

Judge Giordano Order and Decision of December 21, 2016
NORTHAMPTON COUNTY COMMON PLEAS COURT

BETHLEHEM AREA SCHOOL DISTRICT :

Plaintiff, :

V. :

C-48-CV-2016-2328

ALVIN KANOFISKY :

Defendant :

ORDER

AND NOW, this 21st day of December, 2016, upon consideration of Plaintiff's Motion for Judgment and argument held thereupon, it is hereby ORDERED and DECREED that Plaintiff's Motion is GRANTED for reasons that follow at greater length.

STATEMENT OF REASONS

On March 28, 2016, Plaintiff filed a tax claim for delinquent school/real estate taxes in the amount of \$2,449.36 against Defendant's real property at 32 E. 3rd Street, Bethlehem, Pennsylvania, pursuant to the Municipal Claims and Tax Liens Act ("MCTLA"). On April 18, 2016, Plaintiff filed a writ of *Scire Facias* against Defendant based on the tax claim and served the same upon Defendant. Defendant filed an Affidavit of Defense and Counter - Complaint in response.

In review, this Motion for Judgment shall be treated as Motion for Judgment on the Pleadings and will only be granted where the pleadings demonstrate that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Here, the Affidavit of Defense fails to show how the charges are inaccurate or otherwise defective. Defendant has insufficiently denied the Plaintiff's allegations and failed to assert a cognizable defense. Therefore, this Motion must be GRANTED.

Defendant has also filed a Counter Complaint in this matter. The MCTLA, however is a statutory appeal process and does not authorize the filing of a counter-complaint as a defense to a Writ of *Scire Facias*. Therefore, this Counter Complaint will not be considered by this Court.

BY THE COURT:

S/_____
EMIL GIORDANO, J.

COMMONWEALTH COURT OF PENNSYLVANIA

Bethlehem Area School District :
 :
 v. :No.89 C.D. 2017
 : May 19, 2017
 Alvin S. Kanofsky and United :
 States of America :
 :
 Appeal of: Alvin S. Kanofsky :

BEFORE: HONORABLE P. KEVIN BROBSON, Judge
 HONORABLE JULIA K. HEARTHAWAY, Judge(1)
 HONORABLE BONNIE BRIGANCE LEADBETTER, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
 BY JUDGE BROBSON

FILED: September 12, 2017

Appellant, Alvin S. Kanofsky (Kanofsky) pro se appeals from an order of the Court of Common Pleas of Northampton County trial court dated December 21, 2016 which granted Appellee Bethlehem Area School District motion for Judgement for Want of Sufficient Affidavit of Defense (Motion). For the reasons set forth below, we affirm.

Kanofsky is the owner of real property located at 32 East Third Street, Bethlehem, Pennsylvania (property). On March, 28, 2016, the School District filed a tax claim against the Property for non-payment of 2014/2015 school real estate taxes in the amount of \$2,448.36. Thereafter, on April 18, 2016, the School District filed a writ of Scire Facias(2), seeking to reduce the tax claim to a judgment against Kanofsky. In response, there to, Kanofsky, who was acting pro se filed a document titled " Brief in Response to the School District Tax Lien, and a Counter Complaint which the trial court appears to have treated as an Affidavit of Defense. (Affidavit). Subsequently, on October 7, 2016, the School district filed its Motion.

The Trial court held oral argument on the School districts Motion. In so doing, the trial court determined that Kanofsky's Affidavit failed to show how the tax claim was inaccurate or otherwise defective. (Trial Court Order Dec. 21, 2016). The trial court also determined that what is commonly referred to as the Municipal Claims and Tax Liens Act (MCTLA) (3) provided a statutory appeal process and did

not authorize the filing of a counter complaint as a defense to Writ of Scire facia (Id.) As a result, the trial court did not consider Kanofsky's Counter Complaint(Id.)

Kanofsky appealed the trial court's order to this Court, and the trial court directed Kanofsky to file a concise statement of errors complained of on appeal pursuant to Pennsylvania Rule of Appellate Procedure (1925(b) (1925(b) statement). On February 13, 2017 Kanofsky filed his 1925(b) statement. Rather than set forth the reasons for his appeal or the alleged errors committed by the trial Court, Kanofsky simply referenced and attached statements of errors complained of on Appeal that he had filed in previous tax lien appeals. Thus, in its 1925 (a) opinion, the trial court concluded that Kanofsky had failed to raise any cognizable claims on appeal and requested that Kanofsky's appeal be dismissed (Trial Ct. Op.Feb. 14,2017)

On appeal, Kanofsky appears to argue that the trial court erred in granting the School District's Tax cargo, monos Affidavit(4). In response, the School District argues that the trial court properly determined that the school District argues that the trial court properly determined that the School District was entitled to have its tax claim reduced to judgment for want of sufficient Affidavit of defense because Kanofsky failed to raise any issues related in the validity or accuracy of the delinquent taxes in his Affidavit. The school District argues further that the trial court properly chose not to consider Kanofsky's counter complaint. Because there was no basis for Kanofsky to include a counter Complaint with his Affidavit(5).

We need not reach the merits of Kanofsky's argument because the record demonstrates that he failed to properly raise any cognizable issues in his 1925 (b) statement. Although not argued by the School District(6), it is well settled that this court may dismiss an appeal sua sponte based on an appellant's failure to properly preserve issues for appellate review. *Gibraltar Rock Inc. vs. New Hanover Twp*, 118 A 3D 461, 464 (Pa Cmwlth.) appeal denied. 128 A.3d 222(Pa 2015). When a party wishes to appeal an order of a trial court, the Pennsylvania Rules of Appellate Procedure require that, upon the order of the trial court, the appellant must file a concise statement of the errors complained of on appeal. Pa R.A.P 1925(b). The appellant's statement must concisely identify each ruling or error as that the appellant intends to challenge with sufficient detail to identify all pertinent issues for the judge." Pa R.A.P. 1925 (b) (4) (II). Failure to do results in the waiver of any issues not included in the statement Pa. R.A.P. 1925 (b) (4)(vii)

Here, Kanofsky's 1925 (b) statement filed to set forth the reason for his appeal or the alleged errors committed by the trial court. Kanofsky simply referenced and attached statements of errors complained of on appeal that he had filed in previous tax lien appeals, which do not in any way relate the tax claim that is the subject of this appeal i.e., the non-payments of the 2014/2015 school real estate taxes for the Property. Kanofsky has, therefore, failed to identify any

cognizable issues in his 1925 (b) statement, and, pursuant to Pennsylvania Rule of Appellate Procedure 1925 (b), all issues are waived for the purpose of this appeal, including whether the trial court erred in granting the School District's Motion.

Even if we do not dismiss Kanofsky's appeal for failure to comply with Pennsylvania Rule of Appellate procedure (1925)(b), Kanofsky's argument that the trial court erred in granting the School District's Motion is without merit. The procedure governing municipal claims in Pennsylvania was previously explained by this court in *Western Clinton County Municipal Authority v Estate of Rosamilia*, 826 A.2d 52 (Pa. Cmwlth.2003)

Municipal claim procedure in general and Scire Facias procedure in particular is purely statutory (and governed by the MCLTA). Once the municipality files a claim for services, the claim becomes a lien on the property. If the owner does not dispute the claim and assessment, the owner simply pays and removes the lien. To contest the claim or amount of assessment and to force the issue to an original hearing, the owner may file and serve a notice upon the claimant municipality to issue a writ of Scire Facias. In the proceeding commenced by the writ of Scire Facias, the owner must then file an "Affidavit of defense." In that Affidavit the owner raise all defenses he or she has to the municipal claim.

Alternatively, the municipality may pursue a writ of Scire Facias without waiting for prompting by the owner, which is what occurred in the present case. In response to the writ, the owner may file an Affidavit of defense raising all the defenses,

Where a judgement for insufficient Affidavit of defense is sought, the averments in the Affidavit of defense are taken as true. The court may not go outside the case as presented by the pleadings for the purpose of considering extraneous facts, either in support of or against the line of defense disclosed by the Affidavit. In this regard, the procedure followed is analogous to a motion for judgment on the pleadings. A rule for judgment for insufficient Affidavit of defense may be discharged where the appellate court thinks it is advisable that the case go to trial so that the facts may be more fully developed and passed upon.

Estate of Rosamilia, 826 A 2d at 56-57 (citations omitted). Thus, Kanofsky was required to raise any defenses that he had to the School District's tax claim in his Affidavit. Kanofsky did not do so, as his Affidavit does not set forth any facts or allegations regarding the existence, validity, or accuracy of the School District's tax claim. Rather, it appears that Kanofsky used his Affidavit, as well as his brief to this court, to make excuses for why he has not paid the 2014/2015 school real estate taxes and to complain about other matters. Because Kanofsky has failed to set forth

any defense to the School District's tax claim, we cannot conclude that the trial court erred in granting the School District's Motion.(7)

For all of the above stated reasons, we affirm the trial court's order.

/s/ _____
P. KEVIN BROBSON, Judge

1. This decision was reached before Judge Heathway's service with the Court ended on September 1, 2017.
2. On September 28, 2016, after discovering that there were federal tax liens filed against Kanofsky and the Property, the School District filed a motion to amend its writ of Scire facia, seeking to add the United States of America as a defendant. By order dated September 28, 2016, the trial court granted the motion.
3. Act of May 16, 1923, P.L. 2017, as amended, 53 P.S. Sec. 7101-7505
4. In the "Questions Involved" and "Questions Asked" sections of his brief, Kanofsky identifies fourteen issues for consideration by this court on appeal. The majority of Kanofsky's issues, however, involve matters that are irrelevant and in no way relate to this appeal and/or have no basis in the record. As a result, such issues are not properly before this Court and will not be addressed in this opinion.
5. The School District also argues that Kanofsky failed to adequately develop any issues for appellate review in His brief to the Court because his brief "consists of a series of vague allegations presented in scattershot fashion that have no relevance whether he owes (school) real estate taxes. On the Property for the year 2014/2015" and his argument "lacks any citation to legal authority, any legal argument, any explanation of how his allegations relate to the issues in his (multiple) statements of the questions involved, or any explanation of how the trial court erred." (School District's Br. At 5-6) We disagree. Although Kanofsky's brief sets forth matters that in no way relate to this appeal and/or have no basis in the record, when read as a whole, Kanofsky's brief adequately develops the issue of whether the trial court properly granted the School District's Motion.
6. As explained more fully in foot note 5 of this opinion, the School District argued that Kanofsky failed to adequately develop any appellant issues in his brief to this Court. The School District's Argument in no way related to Kanofsky's 1925 (b) statement.

7. The trial court also properly chose not consider Kanofsky's complaint as MCTLA provides a purely statutory mechanism to challenge a municipal claims and the Pennsylvania Rules of Civil Procedure do not apply to any such proceedings. See *Shapiro v. CrR. Twp. Butler Cnty.*, A2d 994, 999 (Pa. Cmwlth. 1993), appeal denied, 642 A2d 488 (Pa 1994)

SUPREME COURT OF PENNSYLVANIA

Bethlehem Area School District :
:
v. : 695 MAL 2017
:
Alvin S. Kanofsky and United :
States of America :
:
Appeal of: Alvin S. Kanofsky :

MARCH 21, 2018

AND NOW, this 21st day of March 2018, the Petition
for Allowance of Appeal is Denied

Per Curiam

SUPREME COURT OF PENNSYLVANIA

Bethlehem Area School District :
:
v. : 695 MAL 2017
:
Alvin S. Kanofsky and United :
States of America :
:
Petition for Reconsideration: :
Alvin S. Kanofsky

May 3, 2018

AND NOW, this 3rd day of May 2018, the Petition
for Reconsideration is Denied.

Per Curiam

IN THE COURT OF NORTHAMPTON COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

No. C-48-CV-2016-2328

Bethlehem Area School District.)
)
Plaintiff)
)
)
Vs.)
)
Alvin S. Kanofsky)
)
Defendant Pro-Se)

Brief in Response to Bethlehem Area School District Tax Lien

1. Defendant is an Adult individual living at 229 E. Church Street in Bethlehem, PA
2. Defendant is responding to the Real Estate Tax Lien placed on his property at 32 E. Third Street in Bethlehem. (Exhibit A)
3. Defendant affirms the statements made in this Affidavit response.
4. Defendant has been in litigation for many years over ownership of this property, a vacant lot, and the adjacent property, his building, known as the Goodman building.
5. The City of Bethlehem has harassed and litigated with the defendant for many years in order to force him to give up his ownership of these properties.
6. The City has acted to prevent any beneficial use the Defendant might have of his properties, such as the use as a flea market with 40 dealers over eight years, a music club, and a performance art venue.
7. At the same time, the Defendant has paid his taxes on these properties for some Thirty years, and worked to maintain them despite the continual harassment and litigation.
8. At the present time, these properties are desired by the developer, Atty. Dennis Benner, working with the city, Lehigh University, and St. Lukes Hospital desires them to further develop the third street. Area.

9. His first major development on Third Street is a 6 story building about three hundred feet from the Petitioner's Property, for which the city of Bethlehem is providing a free parking garage.

10. He has been putting pressure on the Defendant and other owners of the nearby properties not connected with these entities to sell their properties at reduced amounts.

11. This action is connected with the Tax Abatements and advantages offered by the state CRIZ program.

12. As well, there are already on federal liens on the property of the Defendant, and it is assumed the U.S. Government will take the primary position on these real estate parcels.

13. The defendant will notify them as well of any legal action the School district intends to pursue.

14. As you know, there are numerous indictments of public and company officials in the Lehigh Valley due to a widespread FBI investigation of public fraud and corruption.

15. In Allentown, several of the Public Officials are already under indictment with more apparently to be indicted.

16. With the NIZ abatement program in Allentown, many properties were seized under questionable circumstances. Such as public domain, tax sales, etc.

17. As well, the former State Treasurer, McCord, and other government aids active in the state government are under indictment and many are co-operating with the FBI.

18. The Defendant, therefore, in consideration of the City of Bethlehem's actions to prevent his beneficial use of his property begs that the taxes be reduced and the tax lien lifted.

Counter Complaint

19. The defendant is a well known educator and scientist, receiving all of his degrees at the University of Pennsylvania. Defendant since 1967 has worked as a Physics Professor at Lehigh University, supported by the Department of Energy, the Department of Defense, as well as private industry.

20. Defendant has collaborated with and has headed experiments at the top research labs in the country, as well as collaborating and working with the top Universities in the Country. He has two hundred research papers, many on seminal work.

21. Defendant has had thousands students, Graduate PhD students, and undergraduate students. Many of his students have gone on to make major contributions. He has won many awards, being a member of Sigma Xi, a Fellow of the American Physical Society, listings in Who's Who in the World, Who's Who in America, Who's Who in Education. He is a thirty years Member of the Bethlehem Rotary Club, Past Chairman of the Literacy Committee, etc.

22. The local community has many individuals who resent the Defendant's work on starting local, state, and national initiatives to invigorate the local economy with development of his properties, etc.

23. They have acted to obstruct and deprive the Defendant of the beneficial use of his properties for many decades.

24. Some of these individuals are fellow educators who work in the Bethlehem School System, Bethlehem Charter Schools, Colleges, and Universities, many of which are non-profits.

25. As well, some have made slanderous and libelous statements about the activities and properties of the respondent.

26. The defendant has been and is presently in various litigation over many years as a result of his efforts to defend his property.

27. This has resulted in substantial financial loss, pain and suffering, and physical distress.

CONCLUSION

28. The Defendant begs that the lien be removed due to the City of Bethlehem and the Bethlehem Area School district and their associates preventing any beneficial use of his property, and their desire to seize his properties for their own development purposes. As well, the respondent seeks substantial damages for years of pain and suffering and financial loss from the actions associated with the Bethlehem School District and the City of Bethlehem.

Respectfully Submitted,

18

May 9, 2016

Dr. Alvin S. Kanofsky

SUPREME COURT OF PENNSYLVANIA

Bethlehem Area School District :

v. :

695 MAL 2017

Alvin S. Kanofsky and United :
States of America :

Appeal of: Alvin S. Kanofsky :

Brief of Appeal of Northampton County
Court of Common Pleas Case

CV-2016-2328, 89 CD 2017

Brief of Appeal of Northampton County Court of Common Pleas Case

CV-2016-2328, 89 CD 2017

1. The properties involved in this case are those at 30 E. Third Street in Bethlehem, PA and 32 E. Third Street in Bethlehem, PA
2. 30 E. Third Street is a three story building with full basement, with each floor having an area of 8000 square feet.
3. As well, there is a full basement of about 6000 square feet.
4. The property at 32 E. Third Street is a vacant lot adjacent to the Building situated on the corner of the block and with an area of 5000 square feet.
5. These properties front on Third Street, which is the main thorough for intensive development by Saint Luke's Hospital, Lehigh University, ArtsQuest, the Sands Casino, etc.
6. To the rear of the properties is the South Bethlehem Greenway which connects with the Lehigh and Delaware rivers.
7. Petitioner has owned these properties for some thirty years.
8. For some thirty years, as well, the local entities have tried to force the petitioner off of these properties by basically harassing and extorting him.
9. They have issued numerous citations and fines against him for which he has repeatedly responded by correcting the so called violations and legal actions.
10. As well, the U.S. Government through the IRS refused to recognize the use of these properties for the Petitioner's business activities.
11. As well, they refuse to recognize the obstruction of any of the petitioner's business activities by the local entities.
12. The U.S. Government refuses to recognize any of the affirmative defenses regarding the fraud and corruption actions to block petitioner's activities.
13. The U.S. Treasury has consequently penalized the Petitioner with liens on his properties.
14. Thus, when the local entities place a lien on the petitioner's properties, the U.S. Lien takes precedence and the local lien by the school district or the city a secondary position.
15. As well, the U.S. Treasury is required to be a defendant in any lien action against the Petitioner. The Petitioner has been submitting Briefs in defense of the liens with the United States of America now as the Co-defendant.
16. The United States of America is complicit in the prosecution of the Petitioner because of their liens on his property, and their garnishment of the wages and property of the Petitioner.
17. As well, they are complicit in not recognizing the fraud and corruption that the Petitioner is subjected to in pursuing his business activities.

18. They do not recognize his arguments in this regard in either the arguments or evidence he presents in Tax Court or in the briefs he submits to the courts in appealing the Tax Courts adverse decisions.
19. In regard to the actions of the entities that the Petitioner interacts with in the local community and the state, they do not recognize or acknowledge their actions adverse to the Petitioner's development of his properties and business activities
20. They do not acknowledge the libelous slanderous verbal and written statements given in the Courts and to the media in Regard to the petitioner's actions.
21. They do not recognize or acknowledge the actual damage inflicted on the Petitioner's property by allowing the neighbor, John Saraceno, to grow his grape vine on the Petitioner's building, thus destroying the mortar work on the building, opening the roof line seams, and causing water leaks.
22. They do not recognize or acknowledge the damage caused by the city by their snow removal front load when it smashed into the building wall, causing a fracture in the front window, collapse of a roof strut. And a partial portion of the roof, and damage to the roof parapets.
23. They do not acknowledge or recognize the illegal trespass into the building, breaking the front door jam. They do not recognize or acknowledge the the trespass onto the Petitioner's lot after thirty two inch record snowstorm of late January 22, 2016, when they were piling snow fifteen feet high onto the Petitioner's lot against the building the wall.
24. They do not acknowledge or recognize the trespass of the neighbor onto Petitioner's property with the huge grape vine.
25. As well, they do not recognize or acknowledge the numerous fraudulent and corrupt actions by the entities within the city.
26. They do not recognize the fraudulent and corrupt actions by Mr. Tony Hanna, now head of the Bethlehem Redevelopment Authority , in immediately clearing the site of the arson-cause Fire down the block from the Petitioner, despite evidence given by the Petitioner in court on this.
27. This is the site on which the new ST. Lukes and Lehigh University building is now completed.
28. They do not recognize or acknowledge the Magistrate James Stocklas. Rigging of the Pennsylvania lottery.
29. Most recently, the City of Bethlehem has filed for a cConservator Status on the Properties of the Petitioner, both the supposedly blighted list and the supposedly blighted building.
30. Both of these properties are currently in litigation as to their status.
31. Again, the United States of America is a co-defendant in this action.
32. Again, the United States of America is complicit in these fraudulent and corrupt actions.

33. With regard to the Bethlehem City and Bethlehem School Tax Cases, considered here, the properties are subject to a Sheriff's Tax Sale from this cease for the taxes owned and legal expenses.
34. As stated in the Court Order of Judge Giordano, the City is able to obtain the property for much less than its true value.
35. The filing of the City of Bethlehem by the Portnoff Law Firm, omitting the United States Government as a defendant with a possible beneficial interest in the property of the Petitioner, even after being informed by the Petitioner of the United States liens on the property is another indication of the disregard and contempt for the rule of law by the City of Bethlehem.
36. As well, the continued harassment and fraudulent and corrupt legal actions and actual physical damage inflicted by the City on the Petitioner's Property continue to supposedly drive down the value of the property on which the tax is based.
37. Also, with regard to whether the Petitioner's response satisfies the requirements of an Affidavit, the submitted brief presented in sworn testimony in court should carry the same weight as an Affidavit.
38. Judge Giordano could have advised the Petitioner, as he did the City Lawyer, to amend the pleading to follow the desired form, including the counter complaint.
39. The corruption prosecution actions by the United States of America in the neighboring city of Allentown continues.
40. Mayor Pawlowski's assistant, Dougherty, along with numerous others has now pled guilty to fraud and corruption. In return, he hopes to get a reduced sentence for testifying against Pawlowski.
41. The trial of the mayor himself for 54 Counts of Fraud and Corruption is now scheduled for January 2018.
42. The prosecuting Attorney, U.S. Attorney Louis Lappen is now the one involved with Petitioner in this case.
43. Many of the charges against the City Officials involve soliciting and accepting bribes for obtaining city contracts from suppliers of goods and services.
44. It is apparently the case, as the FBI has been demonstrating, that it is a requirement that a bribe be given in order to obtain a contract with the city.
45. As Portnoff Company, the Plaintiff's Attorney, has a contract for collecting taxes in the City of Allentown. Their offices in Allentown are located next to the NIZ tax free zone used by developers in the City to finance their project, which required the seizing of properties firmly on the land used for Development.
46. This is the same situation confronting the defendant with the City determine to seize his properties to turn them over to a developer.
47. It is extremely likely that Portnoff is involved in the corruption in Allentown in enabling the seizure of properties there.
48. It is also very likely that Portnoff was soliciting and receiving bribes from the City of their services.

49. The outcome of these cases could have broad sweeping implications for urban development and that of our society as a whole.

CONCLUSION

The petitioner request appropriate compensation for the pain and suffering inflicted in the course of the extended litigation to counter fraudulent and corrupt attempts to unlawfully seize his property.

Respectfully Submitted,

Dr. Alvin S. Kanofsky

APPENDIX E

ATTORNEY DADAY BRIEF

IN THE COURT OF COMMON PLEAS
NORTHAMPTON COUNTY, PA

PORTNOFF LAW ASSOCIATES, LTD
BY: ROBERT P.DADAY, ESQ. ATTORNEY FOR
PLAINTIFF. ATTORNEY ID 43006
1030 W. WALNUT STREET
ALLENTOWN, PA 18102
484 600 9317

IN THE COURT OF COMMON PLEAS
NORTHAMPTON COUNTY, PA

NO. C48CV-2016-02328
CIVIL ACTION – IN REM

Bethlehem Area School District

Plaintiff

Vs.

Alvin S. Kanofsky
United States of America

Defendants

**MOTION FOR JUDGEMENT FOR WANT OF SUFFICIENT AFFIDAVIT OF
DEFENSE PURSUANT TO 53 P.S. SEC 7271**

Plaintiff, Bethlehem Area School District (School District) by and through its counsel, hereby files this Motion for Judgment for Want of Sufficient Affidavit of Defense Pursuant to 53 P.S. Sec. 7271 against the Defendant. In support of its Motion, Plaintiff avers the following:

1. On March 28, 2016, Plaintiff filed a tax claim for delinquent 2014/2015 School real Estate taxes in the amount of \$2,448.35 (the "Tax claim") against Defendant's real property located at 32 E. 3rd Street, Bethlehem, Pennsylvania, Tax Parcel No. P6SE1A 11 9 (the "Property") pursuant to the

provisions of the Municipal Claims and Tax Liens Act, P.S. Sec 7101, et seq. (the "MCLTLA")

2. On April 18, Plaintiff filed a Writ of Scire Facias (the "Writ") against Defendant's based upon the Tax Claim.
3. On April 20, 2016, the Sheriff of Northampton County served a copy of the Writ upon the defendant personally.
4. On May 10, 2016, Defendant filled an Affidavit of Defense and Counter Complaint (the "Affidavit"). A true and correct copy of the Affidavit and Counter Complaint is attached here too as Exhibit "A"
5. In the Affidavit, Defendant alleges that the School District has been in litigation with the Defendant over the ownership of the Property. Furthermore, the Defendant alleges that Dennis Benner desires his properties. Defendant also makes reference to the FBI investigation in the Lehigh Valley.
6. Defendant raises a defense that his taxes need to be reduced and lifted from the property. This defense is irrelevant.
7. Further, Plaintiff's Counsel sent Defendant a certified notice of this obligation on Plaintiff's behalf on February 9, 2015, pursuant to the requirements 53 P.S. Sec 7106, and defendant signed for the certified mailing on February 18, 2015. Plaintiff's counsel has received no contact from the defendant since sending that letter. A true and correct copy of the letter and the USPS return receipt is attached here to as Exhibit "B"
8. P.S. 7271 provides in part:

If no Affidavit of defense be filed within the time designated, judgment may be entered and damages assessed by the Prothonotary by defraud , for want thereof. Such. Assessment shall include a fee for collection to the plaintiff's attorney in accordance with section 3.

If an Affidavit of defense by filed, a rule may be taken for judgment for want of sufficient Affidavit of defense, or for so much of the claim as is insufficiently denied, with leave to proceed for the residue.

10. 53 P.S. Sec 7187 provides:

Tax claims and municipal claims shall be prima facie evidence of the facts averred therein in all cases, and the averments in both tax and municipal claims shall be conclusive evidence of the facts averred therein, except in the particulars in which those averments shall be specifically denied by the Affidavit of defense or amendment thereof duly allowed. A compulsory non-suit upon trial, shall be equivalent to a verdict for defendant, whether the plaintiff appeared or not. If plaintiff recovers a verdict, upon trial, in excess of the amount admitted by the defendant in his Affidavit of defense or pleading, he shall be entitled to reasonable attorney fees for collection in accordance with section 3. Ref. 1

11. Defendant has insufficiently denied the allegations contained in the Writ of Scire Facias. Ref. 2
12. Pursuant to 53 P.S. Sec 7106 7143, As well as ordinances of the Plaintiff, interest, charges, expenses, and fees incurred in the collection of delinquent tax claims become part of the tax lien including reasonable attorneys' fees. A true and correct copy of the relevant ordinances are attached her to as Exhibit "C"
13. The balance due as of the date of this Motion, including interest, charges, expenses, fees, and attorneys' fees assessed pursuant to the provisions of the MCTLA, is broken down as follows:
 - a. Face amount of Tax Claim: \$1,789.75
 - b..Penalty ;\$179.98
 - c. Attorney's Fees \$690.
 - d. Court Costs: \$94:50
 - e. Notice Expense and postage \$45.13
 - f. Interest 104.64 as of October 4, 2016
 - Total Balance due: \$2,903.00
14. In addition to filing an Affidavit of Defense, Defendant has filed a counter complaint presumably against Plaintiff.
15. The Municipal Claims and Tax Liens Act 53 P.S. 7101 et. Seq., is a statutory appeal process and does not authorize a counter complaint as a defense to a Writ of Scire Facias and must be denied by the court.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court issue a Rule upon the defendant to show cause why judgment should not be entered in favor of Plaintiff and against the Defendant in the amount of \$2, 903., plus any additional charges, expenses or fees that are incurred if a hearing must be held in this matter, including reasonable attorney fees and future interest at a rate of 10% per annum on the principal balance of \$1,968.73 dating from October 4 pursuant to 53 P.S. Sec. 7143. Further, Plaintiff requests that the Counter Complaint be denied.

Respectfully Submitted

PORTNOFF LAW

ASSOCIATES, LTD

Date: 10/7/16.

BY: ROBERT P. DADAY, ESQUIRE
Attorney for Plaintiff

Ref. 1: 53 P.S. Sec 7106

Ref.2: A property owner's Affidavit of defense must contain allegations that are sufficiently certain and definite to rebut the allegations in the municipal claim. *Enteral Municipal Authority v. Yuhas* 572. A 2d 1251 (Pa. Super. 1990); *Borough of Fairview v. Property Located at Tax Index No. 48-67-4. 70 Pa. Cmwlt. 636 , 453 A.2d. 728, n.3(1982).*