

COMMISSION AGENDA:

12.16.08 #22c

TO: The Honorable Chairman and Members of the Board of County Commissioners

FROM: James L. Bennett, County Attorney

JB

SUBJECT: Authority to Defend in the Case of Mark Roesch vs. Robert Binder, Rent To Own Leasing Co. Inc., John Lloyd, Stephen King and Lou Katz and Ken Burke, Clerk of Court, Pinellas County, Florida
Circuit Civil Case No. 08-016741-CI-020

DISTRIBUTION: The Honorable Ken Burke, Clerk of the Circuit Court

DATE: December 16, 2008

RECOMMENDATION: I RECOMMEND THAT THE BOARD OF COUNTY COMMISSIONERS AUTHORIZE THE COUNTY ATTORNEY'S OFFICE TO DEFEND THE ABOVE-STYLED CASE ON BEHALF OF THE CLERK OF THE CIRCUIT COURT.

DISCUSSION: This case involves a claim that the Clerk of the Court conducted a sale of a tax deed without providing adequate notice to the property owner of the impending sale, thereby adversely affecting the owner's right to redeem. The Plaintiff seeks to "unwind" this sale, re-securing title from the purchasers. The Clerk of the Court complied with Florida statutes relevant to providing notice of the impending sale to the Plaintiff. The Plaintiff contends Due Process requires that unspecified additional efforts giving notice were required.

After serving this lawsuit, and without notice to the Clerk, the Plaintiff settled the case with the other Defendants for \$30,000.00 and re-secured title to the property. That act now renders the current claims moot. However, the Plaintiff has now advised the County Attorney's Office that he will now seek to imposed that sum as "damages" by upon the Clerk amending the lawsuit. This threatened claim has no current support in law and should be defended.

JLB:TES

Attachment

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IN THE CIRCUIT COURT OF PINELLAS COUNTY FLORIDA
CASE NO 08-

MARK ROESCH
Plaintiff

V

ROBERT BINDER, RENT TO OWN LEASING CO, INC, JOHN LLOYD, STEPHEN
KING AND LOU KATZ AND KEN BURKE, CLERK OF COURT, PINELLAS
COUNTY, FLORIDA
Defendants

COMPLAINT

Comes Now the Plaintiff and sues the Defendants, Robert Binder, Rent to Own Leasing Co, Inc John Lloyd, Stephen King and Lou Katz,(hereafter referred to as Buyer) and the Clerk of Court, Pinellas County, Florida, and states the following:

1. That the within matter is a suit to set aside a tax deed sale which occurred on October 29, 2008..
2. That the Plaintiff owned the property located at 8068 27th Avenue N., St Petersburg, Florida and same is not his homestead property.
3. That the Defendants, Buyer, were the purchaser of the tax deed issued by the Defendant, Ken Burke, Clerk of Court, on October 29, 2008
4. That Ken Burke is the elected Clerk of Court, Pinellas County, Florida has the jurisdiction and statutory responsibility for discharging its duties and completing tax deed sales.
5. That Section 197 F.S. governs the duties of the Clerk of Court in handling the tax deed sales in Pinellas County Florida
6. A review of the procedures taken by the Clerk of Court for handling the tax deed for the above property includes the following:

a. That the Clerk is to deliver a notice to the Sheriff stating that the property will be sold at a tax deed sale and that the Sheriff shall post a copy of the notice in a conspicuous place at the legal titleholder's last known address.

7. The Plaintiff visits the property on a regular basis and no time after September 19, 2008, the date noted on the envelope returned to the Clerk of Court, and did not find a notice posted in a conspicuous place.

8. The Plaintiff attaches his affidavit in support of the Complaint and a copy of same is attached hereto, marked Exhibit A and made a part hereof.

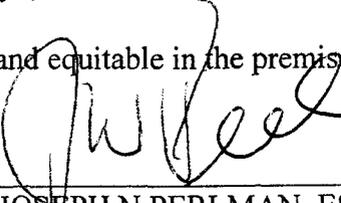
9. The Clerk of Court did send by certified mail the notice required by law and said envelope was marked "return to sender...vacant....unable to forward,"; a copy of the envelope is attached hereto, marked Exhibit B and made a part hereof.

10. The Plaintiff maintains a residence in Pinellas County as well as other investment properties and upon placing his name in the records of the Clerk of Court the Clerk of Court would have found his name and his residence address.

11. The Plaintiff was denied due process when the Clerk failed either to send the letter by ordinary mail or to look in the public records to see if the Plaintiff owned property in Pinellas County Florida in order to determine if there was another address for the Plaintiff.

12. Based on the foregoing the conveyance to the Buyer by the Clerk of Court must be set aside.

Wherefore, Plaintiff prays that the conveyance of the tax deed by the Defendant, Ken Burke, Clerk of Court, to the Defendants, Robert Binder, Rent to Own Lease Inc, Lou Katz , Stephen King and John Lloyd, be set aside and held for naught, attorney fees and costs and for any other relief just and equitable in the premises.



JOSEPH N PERLMAN, ESQ
1101 BELCHER RD S UNIT B
LARGO, FL 33771
FBN: 376663
TEL: 727 536 22711/FAX 536 2714

IN THE CIRCUIT COURT OF PINELLAS COUNTY FLORIDA
CASE NO 08-

MARK ROESCH
Plaintiff

V

ROBERT BINDER, RENT TO OWN LEASING CO, INC, JOHN LLOYD, STEPHEN
KING AND LOU KATZ AND KEN BURKE, CLERK OF COURT, PINELLAS
COUNTY, FLORIDA
Defendants

AFFIDAVIT

State of Florida
County of Pinellas

The undersigned being first duly sworn according to law deposes and says the
following of his own personal knowledge:

1. Affiant is the owner of the property located at 8086 27th Ave N, St Petersburg, Fl
up until October 29, 2008 when the property was sold at a tax deed sale.
2. Affiant purchased the subject property on April 14, 2005.
3. During the time period that affiant owned the property it was
either leased to third parties or has remained vacant.
4. The subject property has been vacant for over 3 months and during
the time that the property was vacant the affiant visited the property on
many occasions to check for security reasons and for maintenance purposes, including
payment of utilities and lawn maintenance.
5. Affiant visited the property numerous times since September 19, 2008 and
at no time did affiant see any notice of any kind posted by the Sheriff of Pinellas
County Florida stating that the property was going to be sold at a tax deed sale
scheduled for October 29, 2008.

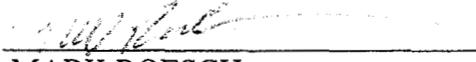


6. Affiant had listed the property for lease with a licensed realtor and a sign had been placed on the property indicating it was for sale.

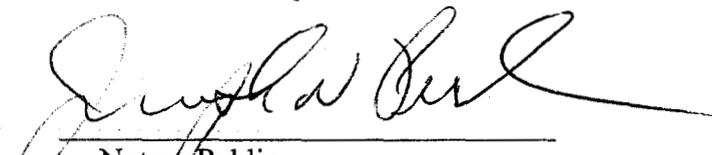
7. Affiant owns over 13 properties in Pinellas County Florida and the deeds on all of the properties either list affiant's home address or affiant's business address on said deeds.

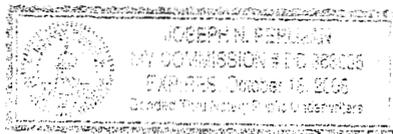
8. Affiant has never received any notification at any time from the Clerk of Court or Tax Collector stating that real estate taxes were due and owing.

Further affiant sayeth not


MARK ROESCH

Before me, a notary public, appeared Mark Roesch who voluntarily executed this affidavit this 3 day of November, 2008, who is personally known to me.


Notary Public



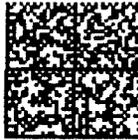
CERTIFIED MAIL

MM

KEN BURKE
PINELLAS COUNTY
CLERK OF THE CIRCUIT COURT
TAX DEED/OFFICIAL RECORDS DEPART
315 COURT STREET, RM 163
CLEARWATER, FLORIDA 33756-5165



7001 1940 0002 5693 5310



Hasler

016H16503794
\$05.320
09/19/2008
Mailed From 33756
US POSTAGE

RECEIVED
RECORDING DEPT
2008 OCT 26 PM 1:07
K. BURKE
CLERK OF THE CIRCUIT COURT
UAC

2006-04344 10/29/2008
MARK ROESCH
8086 27TH AVE N
ST PETERSBURG, FL 33710

NIXIE 337 SE 1 07 10/02/08

RETURN TO SENDER
VACANT
UNABLE TO FORWARD

BC: 33756516538 *2474-00463-02-15

3371032555-00025



B

TAX DEED
(SEC 197.552 F.S.)

STATE OF FLORIDA
COUNTY OF PINELLAS

TAX DEED NO.
01137

KNOW ALL MEN BY THESE PRESENTS: That Tax Certificate number 04344 issued the 1st day of June, A.D., 2006 was duly filed in the Office of the Clerk of the Circuit Court of this County and application made for the issuance of a tax deed thereon; and the applicant having paid or redeemed all other taxed on the lands hereinafter described required by law to be paid or redeemed, and the costs and expenses of this sale; and due notice of sale having been published as required by law, and no person entitled so to do having appeared to redeem said lands; such lands were on the 29th of October, 2008, offered for sale at the Courthouse door for cash to the highest bidder, and was then and there struck off and sold to:

**ROBERT A. BINDER, RENT TO OWN LEASING CO., INC., JOHN LLOYD,
STEPHEN B. KING, LOU KATZ**

**36 MIDWAY ISLAND
CLEARWATER, FL 33767**

they, being the highest bidder for the same and having paid the sum of their bid.

NOW THEREFORE, the County of Pinellas, State of Florida, in consideration of the premises, and in consideration of the sum of (76,510.00) seventy-six thousand five hundred ten and xx / 100 being the amount paid upon the said tax certificate and for costs and charges, and in pursuance of the statutes in such cases made and provided, has given, granted, bargained and sold, and does hereby give, grant, bargain and sell, and convey to the said **ROBERT A. BINDER, RENT TO OWN LEASING CO., INC., JOHN LLOYD, STEPHEN B. KING, LOU KATZ**, and to their heirs and assigns forever, to their own proper use, benefit and behoof the following lands situated in the County and State aforesaid and described as follows:

JUNGLE TERRACE SEC B BLK 12, LOT 6

PARCEL #: 12/31/15/44910/012/0060

said lands shall continue subject and liable for any unpaid general taxes of equal dignity with county taxes represented by the certificate above described.

This instrument prepared by:
KEN BURKE
Clerk of Circuit Court
315 Court Street
Clearwater, FL 33756
By: **KELSEY KENDALL**
Deputy Clerk

KEN BURKE, CLERK OF COURT
PINELLAS COUNTY, FLORIDA
MSTR 20080408 10/29/2008 at 12:31 PM
OFF REC BK: 16416 PG: 1229-1608
DocType: DEED RECORDING: 16416
D DOC STAMP: 9534.28

IN TESTIMONY WHEREOF, by virtue of authority in me vested by law, and for and on behalf of the County of Pinellas, State of Florida, I, the undersigned as Clerk of the Circuit Court for the County and State aforesaid, have executed this deed and have hereunto set my official signature and seal, at Clearwater, in the County of Pinellas, State of Florida, on this 29th day of October, A.D., 2008.

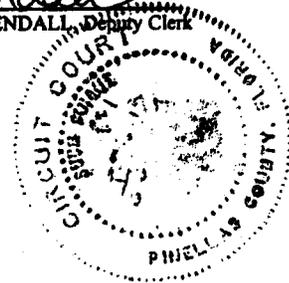
Signed, sealed and delivered in the presence of:

Anita Greco
Witness, ANITA GRECO

Marion Michael
Witness, MARION MICHAELS

KEN BURKE
Clerk of the Circuit Court
Pinellas County, Florida

By Kelsey Kendall
KELSEY KENDALL, Deputy Clerk

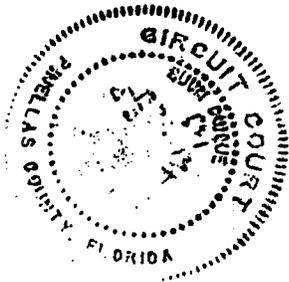


STATE OF FLORIDA
COUNTY OF PINELLAS

On this on this 29th day of October, A.D., 2008, before me a notary, personally appeared KELSEY KENDALL (personally known to me and did not take an oath) as a Deputy Clerk for KEN BURKE, Clerk of the Circuit Court in and for the State and County aforesaid, to me known to be the deputy clerk described in, and who executed the foregoing instrument, and acknowledged the execution thereof to be his/her own free act and deed for the use and purposes therein mentioned, and in the capacity therein indicated.

Witness my hand and official seal date aforesaid.

Daniel Magesnicki
DANIEL MAGEENICKI, Deputy Clerk





Transaction #: 1336511
 Receipt #: 1396710
 Cashier Date: 10/29/2008 3:33:51 PM
 (CLKDMC5)



Print Date:
 10/29/2008 3:33:52 PM

(727) 464-4876

Customer Information	Transaction Information	Payment Summary
0 ROBERT A BINDER	Date Received: 10/29/2008 Source Code: Clearwater Q Code: Clearwater Return Code: Over the Counter Trans Type: Search Agent Ref Num:	Total Fees \$76310.00 Total Payments \$76310.00

1 Payments	
CHECK 14052479	\$76310.00

0 Recorded Items

0 Search Items

2 Miscellaneous Items		
(MISC) Misc		
(TAX DEED) TRIBUTE 2006		
Tax Deed Deposit	76310	\$76310.00
Service Charge Tax Deed	0	\$0.00
Postage Tax Deed	0	\$0.00