

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Haigh M. Porter, Master-in-Equity

Case No. 2018-CP-21-02191
Appellate Case No. 2021-001185

Ronald Edwin Barfield, Plaintiff,

v.

The Corner Store, Inc., and all persons claiming any right, title, estate interest in or lien upon the real estate described; any unknown adults and those persons who may be in the military service of the United States of America, all of them being a class designated as John Doe, whose true name is unknown; any unborn infants or persons under disability being a class designated as Richard Roe, whose true name is unknown, United States of America, and Paige Holsapple as Florence County Delinquent Tax Collector Defendants,

Of Whom Ronald Edwin Barfield, The Corner Store, Inc., and all persons claiming any right, title, estate interest in or lien upon the real estate described; Any unknown adults and those persons who may be in the military service of the United States of America, all of them being a class designated as John Doe, whose true name is unknown; any unborn infants or persons under disability being a class designated as Richard Roe, whose true name is unknown, United States of America, and Paige Holsapple as Florence County Delinquent Tax Collector Respondents,

And

Nilesh Patel, as Trustee of Anjay R. Patel Irrevocable Trust Agreement Dated December 18, 2000 Appellant.

FINAL BRIEF OF APPELLANT

TABLE OF CONTENTS

Table of Authorities	ii
Statement of the Issue on Appeal	1
Statement of the Case	1
Standard of Review	3
Arguments	3
1. Did the Master-in-Equity err in his failure to find that the federal forfeiture of the subject property should have prevented the tax sale?	4
2. Did the federal government’s release of the subject property from the forfeiture years after the tax sale cure the defect of selling the subject property while under federal forfeiture?	8
3. Did the Master-in-Equity err in finding the tax sale was valid?	10
4. Did the Master-in-Equity err in apply the statute of limitations in S.C. Code Ann. §23-51-160?	15
Conclusion	16

TABLE OF AUTHORITIES

CASES

Bryan v. Freeman, 253 S.C. 50, 168 S.E.2d 793 (1969) 3
Donohue v. Ward, 298 S.C. 75, 378 S.E.2d 261 (Ct.App.1989) 0,15
Good v. Kennedy, 291 S.C. 204, 352 S.E.2d 708 (1987) 15
Hawkins v. Bruno Yacht Sales, 242 S.C. 31, 577 S.E.2d 202 (2003)10, 11, 12
King v. James, 388 S.C. 16, 694 S.E.2d 35 (Ct.App. 2010) 9, 10
Rives v. Balsa, 325 S.C. 287, 478 S.E.2d 878 (Ct.App.1996) 10
Rowe v. Hyatt, 321 S.C. 366, 468 S.E.2d 649 (1996) 13
Smith v. Barr, 375 S.C. 157, 650 S.E.2d 486 3

STATUTES

Article VI, paragraph 2, United States Constitution 6
S.C. Code Ann. §12-51-40 11
S.C. Code Ann. §12-51-150 9, 12
S.C. Code Ann. §12-51-60 15
21 USCA §853(a) 5
21 USCA §853(c) 6, 7

STATEMENT OF THE ISSUES ON APPEAL

- I. Did the Master-in-Equity err in his failure to find that the federal forfeiture of the subject property should have prevented the tax sale?
- II. Did the federal government's release of the subject property from the forfeiture years after the tax sale cure the defect of selling the subject property while under federal forfeiture?
- III. Did the Master-in-Equity err in finding the tax sale was valid?
- IV. Did the Master-in-Equity err in applying the statute of limitations in S.C. Code Ann. §12-51-160?

STATEMENT OF THE CASE

Respondent Barfield filed a Lis Pendens, Summons and Complaint on August 14, 2018 seeking to confirm the tax sale and quiet the title of the subject property. (R. pp. 1-13). In the initial pleadings, Respondent Barfield named (1) The Corner Store, Inc., (2) all persons claiming any right, title, estate interest in or lien upon the real estate described, (3) any unknown adults and those persons who may be in the military service of the United States of America, all of them being a class designated as John Doe, whose true name is unknown, and (4) any unborn infants or persons under disability being a class designated as Richard Roe, whose true name is unknown as the initial defendants.

On or about September 25, 2018, Respondent Barfield filed an Amended Lis Pendens, and Amended Summons and Complaint adding the United States of America and Paige Holsapple as Florence County Delinquent Tax Collector ("Florence County") as additional defendants. (R. pp. 13-20). In the Amended Complaint, Respondent Barfield again sought to

have the tax sale confirmed and quiet the title to the subject property and also sought to have “This Court determines (sic) the respective rights of the Defendant United States of America and Plaintiff Ron Barfield to the property pursuant to the 2013 Order of Forfeiture and the responsibilities of the Defendants to reimburse the Plaintiff for costs incurred pursuant to this tax sale process.” (R. p. 19) Respondent Florence County filed an Answer on or about November 15, 2018 seeking to be dismissed from the action. (R. pp. 21-22). The United States of America filed an Answer on or about February 8, 2019 asking that its interests be protected. (R. pp. 23-24). Michele Dahl Sturkie, Esq. was appointed Guardian ad Litem on or about March 11, 2019.

A Summons and Summary of Complaint was published in The News Journal on March 20, 2019, March 27, 2019 and April 3, 2019. Appellant Nilesh Patel, Trustee of the Anjay R. Patel Irrevocable Trust dated December 18, 2000 (“Patel Trust”) filed a Motion under Rule 19 and Rule 24, SCRPC, on May 3, 2019, along with the Answer, Counterclaims against Barfield and Crossclaims against Florence County. (R. pp. 25-35). The Patel Trust sought to be added as a named defendant in this matter or be allowed to intervene as a named defendant in the matter. In the Counterclaims and Crossclaims, the Patel Trust sought to have the tax sale set aside on the grounds that the tax sale was defective, and the Property returned to The Corner Store, Inc. An Order naming the Patel Trust as a defendant in the matter was entered on June 11, 2021. The Patel Trust’s Answer, Counterclaim and Crossclaim was filed on July 16, 2021. A trial was held on July 20, 2021 before the Honorable Haig Porter as Master-in-Equity for Florence County and an Order was entered on September 17, 2021 granting relief for Barfield. (R. pp. 36-40).

The Property was released from the federal forfeiture in February 2021.

STANDARD OF REVIEW

“An action to remove a cloud on and quiet title to land is one in equity.” Bryan v. Freeman, 253 S.C. 50, 52, 168 S.E.2d 793, 793 (1969). An action to set aside a tax sale lies in equity. Smith v. Barr, 375 S.C. 157, 160, 650 S.E.2d 486, 488 (Ct.App.2007). When actions in equity are tried before a judge alone, the appellate court is free to find the facts according to its own view of the preponderance of the evidence. Id.

ARGUMENTS

Facts of the Case

This matter concerns real property located in Florence County and is described as follows:

All those certain pieces, parcels or lots of land lying, being and situate in the County of Florence, State of South Carolina, School District No. 13 and designated on a plat or map of the place known as Hyde Park as Lots 1, 2 and 3, which said map or plat was made for George M. McCown in November, 1946, by W.B. Cummings, Surveyor, and which plat is recorded in the office of the Clerk of Court for Florence County in Plat Book 1 at Page 74. Reference is also made to a map on Dimitri and Theodora Krasias by Nesbitt Surveying Co., Inc., dated June 12, 2002, and recorded in the above-mentioned office in Plat Book 79 at Page 229. Reference being had to said maps for a more complete and accurate description.

Florence County TMS: 90013-03-001

(“Property”). (R. p. 135).

The Property was conveyed to The Corner Store, Inc. by deed recorded in the Office of the Clerk of Court for Florence County in Deed Book B313 at page 124. (R. p. 135). Thereafter, The Corner Store, Inc. executed an Assignment of Rents and Leases to the Patel Trust on February 16, 2012 and it was recorded in the Florence County Clerk of Court on February 23, 2012 in Book B392 at page 235. It was rerecorded on April 2, 2012 in Book B397 at page 1118 to add the property description. (R. pp. 108-119).

In 2011, the United States Government indicted multiple individuals and/or entities under Criminal No.: 5:11CR00031 and the Property was forfeited under that indictment. (R. p. 147). The appropriate federal notices were sent to the Florence County Treasurer's office on or about November 26, 2013 (R. pp. 120-121).

The Property was sold at the Florence County Delinquent Tax sale on October 3, 2016. Ronald Edwin Barfield, Jr. ("Barfield") was the successful bidder at the tax sale. After the one-year redemption period expired, Florence County issued a tax deed to Barfield dated May 9, 2018 and said tax deed was recorded with the Florence County Clerk of Court's Office. (R. pp. 134-137).

I. Did the Master-in-Equity err in his failure to find that the federal forfeiture of the subject property should have prevented the tax sale?

In 2011 the United States Government indicted multiple people under Criminal No.: 5:11CR00031. As part of that indictment, the property which gave rise to the criminal activity for which they were indicted was forfeited to the federal government. The Property was one of the properties forfeited. (R. p. 147). The United States Government sent notices of the indictment to the interested parties, which included the Florence County Treasurer's office. The service of the indictment was evidenced by the email of the US Marshalls Office to pmiles@florenceco.org in November 2015 (R. p. 147). The email address of the recipient within the Florence County Treasurer's Office was confirmed at the trial. (R. p. 76, lines 13-15). The email clearly stated the address of the Property under forfeiture and the tax map number. It also indicated that A Notice of Forfeiture and the Preliminary was transmitted to the Florence County Treasurer's Office on November 26, 2013. The email also confirmed a conversation between the United States

Department of Justice and Ms. Miles with the Florence County Treasurer's Office that Florence County was to desist all tax sale activities regarding the Property, and that the Property would remain under the jurisdiction of the U.S. District Court while 3rd party claims were being litigated. (R. pp. 120-121). Testimony provided at the trial by Ms. Holsapple with the Florence County Delinquent Tax Collector's Office indicated that (1) Ms. Miles was an employee with the Florence County Treasurer's Office at the time of the email (R. p. 31, lines 22-25, p. 32, lines 1-7), (2) Ms. Miles communicated the correspondence with the Department of Justice with the Treasurer's Office, thereby making the Florence County's Treasurer's Office aware of the forfeiture, (R. p. 64, lines 11-17) and (3) the forfeiture was the reason the subject property was pulled from the delinquent tax sale held in 2015 for the 2014 delinquent taxes. (R. p. 69, lines 1-4). When asked why the 2016 tax sale went forward, the response was the County was not able to find the documentation and the title abstractor was not able to find a federal lien. (R. p. 69, lines 7-12).

The criminal forfeiture statutes of the federal government are found at 21 USCA §853(a) which states:

(a) Property subject to criminal forfeiture

Any person convicted of a violation of this subchapter or subchapter II punishable by imprisonment for more than one year shall forfeit to the United States, irrespective of any provision of State law-

(1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;

(2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation; and

(3) in the case of a person convicted of engaging in a continuing criminal enterprise in violation of section 848 of this title, the person shall forfeit, in addition to any property described in paragraph (1) or (2), any of his interest in, claims against, and property or contractual rights affording a source of control over, the continuing criminal enterprise

and

21 USCA §853 (c) states:

All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (n) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

The Supremacy Clause of the United States Constitution allows the forfeiture laws of the United States of America to supersede all other parties' interest in real property that is under federal forfeiture. Article VI, paragraph 2 of the United States Constitution which states:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

When the Property was forfeited to the federal government, the United States of America took all right, title and interest in the Property as outlined in 21 USCA §853(c) and this right superseded the rights of all other people and other entities, including Florence County to sell the property at a delinquent tax sale.

The record establishes that Florence County was aware of the forfeiture. First, in the email between the Department of Justice representative and Ms. Miles with the Florence County Treasurer's Office, the United States Government indicates that the Notice of Forfeiture was previously transmitted to the Florence County Treasurer's Office via Fed-Ex on November 26, 2013. (R. pp. 120-121). That same email also establishes further contact in between the two entities in 2015 instructing Florence County to cease and desist all tax sale activities as it related

to the Property. (R. pp. 120-121). That email did not provide any ending date for the forfeiture or the cease-and-desist directions.

Second, during testimony given at trial, Ms. Holsapple for Florence County indicated that the Property went up for tax sale in 2016 because the Florence County Treasurer's Office could not find "this federal lien because I had a note in the system that there was one and no one was able to find it" (R. p.69, lines 1-12).

The federal forfeiture essentially rendered the Property as untouchable or off limits to everyone, including Florence County for delinquent taxes, until the federal government gave notice the Property was no longer under federal forfeiture, or an interested party filed a claim with the federal government in accordance with 21 USCA §853(c). The federal government did not release the Property from the Forfeiture until February 2021 (four years and four months after the tax sale), and nothing in the record shows that anyone sought a hearing in accordance with 21 USCA §853(c). Therefore, the October 3, 2016 tax sale and the subsequent tax deed should be declared void and set aside because it should not have been sold at any tax sale while the Property was under federal forfeiture.

Barfield and Florence County have argued that because the federal government has released the Property from the forfeiture, the forfeiture issue is now moot and that the Appellant Patel Trust cannot raise the federal forfeiture as a defense. Their argument misses the mark - even though the Property was released from the forfeiture in February 2021 and is now no longer under federal direction, it still does not erase the fact that the Property was sold while under forfeiture, which is in violation of the 21 USCA §853(c) and renders the tax sale defective.

II. Did the federal government’s release of the subject property from the forfeiture years after the tax sale cure the defect of selling the subject property while under federal forfeiture?

Below is a timeline of events regarding the federal forfeiture and the defective tax sale:

DATE	DETAIL
February 26, 2013	Notice of Federal Forfeiture sent to Florence County Treasurer’s Office (R. pp. 120-121)
November 2, 2015	Email correspondence between United States Department of Justice and the Florence County Treasurer’s Office regarding cease and desist measures regarding tax sale activities (R. pp. 120-121)
October 3, 2016	Tax Sale occurred (R. p. 134)
October 4, 2017	Redemption period expiration
May 8, 2018	Tax Deed issued (R. p. 134-137)
February 2021	Property released from forfeiture

The Notice of Federal Forfeiture was transmitted to the Florence County Treasurer’s Office via Fed-Ex on November 26, 2013. (R. pp. 120-121). Thereafter, there was email correspondence between the United States Department of Justice and the Florence County Treasurer’s Office that the Property was under federal forfeiture, and Florence County was to cease and desist all tax sale activities regarding the Property. The email correspondence did not contain any language or other indication of a time frame regarding the cease-and-desist instructions of the tax sale activities. (R. pp. 120-121). The Property was sold on October 3, 2016 and after the redemption period expired, tax deed was issued on May 9, 2018. (R. pp. 134-137). The Property was released from the federal forfeiture in February 2021. This record

establishes and this timeline of events shows that the Florence County Treasurer's Office did not cease and desist tax sale activities in 2016 as instructed in the 2015 email correspondence and the Property was sold and a subsequent tax deed was issued all while the Property was under federal forfeiture, which is in violation of the United States Code of Laws, and renders the tax sale and subsequent tax deed defective. The release of the Property in 2021 from the federal forfeiture after the tax sale and subsequent issuance of the tax deed does not cure the defect.

The statutes regarding tax sales in South Carolina imposes a duty upon the agency collecting the delinquent taxes to perform due diligence or reasonable care regarding the tax sale process, such as identifying addresses in which to send notices other than the address listed on the deed, i.e. the "best address" rule in S.C. Code Ann. 12-51-150. Title searches are performed to ascertain who or what entity may have an interest in the subject Property as well. All of this is done so as to not deprive people or entities of their due process regarding the tax sale. As the Court stated in King v. James, 388 S.C. 16, 25, 694 S.E. 2d 36, 39 (2010), "All requirements of the law leading up to tax sales, which are intended for the protection of the taxpayer against surprise or the sacrifice of his property ...". Here, Florence County had actual knowledge of the federal government's forfeiture of the Property, and yet did nothing other than perform a title search¹ to follow up on or check on the status of the forfeiture prior to selling the Property at the tax sale on October 3, 2016. The email sent to Ms. Miles with the Florence County Treasurer's Office contained the contact information for the Department of Justice representative who spoke and emailed with Ms. Miles regarding the forfeiture and the cease-and-desist instructions. (R. pp. 120-121).

¹ Title searches are usually performed in the course of a tax sale in order to ascertain who may have an interest or right to said title. (R.p. 82).

III. Did the Master-in-Equity err in finding the tax sale was valid?

The final Order issued by the Master-in-Equity indicated that the matter was bifurcated and this ruling is only as to the quiet title action. However, the Patel Trust filed an Answer, Counterclaim, and Crossclaim asserting that the tax sale was defective and should be declared void and the tax deed to the Property set aside. (R. pp. 30-35). At the onset of the hearing, the parties agreed to bifurcate the Crossclaim filed by the Patel Trust against Florence County (R. p. 43). The trial proceeded with all parties presenting testimony and evidence.

A. Tax Sales in South Carolina.

In South Carolina, the procedure for collecting delinquent property taxes is governed by statute. Case law regarding tax sales has established that all tax sales in South Carolina must be conducted in strict compliance with the applicable statutes. “All requirements of the law leading up to tax sales, which are intended for the protection of the taxpayer against surprise or the sacrifice of his property are to be regarded as mandatory and are to be strictly enforced.” King v. James, 388 S.C. 16, 25, 694 S.E.2d 36, 39 (2010), citing Donohue v. Ward, 298 S.C. 75, 83, 378 S.E.2d 261, 265 (Ct. App. 1989). See also Hawkins v. Bruno Yacht Sales, 242 S.C. 31, 577 S.E.2d 202, (2003), “Failure to give the required notice is a fundamental defect in the tax proceedings which renders the proceedings absolutely void” Rives v. Balsa, 325 S.C. 287, 293, 478 S.E.2d 878, 881 (1996).

In this case, the records of Florence County and the testimony provided at the hearing show that the required statutory procedures were not followed in the following particulars: (1) The tax sale of the subject property conducted on October 3, 2016 was in violation of the §12-

51-40(b) of the S.C. Code of Laws, and (2) the notice of the expiration of the redemption period required by S.C. Code of Laws §12-51-150 did not adhere to the statutes.

1. **§12-51-40 (b) notices**

S.C. Code of Laws §12-51-40(b) states:

If the taxes remain unpaid after thirty days from the date of mailing of the delinquent notice, or as soon thereafter as practicable, take exclusive possession of the property necessary to satisfy the payment of the taxes, assessments, penalties, and costs. In the case of real property, exclusive possession is taken by mailing a notice of delinquent property taxes, assessments, penalties, and costs to the defaulting taxpayer and any grantee of record of the property at the address shown on the tax receipt or to an address of which the officer has actual knowledge, by "certified mail, return receipt requested-restricted delivery" pursuant to the United States Postal Service "Domestic Mail Manual Section S912". If the addressee is an entity instead of an individual, the notice must be mailed to its last known post office address by certified mail, return receipt requested, as described in Section S912. In the case of personal property, exclusive possession is taken by mailing the notice of delinquent property taxes, assessments, penalties, and costs to the person at the address shown on the tax receipt or to an address of which the officer has actual knowledge. All delinquent notices shall specify that if the taxes, assessments, penalties, and costs are not paid before a subsequent sales date, the property must be duly advertised and sold for delinquent property taxes, assessments, penalties, and costs. The return receipt of the "certified mail" notice is equivalent to "levying by distress".

The Notice of Levy issued by Florence County Delinquent Tax Office for the subject property read:

IF THESE TAXES, ASSESSMENTS, PENALTIES, AND COSTS ARE NOT PAID BEFORE 10/03/2016 THE PROPERTY MUST BE DULY ADVERTISED AND SOLD FOR DELINQUENT PROPERTY TAXES, ASSESSMENTS, PENALTIES, AND COSTS.

(R. p. 39, lines 6-10).

In Hawkins v. Bruno Yacht Sales, 353 SC 31, 577 SE2d 202 (2003), one of the issues raised was that of artificial deadlines created by the notices leading up to the tax sales. In Hawkins, one of the notices received by Hawkins prior to the tax sale indicated that if the taxes

were not paid before August 31st, the property would be duly advertised and sold for delinquent taxes as described in the notice on the first Monday in October of that year. The South Carolina Supreme Court in Hawkins acknowledged that they “realize the County would rather not advertise until it knows the taxpayer can no longer pay the delinquent taxes, the statute does not provide that the County set a date, *other than the sales date*, after which the taxpayer can no longer pay his delinquent taxes before the county can begin advertising.” Id. at 38, 206, (emphasis added). The Court held that the levy notice was not properly worded, and set aside the tax sale “[b]ased on the standing rule that the County must conduct tax sales in ‘strict compliance with statutory requirements’”. Id.

The wording on the Florence County Notice of Levy and the notice issued in Hawkins are similar. Both of the notices created a deadline other than the date of the tax sale in which the taxes could be paid before it was duly advertised and sold. Further, Ms. Holsapple for Florence County, stated in her testimony that the payments for delinquent taxes would not be accepted the day of the sale and had to be made prior to October 3, 2016. (R. p. 71, lines 10-17). Florence County is in violation of the statute based upon the wording of the Notice of Levy and is further evidenced by the testimony provided, their actions violate the tax sale statutes by not accepting payments on the date of the tax sale. These actions are not in strict compliance with the statutes governing tax sales and the tax sale of the subject Property should be declared void and set aside.

2. **§12-51-150, notice of redemption period**

Section 12-51-150 of the S.C. Code of Laws states:

Neither more than forty-five days nor less than twenty days before the end of the redemption period for real estate sold for taxes, the person officially charged with the collection of delinquent taxes shall mail a notice by “certified mail,

return receipt requested-restricted delivery” as provided in Section 12-51-40(b) to the defaulting taxpayer and to a grantee, mortgagee, or lessee of the property of record in the appropriate public records of the county. The notice must be mailed to the best address of the owner available to the person officially charged with the collection of delinquent taxes that the real property described on the notice has been sold for taxes and if not redeemed by paying taxes, assessments, penalties, costs, and interest at the applicable rate on the bid price in the total amount of ___ dollars on or before ___ (twelve months from date of sale) (date) _____, a tax title must be delivered to the successful purchaser at the tax sale. Pursuant to this chapter, the return of the certified mail “undelivered” is not grounds for a tax title to be withheld or be found defective and ordered set aside or canceled of record.

In this matter, the notices of redemption related to the Property were sent to (a) The Corner Store Inc. at 1252 Overbrook Drive, STE 71, Gaffney, SC 29341, (R. p. 133) (b) Nathan Ramsey at 161 Easy Street, Murrells Inlet, SC 29576, (R. p. 131) and (c) Nathan Ramsey at 192 Lois Drive, Gaffney, SC 29341. (R. p. 132). The notices of redemption described as (a) and (b) above were not received by the addressee. (R. p. 134, R. p. 60, lines 5-7). The notice of redemption described as (c) above was addressed solely to Nathan Ramsey and was marked as received by Jane Ramsey. (R. p. 60, lines 5-7). Nathan Ramsey is not the owner of record for the Property, nor is he a grantee, mortgagee, or lessee of the Property as is required by S.C. Ann. §12-51-150. Testimony given at the trial established that Nathan Ramsey is the registered agent for The Corner Store, Inc. and that is why the redemption notices were addressed to him. (R. p. 59, line 19-22). It should be noted that the redemption notices were *not* addressed to Nathan Ramsey, as Registered Agent for The Corner Store, Inc. The Courts have ruled that “in interpreting a statute, words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation”. Rowe v. Hyatt, 321 S.C. 366, 369, 468 S.E.2d 649, 650 (1996). The redemption notices described as (b) and (c) above

violate the statute that governs who the redemption notice must be sent to as it was addressed to Nathan Ramsey, who is not the owner of record, a grantee, mortgagee, or lessee of the Property.

As stated earlier, the Courts have consistently held that tax sales are to be conducted in strict compliance with the statutes and if the redemption notice is not addressed the owner of record, grantee, mortgagee or lessee of the Property, it is in violation of the statutes governing tax sales and it is not in strict compliance and the tax sale should be declared void and set aside.

In addition to the defect in the redemption notice, the Appellant, who holds an absolute assignment in the Property, also argues that it should have received the redemption notice. The Assignment of Rents and Leases executed and recorded from The Corner Store, Inc. to the Patel Trust was an absolute assignment of rights and in and to the Property from The Corner Store, Inc., and not merely the passing of a security interest. (R. pp. 108-119). The Corner Store, Inc. assigned and transferred to the Patel Trust “(a) the income, receivables, security or similar deposits, revenues, issues, royalties, profits, earnings, products and proceeds from any and all of the Property ... together with the rights, power and authority to collect the same; ...” (R. p. 110). The conveyance from The Corner Store, Inc. to the Patel Trust should be construed like that of a mortgage or a grantee of real property and as such, the Patel Trust should have been provided notice of the approaching redemption period as provided by the S.C. Code of Laws. Further, Ms. Holsapple for Florence County provided in her testimony in that a title search was conducted on the Property as part of the tax sale process, but the search did not reveal the Assignment of Rents. (R. p. 73, lines 17-19). She further testified that Florence County would send a notice of redemption to anyone who had an interest in the Property. (R. p. 82, lines 12-15). The Patel Trust clearly had a right, title and interest in the Property as shown by the Assignment of Rents, and a redemption notice was not provided.

IV. Did the Master-in-Equity err in applying the statute of limitations in S.C. Code Ann. §12-51-160?

The final Order issued by the Master-in-Equity addressed the statute of limitations imposed on tax sales by S.C. Code Ann. §12-51-160. As stated earlier, the Master-in-Equity stated that the matter was bifurcated and that his ruling was only to the quiet title cause of action. However, the Patel Trust filed an Answer, Counterclaim, and Crossclaim asserting that the tax sale was defective and should be declared void and the tax deed to the Property set aside. (R. pp. 30-35). At the onset of the hearing, the parties agreed to bifurcate the Crossclaim filed by the Patel Trust against Florence County (R. p. 43, lines 5-10). The trial proceeded with all sides presenting testimony and evidence.

In regards to the statute of limitations imposed by S.C. Code Ann. §12-51-60, the Appellant would assert that case law in South Carolina holds that the statute of limitations does not run at all when there are jurisdictional defects with the tax sale. Donohue v. Ward, 298 S.C. 75, 82, 378 S.E.2d 261, 265 (1989) (holding where a defect in notice is jurisdictional, such a defect “invalidates the tax proceeding and prevents the running of the limitations statute”); Good v. Kennedy, 291 S.C. 204, 207, 352 S.E.2d 708, 711 (1987) (holding “the general law is that where a statute requires as a condition precedent to foreclosing a taxpayer's rights in property sold for taxes that he be given notice of his right to redeem, such a requirement is generally regarded as jurisdictional”) (internal quotations omitted). In the instant case, Appellant has demonstrated that the tax sale was not conducted in strict compliance with the statutes governing tax sales and because those defects with the Notice of Levy and the redemption notice are jurisdictional in nature, the statute of limitations should not apply.

CONCLUSION

For the reason as set forth in the Appellant's brief, the Appellant respectfully requests that this Court reverse the ruling of the Master-in-Equity and issue an Order:

- (1) declaring that the tax sale was defective as the Property was sold while the Property was under federal forfeiture;
- (2) declaring that the tax deed is void as it was issued while the Property was under federal forfeiture;
- (3) declaring that Florence County did not strictly comply with the tax sale statutes regarding the October 3, 2016 tax sale of the Property the tax sale is therefore void and the subsequent tax deed is set aside; and
- (4) declaring the tax sale was not conducted in strict compliance with the tax sale statutes, which constitute a jurisdictional defect and the statute of limitations in S.C. Code Ann. §12-51-160 does not apply.

Respectfully Submitted,

/s/ Jennifer Dowd Nichols
Jennifer Dowd Nichols (SC Bar #75916)
Samuel M. Price, Jr. (SC Bar #04566)
NICHOLS & PRICE
1413 Main Street, P. O. Drawer 836
Newberry, South Carolina 29108
Phone: 803-276-0796

October 3, 2022

Attorneys for Appellant