

The South Carolina Court of Appeals

APPEAL FROM YORK COUNTY

Daniel D. Hall, Circuit Court Judge

Appellate Case No. 2022-000548

RECEIVED
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SC Court of Appeals

William Bronson,

Appellant,

Vs.

Cray, Inc. and York County,

Respondents.

RECORD ON APPEAL

Daniel D. D'Agostino
S.C. Bar No.: 65088
D'Agostino Law Firm
25 West Liberty Street
York, South Carolina 29745
dan@ddllplaw.com
Office: 803-628-6509
Fax: 803-628-7990
Attorney for Appellant

Daniel J. Ballou
Morton & Gettys, LLC
P.O. Box 707
Rock Hill, South Carolina 29731
Attorney for Respondent Cray, Inc.

Laura Dover
York County Attorney's Office
P.O. Box 299
York, SC 29745
Office: 803-684-4851
Attorney for Respondent York County

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

William Bronson,
Plaintiff,

v.

Cray, Inc. and York County,
Defendants.

IN THE COURT OF COMMON PLEAS
IN THE SIXTEENTH JUDICIAL CIRCUIT

Case Number: 2021-CP-46-03234

ORDER

This matter comes before this Court for hearing on Defendant Cray, Inc.'s Motion to Dismiss Plaintiff's complaint. Present at the hearing on March 15, 2022 were Daniel J. Ballou on behalf of Cray, Inc. ("Cray"), Laura R. Dover on behalf of Defendant York County and Daniel D. D'Agostino on behalf of Plaintiff William Bronson ("Bronson").

Based on the evidence submitted to the Court, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Cray is the title owner of real property located in York County, South Carolina designated as Tax Map Number 070-08-03-108 (the "Property").
2. Upon Cray's failure to timely pay 2018 York County property taxes, the County commenced collection procedures in accordance with the Alternate Procedure for Collection of Property Taxes, S.C. Code Ann. § 12-51-40, et seq. (the "Act"), resulting in a tax sale on November 4, 2019 ("Tax Sale").
3. It is undisputed by the parties that the County strictly complied with the requirements of the Act in selling the Property at the Tax Sale, and that Bronson was the high bidder at the Tax Sale.

4. Based upon the November 4, 2019, Tax Sale date, Cray originally had until November 4, 2020 to exercise its statutory right of redemption under S.C. Code Ann. § 12-51-90.

5. On September 21, 2020, the County sent proper Notice of Redemption pursuant to S.C. Code Ann. § 12-51-120.

6. On September 23, 2020, H3755 Section 3 also known as Act 174 was passed by the South Carolina General Assembly and signed by the Governor, effective September 30, 2020 (“Act 174”). Act 174 extended the statutory redemption period for real property sold at a tax sale in 2019 and provided that where the redemption period for such property had not expired as of September 30, 2020, the redemption period was extended for 12 additional months. Act 174 therefore applied to the Tax Sale of the Property.

7. On June 30, 2021, the South Carolina Supreme Court held Act 174 unconstitutional based upon the “one subject rule.” *Mercury Funding, LLC v. Chesney*, (Op. No. 28040, June 30, 2021).

8. Following the *Mercury Funding* decision, the South Carolina Department of Revenue issued a guidance to counties on July 21, 2021, regarding delinquent tax sales held in 2019 (the “Guidance”). While not necessary to resolve the issues in this action, the Guidance advised that counties should issue new notices of redemption to all taxpayers whose property was sold at a tax sale within the scope of Act 174 and who had not yet redeemed their property, and if such property is not thereafter redeemed, the county should issue the tax title to the successful bidder as soon as possible.

9. Cray redeemed the Property on August 17, 2021, before York County could send a new notice of redemption and before any tax deed had been issued to the Plaintiff.

10. Plaintiff filed suit on October 21, 2021, seeking a declaration that the County should issue a tax deed to him and that title to the Property be vested in him as high bidder.

11. In response to the Complaint Cray and the County both filed Motions to Dismiss, pursuant to Rule 12(b)(6), S.C.R.Civ.P. Cray further moved to cancel the *lis pendens* filed herein for good cause shown on the grounds that the claim alleged by the Plaintiff does not affect title to real property.

CONCLUSIONS OF LAW

1. In South Carolina, all requirements of the law leading up to tax sales are intended for the protection of the taxpayer against surprise or the sacrifice of his property. All such laws, including statutes involving the right of redemption, are regarded as mandatory and are to be strictly enforced. See, *Smith v. Barr*, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App. 2007); *Donohue v. Ward*, 298 S.C. 75, 83, 378 S.E.2d 261, 265 (Ct. App. 1989); *Tanner v. Florence Cnty. Treasurer*, 336 S.C. 552, 521 S.E.2d 153, 159 (1999); *Baker v. Denton*, 37 F.Supp.3d 794 (D. S.C. 2014).

2. S.C. Code §12-51-40 sets forth the statutory procedure for conducting a tax sale. Even after a properly conducted tax sale, the defaulting taxpayer may still redeem the property by paying all owed taxes, interest and penalties within twelve months of the tax sale. S.C. Code §12-51-90.

3. Act 174 extended the statutory redemption period for an additional 12 months.

4. Under S.C. Code §12-51-120, notice of redemption must be mailed “neither more than forty-five days nor less than twenty days before the end of the redemption period.” Act 174’s extension of the redemption period meant that the notice sent on September 21, 2020, was no longer timely and did not strictly comply with the Act, rendering it defective as a matter of law.

5. The County was fully justified in following the provisions of Act 174 between its effective date and the date of the Supreme Court's decision in *Mercury Funding*. All statutes in South Carolina are presumed to be constitutional. *State v. Neuman*, 384 S.C. 395, 402, 683 S.E.2d 268, 271 (2009); *Foundation v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013).

6. In the wake of *Mercury Funding*, the County endeavored to issue new notices of redemption and issue tax titles to the successful bidder of unredeemed property as provided in the Act. Before the County could do so in this case, Cray redeemed the Property in accordance with S.C. Code §§12-51-90.

7. Notwithstanding the determination that Act 174 was unconstitutional, the taxpayer is still entitled to the statutory rights provided by the Act, including proper and timely notice of redemption. See, *Smith v. Barr*, and related cases *supra* (requiring strict compliance with tax sale statutes for protection of taxpayer). No basis exists to require the County to issue a tax deed to the high bidder in a tax sale where the mandatory requirements of the Act have not been met.

8. Moreover, Cray redeemed the Property before the expiration of the redemption period and before the County could send a new notice of redemption required under the Act. Under the Act, once redemption has occurred, the County has no continuing interest in the title to the Property, and therefore no interest it can convey. S.C. Code §12-51-100.

9. Plaintiff has alleged no facts sufficient to contest the County's actions in following the law as it existed at the time of the Tax Sale. Cray properly redeemed the Property in accordance with the Act and dismissal under Rule 12(b)(6) is therefore appropriate.

10. Additionally, Plaintiff seeks an equitable remedy when he clearly has an adequate remedy at law. *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n*, 298 S.C. 179, 185, 379

S.E.2d 119, 123 (1989)("equitable relief is generally available only where there is no adequate remedy at law.) The Act clearly provides that a successful high bidder of a voided tax sale is entitled to a refund of the purchase price plus interest. S.C. Code §§12-51-90, 100.

11. A *lis pendens* may only be filed "in an action affecting the title to real property." S.C. Code §15-11-10. As a successful bidder at a tax sale, Plaintiff has no property interest until the expiration of the statutory redemption period. So too, the Plaintiff's declaratory judgment claim does not in fact affect title to the Property, as under no set of facts does the Plaintiff have any legal or equitable interest in the Property after a valid statutory redemption. At best, Plaintiff has merely stated a claim for refund under S.C. Code §12-51-100.

IT IS THEREFORE HEREBY ORDERED that the Plaintiff's claims in the above-referenced case are hereby dismissed with prejudice and the *lis pendens* filed herein is hereby dissolved.

AND IT IS SO ORDERED.

STATE OF SOUTH CAROLINA
 COUNTY OF YORK
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021 CP-46-03234

William Bronson

Cray, Inc. and York County

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Daniel J. Ballou	Attorney for : <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		



York Common Pleas

Case Caption: William Bronson VS Cray Inc , defendant, et al
Case Number: 2021CP4603234
Type: Order/Dismissal and Cancellation of Lis Pendens

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2022-04-01 10:36:14 page 8 of 8

ELECTRONICALLY FILED - 2022 Apr 01 11:04 AM - YORK - COMMON PLEAS - CASE#2021CP4603234

STATE OF SOUTH CAROLINA
COUNTY OF York
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP4603234

William Bronson
PLAINTIFF(S)

Cray Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

After careful consideration, Defendant, York County and Defendant, Cray, Inc.'s Motion to Dismiss with Prejudice and Motion to Dissolve the Lis Pendens filed against the subject property is GRANTED.

The Court instructs Attorney Ballou to file a formal order.

ORDER INFORMATION

This order ends does not end the case.

See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/22/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2022 Mar 22 11:55 AM - YORK - COMMON PLEAS - CASE#2021CP4603234

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



York Common Pleas

Case Caption: William Bronson VS Cray Inc , defendant, et al
Case Number: 2021CP4603234
Type: Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2022-03-22 11:40:24 page 3 of 3

ELECTRONICALLY FILED - 2022 Mar 22 11:55 AM - YORK - COMMON PLEAS - CASE#2021CP4603234

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
William Bronson,)
)
Plaintiff,)
)
v.)
)
Cray, Inc. and York County,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C.A. No. 2021-CP-46-

SUMMONS

YOU ARE HEREBY SUMMONED AND REQUIRED TO ANSWER the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint on the subscribers at their offices at 25 West Liberty Street, York, South Carolina 29745 within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer this Complaint within the time aforesaid, Plaintiffs in this action will apply to the Court for the relief demanded in the Complaint.

York, South Carolina
October 27, 2021

s/Daniel D'Agostino
S.C. Bar No.: 65088
D'AGOSTINO LAW FIRM
25 West Liberty Street
York, South Carolina 29745
dan@ddlplaw.com
Office: 803-628-6509
Fax: 803-628-7990
ATTORNEY FOR PLAINTIFF

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
William Bronson,)
)
Plaintiff,)
)
vs.)
)
Cray, Inc. and York County,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

2021-CP-46-

COMPLAINT

The above named Plaintiff, complaining of the above named Defendants, would allege and show unto the Court as follows:

1. Plaintiff is a resident of York County, South Carolina. Plaintiff hereinafter may also be referred to as "Purchaser".

2. Defendant York County is a political subdivision organized pursuant to the laws of the State of South Carolina and is made party by actions of the York County Tax Collector hereinafter referred to as "Tax Collector" acting through its deputy treasurer and tax collector for collection of taxes on real property located in York County, South Carolina.

3. Defendant Cray, Inc. hereinafter referred to as "Defaulting Taxpayer", is a South Carolina corporation which owned real property located in York County, South Carolina which is the subject of this action.

4. The real property which is the subject of this action, hereinafter referred to as "property," is located in York County, South Carolina which is known and designated as Tax Map Number 070-08-03-108 for York County being more particularly described as follows:

All that certain piece, parcel or lot of land line and being situate in the state of South Carolina, County of York, City of York, on South Pacific Ave., containing 17.85 acres, more or less, and being designated as 'Tract A' on a plat entitled "Plat of Survey for Raymond P Houston Jr and Melvin T Graham", repaired by Edward F Woodward, P.L.S., dated April 24, 2002 recorded May 8, 2002, and plat book see 61 at page 8 in the office of the clerk of court for York County, which platt is incorporated herein and made a part hereof by this reference and having such meets, bounds, courses and distances as by references to said plat will more fully appear.

5. This court has jurisdiction over the subject matter of this action and venue is proper.
6. This action is commenced pursuant to South Carolina Code Annotated Section 12-50-10 et seq. and the Declaratory Judgments Act, S.C. Code Ann. Sections 15-53-10 et. seq. for a declaration that the tax sale on the property was valid and a tax title should have been issued to the Purchaser.
7. In accordance with South Carolina Code Annotated Sections 12-45-180 and 12-51-40, the York County treasurer issued the execution on the above referenced property against the Defaulting Taxpayer and directed the Tax Collector to levy by distress and sales so much of the Defaulting Taxpayer's property as is sufficient to satisfy the delinquent taxes, assessment, penalties and costs against the property.
8. Pursuant to South Carolina Code Annotated Section 12-51-40 and the execution against Defaulting Taxpayer for taxes and paid for the tax year 2018, the Tax Collector took exclusive possession of the property by delivering a notice to the Defaulting Taxpayer.
9. On November 4, 2019, after properly advertising the tax sale of the property as required by law, the tax collector did sell the property at public auction to purchaser. (Tax Sale)
10. Purchaser fully complied with the terms of the Tax Sale.
11. Purchaser has a legal right and interest in the property.
12. The Tax Collector notified Defaulting Taxpayer of its right to redeem the property within 12 months from the tax sale by a notice of redemption letter dated November 6, 2019.

13. The notice provided that the final date to redeem the property was on or before November 5, 2020.

14. Notice included the sentence "if you fail to redeem the above property by said date, a tax deed will be issued to the successful bidder."

15. The final redemption letter was sent by certified mail to the Defaulting Taxpayer on September 21, 2020 to its last known addresses.

16. Defaulting Taxpayer failed to redeem the property within 12 months from the date of the tax sale.

17. Tax Collector for York County fully complied with all statutory requirements for a tax levy and sale of the property.

18. The Tax Collector improperly voided the tax sale on an internal memorandum concluding that the tax sale and/or the Defaulting Taxpayer should be granted additional time.

19. The Tax Collector relied upon a statute which was determined to be unconstitutional when enacted.

20. Defaulting Taxpayer failed to redeem the property after being given proper notice on September 21, 2020 of his rights which terminated on November 5, 2020.

21. The property was advertised for sale at public auction in Defaulting Taxpayer's name in accordance with South Carolina Code Section 12-51-40.

22. Section 12-51-150 of the South Carolina Code only allows the Tax Collector to void a sale if there is a failure of any action required to be properly performed.

23. The issuance of a tax title is an administrative act and the Tax Collector had a duty to execute the tax title to the Purchaser.

24. The Tax Collector cannot void the tax sale because there was no failure to follow statutory requirements.

25. Voiding a tax sale because of an issue with an unconstitutional statute is not supported by the law and has led to the absurd result of the Purchaser who has a vested interest in the property not receiving the land nor receiving appropriate interest on his monies.

26. The tax sale was valid and the Tax Collector should execute the tax title to the property to Purchaser as Purchaser lacks any other legal remedy.

27. Specifically, Purchaser requests the court declare that the tax sale was proper, that the Tax Collector should execute the tax title of the property to Purchaser and that title in the property shall be vested in Purchaser by order of this court.

WHEREFORE, Plaintiff requests this court to do the following:

A. Issue an order declaring his respective rights and interests of Purchaser and Defaulting Taxpayer with respect to the property; that the tax sale adjudged to be valid and binding upon all Defendants; that the Tax Collector should issue the tax deed to the Purchaser; and that title to the property shall be vested in the Purchaser;

B. For such other and further relief as the court deems appropriate.

Respectfully submitted.

October 27, 2021

York, SC

s/Daniel D'Agostino
S.C. Bar No.: 65088
D'AGOSTINO LAW FIRM
25 West Liberty Street
York, South Carolina 29745
dan@ddllplaw.com
Office: 803-628-6509
Fax: 803-628-7990
ATTORNEY FOR PLAINTIFF

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF YORK)

CASE NO.: 2021-CP-46-)

William Bronson,)

Plaintiff,)

VERIFICATION)

v.)

Cray, Inc. and York County,)

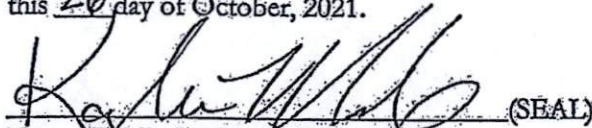
Defendants.)

PERSONALLY appeared before me, WILLIAM BRONSON, who being first duly sworn, deposes and says that he is the Plaintiff in the above-referenced action and that the allegations and facts alleged in the foregoing Complaint are correct of his own knowledge, except for those matters and things alleged upon information and belief, if any, and as to those he believes the same to be true.



WILLIAM BRONSON
Plaintiff

SWORN TO AND SUBSCRIBED before me
this 26 day of October, 2021.

 (SEAL)

Notary Public for State of South Carolina

My Commission Expires: 12/8/21

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK)	
)	
William Bronson,)	
)	
Plaintiff,)	
)	
vs.)	LIS PENDENS
)	
Cray, Inc. and York County,)	
)	
Defendant.)	
)	

NOTICE IS HEREBY GIVEN that a lawsuit will be filed by the above-named Plaintiff against the above-named Defendant relating to title to the property described below. The property has tax map# 070-08-03-108.

All that certain piece, parcel or lot of land line and being situate in the state of South Carolina, County of York, City of York, on South Pacific Ave., containing 17.85 acres, more or less, and being designated as 'Tract A' on a plat entitled "Plat of Survey for Raymond P Houston Jr and Melvin T Graham", repaired by Edward F. Woodward, P.L.S., dated April 24, 2002 recorded May 8, 2002, and plat book see 61 at page 8 in the office of the clerk of court for York County, which plat is incorporated herein and made a part hereof by this reference and having such meets, bounds, courses and distances as by references to said plat will more fully appear.

Being the same property conveyed from H R Partners to Cray, Inc. recorded June 17, 2013 in Deed Book 13495 at Page 88 in the Office of the York County Clerk of Court.

Property Address: Tract A 17.85 ac

York, SC
October 27, 2021

s/Daniel D'Agostino
S.C. Bar No.: 65088
D'AGOSTINO LAW FIRM
25 West Liberty Street
York, South Carolina 29745
dan@ddlplaw.com
Office: 803-628-6509
Fax: 803-628-7990
ATTORNEY FOR PLAINTIFF

STATE OF SOUTH CAROLINA
COUNTY OF YORK

William Bronson,
Plaintiff,

v.

Cray, Inc. and York County,
Defendants.

IN THE COURT OF COMMON PLEAS
IN THE SIXTEENTH JUDICIAL CIRCUIT

Case Number: 2021-CP-46-03234

**MOTION TO DISMISS AND TO CANCEL
*LIS PENDENS***

PLEASE TAKE NOTICE THAT Defendant Cray, Inc. (“Cray”) by and through the undersigned counsel, hereby moves to dismiss the Complaint of plaintiff William Bronson (“Plaintiff”) pursuant to S.C.R.Civ. P. 12(b)(6) on the grounds that the Complaint fails to state facts sufficient to constitute a cause of action against Cray. Cray further moves to cancel the *lis pendens* filed herein for good cause shown on the grounds that the claim alleged by the Plaintiff does not affect title to real property, and the Plaintiff has alleged no facts supporting an interest in the real property that the *lis pendens* purports to cover.

In support of this Motion, Cray states as follows:

INTRODUCTION

This case was brought in the aftermath of an attempt by the South Carolina General Assembly to respond to challenges created by the COVID-19 pandemic. One such response came in the form of the adoption of Section 3 of Act No. 174, effective September 30, 2020 (“Section 3”). Section 3 amended S.C. Code Section 12-51-90 to extend the statutory redemption period for real property sold at a tax sale in South Carolina. It specifically provides that if property was sold at a delinquent tax sale in 2019, and the 12-month redemption period as provided in Code Section 12-51-90(A) has not expired as of September 30, 2020, then the redemption period for the real

property is extended for 12 additional months. Cray is the title owner of real property that was sold at a tax sale by York County in 2019 (the "Property"). Plaintiff was the high bidder at the tax sale of Cray's Property, and the 12-month redemption period had not expired as of September 30, 2020. The tax sale of the Property therefore fell within the scope of Section 3, and by operation of Act 174, the redemption period was extended by an additional 12 months.

On June 30, 2021, the South Carolina Supreme Court held Act 174, including Section 3, unconstitutional based upon the "one subject rule." *Mercury Funding, LLC v. Chesney*, (Op. No. 28040, June 30, 2021). Following the *Mercury Funding* decision, the South Carolina Department of Revenue issued a guidance to counties on July 21, 2021, regarding delinquent tax sales held in 2019 (the "Guidance"). The Guidance advises that counties should issue notices of redemption to all taxpayers whose property was sold at a tax sale within the scope of Section 3 and had not yet redeemed their property, and if such property is not redeemed the county should issue the tax title to the successful bidder as soon as possible.

Cray redeemed the Property on August 17, 2021, before York County had sent a new notice of redemption and before any tax deed had been issued to the Plaintiff. Plaintiff now seeks a declaration that he should be issued a tax deed as the high bidder and has filed a *lis pendens* against the Property.

Plaintiff does not contest that York County complied with all laws applicable to the tax sale of the Property, but instead argues that the County should have ignored the Guidance and simply issued a tax deed, presumably without further notice to Cray. Cray has already redeemed the Property, however, and Plaintiff has no basis in law or equity to divest Cray of its title. As a mere high bidder in a tax sale that was ultimately voided by York County, Plaintiff has no legal or

equitable interest in the Property and his claim against Cray should be dismissed and the *lis pendens* cancelled.

ARGUMENT

1. The Complaint Should Be Dismissed for Failure to State Facts Sufficient to Constitute a Cause of Action.

Dismissal of a pleading is appropriate when it fails "...to state facts sufficient to constitute a cause of action." Rule 12(b)(6), SCRCPP. The motion must be dealt with based solely on the allegations contained in the pleadings. *FOC Lawshe Limited Partnership v. International Paper Company*, 352 S.C. 408, 574 S.E.2d 228 (Ct. App. 2002). In considering the motion, all allegations of the pleading, and all inferences reasonably deducible therefrom are deemed admitted. *Id.* "If the facts and inferences drawn from the facts alleged in the Amended Complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper." *Spence v. Spence*, 286 S.C. 106, 116, 628 S.E. 2d 869, 874 (2006). A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of a claim and must be granted if the claim does not set forth sufficient allegations entitling the party to relief. *Williams v. Condon*, 347 S.C. 227, 232-33, 553 S.E.2d 496, 499 (Ct. App. 2001). This analysis looks to see if there are facts alleged that satisfy every element of the cause of action asserted. *Id.*

In South Carolina, all requirements of the law leading up to tax sales are intended for the protection of the taxpayer against surprise or the sacrifice of his property. All such laws, including statutes involving the right of redemption, and are regarded as mandatory and are to be strictly enforced. See, *Smith v. Barr*, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App. 2007); *Donohue v. Ward*, 298 S.C. 75, 83, 378 S.E.2d 261, 265 (Ct. App. 1989); *Tanner v. Florence Cnty. Treasurer*, 336 S.C. 552, 521 S.E.2d 153, 159 (1999); *Baker v. Denton*, 37 F.Supp.3d 794 (D. S.C.

2014). S.C. Code §12-51-40 sets forth the procedure for conducting a tax sale and requires the county to send a notice of delinquent property taxes to the defaulting taxpayer. S.C. Code §12-51-40(a), (b). Even after the tax sale, statutory notice of redemption is required, and the defaulting taxpayer may still redeem the property by paying all owed taxes, interest and penalties within twelve months of the tax sale. S.C. Code §12-51-90. Section 3 of Act 174 extended this period for an additional 12 months.

Plaintiff alleges that York County “improperly voided the tax sale on an internal memorandum concluding that the tax sale and/or the Defaulting Taxpayer should be granted additional time.” Complaint at ¶ 18. S.C. Code § 12-51-150 specifically gives the County tax collector the discretion to void a tax sale if there is any “failure of any action required to be properly performed” before title has passed. Under section 12-51-120, notice of redemption must be mailed “neither more than forty-five days nor less than twenty days before the end of the redemption period.” Section 3’s extension of the redemption period meant that the notice sent on September 21, 2020 no longer strictly complied with the statute, rendering it defective as a matter of law, justifying the voiding of the tax sale. Plaintiff has alleged no facts sufficient to contest the County tax collector’s actions in obeying the law as it existed at the time. Dismissal under Rule 12(b)(6) is therefore appropriate.

Likewise, Plaintiff’s claim that the County should issue a tax deed over a voided tax sale fails as a matter of law. First, Plaintiff seeks an equitable remedy when he clearly has an adequate remedy at law. *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm’n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989)(“equitable relief is generally available only where there is no adequate remedy at law.) The tax sale statutes clearly provide that a successful high bidder of a voided tax sale is entitled to a refund of the purchase price plus interest. S.C. Code §§12-51-90, 100. So too,

York County no longer has any legal title to convey to the Plaintiff, as the tax sale has been cancelled following the redemption of the Property by Cray. S.C. Code §12-51-100. Under the tax sale statutes, once redemption has occurred, the County has no continuing interest in the title to the Property, and therefore no interest it can convey.

Finally, Plaintiff's filing of the *lis pendens* was improper and it should be cancelled. A *lis pendens* may only be filed "in an action affecting the title to real property." S.C. Code §15-11-10. The *lis pendens* filed in this action is fatally defective as it merely recites that Plaintiff will file a lawsuit "relating to the title" to the Property. As a successful bidder at a tax sale, Plaintiff has no property interest until the expiration of the redemption period. So too, the declaratory judgment claim that was actually asserted by the Plaintiff does not in fact affect title to the Property, as under no set of facts does the Plaintiff have any legal or equitable interest in the Property after a valid statutory redemption. At best, Plaintiff has merely stated a claim for refund under S.C. Code §12-51-100.

CONCLUSION

WHEREFORE, Cray moves this court for an order dismissing this case with prejudice and dissolving the *lis pendens* improperly filed against the Property. This motion is based upon the pleadings, the South Carolina Rules of Civil Procedure, and the appropriate statutory and case law. Counsel certifies, pursuant to Rule 11 S.C. R. Civ. P., that he consulted with opposing counsel prior to filing this motion.

s/ Daniel J. Ballou

Daniel J. Ballou, SC Bar No. 5935

Morton & Gettys, LLC

P.O. Box 707

Rock Hill, SC 29731

T: 803.366.3388

F: 803.366.4044

Dan.Ballou@mortongettys.com

ATTORNEY FOR CRAY, INC

December 1, 2021

CERTIFICATE OF ELECTRONIC FILING AND SERVICE
2021-CP-46-03234

The undersigned certifies that the foregoing Notice of Motion and Motion to Cancel *Lis Pendens* were filed and simultaneously served upon the below counsel of record on December 1, 2021, via the South Carolina Electronic Filing System.

Daniel D'Agostino for William Bronson

s/ Daniel J. Ballou
Daniel J. Ballou
Attorney for Cray, Inc.

ELECTRONICALLY FILED - 2021 Dec 01 2:47 PM - YORK - COMMON PLEAS - CASE#2021CP4603234

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK)	
)	
William Bronson,)	Civil Action No. 2021-CP-46-03234
)	
Plaintiff,)	
)	
vs.)	MOTION TO DISMISS PURSUANT
)	TO S.C.R.C.P. 12(b)(6) AND TO
Cray, Inc., and York County,)	CANCEL LIS PENDENS
)	
Defendants.)	
_____)	

PLEASE TAKE NOTICE THAT Defendant York County, a body politic and political subdivision of the State of South Carolina (hereinafter, "York County" or the "County"), by and through its undersigned counsel, hereby moves to dismiss the Complaint of Plaintiff William Bronson (hereinafter, "Plaintiff"), pursuant to Rule 12(b)(6), South Carolina Rules of Civil Procedure, on the grounds that the Complaint fails to state facts sufficient to constitute a cause of action against Defendant York County.

In support of this Motion, York County states as follows:

INTRODUCTION

The subject property was timely and appropriately auctioned in accordance with the requirements of S.C. Code Ann. § § 12-45-180 and 12-51-40, for failure by the taxpayer (Defendant Cray, Inc.) to pay taxes for the 2018 tax year. On November 4, 2019, after properly advertising the tax sale of the property as required by law, the tax collector for York County did sell the property at public auction to the purchaser, who is the plaintiff in this case. The County notified the defaulting taxpayer of its right to redeem the property within twelve months of the date of the tax sale by providing a notice of redemption letter dated November 6, 2019¹. The final

¹ The notice provided that the final date to redeem the property was on or before November 5, 2020.

redemption letter was sent by certified mail to the last known address of the Defaulting Taxpayer on September 21, 2020.

On September 30, 2020, the South Carolina General Assembly endeavored to respond to the unique challenges posed by the COVID-19 pandemic with regard to delinquent property taxes by adopting Section 3 of Act No. 174 (hereinafter "Section 3"), which amended S.C. Code Ann. § 12-51-90 by extending the statutory redemption period for real property sold at a tax sale in South Carolina. Specifically, Section 3 provided that if property was sold at a delinquent tax sale in 2019, and the twelve-month redemption period provided pursuant to S.C. Code Ann. § 12-51-90(A) had not expired on September 30, 2020, then the redemption period was extended for an additional twelve months. Defendant Cray, Inc.'s (hereinafter "Cray") redemption period had not expired as of September 30, 2020.²

On June 30, 2021, the South Carolina Supreme Court issued its ruling in *Mercury Funding, LLC, vs. Chesney*, (Op. No. 28040, June 30, 2021), holding that Act 174, including Section 3, was unconstitutional on the basis of the "one subject rule."

On July 21, 2021, following that decision, the South Carolina Department of Revenue ("SCDOR") issued a guidance document to counties regarding delinquent tax sales held in 2019, which were impacted by Section 3 and the subsequent ruling in *Mercury Funding* (the "Guidance"), and which Guidance is attached hereto as Exhibit A. The Guidance advised counties to issue notices of redemption required by § 12-51-120 to all taxpayers whose property was sold at a tax sale pursuant Section 3 but who had not yet redeemed their property, and further noted that the counties should issue the tax title to the successful bidder as soon as possible if the taxpayer failed to timely redeem the property following re-issuance of the notice of redemption. The basis

² It was set to expire November 5, 2020.

for SCDOR directing counties to re-issue the end of redemption notices pursuant to S.C. Code Ann. § 12-51-120, is “the state’s interest in protecting private property rights of taxpayers, and the strict construction of [that] purpose...”

On August 17, 2021, Defendant Cray redeemed the subject property, prior to York County issuing a new notice of redemption and before any tax deed had been issued to the Plaintiff. In filing this action, Plaintiff now seeks a declaration that he should be issued a tax deed as the high bidder, and has filed a *lis pendens* against the subject property.

STANDARD OF REVIEW

Under South Carolina Rules of Civil Procedure, a complaint is subject to dismissal when it “fail[s] to state facts sufficient to constitute a cause of action.” Rule 12(b)(6), SCRPC. According to the South Carolina Supreme Court, dismissal under Rule 12(b)(6) is appropriate if the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, do not entitle the plaintiff to relief on any theory. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint. *Flateau v. Harrelson*, 355 S.C. 197, 201-02, 584 S.E.2d 413, 415 (Ct. App. 2003).

DISCUSSION

As discussed more thoroughly below, Plaintiff’s claim against the County should be dismissed.

1. Plaintiff’s Complaint Fails to State a Claim Pursuant to Rule 12(b)(6), SCRPC.

Plaintiff fails to state a claim or facts sufficient to constitute a cause of action pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure because Plaintiff admits that the County complied with South Carolina law regarding tax sales, which are regarded as mandatory

and must be strictly enforced. See *Smith v. Barr*, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App. 2007); *Donohue v. Ward*, 298 S.C. 75, 83, 378 S.E.2d 261, 265 (Ct. App. 1989); *Tanner v. Florence Cnty. Treasurer*, 336 S.C. 552, 521 S.E.2d 153, 159 (1999); *Baker v. Denton*, 37 F.Supp.3d 794 (D.S.C. 2014). The procedure for conducting a tax sale is set forth in S.C. Code Ann. § 12-51-40, which requires, among other things, sending a notice of delinquent property taxes to the defaulting taxpayer. S.C. Code Ann. § 12-51-40(a), (b). Even after a tax sale is conducted, statutory notice of redemption is required, and the defaulting taxpayer retains the opportunity to redeem the property by paying all owed taxes, interest, and penalties within twelve months of the tax sale. S.C. Code Ann. § 12-51-90. The County acted in accordance with South Carolina law and extended the period during which Cray could redeem its' property by an additional 12 months pursuant to Section 3 of Act No. 174. Plaintiff's own Complaint states that the County complied with the statutory requirements but for its compliance with Section 3 of Act No. 174. Plaintiff has alleged no facts sufficient to overcome the County tax collector's action in following the law in existence throughout this process, and as a result, dismissal pursuant to Rule 12(b)(6) is appropriate.

Similarly, Plaintiff's claim that the County should issue a tax deed despite having voided the tax sale fails as a matter of law. Plaintiff seeks an equitable remedy where an adequate remedy at law exists. *Buist v. Huggins*, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006). Here, the County voided the tax sale and, as a result, Plaintiff was entitled to a refund of the purchase price plus interest as provided for in S.C. Code Ann. §§ 12-51-90, -100. Because the statute provides a clear remedy when a tax sale is voided, and which remedy has been effectuated in the present case, no other relief is due Plaintiff in this case. *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000)

(the rules of statutory interpretation are not needed where the language of the statute is plain and unambiguous).

The County has cancelled the tax sale in this case, and no longer holds any legal title to the subject property – thus, the County has no interest which could be conveyed to Plaintiff.

CONCLUSION

WHEREFORE, York County moves this Court for an order dismissing this case with prejudice and dissolving the *lis pendens* filed against the subject property.

Respectfully submitted,

s/ Laura Dover
S.C. Bar # 101521
York County Attorney's Office
26 West Liberty Street
P.O. Box 299
York, South Carolina 29745
(803) 684 – 4851
Laura.Dover@yorkcountygov.com
Attorney for York County

York, South Carolina
December 9, 2021



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 125, Columbia, South Carolina 29214

Government Services Division Decision

SUBJECT: Delinquent Tax Sales held in 2019

DATE: July 21, 2021

REFERENCES: S.C. Code Ann. § 12-51-120

AUTHORITY: S.C. Code Ann. § 12-4-320
S.C. Code Ann. § 12-4-520

SCOPE: The purpose of this document is to provide guidance to the counties regarding the delinquent tax sale held in 2019. It is the Department's determination until changed by statute, regulation, court decision, or a Departmental advisory opinion.

ISSUE:

How should the counties conclude delinquent tax sales conducted in 2019 after the South Carolina Supreme Court held Act 174 unconstitutional in Mercury Funding, LLC v. Kim Chesney, Beaufort County Tax Collector (Opin. No. 28040, filed June 30, 2021)?

CONCLUSION:

The delinquent tax collector should proceed to send notices to the defaulting taxpayer, grantee, mortgagee or lessee of the property, pursuant to § 12-51-120, and then, if the property is not redeemed, immediately issue the tax title to the successful bidder upon conclusion of the 45 days provided in the statute. If the property is redeemed during the notice period, then the bidder will only receive the statutory interest earned pursuant to § 12-51-90 during the first twelve months of the redemption period. As an alternative, a county may choose to void the sale of any properties that have not yet been redeemed, and then follow the provisions of 12-51-150.

DISCUSSION:

The state legislature passed Act 174 at the end of the 2020 legislative session. Section 3 of this Act, which was signed by the Governor on September 30, 2020, provided for an extended redemption period for twelve additional months for any property sold at a delinquent tax sale in

2019, if the redemption period had not yet expired. The Act also included provisions related to this extension, including additional interest to be paid for redemptions during the extended redemption period. The county delinquent tax collectors implemented the extended redemption provisions as provided in the Act. Sections 1 and 2 of the Act, however, dealt with automobile insurance. A motion for the SC Supreme Court to determine the constitutionality of this Act in the Court's original jurisdiction was filed, and the case was heard on May 6, 2021. On June 30, 2021, the Court issued its order declaring Act 174 unconstitutional in its entirety. Since then, the counties have inquired as to how to conclude the tax sales held in 2019, in light of the Court's declaration that Act 174 is unconstitutional.

Act 174, with an effective date of September 30, 2020, extended the redemption period for an additional 12 months for all properties sold at the tax sale in 2019 that had not yet been redeemed. In light of that Act, the delinquent tax collectors paused their usual processes to allow for the extended redemption period. This pause occurred at different times for the different counties, depending on where the county was in the tax sale process. Some counties had issued the final redemption notice pursuant to § 12-51-120 which provides that the notice be sent "not more than forty-five, nor less than twenty days before the end of the redemption period." Most counties were not yet in that time frame for this notice.

Courts in South Carolina have held that the laws relating to delinquent tax sales are for the protection of the taxpayer to prevent the loss of his property, are construed as mandatory, and are strictly enforced to effect that purpose. Baker v. Denton, 37 F. Supp. 3d 794 (SC Dist. Ct. 2014).

In light of these presumptions, each county should issue the notices required by § 12-51-120 to all taxpayers who have not yet redeemed their property. If the property is not redeemed during the notice period, the county should issue the tax title to the successful bidder as soon as possible following the end of the notice period, according to § 12-51-130. Due to the extended interest provisions of Act 174 being declared unconstitutional, if the property is redeemed by the defaulting taxpayer, the statutory interest provided in § 12-51-90 will apply for the first twelve months of the redemption period only. The county may choose to provide the actual interest earned during the extended redemption period to the former bidder as compensation for loss of his expected additional statutory interest.¹

QUESTIONS:

1. If the county had not yet issued the notices required by § 12-51-120 regarding the end of the redemption period, should the county now issue those notices?

¹ § 12-51-150

Answer: The county should immediately issue the notices required by § 12-51-120 and proceed expeditiously through the post-tax sale process of Chapter 51 of Title 12.

2. If the county had issued the notices required by § 12-51-120 regarding the end of the redemption period, should the county immediately issue the tax title to the successful bidder at the tax sale held in 2019?

Answer: In light of the state's interest in protecting private property rights of taxpayers, and the strict construction of this purpose, the county should re-issue the end of redemption notices pursuant to § 12-51-120 and proceed as outlined in Question 1.

3. If the county had not yet issued the notices required by § 12-51-120 regarding the end of the redemption period, may the county administratively void the tax sale for any properties which had not yet been redeemed by the defaulting taxpayer, since the notice requirements of § 12-51-120 had not been strictly complied with?

Answer: Pursuant to § 12-51-150, the county may administratively void a tax sale on the grounds that the required final notice under S.C. Code Ann. § 12-51-120 was not strictly complied with during the statutory redemption period. However, if the notice is given as provided in Question 1, then the defaulting taxpayer receives the statutory notice, and the public interest in protecting the private property rights of the taxpayers has been fulfilled.

4. If the property is redeemed, how should the county address the issue of interest due to the successful bidder in light of the Court's ruling that Act 174, which provided additional statutory interest pursuant to § 12-51-90 be paid during the extended redemption period, is unconstitutional?

Answer: Due to the Court's ruling that the extended interest amount is unconstitutional, then the only interest due is the statutory interest in § 12-51-90 for the first year of the redemption period. A county may choose to also award the actual interest earned by the county pursuant to § 12-51-150.

SOUTH CAROLINA DEPARTMENT OF REVENUE


W. Hartley Powell/Director

July 21, 2021
Columbia, SC

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I N D E X

(WHEREUPON, there were no exhibits marked or testimony taken during this hearing.)

P R O C E E D I N G S

1
2
3 THE COURT: All right. The next matter we have is
4 2021-CP-46-03234, William Bronson versus Cray, Incorporated.
5 This appears to be a motion brought by the defense, a 12(b)
6 motion to dismiss.

7 So, Mr. Ballou or Ms. Dover, which one of you wishes to
8 speak?

9 MR. BALLOU: Judge, I think they're basically---

10 THE COURT: Wait a minute.

11 MR. BALLOU: ---parallel motions.

12 THE COURT: Okay. I just lost Laura.

13 Laura, I can't---

14 MR. D'AGOSTINO: They filed the same motion, judge. So
15 --.

16 THE COURT: All right. Well then -- Laura, I'm gonna
17 allow Dan to go first and then, if you wish to be heard,
18 I'll hear from you and then we'll come to Mr. Ballou -- Mr.
19 D'Agostino.

20 Does that make sense to everybody?

21 MR. BALLOU: That's fine, Your Honor.

22 MR. D'AGOSTINO: Yes, sir.

23 THE COURT: All right. Thank you.

24 Mr. Ballou, I'll be glad to hear from you.

25 Thank you, Your Honor.

1 May it please the Court.

2 Dan Ballou on behalf of Cray, Inc. Cray, Inc. is a
3 corporation that, up until the times alleged in this
4 complaint and, and thereafter, has been the owner of real
5 property located in, in York County.

6 It is undisputed that, for at least tax year 2018,
7 there was a failure of my client to pay property taxes that
8 resulted in the initiation of the alternative tax collection
9 procedures under the South Carolina Code, and those
10 procedures were followed to the letter by York County
11 including the final notice of delinquency that was sent on,
12 we don't dispute, on September 21st of 2019. That
13 resulted in a tax sale of the property on November the
14 4th of 2019 at which Mr. D'Agostino's client, Mr. Bronson,
15 we do not dispute was the high bidder.

16 As you well know, judge, under the tax sale procedures,
17 once you have been the high bidder at a tax sale, the
18 taxpayer nonetheless has another 12 months to redeem the
19 property.

20 And so notice was sent out by the county on September
21 the 21st of 2020 pursuant to the statutes that, as the 12
22 year period following the November 4th, 2019, tax sale
23 approached, that the taxpayer had one last opportunity to
24 redeem the property. And that, to redeem that, they needed
25 to provide to -- basically pay the back taxes and penalties

1 and interest as set forth in the statute.

2 Something, of course, happened during the, during the
3 Fall of 2020 which was the Legislature was dealing with the
4 effects of the COVID crisis. And, in September -- on
5 September the 30th of 2020, the General Assembly adopted a
6 statute that amended the tax sale statutes that provided
7 that if tax -- if, if property is sold at a tax sale in
8 2019, that the redemption period is extended by 12 months.

9 And so, on November the 6th of 2020, the county sent
10 out notices to taxpayers that had property that had been
11 sold in 2019 informing them that they had, pursuant to this
12 new South Carolina statute, an additional 12 months to
13 redeem their property. And that were the state of the law
14 in the Fall of 2020.

15 And at that -- well---

16 MR. D'AGOSTINO: I need to object or -- I need to
17 object or interject something very quickly.

18 THE COURT: I mean this, this is a nonjury---

19 MR. D'AGOSTINO: 12(b)(6).

20 THE COURT: This, this is nonjury motions. I am not
21 gonna entertain any objections. I -- you'll have an
22 opportunity to respond. I'll, I'll hear you just briefly on
23 what it is you need to interject.

24 MR. D'AGOSTINO: Well, they're arguing a summary
25 judgment motion is what it sounds like they're arguing.

1 THE COURT: Right.

2 MR. D'AGOSTINO: Well, it was filed as a 12(b)(6).

3 THE COURT: okay. All right. You'll have an
4 opportunity to respond---

5 MR. D'AGOSTINO: Thank you.

6 THE COURT: ---once he goes -- once I hear him in full.

7 MR. BALLOU: Your Honor, what we are, what we are
8 providing is factual background that establishes that the
9 cause of action pled by the plaintiff, as I understand, is a
10 12(b)(6) motion to dismiss. We're not arguing summary
11 judgment at this time.

12 So, essentially what the plaintiff is arguing is that
13 the county should have disregarded the law at the time that
14 existed in the Fall of 2020 cause that's what happened. The
15 law changed and extended that extension -- that, that
16 redemption period for 12 months and the county did exactly
17 what it was suppose to do. It followed the law.

18 Subsequently, and this is in the complaint, so there's
19 no -- there's no, there's no question about whether or not
20 this is within the bounds of a 12(b)(6) motion. The, the
21 Supreme Court of South Carolina, in the Summer of 2021,
22 determined, on a -- technical grounds, that the, the statute
23 that had been amended in the Fall of 2020 was
24 unconstitutional, and that's the Mercury Funding case that
25 is referenced in our motion. And the Supreme Court

1 concluded that, under the one subject rule, there was more
2 than one subject involved in that particular act of the
3 General Assembly and concluded that the, the, the act was,
4 therefore, unconstitutional.

5 well, that caused the, the whole state now to have to
6 deal with the fact that this law had been passed that
7 counties and property owners had acted in reliance on the
8 existing law at the time. And so how do they, how do they
9 resolve that issue going forward and the Department of
10 Revenue issued a guidance to the counties on how to do that
11 and that's exactly what the county, in, in their motion and
12 what we, we contend, endeavored to do. Although, in this
13 case, as it turned out, my client redeemed the property in
14 August of 2021.

15 So, you've got the act, the act that's passed in the
16 Fall of 2020. It is in effect throughout 2021 until it is
17 declared unconstitutional by the Supreme Court in June of
18 2021 and, in July of 2021, the Department of Revenue issues
19 this guidance, and, in August of 2021, my client redeemed
20 the property.

21 Title had never passed to the plaintiff. The tax deed
22 had never been issued by the county. In fact, my client
23 redeemed it before the county even had an opportunity to
24 send, pursuant to this Department of Revenue guidance, a
25 notice of -- a, a new notice of redemption and that notice

1 of redemption is in a -- an essential component of the tax
2 sale process.

3 If you don't comply with the -- strictly comply with
4 the technical requirements of the tax sale process, the
5 process is not valid and the property owner, the tax payer,
6 is intended to be protected and that's some of the case law
7 we've cited in our, our brief.

8 This entire structure of tax sale is intended to be
9 strictly interpreted for the protection of the taxpayer
10 because the Court recognizes that the power of the State to
11 deprive citizens of, of, of, of real property is an, is an
12 extreme power. And so they're gonna do everything they can
13 to protect the interest of the taxpayer and that's what
14 happened in this situation.

15 The -- it's -- it is undisputed that my client redeemed
16 the property -- the, property properly. The only, the only
17 complaint that I can glean from the, from the, the
18 plaintiff's pleading is that that redemption didn't occur
19 during a period of time when the General Assembly said that
20 it, it did not -- it was not due.

21 So, in essence, the, the plaintiff is asking this Court
22 to require the county to disregard the acts of the General
23 Assembly and that -- and, and, further, to deprive a
24 property owner of real property in derogation of the, the
25 express intent of the tax sale statutes.

1 My client is the rightful owner of the property. He
2 properly redeemed this property pursuant to, to the, the tax
3 sale statutes as they existed and there is no basis under
4 law for the plaintiff to, to recover or to, to require the,
5 the -- my, my, my, my client to be divested of rightful
6 title to the property.

7 The, the additional basis we have in our motion, judge,
8 that might be distinct -- distinction between ours and the,
9 the county's motion relates to the lis pendens. We don't
10 believe that this, this action, in fact, involves title to
11 real property. It may involve claims to property arising
12 from the tax sale process but title never passed through
13 that process to the plaintiff.

14 There is no claim to title to real property. And so
15 what we would ask is that, even if the Court concludes that,
16 by some reason, the case should go forward on the, the
17 merits of the claim that's pled, that the, that the lis
18 pendens should be dismissed.

19 Judge, you're on mute.

20 THE COURT: Ms. Dover, any -- do you wish to add any
21 other comments?

22 You're on mute now, Laura. You're still on mute.
23 Still can not -- can you hear me?

24 (WHEREUPON, there was no audible response.)

25 THE COURT: All right. I can not hear you.

1 Can you -- let's see. Try it this way.

2 All right. Laura, still can not hear you. I'm, I'm
3 showing you unmuted on my screen.

4 MR. BALLOU: Laura, is the microphone on your computer
5 on?

6 THE COURT: All right. I, I often make that mistake,
7 Laura. The microphone way down in the right hand corner on
8 your screen, and you -- but you're a young person. You
9 probably understand that. But that -- I'm, I'm often guilty
10 of that being muted as well as everything else but I'm still
11 showing you muted.

12 All right. You work on your -- see if you can work on
13 where we can hear you.

14 Mr. D'Agostino, I'll give you an opportunity to
15 respond.

16 MR. D'AGOSTINO: Thank you, Your Honor.

17 Your Honor, the reason why I started to object, and,
18 and I'll explain it, this is a 12(b)(6) motion and you got
19 to take all the facts of the complaint specifically pled.
20 There's some things that Mr. Ballou said that factually I
21 don't agree with, and, and, as a result, that's why I
22 believe the case needs to be prepared and we actually have
23 to have a trial on it so we can present a record because
24 deciding the case as, as summary judgment as, as opposed to
25 a 12(b)(6) motion two -- are two entirely different things.

1 We don't really have a record of the facts.

2 Now, as it relates to 12(b)(6), this action was filed
3 basically as a declaratory judgment action. The same thing
4 as was filed when the Court, Supreme Court, decided the
5 underlying case of, of -- which gave rise to the issues in
6 this case. The case of Mercury Funding, LLC versus Kim
7 Chesney and Beaufort County Tax Collector. There's a
8 pending Number 28040.

9 That case was filed as a declaratory judgment action,
10 but in the original jurisdiction of the Supreme Court.
11 Basically I filed an action in State Court before you for
12 the Court to decide some of the issues that remain unclear
13 cause the Supreme Court did not address all the issues and
14 one of those issues deals with the specific issue that
15 exists here and, and that is -- what happened was, just by
16 way of cutting to the chase, the property -- the, the
17 taxpayer never claimed any of its mail, and, and everything
18 that the county sent to the taxpayer was returned unclaimed.
19 And so, when they sent out this, this letter about the
20 time period for the redemption being extended, there's no
21 indication -- I mean they're, they're saying that now that
22 the county did send it out, and I don't know that the county
23 did send a letter out about the, the redemption being
24 extended because of the statute. Never seen such a letter.
25 Under the FOIA request, I didn't get such a letter that was

1 sent to this taxpayer.

2 The only thing I got from -- that was sent to this
3 taxpayer was notice that the property was gonna be sold,
4 that the property was sold, and then that the notice of
5 right of redemption was sent to them. And that was sent to
6 them on September 21st, 2020, and the taxpayer, that's the
7 dates of it, and the taxpayer, the defendant, had until
8 November 5th, 2020, in which to redeem. Not 2021. They
9 had until November 5th, 2020, to redeem the property.

10 So, what happened was, between the time -- so the, the
11 notice of right to redeem, that 30 day -- that, that last
12 notice was sent to this taxpayer. This taxpayer didn't even
13 pick that notice up. Then the Legislature changed the law
14 that said everybody got a 12 month extension of time.

15 Have no, have no idea that the taxpayer ever got that
16 notice. Don't even know -- don't -- have never seen such a
17 letter saying that the time period was extended.

18 November 5th, 2020, came. The deed should of been
19 issued to my client who was the high bidder for 30 something
20 thousand dollars -- 30 -- \$31,505. My client had deposited
21 with the county 11 months earlier, 12 months earlier as of
22 November 5th, 2020. So, on November 5th, 2020, he was
23 waiting to get his tax deed.

24 What happened was the Legislature made that statute --
25 extended the time period but then the case was brought

1 before the Supreme Court. And, and just so you know, the
2 taxpayer did not pay to redeem that property from
3 September 21st, 2020, until November 5th, 2020, which
4 was the last day it could redeem it under the statute that
5 existed prior to the Legislature enacting an
6 unconstitutional statute.

7 Our Supreme Court decided, in its original
8 jurisdiction, that that statute that extended that, that
9 time period for redemption was unconstitutional.

10 And so, once it was declared to be unconstitutional,
11 since the taxpayer did not redeem it within the time period
12 set forth in the letter that was sent to them cause -- and
13 they didn't even claim it. Then our position is the
14 constitutional that -- since the statute was
15 unconstitutional, it, it was never -- they never had a right
16 to rely upon that. We don't even know that they ever got
17 the notice.

18 This, this fact that they got this letter from the --
19 that they're saying that the county sent out, don't even
20 know they ever got it. Don't even know that it was ever
21 sent.

22 What happened was, and, and this is in FOIA, Mr. Ballou
23 was inquiring about some other property owned by the
24 defendant in this action and the tax, the tax collector
25 mentioned to Mr. Ballou we've never been able to get in

1 touch with your client on this other piece of property,
2 Cray, and he has this other property over here in York
3 that's been sold. Do you know how to get in touch with him.

4 It was at that time that Mr. Ballou gets in touch with
5 his client almost a year later, a year after the deed should
6 of been issued, and says -- you know, and, and notifies him.

7 And so the deed should of been issued to my client in
8 November of 2020. They redeemed it on August 17th, 2021,
9 because, by then, the statute had been declared
10 unconstitutional and the county was, was suppose to have
11 sent out the notice, which they would of sent out to the
12 address and it would of been unclaimed again like everything
13 else was, and my client would of ended up with the property.

14 But because, because -- well, of how this specific
15 thing happened, they're claiming that, that the sale should
16 not -- I mean my client should not have the deed. My client
17 doesn't have the deed.

18 My client has a vested property right in this real
19 estate because he put \$31,505.73 with the county back in
20 November of 2019, and he should of gotten title on
21 November 2nd, 2020.

22 The county eventually did issue a refund of his bid
23 plus, you know -- they only gave statutory interest for the
24 12 months. Not, not the two years. They only -- and my
25 client still hasn't cashed the check because we don't

1 believe it's appropriate.

2 So, Your Honor, as it relates to a 12(b)(6) motion,
3 failure to state a claim upon which relief can be granted,
4 we believe we have stated a claim in the, in the substance
5 and the body of the complaint. We're asking for declaratory
6 judgment that the action is -- should not be -- that the
7 statute was unconstitutional, that the conduct by the county
8 was wrong, that strict compliance with the constitutional
9 statutes would of required them to issue my client a deed
10 because the Supreme Court decided that the statute that came
11 into effect was unconstitutional.

12 The issue is whether that statute's unconstitutional
13 void ab initio or whether it only becomes unconstitutional
14 and has any effect from the time the Supreme Court made the
15 decision forward. In the end, that, that could be -- that
16 will be one of the issues.

17 The other issue is, is going to be something Mr. Ballou
18 brought up. He says his client was mailed a letter saying
19 that the statute, that the statute and the redemption period
20 was extended 12 months. That's a, that's a fact that he's
21 interjecting today. That's no where in any pleadings and
22 that's why I was interjecting my objection.

23 So, based upon the face of the complaint, I believe
24 we've stated a claim for declaratory judgment action. The
25 case ought to be developed through testimony and then the

1 Court can decide it after hearing the testimony at trial and
2 receiving the evidence at trial. But right now there's no
3 record for the Court to make a decision as a 12(b)(6)
4 motion.

5 Thank you, Your Honor.

6 THE COURT: All right. Thank you.

7 Ms. Dover, did you get -- you're, you're, you're
8 showing muted on my computer.

9 All right. I just unmuted you.

10 Can you, can you hear me?

11 This is Judge Hall?

12 MS. DOVER: Yes, Your Honor.

13 Can you hear me?

14 THE COURT: Yes.

15 All right. Do you wish to be heard?

16 MS. DOVER: Briefly, Your Honor.

17 I want -- I will not go through a recitation of the
18 facts. I believe Mr. Ballou covered that thoroughly.

19 I will say that the county's position is that we acted
20 in accordance with South Carolina law at, at all points
21 throughout this process. Largely, the, the complaint has no
22 disagreement with that.

23 I would further say that what, what it sounds like
24 plaintiff is, is seeking here is an equitable remedy where
25 we have an adequate remedy at law, and plaintiff was, was

1 entitled to and did receive the refund of the purchase
2 price, plus the interest, as provided for in Title 12
3 Chapter 51, which I believe Mr. D'Agostino also, also agrees
4 with.

5 And regarding when the statute was voided or whether it
6 was void ab initio, I, I would look at White versus J.M.
7 Brown. That was the 2004 South Carolina Supreme Court case
8 that essentially said, and if I could quote from that, "life
9 goes on while else -- while judicial or legislative
10 processes run their course. In the mean time, parties must
11 arrange and conduct their business affairs under the law as
12 it presently exists regardless of a belief or a hope the law
13 will later be changed or invalidated."

14 So, at all times throughout this process I would
15 reiterate that the county followed what was applicable law
16 at the time. Following the Supreme Court's decision which
17 struck, struck down Act 174 in the Mercury Funding case on
18 the basis for the one subject rule, the county acted in
19 accordance with the guidance that was issued by the South
20 Carolina Department of Revenue because we agreed with their
21 basis for that guidance which was that, in taking the next
22 steps that the county took, we were acting in furtherance of
23 the purpose of the statute which is to ultimately be for the
24 protection of the taxpayer.

25 THE COURT: All right. Thank you, Ms. Dover.

1 Mr. Ballou, I'll, I'll give you an opportunity for a
2 brief response.

3 MR. BALLOU: Thank you, Your Honor.

4 First of all, the, the timeline is significant, and, on
5 November 5th of 2020, when Mr. D'Agostino alleges that his
6 client should have been issued a tax deed, the law provided
7 that that tax -- the redemption period had been extended.
8 So, at that point in time -- and, and keep in mind, the, the
9 statute that requires the issuance of a notice of redemption
10 says it must be sent no less than 40 -- 45 days more than 20
11 days. So, there's a window of opportunity there to send a
12 notice of redemption, a last -- the last ditch notice
13 basically to the taxpayer to say we're about to -- you're,
14 you're about to lose title to your property.

15 Now, what's significant is, if you read the case law in
16 context, context sale disputes, the burden is on the, the,
17 the, the county to, to, to comply with the law and the
18 bidders to comply with the law strictly. The taxpayer
19 doesn't -- there's no requirements they actually receive any
20 of the notices. But if they show up on the date -- the last
21 day of redemption and redeem the property, they invalidate
22 all the processes, they get title back, and the clerk of,
23 of, of the, the, the county is instructed to insert the
24 taxpayer's name into the deed voiding the tax sale.

25 He gets his property back. He doesn't have to get any

1 notice. He doesn't have to actually receive it. He can
2 even actually know that it's in process and refuse to pick
3 up his mail. But if he shows up on that last day of
4 redemption and redeems the property, he's entitled to title,
5 title to the property.

6 So, this whole process is designed extremely for the
7 protection of a taxpayer and that's what happened in this
8 case. In the Fall of 2020, we don't dispute that an initial
9 notice of redemption was, in fact, sent, and that's what's
10 alleged in the complaint and as, as, as acknowledged by the
11 county.

12 The effect of the law was to invalidate that strict
13 time period. So, irrespective of whether that, that, that
14 statute -- that, that statute was subsequently determined to
15 be unconstitutional, which we admitted it was, my, my -- the
16 taxpayer's still entitled to the statutory notice of life --
17 of redemption, and until that proper right of redemption is
18 established, there is no right to convey the tax, the tax
19 deed to the highest bidder. The taxpayer re -- retains the
20 right to redeem that property until each and every step of
21 the process is followed.

22 We believe the county did exactly what it was suppose
23 to do, that it -- and it was fortuitous, of course, that my
24 client learned of the existence of a tax sale at the time it
25 did. But that doesn't change the fact that it properly

1 redeemed the property and that there is no dispute or case
2 or controversy for this Court to issue a declaratory
3 judgment about.

4 The whole issue is whether or not the statute was --
5 that the, the process for tax sale was complied with by the
6 county. That's what happened. That should be the end of
7 the story, judge.

8 THE COURT: All right. Thank you.

9 I think I have a pretty good grasp of amended -- in
10 essence is the -- whether the statute was void ab initio or
11 whether it still had an effect during that 12 month
12 redemption period.

13 All right. I'll take a close look at all that. I'm
14 gonna -- I'll rule on that by the end of next week, the end
15 of next week. I want to take a closer look at, at --
16 obviously COVID strikes again is what this case is about.

17 All right. Thank y'all.

18 MR. D'AGOSTINO: Thank you.

19 MR. BALLOU: Thank you, Your Honor.

20

21 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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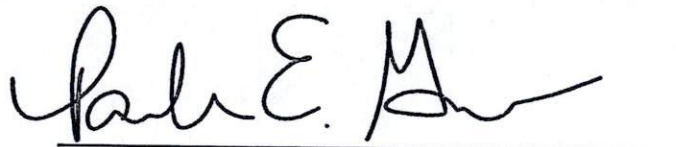
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for York County, South Carolina, on the 15th day of March, 2022.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

May 26th, 2022

A handwritten signature in cursive script, appearing to read 'Pamela E. Green', is written above a horizontal line.

PAMELA E. GREEN, Court Reporter

The South Carolina Court of Appeals

APPEAL FROM YORK COUNTY

Daniel D. Hall, Circuit Court Judge

Appellate Case No. 2022-000548

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SC Court of Appeals

William Bronson,

Appellant,

Vs.

Cray, Inc. and York County,

Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal complies with Rule 210(g), SCACR.

November 17, 2022

/s/ Daniel D. D'Agostino
Daniel D. D'Agostino
S.C. Bar No.: 65088
D'Agostino Law Firm
25 West Liberty Street
York, South Carolina 29745
dan@ddlplaw.com
Office: 803-628-6509
Fax: 803-628-7990
Attorney for Appellant