

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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**Dec 28 2022**

**SC Court of Appeals**

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APPEAL FROM JASPER COUNTY  
Court of Common Pleas

The Honorable Bentley D. Price, Presiding Court Judge

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Case No. 2022-001054

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Charles Bradford Keiffer.....Appellant

v.

Jasper County Delinquent Tax Office  
and Carolina Heritage, LLC.....Respondents

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FINAL BRIEF OF APPELLANT

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**STATEMENT OF THE ISSUES ON APPEAL**

Whether the Jasper County authorities failed to give notice required by the South Carolina tax sale statutes?

Whether there are genuine issues of material fact which preclude the grant of summary judgment in this case?

## STATEMENT OF THE CASE

This action was commenced on January 31, 2020, by the filing of Appellant, Charles Keiffer's ("Appellant Keiffer") initial Summons and Complaint. See Summons and Complaint (ROA pg 1). Appellant Keiffer further filed a Motion for Summary Judgment along with exhibits. The exhibits consisted of tax liens by the South Carolina Department of Revenue against Appellant which were recorded with the Jasper County Register of Deeds. See Motion for Summary Judgment and Exhibits (ROA pgs. 4, 5-12) The Jasper County Delinquent Tax Office ("Respondent Jasper County") filed an Answer on February 27, 2020 essentially denying Appellant's allegations. See Answer of Jasper County Delinquent Tax Office (ROA pgs. 13-15) Respondent Carolina Heritage, LLC ("Respondent Carolina Heritage") filed an Answer and Counterclaim for quiet title and frivolous tort claims. See Answer and Counterclaim of Carolina Heritage (ROA pgs. 16-20 ). Carolina Heritage soon thereafter filed an Amended Answer and Counterclaim See Amended Answer and Counterclaim of Carolina Heritage (ROA pgs. 21-25 ). Respondent Jasper County filed an Answer to Carolina Heritage as well. See Answer of Jasper County to Carolina Heritage (ROA pgs. 26-28 ). Appellant Keiffer filed a Reply to Respondent Carolina Heritage. See Objection to Carolina Heritage, LLC's Amended Answer and Counterclaim (ROA pgs. 29-32 )

In the Motion for Summary Judgment, Appellant Keiffer claimed that the tax sale was invalid on its face because required mailings were all returned and there was an address in the tax file that was a working address for Appellant. Respondent Carolina Heritage filed an Objection to Motion for Summary Judgment essentially on the grounds that the motion was premature. See Objection to Motion for Summary Judgment (ROA pgs. 35-47 ) Appellant Keiffer filed a Memorandum in Support of Motion for Summary Judgment (ROA pgs. 33-34 ) Respondent

Carolina Heritage filed a Reply to Appellant Keiffer's Motion for Summary Judgment attaching Appellant Keiffer's responses to Interrogatories as an Exhibit. (See Defendant Carolina Heritage, LLC's Reply to Plaintiff's Memorandum in Support of Motion for Summary Judgment and Exhibit (ROA pgs. 48-51 ) Respondent Jasper County filed a Memorandum responding to Appellant Keiffer's Motion for Summary Judgment. See Memorandum of Jasper County Tax Collector Regarding Motion for Summary Judgment by Plaintiff (ROA pgs. 52-57 ). Respondent also filed an Affidavit of Rhonda Mitchell, the Jasper County Tax Collector, with exhibits from the tax sale file attached. See Affidavit of Rhonda Mitchell and Exhibits (ROA pgs. 58-84 ).

A hearing was held on Appellant Keiffer's Motion for Summary Judgment and the Court denied the motion on the basis that genuine issues of material fact exist. See Order Form 4 May 15, 2020 (ROA pgs. 85-87 ) Thereafter, Respondent Carolina Heritage filed a Third Amended Answer and Counterclaim on November 19, 2021. See Third Amended Answer and Counterclaim (ROA pgs. 88-96 ). Thereafter, Respondent Carolina Heritage filed a Fourth Amended Answer and Counterclaim on February 17, 2022 (See Fourth Amended Answer and Counterclaim (ROA pgs. 97-103 ) Appellant Keiffer filed a Reply to the Fourth Amended Counterclaim See Plaintiff's Reply to Counterclaims (ROA pgs. 104-107 ) Respondent Carolina Heritage then next filed a Third Party Summons and Fifth Amended Answer and Counterclaims and Third Party Complaint on March 29, 2022. It appears the Property has major access issues if not in the Keiffer family and Respondent Carolina Heritage filed this version of the Complaint to acquire access. See Third Party Summons & Fifth Amended Answer and Counterclaims and Third Party Complaint (ROA pgs. 108-116 ) Matilda Keiffer filed an Answer. See Third Party Defendant, Matilda S. Keiffer's Answer to Third Party Complaint (ROA pgs. 117-119 )

Respondent Carolina Heritage filed a Motion for Summary Judgment on March 9, 2022, citing the Affidavit of Rhonda Mitchell as support. See Motion for Summary Judgment (ROA pgs. 120 ). In response, Appellant Keiffer filed an Affidavit of Joseph Cody Parker. See Affidavit of Joseph Cody Parker (ROA pgs. 121 ). A hearing was held before the Honorable Bentley D. Price on May 17, 2022, and Judge Price issued a Form 4 Order granting Respondent Carolina Heritage's Motion on May 24, 2022. See Order Form 4 dated May 24, 2022 (ROA pgs. 131-133 ). Appellant Keiffer filed a Rule 59 Motion on June 3, 2022. See Motion/Reconsider dated June 3, 2022 (ROA pgs. 134-135 ). On June 30, 2022, Judge Price issued an Order denying Appellant Keiffer's Motion. See Order Denying Plaintiff's Motion to Reconsider (ROA pgs. 136-138 ). On July 28, 2022, Appellant Keiffer filed a Notice of Appeal of both the May 24 and June 30 Orders. See Notice of Appeal (ROA pgs. 139 )

### **STATEMENT OF FACTS**

In this action, Appellant seeks to recover family land from a tax sale investor. The property is described as Parcel B off of U.S. Highway 321 North of Hardeeville, containing 1.46 acres and containing a mobile home, shown as Jasper County TMS No. 028-00-03-128 (the "Property") See Affidavit of Rhonda Mitchell Exhibit 2 (ROA pgs. 58-84 ). The Property is one of several properties in the area that has been in the Keiffer family for years, although the family does not currently live on the Property. Joseph Cody Parker lives in a mobile home which is located on the Property. See Complaint, Page 1 (ROA pgs. 1-3 ).

According to Joseph Cody Parker, the mobile home was often posted for delinquent taxes but the Property never was. Parker was familiar with delinquent tax notices and would take any delinquent notices to the tax office, pay the deficiency and request the mailing address be changed which took several years to correct. Parker never saw a delinquent tax notice posted on the

Property. Had Parker noticed the Property being posted, he would have immediately notified the Keiffers. See Affidavit of Joseph Cody Parker (ROA pgs. 121 )

The pertinent facts begin on March 17, 2017, when the Jasper County Tax Collector received an Execution from the Jasper County Treasurer with notice that the 2016 real property taxes on the Property had not been paid. See Affidavit of Rhonda Mitchell, Exhibit 1 (ROA pgs. 58-84 ). The first notice of delinquency was sent regular mail to Charles Bradford Keiffer at P. O. Box 174, Hardeeville, SC 29927. It was not returned. See Affidavit of Rhonda Mitchell (ROA pgs. 58-84 ). The second notice was sent via certified mail, restricted delivery, on June 12, 2017, addressed to Charles Bradford Keiffer at P.O. Box 174, Hardeeville, SC 29927. This mailing was returned to the Tax Collector on June 20, 2017, marked “Return to Sender – Attempted – Not known – Unable to forward.” Apparently, the addresses used for notices are auto generated by a computer program used by Respondent Jasper County. See Affidavit of Rhonda Mitchell and Exhibit 2 (ROA pgs. 58-84 ).

The Property was purportedly posted on September 8, 2017. See Affidavit of Rhonda Mitchell & Exhibit 3 (ROA pgs. 58-84 ). Joseph Cody Parker disputes whether the Property was posted. See Affidavit of Joseph Cody Parker (ROA pgs. 121 ). Notice of Sale and Redemption amounts was sent to Appellant Keiffer via regular mail on November 15, 2017, to Charles Bradford Keiffer at P.O. Box 174, Hardeeville, SC 29927. It was not returned. See Affidavit of Rhonda Mitchell & Exhibit 4 (ROA pgs. 58-84 ). The second Notice of Sale and Redemption amounts was sent regular mail on February 13, 2018, to Charles Bradford Keiffer at P. O. Box 174, Hardeeville, SC 29927. It was not returned. See Affidavit of Rhonda Mitchell & Exhibit 5 (ROA pgs. 58-84 )

At this point, it was clear to Rhonda Mitchell that the address used to send notices was not working, so she reviewed the file to determine if there was any change of address or if there was a better address for notice. Ms. Mitchell decided to use the Property's physical address. Notice of Approaching End of Redemption Period was sent via certified mail on September 25, 2018, to Charles Bradford Keiffer at P.O. Box 174, Hardeeville, SC 29927; to Charles Bradford Keiffer at 1397 Honey Hill Road, Hardeeville, SC 29927; and to Joseph Cody Parker, 1397 Honey Hill Road, Hardeeville, SC 29927. All of these mailings were returned marked "Return to Sender / Not Deliverable as Addressed / Unable to Forward." Respondent Jasper County also sent a notice to the South Carolina Department of Revenue ("SCDOR"), via certified mail, on September 25, 2018, and this mailing was delivered and signed for by an agent of the SCDOR. See Affidavit of Rhonda Mitchell & Exhibits 6-9 (ROA pgs. 58-84). There is no mailbox at 1397 Honey Hill Road. See Affidavit of Joseph Cody Parker (ROA pgs. 121).

The mailing to the SCDOR is critical. SCDOR filed several tax liens against members of the Keiffer family and several against Charles Keiffer. These liens were duly filed with the Jasper County Register of Deeds and must have been the cause of the mailing by Respondent Jasper County to the SCDOR. These liens contain two addresses for which Respondent Jasper County did not use for notice to Appellant Keiffer. 1405 Honey Hill Road, Hardeeville, SC 29927, and 89 Hodge Court, Hardeeville, SC 29927 were both addresses shown on the tax liens. See Exhibits to Plaintiff's Motion for Summary Judgment (ROA pgs. 4, 5-12). Appellant Keiffer receives mail at 89 Hodge Court and a notice properly sent to that address would have reached him. See Complaint (ROA pgs. 1-3). Sometime before January 2020, Appellant Keiffer learned of the tax sale and filed this action to set the sale aside.

## ARGUMENT AND CITATION OF AUTHORITY

### *Standard of Review:*

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, summary judgment is appropriate where there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Summary judgment is a drastic remedy and should be cautiously invoked so that no person is deprived of a trial where there are disputed issues of fact. *See eg. Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991) Summary judgment is only appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. Once the moving party meets the initial burden of showing an absence of evidentiary support for the opponent's case, however, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. The non-moving party must come forward with specific facts showing a genuine issue of fact for trial. If the non-moving party fails to rebut the moving party's initial showing, then the moving party is entitled to summary judgment. *See eg. Moore v. Weinberg*, 373 S.C. 209, 644 S.E.2d 740 (Ct. App. 2007).

An action to set aside a tax sale lies in equity. As such, the Appellate Court may determine facts in accordance with its own view of the preponderance of the evidence and not be bound by the Circuit Court's findings, even though the Appellate Court need not disregard the findings of the Circuit Court who was in a better position to weight the evidence. *King v. James*, 388 S.C. 16, 694 S.E.2d 35 (Ct. App. 2010). It should be noted that the Circuit Court in this case made no findings of fact or conclusions of law.

### ***Tax Sales in South Carolina:***

The procedure for conducting tax sales in South Carolina is governed by S.C. Code Ann.

§ 12-51-40 et seq. S.C. Code Ann. § 12-51-40 states, in pertinent part:

After the county treasurer issues his execution against a defaulting taxpayer in his jurisdiction, as provided in Section 12-45-180, signed by him or his agent in his official capacity, directed to the officer authorized to collect delinquent taxes, assessments, penalties, and costs, requiring him to levy the execution by distress and sale of the defaulting taxpayer's estate, real or personal, or both, or property transferred by the defaulting taxpayer, the value of which generated all or part of the tax, to satisfy the taxes, assessments, penalties, and costs, the officer to which the execution is directed shall:

(a) On April first or as soon after that as practicable, mail a notice of delinquent property taxes, penalties, assessments, and costs to the defaulting taxpayer and to a grantee of record of the property, whose value generated all or part of the tax. The 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 authorized to collect delinquent taxes, penalties, and costs has actual knowledge. The notice must specify that if the taxes, penalties, assessments, and costs are not paid, the property must be advertised and sold to satisfy the delinquency.

(b) If the taxes remain unpaid after thirty days from the date of mailing of the delinquent notice, or as soon thereafter as practicable, take exclusive possession of the property necessary to satisfy the payment of the taxes, assessments, penalties, and costs. In the case of real property, exclusive possession is taken by mailing a notice of delinquent property taxes, assessments, penalties, and costs to the defaulting taxpayer and any grantee of record of the property at the address shown on the tax receipt or to an address of which the officer has actual knowledge, by "certified mail, return receipt requested-restricted delivery" pursuant to the United States Postal Service "Domestic Mail Manual Section S912". If the addressee is an entity instead of an individual, the notice must be mailed to its last known post office address by certified mail, return receipt requested, as described in Section S912. In the case of personal property, exclusive possession is taken by mailing the notice of delinquent property taxes, assessments, penalties, and costs to the person at the address shown on the tax receipt or to an address of which the officer has actual knowledge. All delinquent notices shall specify that if the taxes, assessments, penalties, and costs are not paid before a subsequent sales date, the property must be duly advertised and sold for delinquent property taxes, assessments, penalties, and costs. The return receipt of the "certified mail" notice is equivalent to "levying by distress".

(c) If the "certified mail" notice has been returned, take exclusive physical possession of the property against which the taxes, assessments, penalties, and costs were assessed by posting a notice at one or more conspicuous places on the premises, in the case of real estate, reading: "Seized by person officially charged with the collection of delinquent taxes of (name of political subdivision) to be sold for delinquent taxes", the posting of the notice is equivalent to levying by

distress, seizing, and taking exclusive possession of it, or by taking exclusive possession of personalty.

S.C. Code Ann. § 12-51-120 states the notice requirements for the end of the redemption period:

Neither more than forty-five days nor less than twenty days before the end of the redemption period for real estate sold for taxes, the person officially charged with the collection of delinquent taxes shall mail a notice by "certified mail, return receipt requested-restricted delivery" as provided in Section 12-51-40(b) to the defaulting taxpayer and to a grantee, mortgagee, or lessee of the property of record in the appropriate public records of the county. The notice must be mailed to the best address of the owner available to the person officially charged with the collection of delinquent taxes that the real property described on the notice has been sold for taxes and if not redeemed by paying taxes, assessments, penalties, costs, and interest at the applicable rate on the bid price in the total amount of \_\_\_ dollars on or before \_\_\_ (twelve months from date of sale) (date) \_\_\_\_\_, a tax title must be delivered to the successful purchaser at the tax sale. Pursuant to this chapter, the return of the certified mail "undelivered" is not grounds for a tax title to be withheld or be found defective and ordered set aside or canceled of record.

In South Carolina, tax sales must be conducted in strict compliance with the statutory requirements. Failure to give the statutory notice of a tax sale is a fundamental defect that renders the proceedings absolutely void. All requirements of law leading up to a tax sale are intended for the protection of the taxpayer against surprise or sacrifice of his property and are mandatory and are to be strictly enforced. Even the fact that the defaulting taxpayer has actual notice of the impending sale is insufficient to uphold a tax sale absent strict compliance with statutory requirements. Halsey v. Simmons, 429 S.C. 385, 837 S.E.2d 919 (S.C. App. 2020) citing King v. James, 388 S.C. 16, 694 S.E.2d 35 (Ct. App. 2010); Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 577 S.E.2d 202 (2003) The giving of mandatory notice to a tax debtor is not waived by informal knowledge on the debtor's part that taxes have not been paid and the sale is void even if the debtor has actual knowledge and attempts to waive the failure to give notice. Aldridge v. Rutledge, 269 S.C. 475, 238 S.E.2d 165 (S.C. 1977)

Where a statute requires notice to the owner as a condition precedent to foreclosure of a tax lien, the person authorized to send the notice must exercise diligence to ascertain the correct

address of the property owner. Whether such person has exercised due diligence depends upon the circumstances of the particular case. See Reeping v. JEBBCO, LLC, 402 S.C. 195, 740 S.E.2d 504 (Ct. App. 2013) citing Benton v. Logan, 323 S.C. 338, 474 S.E.2d 446 (Ct. App. 1996) The notice requirements are also jurisdictional and not subject to the statute of limitations. Donohue v. Ward, 298 S.C. 75, 378 S.E.2d 261 (S.C. App. 1989) (“The next question presented is whether failure to give the required notice constitutes more than a mere irregularity the effect of which invalidates the tax proceeding and prevents the running of the limitations statute. It is stated "all requirements of the law leading up to tax sales which are intended for the protection of the taxpayer against surprise or the sacrifice of his property are to be regarded mandatory and are to be strictly enforced." *cits omitted* We think the Legislature in requiring the Treasurer of Horry County to give a twenty day notice prior to advertising the property for sale intended such provision for the protection of the taxpayer against a sacrifice of his property. We therefore hold that failure to give the required notice is a fundamental defect in the tax proceedings which renders the proceedings absolutely void.”)

***A. The Jasper County authorities failed to give required notice to Appellant’s best-known address of which the Jasper County authorities had actual notice.***

Appellant Keiffer hates to criticize public employees who have a large and difficult job without much compensation. Tax collectors and those handling tax sales across South Carolina have a huge job with many properties and many with issues making it difficult to get it right. This case is no different. That does not change the fact that tax sales often involve substantial assets of people and, as in this case, family property of families who are not fabulously wealthy. It is why South Carolina makes the requirements for taking property via tax sale so stringent and why the remedy for the mistakes which inevitably occur is the voiding of the tax sale, subject to the payment of back taxes and penalties.

*Reeping* is illustrative of the notice requirements. In *Reeping*, the Reepings owned property in Orangeburg County, but resided in Delaware. Delaware then changed rural route addresses to 911 addresses. A tax notice was sent to the old rural route address and forwarded to the Reepings at their new 911 address. The Reepings sent payment with the new address noted with a sticky note, but the Orangeburg assessor did not note the change of address and continued to send notices to the old rural route address. When the taxes were not paid and the tax sale process started, certified notices were returned as undeliverable, with the new 911 address handwritten on the envelope. The Orangeburg authorities failed to send notice to the proper address. The Reepings learned of the tax sale when contacted by a company offering to assist them with collecting the bid overage. They filed suit shortly thereafter. The Court of Appeals held that the Orangeburg authorities failed to exercise due diligence in determining the best address for the Reepings. Even though the handwritten notation showing the new address did not include the city, state and zip code, the Court of Appeals found that a minimal amount of due diligence would have uncovered the full address and the tax sale should be set aside. Reeping v. JEBBCO, LLC, 402 S.C. 195, 740 S.E.2d 504 (Ct. App. 2013)

In the present case, the Jasper County authorities had the SCDOR tax liens which showed Appellant Keiffer's full and correct address and, yet notice was sent to the Property physical address which the authorities should have known was a non-working address. Why would Appellant Keiffer have used another mailing address for the Property tax bills had the physical address been a working address? Why would the Jasper County officials send two notices using the physical address when one of those notices could have been sent to an address on the SCDOR lien? Jasper County authorities gave notice to the SCDOR but did not send just one notice to Appellant Keiffer's address as noted on the recorded lien. How can the Jasper County authorities

claim they had no notice of Appellant Keiffer's address when such address was on SCDOR liens of which the Jasper County authorities had actual notice?

***B. Genuine issues of material fact preclude the grant of summary judgment in this case.***

Appellant Keiffer takes the position that the facts, taken in the light most favorable to the Respondents, requires the Court to void the tax sale and return the Property to the Keiffer family. It is why Appellant Keiffer filed a Motion for Summary Judgment at the outset of this case to that effect. The Circuit Court denied that motion and stated: “[a]fter considering the record, the Court finds that genuine issues of material fact exist.” See Order Form 4 May 15, 2020 (ROA pgs. 85-87) For Respondent Carolina Heritage's Motion for Summary Judgment, the Court apparently found that no genuine issues of material fact existed, and Carolina Heritage was entitled to judgment as a matter of law. In this appeal, the only issue this Court need decide is whether there are genuine issues of material fact which preclude the granting of summary judgment. Whether the Jasper County authorities used the best address available is a genuine issue of material fact. Further, Joseph Cody Parker, in his Affidavit, claimed the Property was never posted. See Affidavit of Joseph Cody Parker (ROA pgs. 121). This is another issue of material fact which also goes to the core requirement of notice. These issues must be viewed in the light most favorable to the non-moving party, Appellant Keiffer. The Circuit Court previously found that there were issues of material fact in the case, and that should be the same for Respondent's motion.

**CONCLUSION**

The Order of the Circuit Court should be reversed, because there are genuine issues of material fact as to whether the Jasper County authorities used the best address available and otherwise complied with the notice requirements in the tax sale statute. This matter should be remanded for trial on the merits, so Appellant Keiffer can regain family property.

Respectfully submitted this 28th day of December, 2022.

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