

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-081

DECEMBER TERM, 2001

Ronald and Marylou Saldi	}	
	}	
v.	}	APPEALED FROM:
	}	
Donald E. and Janet W. Merchant	}	Orange Superior Court
	}	
v.	}	DOCKET NO. 148-10-98 Oecv
	}	
Department of Taxes	}	Trial Judge: Alan W. Cook
	}	
	}	

In the above-entitled cause, the Clerk will enter:

The Department of Taxes appeals the judgment of the superior court concluding that the tax lien filed by the Department against property located in the Town of Williamstown, previously owned by Donald and Janet Merchant and presently owned by Ronald and Marylou Saldi, is invalid. The Department argues on appeal that it properly adhered to the notice requirements in 32 V.S.A. 3756(c) regarding enrollment of the property in the use value appraisal (current use) program. Additionally, the Department argues that the trial court's findings of fact are inadequate for the purposes of review and are unsupported by the record. We affirm.

The testimony at trial revealed the following. Donald and Janet Merchant purchased a piece of undeveloped property in the Town of Williamstown from Ronald and Marylou Saldi in 1989. The Merchants attempted to turn the land into an environmental reserve in 1997 and formed a non-profit organization, named Dynah's Quest, in furtherance of this plan. Early in 1997, the Merchants hired Paul Harwood, a consulting forester, to develop a current use plan for the property and apply to enroll the property in the current use program. Harwood prepared the application, which was signed by the Merchants, and submitted it to the Property Valuation and Review (PVR) division of the Department in August 1997. Because Harwood was under the impression that Dynah's Quest was already the owner of the parcel, however, Harwood listed the non-profit as the landowner.

In December 1997, PVR sent a letter to Dynah's Quest, in care of the Merchants, indicating that the application was not complete, requesting certain required maps, and noting the application otherwise would be withdrawn from consideration. Donald Merchant testified that when he received the December letter, he took it to be a rejection and does not recall speaking with Harwood about responding to or following up on the letter. Nevertheless, Harwood did send the requested maps.

Having received the necessary maps, PVR proceeded to process the application. PVR approved the application on April 15, 1998. William Snow, of PVR, testified that once all the current use applications are approved on April 15, PVR's standard practice is to send the approved applications out in that day's mail. PVR also sends a copy of the approved application to the Town in which an enrolled parcel is located. The application is then filed in the land records and constitutes a lien on the property to secure the future payment of the land use change tax in the event the property is ever developed. 32 V.S.A. 3757(f). In this case, the Williamstown town clerk testified that she did not receive the approved application until April 22, 1998. She stated that, because the landowner listed on the application was Dynah's Quest, she indexed the application under that name and not the Merchants.

Donald and Janet Merchant testified that neither one of them ever received a copy of the approved application in the mail, and, because of the December letter, they were under the impression that their application was not processed. In

fact, because of financial difficulties, the Merchants had decided to sell the property in roughly December 1997 or January 1998 and had contacted the Saldis to see if they were interested in purchasing the property back. The Merchants and the Saldis entered into a purchase and sale agreement in March 1998 and the Saldis closed on the parcel in May 1998. Ronald Saldi had sought a title opinion on the property, but it did not reflect a lien on the parcel, presumably because the lien was not indexed under the Merchants' name, but rather under "Dynah's Quest." The Department of Taxes learned of the sale and contacted both the Saldis and the Merchants in late summer of 1998 regarding the parcel's continued enrollment in the plan and a potential penalty stemming from the sale of the property. Both the Merchants and the Saldis testified that this was the first time either group learned of the parcel's enrollment in the current use program, and any attendant lien on the property.

The Saldis brought suit against the Merchants because the Merchants had warranted the deed and had not disclosed the presence of any encumbrances on the property. The Merchants successfully sought to join the Department as an indispensable party. After a hearing on the matter, the trial court entered judgment for the Merchants, concluding that the lien was not valid. It stated on the record its reasons for doing so. The Department requested additional findings, and the court denied the request, noting that it had made sufficient oral findings at the conclusion of the hearing.

The Department argues that, contrary to the trial court's conclusion, 32 V.S.A. 3756(c) (governing notice of eligibility for the current use program) merely requires that PVR mail notice to landowners by April 15, rather than actual notice by April 15. The Department also argues that the trial court erroneously denied its motion for specific findings of fact and that the oral findings by the court at the close of the hearing are not sufficient to allow review by this Court. Finally, the Department argues that those limited findings are not supported by the record.

"The trial court has a fundamental duty to make all findings necessary to support its conclusions, resolve the issues before it, and provide an adequate basis for appellate review." Sec'y, Agency of Natural Res. v. Irish, 169 Vt. 407, 419, 738 A.2d 571 (1999) (citing V.R.C.P. 52(a)). These findings need not appear in writing, however. V.R.C.P. 52(a)(2) ("It will be sufficient if findings of fact and conclusions of law are stated orally and recorded in open court following the close of evidence . . ."). At the conclusion of the hearing, and after conferring with the two assistant judges sitting on the case, the trial court in this case stated on the record that it had found that the Department's lien was not valid. It indicated that it did so because it had determined that the notice provided by the Department to the Merchants was "inadequate in a number of ways." It then stated that its determination of inadequacy was based not only on its legal conclusion that actual notice was required by April 15 under 3756(c), but was based also on its factual finding that the Department had not even mailed the approved application by April 15. Finally, the trial court stated that it also concluded that the lien was not valid because it was not properly recorded. These statements both adequately explain the alternate bases for the court's decision in the Merchants' favor, and are specific enough to allow this Court to review its decision.

With respect to the merits of that decision, we will accept for the sake of argument that mailing of the notice by April 15 is sufficient to satisfy 3756(c). Nevertheless, because the court's factual determination that the Department did not even meet this notice requirement is supported by evidence in the record, we must affirm. See Highgate Assocs. v. Merryfield, 157 Vt. 313, 315, 597 A.2d 1280, 1281 (1991) (a trial court's findings of fact must stand unless, viewing the record in the light most favorable to the prevailing party and excluding the effect of modifying evidence, there is no credible evidence to support the findings). If the Department failed to provide adequate notice of the approval and the attendant lien to the Merchants, the lien is not valid. Cf. Town of Bristol v. United States ex rel. the Small Bus. Admin., 315 F. Supp. 908, 911-12 (D. Vt. 1970) (town failed to perfect lien against personal property to secure payment of taxes under statute requiring notice to owner when filing lien).

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

James L. Morse, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice