

STATE OF SOUTH CAROLINA
COUNTY OF MARLBORO

) COURT OF COMMON PLEAS
) FOURTH JUDICIAL CIRCUIT
) 2021-CP-34-00150

RS&A Piping & Fabrication, Inc. a/k/a
R. S. & A Piping, Inc.,

Plaintiff,

vs

Ronald D. Kirby, Dylan T. Kirby, Treasurer
For Marlboro County, and Danny T. Williams,

Defendants.

ORDER OF DISMISSAL

RECEIVED

DEC 19 2022

SC Court of Appeals

Defendant Treasurer for Marlboro County¹ filed a Motion to Dismiss on June 15, 2021, on the following grounds: (1) the Treasurer for Marlboro County was not the proper Defendant, as it has no involvement in the collection of delinquent property taxes and/or the sale of real property for the payment of taxes, and (2) Plaintiff's action for the recovery of real property cannot be maintained as it was filed more than two years after the date of the tax sale, pursuant to Sections 12-51-160 and 12-51-90 of the S.C. Code Ann. A hearing was held on August 31, 2021 at 9:30AM. In attendance were Plaintiff's attorney, Leonard R. Jordan, Jr., Defendant Treasurer of Marlboro County's attorney, Andrew Foster McLeod, and Defendants Ronald D. Kirby, Dylan T. Kirby, and Danny T. William's attorney, Allison Truitt Burch. At the hearing, Defendants Ronald D. Kirby, Dylan T. Kirby, and Danny T. Williams, also argued the statute of limitations prevented Plaintiff from bringing the action more than two years from the date of the sale.

¹ In Plaintiff's Summons and Complaint, the Treasurer for Marlboro County was named as a Defendant. Defendant made a Motion to Substitute Defendant Treasurer for Marlboro for the alleged proper party, the Tax Collector for Marlboro County, on August 8, 2021. This order of dismissal makes that issue moot.

Section 12-51-160 of the S.C. Code Ann. provides, "An action for the recovery of land sold pursuant to this chapter or for the recovery of the possession must not be maintained unless brought within two years from the date of sale as provided in Section 12-51-90(C)." Section 12-51-90(C) states "If the defaulting taxpayer, grantee from the owner, or mortgage or judgment creditor fails to redeem the item of real estate sold at the delinquent tax sale within the 12 months provided in subsection (A) and after the passing of an additional 12 months, the tax deed issued is incontestable on procedural or other grounds." Plaintiff, the defaulting taxpayer, failed to pay his taxes in 2017, and the property was sold on November 5, 2018. This suit was filed May 17, 2021, over two years from the date the tax sale.

After hearing the arguments of counsel and reviewing the statutes and case law relied upon by both parties, I find that the statute of limitations, as set forth in Sections 12-51-160 and 12-51-90 S.C. Code Ann. prevents Plaintiff from bringing the cause of action more than two years from the date of tax sale. The date of the tax sale was November 5, 2018. The two year statute of limitations expired November 5, 2020. However, this suit was not commenced until May 17, 2021, well after the expiration of the statute of limitations. Since the date of the tax sale, Defendants Ronald D. Kirby and Dylan T. Kirby have begun operating a small business on the property they purchased and have made improvements to the property.

As Plaintiff's first cause of action to overturn the tax sale is hereby dismissed, I find that Plaintiff's second action for conversion, which alleged that, more than a year and half after the date of tax sale, Defendant Ronald D. Kirby, Dylan T. Kirby, and Danny T. William removed and/or disposed of the Plaintiff's personal property left at the property, is hereby dismissed.

IT IS SO ORDERED.



Marlboro Common Pleas

Case Caption: Rs&A Piping & Fabrication, Inc. , plaintiff, et al VS Ronald D. Kirby ,
defendant, et al
Case Number: 2021CP3400150
Type: Order/Dismissal

So Ordered

s/Roger E. Henderson 2754