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ELECTRONICALLY FILED - 2022 Dec 22 12:26 PM - MARLBORO - COMMON PLEAS - CASE#2021CP3400150

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

Roger E. Henderson, Presiding Judge

Case No. 2021-CP-34-00150

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

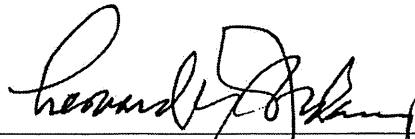
v.

Ronald D. Kirby, Dylan T. Kirby, Marlboro County Delinquent Tax Collector and Danny T. Williams..... Respondents.

NOTICE OF APPEAL

RS&A Piping & Fabrication, Inc. a/k/a R. S. & A. Piping, Inc. appeals the Order Denying Motion to Reconsider, filed on November 21, 2022. Copies of the said Order along with the Order of Dismissal, filed on November 4, 2021, the Notice of Motion and Motion to Reconsider Order of Dismissal, filed on November 12, 2021, are attached hereto.

December 19, 2022



Leonard R. Jordan, Jr., #3221
JORDAN LAW FIRM
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Attorney for Appellant

Other Counsel of Record:

Allison Truitt Burch, Esquire
Andrew F. McLeod, Esquire

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, Tax)
Collector for Marlboro County, and)
Danny T. Williams,)
)
Defendants.)

**ORDER DENYING
MOTION TO RECONSIDER**

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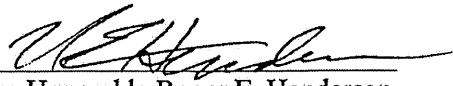
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This matter was before the Court on September 29, 2022 on Plaintiff's Motion for Reconsideration. Defendant asked this Court to reconsider its Order dated and e-filed on November 4, 2021 dismissing Plaintiff's causes of action based on the applicable statute of limitations. In support of this Motion for Reconsideration, Plaintiff submitted a Motion and Memorandum in Support. After careful consideration of the Plaintiff's Motion and Memorandum in Support, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for amending or setting aside the Order of the Court in the above captioned case.

It is, therefore, ordered that the said Motion for Reconsideration be denied.

AND IT IS SO ORDERED.


The Honorable Roger E. Henderson
Fourth Judicial Circuit

Chesterfield, South Carolina
November 16, 2022

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF MARLBORO) 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

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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

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STATE OF SOUTH CAROLINA)
)
COUNTY OF MARLBORO)

IN THE COURT OF COMMON PLEAS
CASE NO.: 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.)

**NOTICE OF MOTION AND
MOTION TO RECONSIDER
ORDER OF DISMISSAL**
(with Plaintiff's Memorandum)

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TO: ALLISON TRUITT BURCH, ESQUIRE, ATTORNEY FOR DEFENDANTS, RONALD D. KIRBY, DYLAN T. KIRBY AND DANNY T. WILLIAMS; AND ANDREW F. MCLEOD, ESQUIRE, ATTORNEY FOR DEFENDANT, TREASURER FOR MARLBORO COUNTY:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, RS&A Piping & Fabrication, Inc. a/k/a R. S. & A. Piping, Inc., by and through its undersigned attorney, will move before the Honorable Roger E. Henderson, Presiding Judge, at such time as is convenient to the Court, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, to reconsider the Order of Dismissal issued by the said Judge on November 4, 2021, which was filed in the Office of the Clerk of Court for Marlboro County on November 4, 2021, to address the following points:

1. The Judge erred in concluding that S.C. Code Sections 12-51-160 and 12-51-90 are applicable to the facts of this case.
2. The Judge erred in failing to conclude that the tax sale was void by virtue of the County's failure to comply with S.C. Code Section 12-51-120, thereby rendering the statute of limitations inapplicable. (See the attached Plaintiff's Memorandum for a thorough discussion of this point.)
3. The Judge erred in failing to conclude that, at the earliest, the limitation period

under Sections 12-51-160 and 90 does not begin the run until the purchaser is put in possession of the subject property. (See the attached Plaintiff's Memorandum for a thorough discussion of this point.)

4. The Judge erred in failing to consider, and follow, the decision of the Court of Appeals in the case of *Leake v. Ethridge*, 2005 S.C. App. Unpub. LEXIS 377, a copy of which is attached to the Plaintiff's Memorandum (In Support of Motion to Reconsider Order of Dismissal). (See the Plaintiff's Memorandum for a discussion of said case.) [Note: A copy of this case was handed-up to the Judge by counsel for Defendants, Ronald D. Kirby, Dylan T. Kirby and Danny T. Williams, during the motion hearing on August 31, 2021.] This case is precisely on point with the facts and the arguments in the present case.

5. The Judge erred in dismissing the Plaintiff's cause of action for Conversion, which has no direct connection with the tax sale or with Sections 12-51-160 and 90.

6. The Judge erred in granting the Motion to Dismiss, filed by the Defendant, Treasurer for Marlboro County, which has no standing whatsoever to seek dismissal of the Conversion cause of action, which involved personal property belonging to the Plaintiff (not the real property sold at a tax sale) and, in fact, the Motion to Dismiss only discusses the application of tax sale statutes, to wit: §§12-51-160 and 90, which involve the limitation period for contesting tax sales.

s/Leonard R. Jordan, Jr.
Leonard R. Jordan, Jr., #3221
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ljordan@ljordanlaw.com
Attorney for Plaintiff

Columbia, South Carolina
November 12, 2021

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

Roger E. Henderson, Presiding Judge

Case No. 2021-CP-34-00150

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

v.

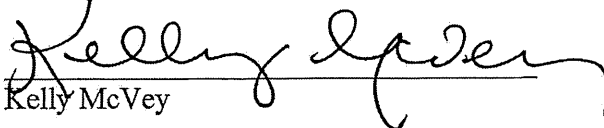
Ronald D. Kirby, Dylan T. Kirby, Marlboro County Delinquent Tax Collector and Danny T. Williams..... Respondents.

CERTIFICATE OF MAILING

I, Kelly McVey, of Jordan Law Firm, attorney for the Appellant, RS&A Piping & Fabrication, Inc. a/k/a R. S. & A. Piping, Inc., hereby certify that I have this 19th day of December, 2022, served the Notice of Appeal upon Allison Truitt Burch, Esquire, Attorney for the Defendants, Ronald D. Kirby, Dylan T. Kirby and Danny T. Williams, and Andrew F. McLeod, Esquire, Attorney for Defendant, Marlboro County Delinquent Tax Collector, by mailing a copy thereof to them at the addresses indicated below:

Allison Truitt Burch, Esquire
SPENCER LAW FIRM
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Chesterfield, South Carolina 29709

Andrew F. McLeod, Esquire
Attorney for SCDOE
Post Office Drawer 1449
Cheraw, South Carolina 29520


Kelly McVey