff's Department
Attention: Civil
100 Center Drive
Riverhead, NY 11901

Re: Rene Mitchell v. Town of Cornish
Docket No.: 14982-93EX

Dear Sheriff Mahoney:

Enclosed are the following:

- 1) 4 attested copies of orders of notice with attachments; and
- 2) a \$24.72 check to cover service.

The individual to be served is Nancy Marie Noll, 13-14 Smithtown Avenue, Bohemia, New York, 11716. Please serve her no later than January 28, 1995. Upon completion of service, please certify service and return it to me.

Please contact me if there are any questions.

Very Truly Yours,

Valerie B. Lanigan, Clerk

VBL/cmr

Enc. Orders of Notice
Check #658099 for \$24.72

cc.: Laura J. Milliken, Esq.
Michael A. Fuerst, Esq.

INSTRUCTIONS TO SERVE NOLL

- 1) See and read RSA 510:4 (attached).
- 2) Prepare order of notice
- 3) Serve Secretary of state (see if we need to pay \$10 fee)
- 4) Serve via mail (registered mail) to the post office box and home
- 5) Serve via sheriff's office (see letter).

SERVE {Petition}
 {Order}
 {Orders of Notice}
 {RSA 72:38-9}