

STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

FILED

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ONSLOW COUNTY, O.S.C.

BY \_\_\_\_\_

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 04 CVS 2016

ONSLOW COUNTY  
Plaintiff.  
VS.

E-COMMERCE SUPPORT  
CENTERS, INC.  
Defendant.

**ORDER**

A TRUE COPY  
CLERK OF SUPERIOR COURT  
ONSLOW COUNTY  
BY *[Signature]*  
Assistant Deputy, Clerk Superior Court

This matter came on to be heard pursuant to N.C.G.S. § 105-368(f). After reviewing the file, having had an opportunity to hear and observe each witness in order to determine the weight and credibility to give to their testimony, and having considered the arguments of counsel for both Onslow County, the plaintiff, and E-commerce Support Centers, Inc. (hereinafter "E-Com"), the defendant, the court finds the following facts have been proven by a preponderance of the evidence:

1. E-Commerce Support Centers, Inc. has been in operation in Onslow County, North Carolina since December 21, 2000 when it became a wholly owned subsidiary of Paladyne Corporation. The registered agent for E-Com is James Rapp whose address is 1650A Gum Branch Road in Jacksonville, N.C.
2. On August 13, 2003, the plaintiff, pursuant to N.C.G.S. § 105-312, sent by certified mail to E-Com at 1650A Gum Branch Road, Jacksonville, N.C. a listing and tentative appraised value for "discovered" business personal property owned by the defendant corporation for taxable years 1998 to 2003 in the amount of \$1,000,000.00 per year. (See defense exhibit "B") This tentative appraised value was set by Onslow County

Tax Administrator Harry Smith who based it on a comparison of similar property and his twelve years of experience in the area of appraisal and collection of county taxes. The receipt of this notice was acknowledged by E-Com and was evidenced by the Receipt for Certified Mail (see defense exhibit "C") signed by Catherine Kiston who worked in the mail-room where E-Com received and distributed its mail along with other businesses. The notice advised the defendant that the "above listing and appraisal will become final unless a written exception is filed with this office [Office of Tax Administration] within 30 days of this notice." No written exception was filed by the defendant within the time allowed.

3. Not having received a written exception, the plaintiff on June 1, 2004, more than nine months after the notice of discovered property was sent, pursuant to N.C.G.S. §105-368, sent to E-Commerce Support Centers, Inc., Terrence J. Leifheit, president and c.e.o., and RBC Centura Bank a Notice of Attachment and Garnishment for funds (see defense exhibit "D") which the defendant had on deposit in the amount of \$109,606.69. The notice provided that the account was being attached for unpaid ad valorem taxes, interest, and cost for tax year 2003. A copy of the Notice of Attachment and Garnishment was hand delivered to a representative of RBS Centura Bank on June 1, 2004.
4. This notice of Attachment and Garnishment was received by E-Com on June 4, 2004 as evidenced by the Receipt for Certified Mail signed by Scott Schwartz (see defense exhibit "E"), a mailroom clerk for the defendant.
5. Terrence J. Leifheit had previously resigned his position as president and c.e.o. of the defendant corporation on April 10, 2004. This resignation was unknown to the

plaintiff. At the time of the notice of attachment and garnishment in June of 2004, the last annual report filed by the defendant in 2003 with the North Carolina Secretary of State indicated that Terrence Leifheit, 1650 A Gum Branch Road, Jacksonville, N.C. was president of E Commerce Support Centers, Inc.

Based upon the foregoing, the court concludes as a matter of law that:

1. N.C.G.S. § 105-306(a) requires the owner of taxable personal property to list that property in the name of owner. Subsection (c)(3) requires that corporate personal property be listed in the name of the corporation. The county tax assessor has the duty to discover and assess all personal property not properly listed during the regular listing period so it might be taxed. N.C.G.S. § 105-312(b).
2. The defendant corporation failed to list its business personal property as required by N.C.G.S. § 105-306(a). As provided in N.C.G.S. § 105-312(d), the assessor listed the personal property of the defendant in the name of the defendant corporation. The business personal property of the defendant listed in the August 13, 2003 notice does not fall within any exclusion of N.C.G.S. §§ 105-274 or 105-275 and is subject to taxation by the county.
3. N.C.G.S. § 105-312 delineates the procedure to be followed by the assessor when the assessor discovers unlisted property. It requires that the notice to the taxpayer contain: “(1) the name and address of the person in whose name the property is listed; (2) a brief description of the property; (3) a tentative appraisal of the property; and (4) a

statement to the effect that the listing and appraisal will become final unless written exception thereto is filed with the assessor within 30 days from date of the notice.”

4. The August 13, 2003 notice of discovered property, sent by the plaintiff and received by the defendant, complies with the statutory requirements of N.C.G.S. § 105-312(d). There is no requirement that this notice be served in accordance with the service requirements of Rule 4 of the Rules of Civil Procedure or that it be sent to the registered agent or an officer or director of E-Com.
5. N.C.G.S. § 105-368 governs the procedure for attachment and garnishment. It requires that the tax collector serve or cause to be served upon the taxpayer and the person having in his possession the property to be attached a notice which may be personally served by any deputy or employee of the tax collector. Service may be also achieved by any officer having authority to serve summonses, or by complying with Rule 4 of the North Carolina Rules of Civil Procedure. The plaintiff achieved personal service upon RBC Centura Bank by delivery of the notice (defendant’s exhibit “B”) by a deputy county tax collector. It is required that the notice contain: (1) the name of the taxpayer, and if known ...his federal tax identification number and address; (2) the amount of the taxes, penalties, interest and costs and the year or years for which the taxes were imposed; (3) the name of the taxing unit or units by which the taxes were levied; (4) A brief

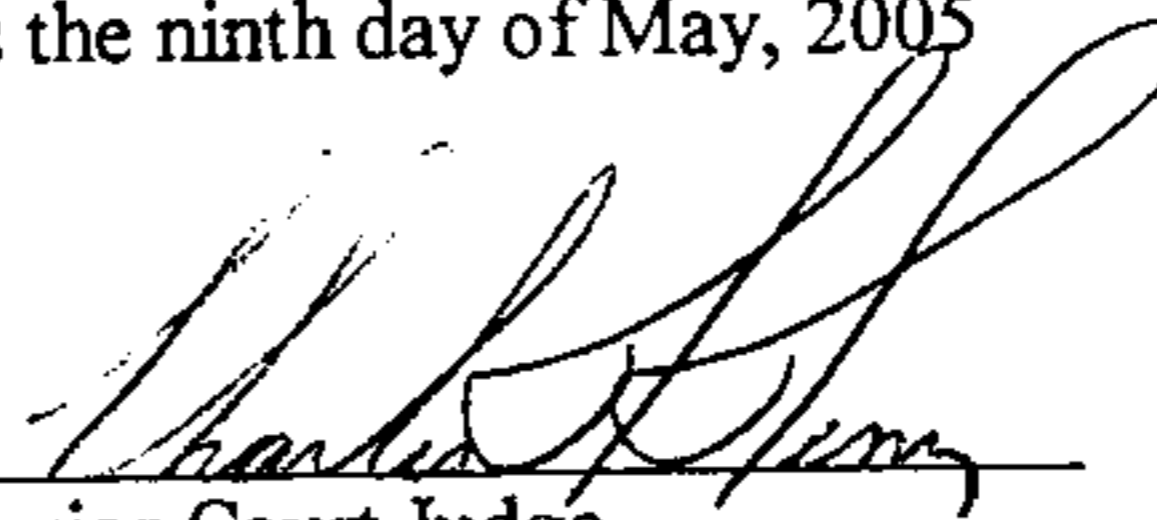
description of the property sought to be attached; and (5) a copy of the applicable law. The June 1, 2004 notice of attachment and garnishment, sent by the plaintiff and served on RBC Centura Bank, complies with the statutory requirements of N.C.G.S. § 105-368(b).

6. The notice of attachment and garnishment was sent by certified mail to the defendant corporation and Terrence S. Leifheit, president and c.e.o. It was signed for by Scott Schwartz, a mail room clerk for the defendant. Mail service under Rule 4(c)(2) is deemed completed upon receipt of the signed form of acknowledgement of service. A person authorized to receive mail is also under North Carolina law an authorized agent for purposes of receiving service of process. *Capstar Corporation v. Pristine Industries, Inc.*, 768 F. Supp. 518 (W.D.N.C. 1991), N.C.R.C.P. 4 (j2) (2). The June 4, 2004 notice of attachment and garnishment mailed to the defendant corporation complies with the service requirements of Rule 4(j)(6) of the Rules of Civil Procedure as required by N.C.G.S. § 105-368.
7. The defendant has failed to show pursuant to N.C.G.S. § 105-381(a)(1) a valid defense to the enforcement of the collection of the tax. There was no clerical error which “applies only to transcription errors” or mistakes in writing or copying. This mistake must ordinarily “be apparent on the face of the instrument” and must be unintended. *Ammons v. County of Wake*, 127 N.C. App. 426, 429, 490 S.E.2d 569, \_\_\_ (1997), cert. denied, 347 N.C. 670, 500 S.E.2d 84 (1998). There

was also no showing that the tax imposed was an illegal tax or a tax levied for an illegal purpose. "A tax or assessment is invalid or illegal only when the taxing body lacks the authority to impose the tax, as where the rate is unconstitutional or the subject is exempt from taxation". *Reeves Bros. v. Town of Rutherfordton*, 15 N.C. App. 385 , 391,(1972), rev'd on other grounds, 282 N.C. 559, 194 S.E.2d 129 (1973).

Based upon the foregoing, it is ORDERED that the defendant's defenses to the attachment and garnishment notice are without merit and are hereby DISMISSED.

This the ninth day of May, 2005

  
Superior Court Judge