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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM JASPER COUNTY

Court of Common Pleas

The Honorable Bentley D. Price, Presiding Court Judge

Case No. 2022-001054

Charles Bradford KeifferAppellant

v.

Jasper County Delinquent Tax Office and Carolina Heritage, LLCRespondents

INITIAL BRIEF OF RESPONDENT

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Rule 56

STATEMENT OF THE ISSUES ON APPEAL

Was the learned trial Judge absolutely correct in finding that the Jasper County authorities gave notice required by the South Carolina tax sale statutes?

Was the learned trial Judge absolutely correct in finding that there are not genuine issues of material fact which preclude the grant of summary judgment in this case?

STATEMENT OF THE CASE

Appellant's Statement of the Case is accurate with the following exceptions;

Not all "required mailing were all returned,"

The first notice of delinquency was sent "US First Class postage on April 10, 2017 to Charles Bradford Keiffer at P.O. Box 174, Hardeeville, SC 29927, and was not returned" (Tax Collectors Affidavit).

STATEMENT OF FACTS

The Appellant's ad valorem taxes remained unpaid after March 17th, 2017. The Treasurer issued a tax execution to the Tax Collector, and proceeded under the collection process under Title 12, Chapter 51 of the South Carolina Code of Laws. The Tax Collector received the Tax Execution dated March 17, 2017, and the Tax Collector then either personally took, or caused the taking of the following actions in regard to the tax sale and tax deed involving Tax Map Parcel 028-00-03-128 (ROA ____).

The first notice of delinquency was sent regular US First Class Postage on April 10, 2017, to Charles Bradford Keiffer at P.O. Box 174, Hardeeville, SC 29927, and was not returned (ROA ____).

The second notice was sent certified mail, restricted delivery on June 12, 2017, addressed to Charles Bradford Keiffer at P.O. Box 174, Hardeeville, SC 29927, and returned from US Postal Service on June 20, 2017, marked "Returned to Sender – Attempted – Not Known – Unable to Forward" (ROA ____).

The statutory notices to delinquent taxpayers or grantees of record pursuant to §12-51-40 (a) & (b) are auto generated and mailed by a third-party service, PUBLIQ, using the name and address of the tax payer that the Tax Assessor has listed in its system (ROA ____).

The property was posted on September 8, 2017 (ROA ____).

Notice of Sale and Redemption amounts was sent regular U.S. First Class Postage on November 15, 2017, to Charles Bradford Keiffer at P.O. Box 174, Hardeeville, SC 29927, and was not returned (ROA ____).

The second Notice of Sale and Redemption amounts was sent regular US First Class Postage on February 13, 2018, to Charles Bradford Keiffer at P.O. Boc 174, Hardeeville, SC 29927, and was not returned (ROA _____).

Prior to sending out the Notice of Approaching End of Redemption Period, the Jasper County Tax Collector once again consulted with the Tax Assessor's Office to determine if any change of address was available; there was none recorded. The Jasper County Tax Collector further searched to determine if there was any other address that the Tax Collector might send Notice to in order to provide notice to the defaulting tax payer. The Tax Collector sent a notice to the property's physical address (ROA _____).

The Notice of Approaching End of Redemption Period was sent Certified Mail with the US Postal Service on September 25, 2018, to Charles Bradford Keiffer at P.O. Box 174, Hardeeville, SC 29927, and was returned by the US Postal Service on September 28, 2018 marked "Return to Sender / Not Deliverable as Addressed / Unable to Forward;" a letter was also sent to Charles Bradford Keiffer at 1397 Honey Hill Road, Hardeeville, SC 29927, and Joseph Cody Parker, 1397 Honey Hill Road, Hardeeville, SC 29927, and both were returned by the US Postal Service on September 28, 2018 marked "Return to Sender / Not Deliverable as Addressed / Unable to Forward;" and to SC DOR, Attn: Collection Supervisor, 2 South Park Circle, Charleston, SC 29407, which was delivered and signed for on September 28, 2018 (ROA _____).

In Appellant's Answers to Interrogatories dated May 1, 2020, when asked, "when did you close U.S. POB 174, Hardeeville, SC 29927?" Appellant answered, "It's not closed – it's just not used" (ROA _____).

After the redemption period expired, the Tax Collector requested a tax deed to be prepared and caused the deed into Carolina Heritage, LLC to be filed at Records Book 1006 at Page 619 (ROA _____).

ARGUMENT AND CITATION OF AUTHORITY

The requisite mailings were sent to the best address available, which was that available at the Tax Assessor's Office of P.O. Box 174, Hardeeville, SC 29927, as well as the property address, and other addresses identified as possible addresses by Defendant Jasper County, being beyond what was required by law, and that in any event, the property was properly posted, curing issues of notice. The Tax Collector has no record of any address change from P.O. Box 174 being submitted or recorded at the Tax Assessor's Office; the P.O. Box 174 Address is the address shown on the deed by which Plaintiff acquired the property. No affidavit or other documentation has been submitted showing there was a requested change of address at the County Tax Assessor's Office. These matters are supported by the Affidavit of Rhonda Mitchell, submitted by Defendant Jasper County.

A person is liable for the payment of taxes assessed by counties and municipalities §12-37-610. On December 31, a statutory lien attaches to all real property owned by a taxpayer for all the taxes assessed during the following year. §12-49-20. For example, on December 31, 2015, a lien attaches for the taxes that are assessed during 2016. Tax bills are normally mailed in the fall or early winter and are due by January 15 of the next year.

Penalties are added beginning January 16, and additional penalties are added every 30 days. If the delinquent taxes are not paid by March 17, the treasurer issues an execution to the delinquent tax collector. §12-45-180(a). This begins a series of requirements that at least four, and as many as six, notices must be sent before the property can be sold and conveyed for the nonpayment of delinquent taxes.

Once the delinquent tax collector receives an execution notice from the treasurer in March, he or she must mail a notice of delinquent property taxes to the owner of record at the best address available. No sooner than April 1, the delinquent tax collector must mail the first notice, called a notice of delinquent tax, to the taxpayer. §12-51-40(a). This notifies the taxpayer that his or her real property will be sold if the taxes remain unpaid.

If the taxes remain unpaid after 30 days from the date of the first notice, the delinquent tax collector must levy on the execution, the second requirement. §12-51-40(b). The delinquent tax collector takes “exclusive possession” of so much of the defaulting taxpayer’s property as is necessary to satisfy the payment of the taxes, assessments, penalties, and costs. “Exclusive possession” is taken by sending via certified mail – return receipt requested – restricted delivery, a notice of delinquent property taxes to the defaulting taxpayer at the address shown on the tax receipt or to a more correct address known to the officer.

The statutory notices to delinquent taxpayers or grantees of record pursuant to §12-51-40 (a) & (b) are auto generated and mailed by a third-party service, Publiq, using the name and address of the taxpayer that the Tax Assessor has listed in its system.

The third notice requirement is not always operative. It provides that in the event the second notice is returned, the tax collector must take exclusive physical possession of the property by posting a notice at a conspicuous place on the premises. § 12-51-40(c). This is an alternative method of levying on the execution and only occurs in the event the certified mail notice has been returned and not properly signed for by the addressee. In this matter, the property was posted.

The fourth notice requirement is that the property must be advertised for sale at a public auction in a newspaper of general circulation within the county. §12-51-40(d). This property was included in the publications.

Once these notices have been given, the delinquent tax collector conducts the sale, and the owner has one year from the date of sale to redeem the property. For the 12-month period immediately succeeding the tax sale, title to the property remains in the defaulting taxpayer; however, his or her title is defeasible upon failure to redeem the property during the 12-month period. Letters notifying the taxpayer of the sale were sent by Defendant Jasper County, although not required.

The fifth notice requirement is the delinquent tax collector must send the record owner notice that the redemption period is about to expire. § 12-51-120. No more than 45 days or no less than 20 days before the end of the 12-month redemption period, the delinquent tax collector must give the owner of record notice “at the best address available” via “certified mail, return receipt requested-deliver to addressee only” that the redemption period is about to expire. S.C. Code § 12-51-120. A sixth notice requirement mandates notice of the sale to any mortgage holders, or to a lessee of the property of record in the appropriate public records of the county. § 12-51-120. These notices were sent, as more fully set forth below.

Once the last two notices are given, title is transferred to the successful bidder if the property is not redeemed. If the defaulting taxpayer redeems the property during the 12-month period, the tax sale is canceled, and the successful bidder's money is refunded with interest. S.C. Code §§ 12-51-90 and 100. If the defaulting taxpayer fails to redeem the property during the 12-month period, his or her title is defeated and title to the property is transferred to the successful bidder. § 12-51-130. Delivery of the tax sale deed to clerk of court or register of deeds is considered “putting the purchaser in possession.” S.C. Code § 12-51-130.

To demonstrate compliance with these requirements, the Affidavit of Rhonda Mitchell, the Jasper County Tax Collector, details with exhibits the actions the Tax Collector took regarding

this property, with copies of notice mailings as Exhibits. Of particular note are Exhibits 6, 7, and 8, which demonstrates the lengths the Tax Collector went to in an attempt to provide notice to the Plaintiff of the approaching end of the redemption period. These notices were sent to PO Box 174, and to both the Plaintiff and the occupant (lessee) of the mobile home located at 1397 Honey Hill Road, the property's physical street address. The Department of Revenue was sent a notice of the approaching end of the redemption period as a lien holder. The Tax Collector checked the records for any change of address notices, and did not find any record of that occurring. In fact, she sent notices to addresses she thought might provide notice, but that is not an indication of her having actual knowledge of either being a better address than the address on the deed, or the property address. As re-affirmed in the recent Halsey v. Simmons case, 837 S.E.2d 919, 926, 429 S.C. 385, 397 (Ct.App. 2020) citing Bell v. Knight, 376 S.C. 380, 383, 656 S.E.2d 395 (Ct. App. 2008) “[W]e will not find notice inadequate because a tax collector exceeded the statutory notice requirements.”). The appearance of a different address on the Department of Revenue tax liens does not provide actual knowledge of a corrected or forwarding address; in fact, one of those two addresses was not correct, being the address of his father.

Section 12-51-40 of the South Carolina Code (2014) states that the county officer authorized to collect delinquent taxes shall “mail a notice of delinquent property taxes, penalties, assessments, and costs to the defaulting taxpayer and to a grantee of record of the property” This “notice must be mailed to the best address available, which is either the address shown on the deed conveying the property to him, the property address, or other corrected or forwarding address of which the officer ... has actual knowledge.” § 12-51-40(a). Likewise, § 12-51-120 requires the notice of the approaching end of the redemption period to be mailed to the best address of the owner available to the person officially charged with the collection of delinquent taxes, as well as

to a grantee, mortgagee, or lessee of the property. In this matter, the address used for the owner was the address shown on the deed; the Tax Collector had no knowledge of an address change, nor that the tax lien addresses were correct. The Tax Collector also sent the Notice to the owner at the property address, as provided by the statute, as well as to the lessee and a lien holder.

In Appellant's Answers to Respondent, Carolina Heritage, LLC's Interrogatories, Appellant answered (in paragraph 9) the Appellant's POB 174, in Hardeeville, SC 29927 "it's not closed – it's just not used" (ROA) It is not the Respondent Jasper County Delinquent Tax Collector's fault that the Appellant does not use his open "it's not closed – it's just not used" POB which is listed as Appellant's address on his deed to the property. No change of address was ever filed with Jasper County by anybody including the Appellant. This is why Appellant's Motion for Summary Judgment dated January 31, 2020 was denied and Respondent's Motion for Summary Judgment dated March 8, 2022 was granted.

The Respondent, Jasper County Delinquent Tax Office sent all notices to the Appellant's best address. It's not the Respondent, Jasper County Delinquent Tax Office's fault that the Appellant does not use his open post office box which s listed on his deed and as his best and correct mailing address.

CONCLUSION

Jasper County correctly processed the tax sale with all required notices being sent to the best address available and there is no genuine issues of material fact which would preclude the grant of Summary Judgment in this case.

Submitted this 1st day of December, 2022.

s/C. Russ Keep, III _____
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