The South Carolina Court of Appeals

APPEAL FROM YORK COUNTY

Daniel D. Hall, Circuit Court Judge

Appellate Case No. 2022-000548

William Bronson, Appellant,

Vs.

Cray, Inc. and York County, Respondents.

FINAL BRIEF OF THE APPELLANT

November 18, 2022

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STATEMENT OF THE ISSUES

I. Did the Trial Court err in dismissing the case with prejudice pursuant to Respondents' Rule 12 (b) (6) motions when the Respondents argued matters outside of the Complaint and the court included those as part of its basis for a decision?

II. Did the Trial Court err in deciding the Respondent York County complied with the law when the statute upon which the Respondents Reply was unconstitutional and therefore is void ab initio?

STATEMENT OF THE CASE

The Appellant filed a Summons and Complaint on October 27, 2021, seeking a determination to the declaratory the Respondent York County should issue a tax deed to the Appellant for property for which Appellant was the high bidder at tax sale (Declaratory Judgment Complaint) (R. pp. 13-18). Each Respondent filed a Motion to Dismiss and Cancel the Lis Pendens, the Respondent Cray having filed its motion on December 1, 2021 (Motions) (R. pp. 19-25), and Respondent York County having filed its motion on December 9, 2011 (Transcript) (R. pp. 26-33). The case came before the court for a motion hearing on March 15, 2022 (R. pp. 34-54). Each party, through council, argued their positions. The court entered an order which was filed on April 1, 2022 (R. pp. 1-8). Appellant filed a timely Notice of Appeal.

STATEMENT OF FACTS

The Appellant is a resident of York County, South Carolina. The Respondent Cray was the defaulting taxpayer. Respondent Cray owned real estate located in York County, South Carolina. The property is 17.85 acres of land. The Respondent York County issued an execution on the property owned by Respondent Cray which directed the tax collector to levy by distress and sell the Respondent Cray's property. Respondent York County issued the execution against the real estate. The Respondent York County advertised and sold the property for taxes which were delinquent for the tax year 2018. The sale occurred on November 4, 2019, after proper advertising. Appellant was the high bidder, complied with the terms of the tax sale and was awaiting a tax deed. Appellant deposited with York County appropriate monies for the purchase of the property. After the sale, the Respondent York County notified Respondent Cray of its right to redeem the property within 12 months of the tax sale by a notice of redemption letter. The letter advised Respondent Cray that if it failed to redeem the property, the tax deed would be issued to the successful bidder. The letter was sent to Respondent Cray on September 21, 2020. Respondent Cray failed to redeem the property within 12 months of the date of sale. The above are the allegations of the Complaint (R. pp. 13-17).

Respondent York County fully complied with the statutory requirements for the tax levy and sale of the property. The Respondent York County subsequently voided the tax sale and refused to issue the tax deed. South Carolina code section §12-51-150 only allows a tax collector to avoid a sale if there is a failure of any action required to be properly performed, and in this case there was no failure. The tax sale was completed. The Respondent York County sent the final notice but did not issue a tax deed.

The Appellant filed this action seeking a determination since the notice of final redemption letter was sent and the property was not redeemed within the statutory required time period, and the Respondent York County should have issued the deed to the Appellant (R. pp. 13-17). The Respondents filed their Motion to Dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure (R. pp. 19-33).

At the hearing, Appellant objected to the arguments and presentation of facts outside of the four corners of the Complaint because this was a 12(b)(6) Motion (R. p. 38, line 16 – p. 39, line 6 and R. p. 43, line 17 – p. 44, line 8). The Court heard arguments and subsequently issued its Order granting the Motion to Dismiss and release the Lis Pendens. This appeal followed.

STANDARD OF REVIEW

In an appeal from the dismissal of a case for failure to state a claim upon which relief can be granted, the Appellate Court applies the same standard of review as the Trial Court. The standard requires the court to construe the Complaint in a light most favorable to the non-moving party and determine if the facts alleged and all inferences reasonably deductible from the pleadings would entitle the Plaintiff to relief on any theory of the case. **Freemantle v. Preston**, 398 S.C. 186, 728 S.E.2d 40, (S.C. App 2012).

ARGUMENT

1. The trial court aired in dismissing this action pursuant to 12(b)(6) of the South Carolina rules of civil procedure as the complaint does state a cause of action.

At the motion hearing, the Respondent began to argue matters outside of the four corners of the Complaint. Appellant attempted to, and did object, to the Respondent's arguing this motion as a summary judgment motion pursuant to Rule 56 as opposed to the 12(b)(6) Motion which was filed. (Tr. p. 5, line 16 top. 6, line 5 and p. 10 line 14 top. 11, line 8). The Trial court subsequently determined issues not in light most favorable to the Appellant but made findings of fact without a record. The Court, and it's finding a fact number eight, referred to the South Carolina Department of Revenue guidance document issued to counties on July 21, 2021 (Order). The document was not part of the record of the Complaint, and it is not a statute. In the Court's finding a fact number nine, the Trial Court found that Respondent 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 Appellant. While it is true no tax deed had been issued to the Appellant, the Court's finding that Cray redeemed the property on August 17,

2021, before York County could send a new notice of redemption, is nowhere in the Complaint or the record (R. pp. 1-9). These findings are inserted into the Order from the Respondent. The Respondents did not provide any affidavit or document upon which the Trial Court could make these findings of fact. There is no evidence of record to support these findings or these dates. The Trial Court did not view all evidence in light most favorable to the Appellant in the Trial Court clearly did not view all inferences and light most favorable to the Appellant. The Trial Court adopted arguments and facts without any evidentiary support when such allegations were presented as arguments from the Respondent.

In addition, in the Court's conclusion of law paragraph number five, the Trial Court found that York County was fully justified in following the provisions of Act 174 of 2020. In making a decision that the Respondent York County was justified, the Trial Court was again making a determination and finding in light most favorable to the moving party, the Respondent York County and not the Appellant. There was no evidence submitted or pleading submitted to substantiate such a claim.

The Appellant was not required to file a Motion to Alter or Amend because the Appellant objected to this argument and these facts at the hearing. Despite the objection, the Court ruled and adopted facts that are not part of the record. No answer was filed. The Respondents did not file any affidavits for this Court upon which to treat this Motion as a Summary Judgment Motion. When Respondent's counsel prepared the Order for the court, Respondent included dates and facts that did not appear in the record but were part of its argument (R. p. 9).

The Appellant should have been allowed to develop the record as it relates to when the property was redeemed, when York County sent notice of redemption letters, whether York

County had sent a letter to the Respondent Cray after September 20, 2020. The parties should have been able to develop a record of what happened, when it happened, and as well, how a decision of the unconstitutionality of the statute would affect the public. Respondent argued many facts which are outside of the record and the Trial Court used the arguments as facts in issuing its Order. As set forth in the standard of review, all matters alleged in the Complaint and inferences which could be drawn from there must be construed most favorable to the Appellant. Since this was not done, Appellant submits that the Trial Court erred. The Order should be reversed, and case should be remanded. With a reversal, the setting aside of the Lis Pendens would also be reversed. The Appellant alleged an interest in the land because Appellant deposited the money and was the purchaser of the land. Therefore, the Appellant has an interest in that real estate which establishes the basis for filing the Lis Pendens.

Finally, the determination by the Trial Judge that an adequate remedy at law exist is not pled or part of the Complaint. Neither Respondent filed an Answer nor did either Respondent present any evidence that there is an adequate remedy at law. Therefore, it was and is improper and outside the pleadings for the Court to have made any decision as to any adequate remedy for the Appellant.

2. The Trial Court's decision that the holding in **Mercury Funding, LLC v. Chesney**, 433 S.C. 591, 861 S.E.2d 35 (2021) did not render Act 174 of 2020 void ab initio was in error.

The Trial Court determined in its conclusion number 5 that York County was justified in following the provisions of Act 174 between its effective date and the date of the Supreme Court's decision in **Mercury Funding**. (R. p. 4, paragraph 5). The Trial Judge, in its Order, basically finds that the determination that Act number 174 of 2020 is void must only be applied

prospectively when it finds that all statutes in South Carolina are presumed to be constitutional and that York County was justified in following the provisions of the Act. The law is clear: "An unconstitutional act is not a law, it confers no rights, it imposes no duties, it affords no protection, ... It is, in legal contemplation, as inoperative as though it has never been passed. **Bergstrom v. Palmetto Health All**, 358 S.C. 388, 399 596 S.E.2d 42, 47 (2004)." **Swicegood v. Thompson**, 435 S.C. 63, 64, 865 S.E.2d 775, 776 (2022). The general rule as explained is that a determination of a statute is unconstitutional means it is void ab initio and is followed "except in special or unusual circumstances such as when doing so would create widespread havoc involving a great number of people or transactions, spawn unnecessary litigation or result in flagrant injustice." **Bergstrom**, at 400. The Respondents did not present any evidence the determination of the statute being void ab initio would create any widespread habit involving a great number of people or transaction or spawn any unnecessary litigation. There was and is no evidence of record of such being the case.

In analyzing the facts of this case as set forth, the Respondent Cray was the title owner of real property identified as tax map number 070–08–03–108, the property being located in York County, South Carolina. Respondent Cray failed to timely pay the 2018 property taxes and Respondent York County commenced collection procedures pursuant to the Alternate Procedure for Collection of Property Taxes, South Carolina Code Section §12–51–40, et seq. York County strictly complied with the court requirements of the statute in selling the property at tax sale and Appellant was the high bidder at the tax sale and deposited its money for the purchase of the property pursuant to statute. The property sale occurred on November 4, 2019, and Respondent Cray had until November 4, 2020 to exercise its statutory right of

redemption pursuant to South Carolina Code Section §12–51–90. Respondent York County sent notice pursuant to the statute to Respondent Cray on September 21, 2020. On September 23, 2020, Act 174 of 2020 which was signed by the Governor and became effective on September 30, 2020 extended the redemption period. This act was determined to be unconstitutional and therefore is as though it never occurred. Respondent Cray did not redeem the property on or before November 4, 2020. Since the sale occurred, the notice of the right of redemption pursuant to statute was sent to Respondent Cray advising of its right to redeem on or before November 4, 2020 and since Respondent Cray did not redeem, the tax sale should not have been set aside, and the tax deed should have been issued.

No other analysis can exist under the facts of this case if this Court decides that a decision could be made based upon the undisputed facts of the Complaint and upon which Respondents agree. The Appellant argued this entire analysis to the Trial Court including the issue of this being a 12 (b)(6) Motion and not a Summary Judgment Motion and the issue of the unconstitutionality of the statute being void ad initio (R. p. 43, line 16 – p. 49, line 4). Appellant argued and advised the Court that if it was going to consider the issue and inferences, the issue could come down to the question of whether the Act was void ab initio. Based upon the law as cited above, the determination of a law being unconstitutional is a determination that it is as if it never happened and therefore void ab initio. As such, the Respondent York County should have been directed to issue the deed to the Appellant.

CONCLUSION

For the above reasons, the Appellant request this Court to reverse the trial judgement and determine and direct the Respondent York County to issue a tax deed to the Appellant, or in the alternative, to remand this case to the Trial Court, vacating the Trial Judge's decision which leaves in place the Complaint and the Lis Pendens, and enables the parties to develop a record as it relates to the issues in this case.

Respectfully submitted,

November 18, 2022

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

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