

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Jan 18 2023

SC 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 YORK COUNTY

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STATEMENT OF ISSUES ON APPEAL

- I. **Whether 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. **Whether trial court properly dismissed the case because the allegations in the Complaint establish that Respondent York County acted in accordance with South Carolina law with regard to the tax sale?**

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 Pleas. Complaint (R. pp. 13 – 18). Appellant was the high bidder at a tax sale of real property ("Property") owned by Respondent Cray, Inc. ("Respondent Taxpayer") (R. p. 14). Complaint at para. 9. Following the sale of the Property to Appellant, York County notified Respondent Taxpayer of its right to redeem the property within twelve (12) months of the date of the tax sale by providing a notice of redemption letter dated November 6, 2019 (R. p. 14). Complaint at para. 12 (while the Complaint admits the same fact, an incorrect date of November 5, 2019, was inadvertently included, and the correct date is noted in Respondent York County's Motion to Dismiss, R. pp. 26 – 30). The final redemption letter was sent by certified mail to the last known address of Respondent Taxpayer on September 21, 2020 (R. p. 15). Complaint at para. 15. Appellant alleges that the tax sale was improperly "voided" by Respondent York County ("York County") because of a statute that was determined to be unconstitutional and contends that as a result, he is entitled to an order directing York County to issue him a tax deed for the Property (R. p. 15). Complaint at para. 18. Respondent York County moved to dismiss on the grounds that the Complaint admitted that the County fully complied with South Carolina law at all times relevant to the tax sale and that the County no longer holds any title to the property at issue (R. pp. 26 – 30). The Honorable Daniel Dewitt Hall

heard the Motion to Dismiss on March 15, 2022, and granted the Motion to Dismiss (R. pp. 1 – 11).

This appeal followed.

RESPONDENT YORK COUNTY ADOPTS RESPONDENT CRAY, INC.'S STANDARD OF REVIEW

Pursuant to Rule 208(b)(6), Respondent York County hereby adopts Respondent Cray, Inc.'s Standard of Review as set forth in its' Initial Brief, submitted on September 21, 2022.

ARGUMENT

This case arises from a statutory tax sale that was impacted by the South Carolina General Assembly's response to the COVID-19 pandemic through legislative action. The Complaint alleges that York County, through its Tax Collector, "improperly voided the tax sale on an internal memorandum concluding that the tax sale and/or the Defaulting Taxpayer [Respondent Cray, Inc.] should be granted additional time" (R. p. 15). Complaint at para. 18. Appellant alleges that "[t]he Tax Collector relied upon a statute which was determined to be unconstitutional when enacted" (R. p. 15). Complaint at para. 19. The statute referenced by the Appellant is Section 3 of Act No. 174, enacted on September 23, 2020, and effective on September 30, 2020 (hereinafter "Section 3"). Section 3 was enacted in response to the COVID-19 pandemic and endeavored to modify the statutory procedures under Chapter 51 of Title 12 of the South Carolina Code of Laws specifically by extending the statutory redemption period for real property sold at a tax sale in South Carolina. Respondent Taxpayer's property was sold at a tax sale during the period covered by Section 3. Section 3 provided:

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].

Act No. 174, 2020 S.C. Acts 1422, 1423-24. (emphasis added).

The parties agree that the Property was sold by York County, through its Tax Collector, at a delinquent tax sale on November 5, 2019, and that the Appellant was the high bidder at the tax sale. The Complaint alleges that York County sent the notice of redemption ("Notice") on September 21, 2020, notifying Respondent Taxpayer that the right to redeem would expire on November 5, 2020 (R. p. 15). However, pursuant to the enactment of Section 3, Respondent Taxpayer's redemption period was extended for an additional twelve (12) months to November 5, 2021.

On June 30, 2021, The South Carolina Supreme Court issued its ruling in *Mercury Funding, LLC, v. Chesney*, 433 S.C. 591, 861 S.E.2d 35 (2021), holding that Act 174, including Section 3, was unconstitutional on the basis of the "one subject rule." Appellant contends that the ruling in *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 (R. pp. 15 – 16). Appellant's position fails because York County properly complied with Section 3, and complied with the overarching principle of the Tax Sales Act to protect the interest of taxpayer property owners by acting in accordance with the guidance document issued by the South Carolina Department of Revenue subsequent to the *Mercury Funding* ruling.

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.**

a. **Appellant's Claim Is Governed By The Law In Effect.**

While a statute that is held to be unconstitutional can be declared void *ab initio*, the application of that rule does not resolve this case. State statutes are presumed to be constitutional from the date of enactment, and this rule applies to Act 174 as of its effective date. 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, 352358 (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 *O'Shields v. Caldwell*, the Court held 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 challenge to a county treasurer's payment of a salary to himself pursuant to a statute subsequently ruled unconstitutional. In its ruling, the Court determined that the treasurer was a ministerial officer acting in good faith and was not at liberty to question the validity of the statute prior to it being declared invalid. *Id.*

Here, the Appellant's claim that York County should have issued the tax deed presumes that that Section 3 was void *ab initio* as a result of the Supreme Court's ruling that it was unconstitutional, while the County followed the law that was in effect throughout the tax sale process with regard to the Property, and subsequently complied with guidance issued by the South Carolina Department of Revenue. Whether Section 3 was void *ab initio* requires a determination by the courts. Notably, in

its *Mercury Funding* ruling, the Court declined to broaden the scope of its findings beyond its decision that Act 174 was unconstitutional. *See Mercury Funding*, 861 S.E.2d at 36.

Where finding a statute to be void *ab initio* would create widespread havoc, spawn unnecessary litigation, or result in flagrant injustice, our Courts have taken note in order to avoid such an outcome. *See Herndon and O'Shields, supra*. The General Assembly's effort to change the timeline for redemption was a clear indicator of its intent to further protect the interest of defaulting property owners in accordance with the purpose and intent of the Tax Sales Act and in light of the COVID-19 pandemic. Because the Supreme Court did not declare Section 3 void *ab initio*, the trial court's decision was correct in its determination that the Appellant's Complaint should be dismissed under S.C.R.Civ.P. 12(b)(6).

I. The trial court properly dismissed the case because the allegations in the Complaint establish that Respondent York County acted in accordance with South Carolina law with regard to the tax sale.

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). The facts Appellant claims as being relied upon by the trial court were either expressly pled, or reasonably deducible from the Complaint, including any references to the Guidance issued by the Department of Revenue, and which Guidance was referenced by the Appellant in the Complaint (para. 18 of the Complaint), and the provisions of Act 174 (called a "statute which was determined to be unconstitutional" in paragraph 19) (R. pp. 13 – 16). The Appellant's own Complaint admits that York County complied with the statutory requirements for conducting a tax sale (R. pp. 13 – 16), excepting the Appellant's assertion that York County should not have complied with Section 3 while it was in effect. As a result, this Court should affirm the trial court's dismissal of the Complaint.

CONCLUSION

For the foregoing reasons, York County asks this Court to affirm the decision of the court below.

December 9, 2022



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