

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 Hallenbeck Sisters, LLC, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Ronald D. Hall and Mary M. )  
 Scarborough, Solely in Their )  
 Capacities as Acting Delinquent Tax )  
 Collector and Delinquent Tax )  
 Collector, Respectively for )  
 Charleston County, SC, )  
 )  
 Defendant(s). )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT  
 CASE NO. 2012-CP-10-7919

**ORDER GRANTING DEFENDANTS'  
 MOTION FOR SUMMARY JUDGMENT**

FILED  
 2013 MAY 13 AM 9:59  
 JULIE J. ARMSTRONG  
 CLERK OF COURT  
 BY [Signature]

This matter is before the Court on Plaintiff's Notice of Motion and Motion to Amend Findings or make Additional Findings or in the Alternative Motion to Alter or Amend Judgment (Rule 52(b), SCRPC) (Rule 59(e), SCRPC) filed March 27, 2013. The matter was before the Court on Plaintiff's complaint to set aside a tax sale and Defendants' motion for summary judgment.

**PROCEDURAL BACKGROUND**

The Court heard argument on the complaint and motion on March 4, 2013. Plaintiff was represented by Howard R. Kinard, Esquire and Steven M. Querin, Esquire. Defendants were represented by Bernard E. Ferrara, Jr., Esquire. After considering the pleadings, the motion and parties' respective memoranda, and arguments of counsel, the Court entered a Form 4 Judgment in a Civil Case filed on March 15, 2013, denying the Plaintiff's petition to set aside the tax sale.

Based on the same aforementioned papers, the Court denies the Plaintiff's petition to set aside the tax sale and grants the Defendants' motion for summary judgment. The Court finds and

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SC Court of Appeals

concludes as follows:

**FINDINGS OF FACT**

The material facts are not in dispute; the parties stipulated to them. The summons and complaint to set aside a tax sale and seek injunctive relief were filed on December 5, 2012. Service was made on the Defendants, through its Delinquent Tax Department ("Charleston County"), collectively on January 29, 2013, as evidenced by the executed certificate of service. Charleston County filed an answer on January 24, 2013. The Plaintiff's request for injunctive relief was denied by the Court in a previous hearing on that matter. The Plaintiff was notified of the time, date and place of the hearing on the petition and motion in this matter.

Plaintiff sought to set aside a 2011 tax sale based upon insufficient notices mailed by the Charleston County Delinquent Tax Collector to the defaulting taxpayer, Aiquyen Thi Tiet ("Tiet"), who is not a party to this case. The Plaintiff alleged that the Execution Notice and Official Notice of Levy created an artificial deadline for payment before the tax sale date, in contravention to statutory requirements that the notices provide that past due taxes must be paid before a subsequent sales date.

The subject property is identified as tax map parcel number 460-16-03-099 and is known as the College Laundromat located at 226 Calhoun Street, Charleston, South Carolina. Charleston County mailed an Execution Notice for the subject property to Tiet, c/o College Laundromat, 226 Calhoun Street, Charleston, SC 29401-1314, dated August 19, 2011. Charleston County mailed an Official Notice of Levy for the property to Tiet at the same address by certified mail, return receipt requested-restricted delivery, dated October 7, 2011.

Tiet conveyed the property to Plaintiff Hallenbeck Sisters, LLC by virtue of the document of conveyance titled Title to Real Estate from Aiquyen Thi Tiet to Hallenbeck Sisters, LLC, dated

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November 30, 2011, and recorded December 12, 2011 in Book 0222, Page 164 in the Office of the Register of Mesne Conveyance for Charleston County, South Carolina.

Charleston County sold the property at the December 5, 2011 tax sale for the purpose of enforcing the payment and collection of delinquent 2010 property taxes. RASC II, LLC was the successful bidder and paid the full amount of the bid of \$460,000 to the County for the property on the date of the tax sale.

Plaintiff paid the 2011 taxes owed in the amount of \$13,421.85 on February 3, 2012. Charleston County mailed a Final Notice of Property Redemption for the property to the Plaintiff at 419 The PKWY #140, Greet, SC 2965-4522 by certified mail, return receipt requested-restricted delivery, which was received by the Plaintiff on November 7, 2012. The Notice states that the property was sold for taxes and may be redeemed by paying the taxes, assessments, penalties, costs, and interest in the amount of \$56,267.18.

Plaintiff redeemed the property on December 4, 2012, by paying \$40,684.55 to Charleston County, which represents the delinquent 2010 taxes, assessments, penalties, and costs of \$13,561.35 and interest of \$27,123.20.

#### CONCLUSIONS OF LAW

The Court concludes as follows:

A. The notices mailed to the defaulting taxpayer are valid on their face as the County's notices state December 2 is the last date, which is the actual date and last business day, to pay the taxes before the tax sale on Monday, December 5. In the *Hawkins v. Bruno Yacht Sales* case, Beaufort County had two dates to pay the taxes (August 31 and September 15) that were before the last business day before the tax sales date. The Court in *Hawkins* said "[b]ecause the sales date in

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this instance was October 2, the Court of Appeals found that the August 31 and September 15 deadlines were artificial, and gave the impression that Hawkins had to pay the taxes weeks before the date of sale. We agree with the Court of Appeals' holding on this issue." *Hawkins v. Bruno Yacht Sales, Inc.* 353 S.C. 31, 38, 577 S.E.2d 202, 206 (2003).

The *Hawkins* case is distinguishable from the case before this Court. Charleston County does not have two dates to pay the taxes that are before the last business day before the tax sales date. Instead, Charleston County has only one date to pay the taxes before the sales date. The County's notices state December 2 is the last date, which is the actual date, the last business day, to pay the taxes before the tax sale on Monday, December 5. The County is not in business on Saturday or Sunday to accept payment of taxes on delinquent properties. The County's notices clearly specify that if the taxes, assessments, penalties, and costs are not paid before a subsequent sales date, the property will be sold at tax sale. Therefore, the Execution Notice and Official Notice of Levy mailed to the defaulting taxpayer are valid and comply with the statute.

B. In the alternative, even if the Court found the notices are defective, as an additional ground for granting summary judgment, Charleston County has immunity and not liable for damages for Plaintiff's redemption of the property. Charleston County is immune for any and all losses resulting from actions taken in the assessment or collection of taxes or enforcement of tax laws, including attorney's fees and costs of the action. *See* § 15-78-60(4) and (11). "The exceptions listed in § 15-78-60 should be liberally construed to limit liability." *Richland County v. Carolina Chloride, Inc.*, 382 S.C. 634, 650, 677 S.E.2d 892, 900 (2008) quoting *Steinke v. S.C. Dep't. of Labor, Licensing, and Regulation*, 336 S.C. 373, 393, 520 S.E.2d 142, 152 (1999). "The provisions of Section 15-78-60(4) are clear and unambiguous on their face, and are not subject to judicial

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interpretation.” *Adkins v. Varn*, 312 S.C. 188, 192, 439 S.E.2d 822, 824 (1993).

In an unpublished opinion in the case *SPD Investment Company, LLC, a South Carolina Limited Liability Company v. The County of Charleston, a body politic, and TransAm Financial Group d/b/a Advantage 99 TD*, the Court of Appeals considered Charleston County’s assertion of section 15-78-60(11) as a defense to SPD’s action against the County for interest fees incurred by borrowing money to redeem the property it lost at a tax sale. The Court agreed that the County was enforcing the tax laws against SPD which was the purpose of the South Carolina Tort Claims Act. The Act “is to shield the County from liability when taxpayers lose property as a result of a faulty tax sale.” *SPD Investment Company, LLC, a South Carolina Limited Liability Company v. The County of Charleston, a body politic, and TransAm Financial Group d/b/a Advantage 99 TD*, Unpublished Opinion No. 2004-UP-039.

In this case, the Plaintiff’s loss, if any, was caused by its own failure to pay the delinquent taxes at the sale of the property to it from Tiet. Payment by the Plaintiff of the amount to redeem the property from tax sale is the result of the County’s assessment or collection of taxes or enforcement of tax laws.

C. Further, as an additional ground, the Plaintiff lacks standing to complain of the sufficiency of the notices mailed to the defaulting taxpayer because the Plaintiff does not have standing by statute, “constitutional standing,” or fall under a “public importance” exception. “Standing may be acquired: (1) by statute; (2) through the rubric of ‘constitutional standing;’ or (3) under the ‘public importance’ exception.” *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008). Nothing in the Alternate Procedure for Collection of Property Taxes, S.C. Code Ann. § 12-51-40 *et seq.*, provides the Plaintiff to assert statutory standing. Second,

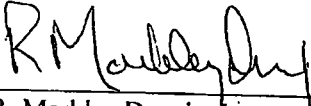
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the Plaintiff cannot satisfy the three-part test to establish constitutional standing. It cannot assert standing under the public importance doctrine. "The key to the public importance analysis is whether a resolution is needed for future guidance. It is this concept of 'future guidance' that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance." *Id.* at 341, citing *Baird v. Charleston County*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999) ("[A] court may confer standing upon a party when an issue is of such public importance as to require its resolution for future guidance.").

Based on the Findings of Fact and Conclusions of Law,

**IT IS ORDERED** that the Defendants' motion for summary judgment is granted and the 2011 tax sale involving the subject property is confirmed.

**AND IT IS SO ORDERED.**

  
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R. Markley Dennis, Jr.  
Judge for Charleston County, Ninth Judicial Circuit

Charleston, South Carolina  
May 4, 2013

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