

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Francisco Nicolas Miguel,)
)
 Plaintiff,)
)
)
 v.)
)
 Palmetto Asset Investments, LLC,)
 Gabriel Angel Prestegui Gomez, and)
 A. Kevin Hunter, II, Greenville County Tax)
 Collector,)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL DISTRICT

**ORDER ON PLAINTIFF'S MOTION
 TO ENFORCE JUDGMENT AND
 DETERMINE AMOUNT DUE AND
 ON DEFENDANT'S MOTION FOR
 RULE TO SHOW CAUSE**

C.A. NO: 2018-CP-23-03713

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 SC Court of Appeals

A virtual hearing was heard before this Court on September 26, 2022 to address the Motions before the Court. Defendant, Palmetto Asset Investments, LLC, filed a Motion for a Rule to Show Cause, and Plaintiff filed a Motion to Strike Defendant's Rule to Show Cause. Plaintiff, Francisco Nicolas Miguel, filed a Motion to Enforce Judgment and Determine Amount Due. Plaintiff and Defendant, Palmetto Asset Investments, LLC by and through their respective counsel, submitted memorandum on each Motion respectively.

Present at the hearing was Samantha N. Larkins, Esq. on behalf of Plaintiff, Francisco Nicolas Miguel; Plaintiff's daughter Patricia Nicholas; John Spell, Esq., on behalf of Defendant Palmetto Asset Investments, LLC; Johnathan Underwood as a member of Palmetto Asset Investments, LLC; John Devlin, Esq. on behalf of Defendant Greenville County Tax Collector.

FACTUAL AND PROCEDURAL BACKGROUND

This is an action seeking to set aside as defective a delinquent property tax sale conducted in 2016 for certain property in Greenville County, South Carolina located at 1 Hilltop Avenue, Greenville, South Carolina and subsequent instruments of title. Plaintiff was the title owner of the property subject to the tax sale that is the subject of this action at the time of the sale. Palmetto Asset Investments, LLC was the purchaser of the property through the tax sale that is the subject of this action. Gabriel Angel Prestegui Gomez claims an interest in the property by an instrument of title entered with Palmetto Asset Investments, LLC subsequent to the tax sale. A. Kevin Hunter, III is the Tax Collector for Greenville County, South Carolina and was responsible for administration of the delinquent property tax sale that is the subject of this action.

This Court issued an Order Granting Plaintiff's Motion for Summary Judgment on January 7, 2020, providing:

The 2016 tax sale of the property located at 1 Hilltop Avenue, Greenville, South Carolina was not conducted in strict compliance with statutory requirements and is set aside...

The Tax Deed recorded on December 8, 2017 in Deed Book 2527, Page 3023 in the Office of the Register of Deeds for Greenville County, South Carolina and the Installment Contract for Sale of Real Estate which was recorded on February 8, 2018 in Deed Book 2531, Page 2233 in the Office of the Register of Deeds for Greenville County, South Carolina are voided...

Plaintiff's right to redeem the property is reinstated and Plaintiff shall pay to Greenville County all delinquent taxes owed from 2015, together with statutory interest and penalties, and all taxes assessed against property for 2016, 2017, 2018 and 2019. Payment shall be made to the County of Greenville within forty-five (45) days of the date of this Order, this Order shall be voided and the tax sale that is the subject of this action shall be deemed valid...

Palmetto Asset Investments, LLC shall receive a refund of all amounts paid to Greenville County for the property a 1 Hilltop Avenue, Greenville, South

Carolina, together with the statutory interest accruing on such amounts, from Greenville County upon Plaintiff's redemption of the property.

On January 17, 2020, Defendant Palmetto Asset Investments, LLC filed a Motion to Alter or Amend Judgment, which was denied on January 29, 2020. On January 17, 2020, Defendant Palmetto Asset Investments, LLC filed a Motion to Alter or Amend, which this Court denied on January 29, 2020. Defendant Palmetto Asset Investments, LLC filed a Notice of Appeal on February 24, 2020. Remittitur was filed in Greenville County on July 5, 2022. The Court of Appeals affirmed that the tax collector failed to comply with the statutory requirement that notice of the delinquent taxes be mailed to the best available address. On September 26, 2022, Plaintiff filed a Motion to Strike Plaintiff's Rule to Show Cause.

On August 9, 2022, Defendant Palmetto Asset Investments, LLC by and through John Underwood filed a Motion for Rule to Show Cause with the Greenville County Clerk of Court alleging Plaintiff had not redeemed the subject property pursuant to this Court's Order dated January 7, 2022. On August 16, 2022, Plaintiff filed a Motion to Enforce and Judgment and Determine Amount Due seeking the Court's intervention. Plaintiff asserted that he, by and through counsel, inquired as to the redemption amount on January 8, 2020; attempted to redeem by payment directly to the Greenville County Tax Assessor on or about July 15, 2022 and August 11, 2022; and continued efforts to pay the redemption amount via correspondence with counsel thereafter.

LAW AND DECISION OF THE COURT

Corporations must be represented by an attorney licensed to practice law in South Carolina. *In re Unauthorized Practice of Law Rules*, 309 S.C. 304, 422 S.E.2d 123 (1992). Corporations, which are artificial creatures of state law, do not have a right to appear pro se in all

instances, and must appear pro se by leave of the Court. S.C. Code Ann. § 40-5-320 (1986); S.C. Code Ann. § 40-5-80 (Supp. 2002); see also 191 S.C. 468, 5 S.E. 2d 181 (1939). South Carolina Rules of Civil Procedure, Rule 12 (f) provides, “[u]pon motion pointing out the defects complained of...the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.” Defendant’s Motion for Rule to Show Cause was submitted by Jonathan Underwood as a pro se litigant. Therefore, Plaintiff’s Motion to Strike is granted and Defendant’s Motion for Rule to Show Cause shall be stricken.

Pursuant to South Carolina Court of Appeals Rule 241,” the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision.” Rule 241, SCACR. The final disposition of a case occurs when the remittitur is returned by the clerk of the appellate court and filed in the lower court. *McDowell v. S.C. Dep’t of Soc. Servs.*, 300 S.C. 24, 386 S.E.2d 280 (Ct. App. 1989). The Court finds that the Plaintiff made a good faith effort to comply with the Order within forty-five (45) days, and to rule against Plaintiff would be too harsh a penalty.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. Defendant’s Motion for Rule to Show cause is stricken.
2. Plaintiff’s right to redeem remains valid. Plaintiff shall pay to Greenville County the amounts ordered by this Court on January 7, 2020 including all delinquent taxes owed from 2015, together with statutory interest and penalties, and all taxes assessed against the property for 2016, 2017, 2018, and 2019. Greenville County shall inform the Plaintiff the total amount due and owing.

3. Upon payment noted above, Palmetto Asset Investments, LLC shall receive a refund of all amounts paid to Greenville County for the property at 1 Hilltop Avenue, Greenville, South Carolina, together with the statutory interest accruing on such amounts, from Greenville County upon Plaintiff's redemption.

AND IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE TO FOLLOW]



Greenville Common Pleas

Case Caption: Francisco Nicolas Miguel vs. Palmetto Asset Investments LLC ,
defendant, et al
Case Number: 2018CP2303713
Type: Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)