STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Dan Dewitt Hall, Circuit Court Judge

Civil Action Number 2021-CP-46-03234
Appellate No. 2022-000548

William Bronson, ...Appellant,

v.

Cray, Inc. and York County,.....Respondents.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. **The trial court properly dismissed the Appellant's complaint pursuant to South Carolina Rule of Civil Procedure 12(b)(6), as the complaint fails to state facts sufficient to constitute a cause of action.**

II. **The trial court properly dismissed the case because the allegations in the Complaint establish that the notice of redemption sent to the taxpayer was defective.**

STATEMENT OF THE CASE

This case was initiated by the filing of a Summons and Complaint ("Complaint") by William Bronson ("Appellant") on October 27, 2021, in the York County Court of Common Pleas. Appellant was the high bidder at a tax sale of real property ("Property") owned by the respondent Cray, Inc. ("Taxpayer"). Appellant alleges that the tax sale was improperly voided by York County because of a statute that was determined to be unconstitutional and therefore contends he is entitled to an order directing the County to issue a tax deed for the Property to him. Taxpayer moved to dismiss on the grounds that the statute in question effectively invalidated the statutory notice of redemption required by the Alternate Procedure for Collection of Property Taxes, S.C. Code §12-51-40 *et seq*. ("Tax Sales Act") and that it was entitled to an order of dismissal under S.C.R. Civ. P. 12(b)(6) as a matter of law. The Honorable Daniel Dewitt Hall heard the Motion to Dismiss on March 15, 2022 and granted Taxpayer's motion. This appeal followed.

STANDARD OF REVIEW

On appeal from the dismissal of the case pursuant to Rule 12(b)(6) for failure to state facts sufficient to constitute a cause of action, an appellate court applies the same standard of review as the Circuit Court. *Rydde v. Morris*, 381 S.C. 643, 675 S.E.2d 431, 433 (2009) (citing *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 500 (Ct. App. 2001)). 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). However, 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).

ARGUMENT

This case arises from a statutory tax sale that was impacted by the South Carolina General Assembly's legislative response to the COVID-19 pandemic. The Complaint alleges that York County, through its Tax Collector, complied with the statutory process required by the Tax Sales Act up and until the point that "[t]he 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." Complaint at para. 18. Appellant alleges that "[t]he Tax Collector relied upon a statute which was determined to be unconstitutional when enacted." Complaint at para. 19. The statute referred to by the Appellant is Section 3 of Act No. 174, enacted on September 23, 2020, and effective as of September 30, 2020 ("Section 3"). Section 3 was enacted in the midst of the COVID-19 pandemic and sought to modify the statutory tax procedures under the Tax Sales Act for a limited class of taxpayers whose property became subject to a tax sale during the height of the pandemic. This class of persons includes the Taxpayer.

Section 3 provided as follows:

> A. Notwithstanding any other provision of law, if real property was sold at a delinquent tax sale in 2019 and the twelve-month redemption period has not expired as of the effective date of this section, then the redemption period for the real property is extended for twelve additional months. If the property is redeemed during the twelve-month extension, additional interest shall accrue in the same manner and rate as interest accrues in the original redemption period, as set forth in Section 12-51-90(B). The provisions of Chapter 51, Title 12 of the 1976 Code, must be administered to account for the additional twelve months, mutatis mutandis including, but not limited to, the extension of affected deadlines.
>
> B. This SECTION takes effect upon approval by the Governor [September 30, 2020].
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> Act No. 174, 2020 S.C. Acts 1422, 1423-24. (emphasis added).

The parties agree that the Property was sold by the York County Tax Collector at a delinquent tax sale on November 5, 2019, and that Plaintiff was the high bidder at the tax sale. The Complaint alleges that the County sent the notice of redemption ("Notice") on September 21, 2020, notifying the Taxpayer that the right to redeem would expire on November 5, 2020. However, with the enactment of Section 3, the Taxpayers' redemption period was extended for 12 months to November 5, 2021. Therefore, the Notice became untimely and void.

On June 30, 2021, the Supreme Court held Act 174, including Section 3, unconstitutional based upon the "one subject rule." *Mercury Funding, LLC v. Chesney*, 433 S.C. 591, 861 S.E.2d 35 (2021). Appellant contends that *Mercury Funding* rendered Section 3 void *ab initio*, and that he is entitled to an order compelling York County to issue him a tax deed to the Property, divesting the Taxpayer of title. Appellant's position fails because York County is required to follow the law as it exists at the time of the acts in question, and the allegations of the Complaint show that the Notice that was sent by the County failed to strictly comply with the statutory requirements of the Tax Sales Act.

I. The trial court properly dismissed the case pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

a. Act 174, Section 3 Invalidated the Notice of Redemption.

It is a truism that tax sales in South Carolina require strict compliance with all statutory requirements. *King v. James*, 388 S.C. 16, 694 S.E.2d 35, 39 (Ct. App. 2010) (citing *In Re Ryan Investment Co.*, 335 S.C. 392, 395, 517 S.E.2d 692, 693 (S.C. 1999)). The requirements of the Tax Sales Act are intended for the protection of the taxpayer against surprise or the sacrifice of his property and are regarded as mandatory and are strictly enforced. *Id.* at 40. Failure to give proper statutory notice is a fundamental defect in tax sale proceedings that renders the proceedings absolutely void. *Id.* (quoting *Rives v. Bulsa*, 478 S.E.2d 878, 881 (Ct. App.1996); see also, *Hawkins v. Bruno Yacht Sales, Inc.*, 353 S.C. 31, 36, 577 S.E.2d 202, 205 (2003); *Baker v. Denton*, 37 F.Supp. 3rd 794 (D.S.C. 2014). Strict compliance is required because the laws leading up to tax sales are intended for the protection of the constitutional due process and property rights of the taxpayer against surprise or the sacrifice of his property. *Osborne et al. v. Vallentine*, 196 S.C. 90, 12 S.E.2d 856 (1941); see also, *Good v. Kennedy*, 291 S.C. 204, 352 S.E.2d 708 (Ct. App.1987) (noting that "while statutory provisions which are intended merely for the convenience of taxing officers in the conduct of sales need not be strictly complied with, ... the law is otherwise as to provisions intended for the protection of the taxpayer.").

Moreover, the requirement of strict compliance with the Tax Sales Act is jurisdictional in nature, "such that the owner's right of redemption cannot be cut off unless the required notice is given." *Good*, 291 S.C. at 207, 352 S.E.2d at 711; see also, *Manji v. Blackwell*, 323 S.C. 91, 473 S.E.2d 837 (Ct. App. 1996) (voiding tax deed issued to successful bidder because of failure of county to mail notice of redemption by restricted delivery as required by S.C. Code Ann. § 12-51-120.); *Rives,* 478 S.E.2d at 881, (holding that notice of redemption is a condition precedent to

foreclosing a taxpayer's rights in property sold for taxes). *Rives* clarified that the "failure to give the required notice is a fundamental defect in the tax proceedings which renders the proceedings absolutely void." *Id.* (citing *Donohue v. Ward,* 298 S.C. 75, 378 S.E.2d 261 (Ct. App.1989) (emphasis added).

As noted in *Rives, "w*here a statute requires as a condition precedent to foreclosing a taxpayer's rights in property sold for taxes that he be given notice of his right to redeem … the owner's right of redemption cannot be cut off unless the required notice is given." 325 S.C. 287, 478 S.E.2d 878, 881 (Ct. App. 1996) (citing *Good v. Kennedy*, 291 S.C. 204, 352 S.E.2d 708 (Ct. App.1987)). *Rives* continued that the "failure to give the required notice is a fundamental defect in the tax proceedings which renders the proceedings absolutely void." *Id.* (citing *Donohue v. Ward,* 298 S.C. 75, 378 S.E.2d 261 (Ct. App.1989) (emphasis added).

In this case, the practical effect of Section 3 was to fundamentally alter the timeline for redemption of property under the Tax Sales Act by persons within a specifically defined class of taxpayers. Normally under the Act, a taxpayer has 12 months after the date of the tax sale to redeem the property by paying all delinquent taxes, assessments, penalties and costs as set forth in S.C. Code Ann. § 12-51-90(A). Since the tax sale occurred on November 4, 2019, the redemption deadline would have fallen on November 5, 2020. S.C. Code Ann. § 12-51-120 requires that the notice of redemption must be mailed within a specific window of "neither more than forty-five days nor less than twenty days before the end of the redemption period." Appellant alleges that York County sent the Notice on September 21, 2020. Complaint at para. 15. Section 3, effective on September 30, 3030, nine days after the Notice was sent, placed the Taxpayer in a class of protected taxpayers entitled to the extended redemption period. Taxpayer's time for redemption was thereby extended from November 5, 2020, until November 5, 2021. The Notice was therefore

sent 410 days before the end of the Taxpayer's redemption period instead of "neither more than forty-five days nor less than twenty days before the end of the redemption period," as strictly required by S.C. Code Ann. § 12-51-120. Since the allegations of the Complaint establish that the County has not strictly complied with the Tax Sales Act, there exists no basis for the issuance of a tax deed as a matter of law. *See Rives*, 478 S.E.2d at 881.

The South Carolina Department of Revenue ("SCDOR") specifically addressed the issue raised by this appeal in a Government Services Division Decision dated July 21, 2021 ("Guidance").[1] SCDOR's position is clear that a notice of redemption that was pending at the time of the enactment of Act 174 does not strictly comply with the timing requirements of S.C. Code Ann. § 12-51-120. Under these circumstances, SCDOR advised "[i]n 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 [expeditiously through the post-tax sale process of Chapter 51 of Title 12.]"

The Guidance is not cited as evidence in this case, but as persuasive authority that supports the correctness of the trial court's decision. The property rights of taxpayers are protected under Art. I, Sec. 3 of the South Carolina Constitution, and under no set of facts is the Appellant entitled to the issuance of a tax deed without strict compliance with the Tax Sales Act. Construing the Complaint in the light most favorable to the Appellant, and accepting all of the factual allegations as true, the initial redemption deadline of November 5, 2020, was invalidated by operation of law, requiring the reissuance of a notice of redemption that strictly complied with S.C. Code Ann. § 12-51-120, neither more than forty-five days nor less than twenty days before the end of the new

[1] The Guidance was not an "internal memorandum" as alleged by the Appellant, but was issued on July 21, 2021, by the Director of the South Carolina Department of Revenue, and issued as "the Department's determination until changed by statute, regulation, court decision or a Departmental advisory opinion."

redemption period. Since the decision in *Mercury Funding* came long after the original redemption period had passed, due process and the post-tax sale process of Chapter 51 of Title 12 require a timely notice to re-start the statutory redemption clock. Appellant alleges no facts suggesting any notice of redemption sent after the *Mercury Funding* decision, or otherwise establishing strict compliance with the Tax Sales Act entitling him to the issuance of a tax deed.

b. Appellant's Claim Is Governed By The Law In Effect At The Time It Accrued.

Although statutes that are held to be unconstitutional can be deemed void *ab initio*, the application of that rule does not resolve the issues in this case. State statutes are presumed to be constitutional from the date of enactment, and this rule applies to Art. 174 from its effective date until the day it was ruled to be unconstitutional in *Mercury Funding*. See, e.g., *Knotts v. S.C. Dep't of Natural Resources*, 348 S.C. 1, 6, 558 S.E.2d 511, 513 (2002); *Feldman & Co. v. City Council of Charleston*, 23 S.C. 57, 66 (1885). Our Courts have upheld the "validity of transactions or events that occurred before a statute was declared unconstitutional." *Bergstrom v. Palmetto Health Alliance*, 358 S.C. 388, 596 S.E.2d 42 (2004)(citing *Knotts*, 348 S.C. at 11; *O'Shields v. Caldwell*, 207 S.C. 194, 35 S.E.2d 184 (1945); *Herndon v. Moore*, 18 S.C. 339, 352-358 (1883)). This is true particularly in special or unusual circumstances, when doing so would create widespread havoc involving a great number of people or transactions, spawn unnecessary litigation, or result in flagrant injustice." *Bergstrom*, 358 S.C. at 400.

In *Herndon*, the Court upheld the validity of numerous real estate transactions conducted by probate courts, even though the statute purporting to grant them such jurisdiction was subsequently found to be unconstitutional. *Id.* As also noted in *Bergstrom*, the critical inquiry in determining the applicable law is establishing when a cause of action accrues. 358 S.C. at 397 (citing, *Stephens v. Draffin*, 327 S.C. 1, 5, 488 S.E.2d 307, 309 (1997) and *Tilley v. Pacesetter Corp.*, 355 S.C. 361,

371, 585 S.E.2d 292, 297 (2003) for the proposition that "in South Carolina, the law in effect at the time the cause of action accrued controls the parties' legal relationships and rights").

Similarly, in *O'Shields v. Caldwell*, the Court noted the general rule that, "subject to certain exceptions, officers must obey a law found on the statute books until in a proper proceeding its constitutionality is judicially passed upon." 207 S.C. 194, 35 S.E.2d 184, 193 (1945)(citing 43 Am.Jur. 79). *O'Shields* involved a claim challenging the propriety of a county treasurer paying himself a salary pursuant to a statute that was subsequently ruled unconstitutional. The Court concluded that the treasurer was a ministerial officer acting in good faith who was not allowed to question the validity of the statute before it was declared invalid. *Id.*

Here, the Appellant claims that the taxpayer's right to redeem the Property terminated on November 5, 2020, while Section 3 was in effect. However, York County was still required to strictly follow the Tax Sales Act as it existed at that time, precluding the relief Appellant seeks. Whether or not Act 174 is void *ab initio*, the post-tax sale procedures of Chapter 51 of Title 12 still require a timely notice of redemption that was neither more than forty-five days nor less than twenty days before the end of the redemption period. S.C. Code Ann. § 12-51-120. While the Court in *Mercury Funding* clearly found Art. 174 to be unconstitutional, it specifically withheld any further findings, including any finding that would have cured the defective Notice. *See Mercury Funding,* 861 S.E.2d at 36. Due process and fundamental fairness require the County to restart the redemption period by issuing a new notice according to Section 12-51-120 and proceeding expeditiously through the post-tax sale process of the Tax Sales Act, as advised by the SCDOR. Appellant does not allege any such second notice of redemption was sent but relies solely upon the defective Notice sent in September of 2020.

Moreover, as Appellant concedes, York County has the discretion under S.C. Code Ann. § 12-51-150 to void any tax sale before title has passed if it discovers "there is a failure of any action required to be properly performed." The practical effect of Section 3 was to make the Notice untimely, improperly performed and therefore statutorily defective. Under the circumstances, the York County Tax Collector correctly voided the tax sale and refrained from executing a tax deed while Section 3 was in effect. Once Act 174 was invalidated, she could not proceed in strict compliance with the Tax Sales Act without a timely notice of redemption.

So too, a significant reliance interest exists among taxpayers in South Carolina in the due process protections requiring counties to follow existing law. Here, Act 174 created a reasonable right of taxpayers to rely on the extended redemption period, and then to rely upon the requirement that counties strictly comply with the Tax Sales Act redemption procedures. As our Courts repeatedly note, this reliance interest is so compelling that strict compliance with all requirements of the Tax Sales Act is required of the County, even when a taxpayer has actual notice of the impending sale. *See, e.g.*, *In Re Ryan Inv. Co.*, 335 S.C. at 395.

Further, where finding a statute to be void *ab initio* would create widespread havoc, spawn unnecessary litigation, or result in flagrant injustice, our Courts have not hesitated to avoid such harsh results. See *Herndon* and *O'Shields*, *supra*. The unique factors involved in the adoption of Section 3 aside (a legislative attempt to moderate the financial effects of a worldwide pandemic), once the General Assembly changed the timeline for redemption, changing them back retroactively would be fundamentally unfair. The Tax Sales Act has repeatedly been interpreted to protect the interests of the taxpayer, and it would be flagrantly unjust to turn this policy on its head in this case. Accordingly, since strict compliance with the Tax Sales Act cannot be established, the trial

court correctly determined that the Appellant's Complaint should be dismissed under S.C.R.Civ. P. 12 (b)(6).

II. The trial court properly dismissed the case because the allegations in the Complaint establish that the notice of redemption sent to the taxpayer was defective.

A motion to dismiss under Rule 12(b)(6) must be granted if facts alleged in the complaint and inferences reasonably deducible therefrom do not entitle plaintiff to relief on any theory of the case. *See, e.g., Blandon v. Coleman*, 285 S.C. 472, 330 S.E.2d 298, 300 (1985). Any facts claimed by the Appellant to have been relied upon by the trial court were either expressly pled, or reasonably deducible from the allegations in the Complaint, including references to the Guidance (referred to obliquely in the Complaint at paragraph 18 as an "internal memorandum"), and the provisions of Act 174 (called a "statute which was determined to be unconstitutional" in paragraph 19).

Even if the trial court referenced matters outside the pleadings (such as the subsequent redemption of the Property by Taxpayer), such matters are unnecessary to determine that the case should be dismissed. Furthermore, any error in mentioning redemption would be harmless, as sufficient basis exists to affirm under Rule 220(c), SCACR. *Brazell v. Windsor*, 655 S.E.2d 736, 376 S.C. 83 (S.C. App. 2007). Fundamentally, the Complaint does not allege facts sufficient to establish strict compliance with the Tax Sales Act. In fact, the Appellant alleges facts indicating a specific defect in compliance with the statutory procedures, i.e. a void Notice, but simply asks the Court to ignore it.

CONCLUSION

Even if Act 174 is determined to be void *ab initio*, Appellant has not alleged and cannot establish facts indicating that York County strictly complied with the Tax Sales Act in this case.

Without strict statutory compliance, a tax sale is void as a matter of law. Based solely upon the record and construing the Plaintiff's allegations in the Complaint in the light most favorable to him, the Appellant has failed to state facts sufficient to constitute a cause of action, and the trial court therefore correctly dismissed the Complaint.

December 9, 2022

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