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**Jul 20 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

THE HONORABLE CHARLES B. SIMMONS, JR., Master in Equity

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Appellate Case No. 2022-001578

Circuit Court Case No. 2018-CP-23-03713

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Francisco Nicolas Miguel ..... Respondent.

And

Palmetto Asset Investments, LLC, Gabriel Angel Prestegui Gomes, and A. Kevin Hunter, II,  
Greenville County Tax Collector, Defendants.

Of which Palmetto Asset Investments, LLC is the .....Appellant.

---

RECORD ON APPEAL

---

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL DISTRICT
COUNTY OF GREENVILLE	)	
Francisco Nicolas Miguel,	)	
	)	
Plaintiff,	)	<b>ORDER GRANTING PLAINTIFF'S</b>
	)	<b>MOTION FOR SUMMARY</b>
	)	<b>JUDGMENT</b>
v.	)	<b>C.A. NO: 2018-CP-23-03713</b>
	)	
Palmetto Asset Investments, LLC,	)	
Gabriel Angel Prestegui Gomez, and	)	
A. Kevin Hunter, II, Greenville County Tax	)	
Collector,	)	
	)	
Defendants.	)	

Hearing Date:	November 14, 2019, at 10:00 a.m.
Hearing Judge:	Charles B. Simmons, Jr.
Counsel for Plaintiff:	Ryan E. Gaylord
Counsel for Defendants:	C. Richard Stewart
	Jeffrey D. Wile
Court Reporter:	Danette Hanks

This matter was before the Court on Thursday, November 14, 2019 in Greenville County, South Carolina upon Plaintiff's Motion for Summary Judgment. Attorney Ryan E. Gaylord of Hyde Law Firm, PA, was present representing the interests of the Plaintiff. Attorney C. Richard Stewart was present representing the interests of Defendant, Palmetto Asset Investments, LLC. Attorney Jeffrey D. Wile was present representing the interests of Defendant, A. Kevin Hunter, II, Greenville County Tax Collector. Defendant, Gabriel Angel Prestegui Gomez, is not represented and did not attend the hearing.

### **PROCEDURAL BACKGROUND**

This action was commenced by the filing of a Summons and Complaint on July 11, 2018 seeking to set aside a tax sale and subsequent instruments of title and reinstate Plaintiff's right of redemption. Gabriel Angel Prestegui Gomez was properly served with the Summons and Complaint on July 12, 2018 as demonstrated by that Affidavit of Service filed July 13, 2018, but has not filed any responsive pleadings or appeared in this action. Palmetto Asset Investments, LLC was properly served with the Summons and Complaint on July 12, 2018 as demonstrated by that Affidavit of Service filed July 13, 2018, and filed an Answer on August 10, 2018. Palmetto Asset Investments, LLC thereafter filed an Amended Answer on August 30, 2018 and Second Amended Answer, Counterclaim and Cross Claim on November 13, 2019. A. Kevin Hunter, II, Greenville County Tax Collector was properly served with the Summons and Complaint on July 13, 2018 as demonstrated by that Affidavit of Service filed July 20, 2018, and filed an Answer on July 17, 2018. The Plaintiff filed a Motion for Summary Judgment on September 25, 2019. The parties were before the Court regarding the Motion for Summary Judgment on November 14, 2019.

### **FACTUAL BACKGROUND**

This is an action seeking to set aside as defective a delinquent property tax sale conducted in 2016 for certain property in Greenville County, South Carolina located at 1 Hilltop Avenue, Greenville, South Carolina and subsequent instruments of title. Plaintiff was the owner of the property subject to the tax sale that is the subject of this action at the time of the sale. Palmetto Asset Investments, LLC was the purchaser of the property through the tax sale that is the subject of this action. Gabriel Angel Prestegui Gomez claims an interest in the property by an instrument of title entered with Palmetto Asset Investments, LLC subsequent to the tax sale.

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A. Kevin Hunter, III is the Tax Collector for Greenville County, South Carolina and was responsible for administration of the delinquent property tax sale that is the subject of this action.

By deed dated August 29, 2013 and recorded on September 3, 2013 in the Office of the Register of Deeds for Greenville County, South Carolina, Ralph E. Scopa, Jr., as Trustee of the U.R. Home Trust conveyed certain real property in Greenville County, South Carolina located at 1 Hilltop Avenue, Greenville, South Carolina to Plaintiff. The deed conveying the Property to Plaintiff identified his address as 1 Hilltop Avenue, Greenville, SC 29609. In about October, 2014, the Plaintiff moved to 117 Odom Circle, Greenville, SC 29611.

Greenville County uses a mail service vendor to print and mail its property tax bills. Prior to mailing tax bills, the mail service vendor seeks to discover possible updated addresses through the NCOA system, a database coordinated by the Postal Service and other addressing entities, in order to try to save the County money on postage. The mail service vendor sends the tax bill to the updated address, and reports the discovery of any possible new address to Greenville County. The existence and record of a possible new address is then available to and accessible by the Greenville County Tax Collector's Office. Kevin Hunter, Greenville County's Tax Collector, stated in his deposition that his office also relies on either the taxpayer or the tax assessor for changes of addresses, because "... a lot of people, they change their addresses all the time." (Hunter depo., P. 13, ll. 19-22)

During the compilation and mailing of the 2015 property tax bills Greenville County's mail service vendor discovered a possible new address for Plaintiff through the NCOA system. The new address was 117 Odom Circle, Greenville, SC 29611.

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The vendor mailed the 2015 tax bill to 117 Odom Circle and notified Greenville County of the discovery of the new address. The vendor also mailed Plaintiff a postcard asking Plaintiff to reply and confirm his mailing address.

Plaintiff did not respond to the postcard mailed by the vendor, thus failing to inform the County of his new address. On November 13, 2015 Greenville County Real Property Services updated its records for the property at 1 Hilltop Avenue to note the discovery of a possible new address by the vendor. The Tax Collector's Office, however, did not update its address records since the postcard was never returned by Plaintiff.

Plaintiff did not pay the 2015 taxes and Greenville County initiated collection for the delinquent taxes pursuant to Section 12-51-40 et. seq.

All notices relating to the 2016 sale of 1 Hilltop Avenue, Greenville, South Carolina for delinquent taxes mailed by Greenville County, including the notices required by S.C. Code Ann. § 12-51-40(b) (1976) and S.C. Code Ann. § 12-51-120 (1976), were addressed to Plaintiff at 1 Hilltop Avenue, Greenville, SC 29609. None of the notices mailed by Greenville County in conducting the tax sale were mailed to 117 Odom Circle, Greenville, SC 29611. On June 6, 2016 Greenville County mailed a notice of delinquent property taxes, penalties and costs owed pursuant to S.C. Code Ann. § 12-51-40(b) (1976) to Plaintiff at 1 Hilltop Avenue, Greenville SC 29609 by certified mail, return receipt requested – restricted delivery. The notice was signed and returned; however, the signature on the notice was illegible. Plaintiff did not receive the notice and no notice of the tax sale was posted at 1 Hilltop Avenue, Greenville, South Carolina.<sup>1</sup>

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<sup>1</sup> Employees of the Tax Collector's Office stated that under the facts of this case, the property probably should have been posted. See, Depo. D. Henderson (p. 17: 17-24) and Depo. A. Hunter (p. 28:16-29:1).

On October 24, 2016, after due advertisement, Greenville County conducted an auction and sold 1 Hilltop Avenue, Greenville, South Carolina to Palmetto Asset Investments, LLC. Plaintiff's right to redeem the property expired on October 24, 2017.

On November 4, 2016 Greenville County's mail service vendor mailed the 2016 tax bill for 1 Hilltop Avenue, Greenville, South Carolina to Plaintiff at 117 Odom Circle, Greenville, SC 29611-2957. On the payment stub attached to this tax bill, there is a note which states "On 11/4/2016 there were delinquent taxes due on this property, which must be paid before these current taxes may be paid. Please contact the Tax Collectors Office as this property may be sold for delinquent taxes" (hereafter, the delinquent taxes note). Plaintiff did not pay 2016 taxes, nor did he respond to this note in any way. On November 8, 2016 another entry was made in Greenville County Real Property Service's records for the property at 1 Hilltop Avenue to note Plaintiff's possible address change to 117 Odom Circle, Greenville, SC 29611-2957.

On September 15, 2017 Greenville County mailed notice of the approaching end of the redemption period pursuant to S.C. Code Ann. § 12-51-120 (1976) to Plaintiff at 1 Hilltop Avenue, Greenville, SC 29609 by certified mail, return receipt requested – restricted delivery. The notice was returned to Greenville County as "Unclaimed – Unable to Forward". Plaintiff did not receive this notice of his right to redeem the property and did not redeem the property.

On October 18, 2017 Greenville County's mail service vendor mailed the 2017 tax bill for 1 Hilltop Avenue, Greenville, South Carolina to Plaintiff at 117 Odom Circle, Greenville, SC 29611-2957. The tax bill made no notice of mention that 1 Hilltop Avenue had been auctioned for delinquent taxes or that Plaintiff's right to redeem would expire October 24, 2017.

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On October 20, 2017 another entry was made in Greenville County Real Property Service's records for the property at 1 Hilltop Avenue to note Plaintiff's possible address change to 117 Odom Circle, Greenville, SC 29611-2957.

On December 5, 2017, A. Kevin Hunter, II executed a Tax Deed on behalf of Greenville County to convey the property at 1 Hilltop Avenue, Greenville, South Carolina to Palmetto Asset Investments, LLC. The Tax Deed was recorded on December 8, 2017 in Deed Book 2527, Page 3023 in the Office of the Register of Deeds for Greenville County, South Carolina. Thereafter, on February 5, 2018, Palmetto Asset Investments, LLC and Gabriel Angel Prestegui Gomez entered an Installment Contract for Sale of Real Estate which was recorded on February 8, 2018 in Deed Book 2531, Page 2233 in the Office of the Register of Deeds for Greenville County, South Carolina.

### **LAW AND DECISION OF THE COURT**

Summary Judgment is appropriate only when it is perfectly clear that no genuine issue of material fact exists; further inquiry into the facts is not necessary to clarify the application of the law; and the moving party is entitled to judgment as a matter of law. *Folkens v. Hunt*, 290 S.C. 194, 195, 348 S.E.2d 839, 841 (Ct. App. 1986). In this matter the parties agree that no genuine issue of material fact exists and that the record as developed by the pleadings filed in support of and in opposition to Plaintiff's Motion for Summary Judgment is complete.

Section 12-51-40 et seq. of the South Carolina Code prescribes the conditions precedent for foreclosing a taxpayer's rights in property for delinquent taxes. *Good v. Kennedy*, 291 S.C. 204, 207, 352 S.E.2d 708, 711 (S.C. App. 1986), citing 72 Am.Jur.2d State and Local Taxation Section 1010 (1974); accord, 85 C.J.S. Taxation Section 868 (1954). The provisions are intended for the protection of the taxpayer against "surprise or the sacrifice of his property" and

“all requirements of the law leading up to tax sales are to be regarded as mandatory and strictly enforced”. *Leysath v. Leysath*, 209 S.C. 342, 40 S.E.2d 233, 235 (1946). *Good v. Kennedy*, 291 S.C. 204, 207, 352 S.E.2d 708, 711 (S.C. App. 1986).

Section 12-51-40(a) of the South Carolina Code dictates that notice of delinquent taxes must be made to the taxpayer by mail addressed 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.” *Reeping v. Jebbco, LLC*, 402 S.C. 195, 200, 740 S.E.2d 504, 506 (Ct. App. 2013). Further, Section 12-51-120 of the South Carolina Code requires that notice of the approaching end of the redemption period “be mailed to the best address of the owner available to the person officially charged with the collection of delinquent taxes...” S.C. Code Ann. § 12-51-120 (1976).

A person authorized to send notice by mail as a condition precedent to foreclosure of a taxpayer’s rights in property “must exercise diligence to ascertain the correct address of the property owner.” *Reeping*, 402 S.C. at 199-200, see also *Good*, 291 S.C. at 207-08.

“Though diligence is a relative term depending upon the circumstances of each case, ... it imparts upon a public official due care in the performance of her duties” *Good*, 291 S.C. at 208. A tax collector’s receipt of information that indicates the existence of a new address for a taxpayer requires further inquiry. *Good v. Kennedy*, 291 S.C. 204, 207-08 (S.C. App. 1986), *Benton v. Logan*, 323 S.C. 338, 340 - 43, 474 S.E.2d 446, 447-48 (S.C. App. 1996).

The Greenville County Tax Collector’s Office handles an extremely high volume of delinquent tax matters and does an admirable job protecting the rights of taxpayers. However, under the unique facts of this case and even though Plaintiff did not avail himself of

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opportunities to formally provide a change of address, the notice herein was not given to Plaintiff at the best address. Greenville County's mail service vendor had notice of Plaintiff's possible new address through the NCOA system and provided notice of the new address to Greenville County. Greenville County Real Property Service's records were updated to note the possible address change, and the tax bills for 2015, 2016 and 2017 were mailed to the new address. The Greenville County Tax Collector's Office had access to both the possible address change notes within County records and the address used for the mailing of tax bills. The return of the green card from the June 6, 2016 notice with an illegible signature and the return of the September 15, 2017 notice with the notation "Return to Sender – Unclaimed – Unable to Forward" together with notice of the address change derived from the NCOA system should have prompted further inquiry and provision of tax sale notices to Plaintiff at the 117 Odom Circle address.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The 2016 tax sale of the property located at 1 Hilltop Avenue, Greenville, South Carolina was not conducted in strict compliance with statutory requirements and is set aside.
2. The Tax Deed recorded on December 8, 2017 in Deed Book 2527, Page 3023 in the Office of the Register of Deeds for Greenville County, South Carolina and the Installment Contract for Sale of Real Estate which was recorded on February 8, 2018 in Deed Book 2531, Page 2233 in the Office of the Register of Deeds for Greenville County, South Carolina are voided.
3. Plaintiff's right to redeem the property is reinstated and Plaintiff shall pay to Greenville County all delinquent taxes owed from 2015, together with statutory interest and

penalties, and all taxes assessed against property for 2016, 2017, 2018 and 2019. Payment shall be made to the County of Greenville within forty-five (45) days of the date of this Order. Upon receipt of an Affidavit from Mr. Wile, as attorney for Defendant Tax Collector, that payment has not been made within forty-five (45) days of the date of this Order, this Order shall be voided and the tax sale that is the subject of this action shall be deemed valid.

4. Upon payment noted above, Palmetto Asset Investments, LLC shall receive a refund of all amounts paid to Greenville County for the property a 1 Hilltop Avenue, Greenville, South Carolina, together with the statutory interest accruing on such amounts, from Greenville County upon Plaintiff's redemption of the property.

AND IT IS SO ORDERED.

**Judge's Signature on Following Page**



Greenville Common Pleas

**Case Caption:** Francisco Nicolas Miguel vs. Palmetto Asset Investments LLC ,  
defendant, et al  
**Case Number:** 2018CP2303713  
**Type:** Order/Summary Judgment

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

Electronically signed on 2020-01-06 15:52:43 page 10 of 10

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF GREENVILLE  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2018CP2303713

Francisco Nicolas Miguel		Palmetto Asset Investments LLC Gabriel Angel Prestegui Gomez	A Kevin Hunter II Greenville County Tax Collector
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PLAINTIFF(S) \_\_\_\_\_ DEFENDANT(S) \_\_\_\_\_  
 Submitted by: \_\_\_\_\_ Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
 Affirmed;  Reversed;  Remanded;  Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order, (formal order to follow)  Statement of Judgment by the Court:  
**ORDER INFORMATION**

Palmetto Asset Investments, LLC Motion to Alter or Amend filed January 17, 2020 was heard via telephone conference on January 28, 2020. The Court finds that the Order filed January 7, 2020 addresses all the issues raised in the Motion to Alter or Amend. Accordingly, the Motion to Alter or Amend is denied.  
 And It Is So Ordered.

This order  ends  does not end the case.  
 Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.  
**Note: Title abstractors and researchers should refer to the official court order for judgment details.**

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E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

3023

1/29/2020

Circuit Court Judge

Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Ryan Edward Gaylord Hyde Law Firm, P.A. 753 East Main Street, Suite One Spartanburg, SC 29302

Jeffrey D. Wile 301 University Ridge Ste. 2400 Greenville, SC 29601-3681

John Underwood 1 Landing Ferry Way Greer, SC 29650

C. Richard Stewart 11 Whitsett St. Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

- Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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Greenville Common Pleas

**Case Caption:** Francisco Nicolas Miguel vs. Palmetto Asset Investments LLC ,  
defendant, et al  
**Case Number:** 2018CP2303713  
**Type:** Master/Order/Form 4

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

Electronically signed on 2020-01-29 13:24:26 page 3 of 3

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

Francisco Nicolas Miguel, Respondent,

v.

Palmetto Asset Investments, LLC, Gabriel Angel  
Prestegui Gomez, and A. Kevin Hunter, II, Greenville  
County Tax Collector, Defendants,

of which Palmetto Asset Investments, LLC is the  
Appellant.

Appellate Case No. 2020-000390

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Appeal From Greenville County  
Charles B. Simmons, Jr., Master-in-Equity

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Unpublished Opinion No. 2022-UP-231  
Submitted May 1, 2022 – Filed June 1, 2022

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**AFFIRMED**

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Jeffrey T. Spell, of Charleston, for Appellant.

Max Thomas Hyde, Jr., of Hyde Law Firm, P.A., of  
Spartanburg, and Ryan Edward Gaylord, of Spartanburg,  
both for Respondent.

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**PER CURIAM:** Palmetto Asset Investments, LLC (Appellant) appeals the master-in-equity's order granting summary judgment to taxpayer Francisco Nicolas Miguel (Respondent) and voiding a tax sale and deed. On appeal, Appellant argues the master erred in finding notice was not given to Respondent at his best address as required by statute. We affirm.

We hold the master did not err in granting summary judgment to Respondent and voiding the tax sale and deed. See *Gadson v. Hembree*, 364 S.C. 316, 320, 613 S.E.2d 533, 535 (2005) ("Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law."); *Reeping v. JEBBCO, LLC*, 402 S.C. 195, 199, 740 S.E.2d 504, 506 (Ct. App. 2013) ("[A]ll 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 [as] mandatory and are to be strictly enforced." (alterations in original) (quoting *Donohue v. Ward*, 298 S.C. 75, 83, 378 S.E.2d 261, 265 (Ct. App. 1989))); *Rives v. Balsa*, 325 S.C. 287, 293, 478 S.E.2d 878, 881 (Ct. App. 1996) ("Failure to give the required notice is a fundamental defect in the tax proceedings which renders the proceedings absolutely void."); *Reeping*, 402 S.C. at 199-200, 740 S.E.2d at 506 (holding the tax collector "must exercise diligence to ascertain the correct address of the property owner" (quoting *Benton v. Logan*, 323 S.C. 338, 341, 474 S.E.2d 446, 447 (Ct. App. 1996))); S.C. Code Ann. § 12-51-40(a) (2014) (requiring the tax collector to mail a notice of delinquent property taxes to the taxpayer at the best address available); *id.* (stating the "best address available" means "either the address shown on the deed conveying the property to [the taxpayer], the property address, or other corrected or forwarding address of which the [tax collector] has actual knowledge"); S.C. Code Ann. § 12-51-40(b) (2014) (authorizing the tax collector to take exclusive possession of the property by mailing a notice to the taxpayer "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'"); S.C. Code Ann. § 12-51-120 (2014) (requiring the tax collector to send the taxpayer a notice of the approaching end of the redemption period by "certified mail, return receipt requested-restricted delivery" to the best address available). Here, the tax collector failed to use diligence in ascertaining Respondent's correct address. Therefore, the tax sale to Appellant was void because the tax collector failed to comply with the statutory requirement that notice of the delinquent taxes be mailed to the best available address.

**AFFIRMED.<sup>1</sup>**

**GEATHERS and HILL, JJ., and LOCKEMY, A.J., concur.**

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<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

**000018**



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
www.sccourts.org

June 23, 2022

ENTERED COMPLETION

The Honorable Paul B. Wickensimer  
Courthouse  
305 E North St  
Greenville SC 29601-2121

## REMITTITUR

Re: Francisco Nicolas Miguel v. Palmetto Asset Investments, LLC  
Lower Court Case No. 2018CP2303713  
Appellate Case No. 2020-000390

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

*V. Claire Allen*

CLERK

Enclosure

cc: Max Thomas Hyde, Jr., Esquire  
Ryan Edward Gaylord, Esquire  
Jeffrey T. Spell, Esquire

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# The South Carolina Court of Appeals

Francisco Nicolas Miguel, Respondent,

v.

Palmetto Asset Investments, LLC, Gabriel Angel  
Prestegui Gomez, and A. Kevin Hunter, II, Greenville  
County Tax Collector, Defendants,

of which Palmetto Asset Investments, LLC is the  
Appellant.

Appellate Case No. 2020-000390

The Honorable Charles B. Simmons, Jr.  
Greenville County  
Trial Court Case No. 2018CP2303713

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## ORDER

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Pursuant to Rule 222 of the South Carolina Appellate Court Rules, the motion for costs filed by Francisco Nicolas Miguel is granted in the amount of \$2,500.00 against Palmetto Asset Investments, LLC. The Greenville County Clerk of Court of is directed to add this award of costs to the remittitur.

FOR THE COURT

BY *V. Claire Allen*  
CLERK

Columbia, South Carolina

**FILED**  
**Jul 20 2022**

000020

cc:

Max Thomas Hyde, Jr., Esquire

Ryan Edward Gaylord, Esquire

Jeffrey T. Spell, Esquire

Paul B. Wickensimer

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL DISTRICT
COUNTY OF GREENVILLE	)	
Francisco Nicolas Miguel,	)	
	)	
Plaintiff,	)	<b>ORDER ON PLAINTIFF'S MOTION</b>
	)	<b>TO ENFORCE JUDGMENT AND</b>
	)	<b>DETERMINE AMOUNT DUE AND</b>
	)	<b>ON DEFENDANT'S MOTION FOR</b>
	)	<b>RULE TO SHOW CAUSE</b>
	)	
v.	)	<b>C.A. NO: 2018-CP-23-03713</b>
	)	
Palmetto Asset Investments, LLC,	)	
Gabriel Angel Prestegui Gomez, and	)	
A. Kevin Hunter, II, Greenville County Tax	)	
Collector,	)	
	)	
Defendants.	)	
	)	

A virtual hearing was heard before this Court on September 26, 2022 to address the Motions before the Court. Defendant, Palmetto Asset Investments, LLC, filed a Motion for a Rule to Show Cause, and Plaintiff filed a Motion to Strike Defendant's Rule to Show Cause. Plaintiff, Francisco Nicolas Miguel, filed a Motion to Enforce Judgment and Determine Amount Due. Plaintiff and Defendant, Palmetto Asset Investments, LLC by and through their respective counsel, submitted memorandum on each Motion respectively.

Present at the hearing was Samantha N. Larkins, Esq. on behalf of Plaintiff, Francisco Nicolas Miguel; Plaintiff's daughter Patricia Nicholas; John Spell, Esq., on behalf of Defendant Palmetto Asset Investments, LLC; Johnathan Underwood as a member of Palmetto Asset Investments, LLC; John Devlin, Esq. on behalf of Defendant Greenville County Tax Collector.

## FACTUAL AND PROCEDURAL BACKGROUND

This is an action seeking to set aside as defective a delinquent property tax sale conducted in 2016 for certain property in Greenville County, South Carolina located at 1 Hilltop Avenue, Greenville, South Carolina and subsequent instruments of title. Plaintiff was the title owner of the property subject to the tax sale that is the subject of this action at the time of the sale. Palmetto Asset Investments, LLC was the purchaser of the property through the tax sale that is the subject of this action. Gabriel Angel Prestegui Gomez claims an interest in the property by an instrument of title entered with Palmetto Asset Investments, LLC subsequent to the tax sale. A. Kevin Hunter, III is the Tax Collector for Greenville County, South Carolina and was responsible for administration of the delinquent property tax sale that is the subject of this action.

This Court issued an Order Granting Plaintiff's Motion for Summary Judgment on January 7, 2020, providing:

The 2016 tax sale of the property located at 1 Hilltop Avenue, Greenville, South Carolina was not conducted in strict compliance with statutory requirements and is set aside...

The Tax Deed recorded on December 8, 2017 in Deed Book 2527, Page 3023 in the Office of the Register of Deeds for Greenville County, South Carolina and the Installment Contract for Sale of Real Estate which was recorded on February 8, 2018 in Deed Book 2531, Page 2233 in the Office of the Register of Deeds for Greenville County, South Carolina are voided...

Plaintiff's right to redeem the property is reinstated and Plaintiff shall pay to Greenville County all delinquent taxes owed from 2015, together with statutory interest and penalties, and all taxes assessed against property for 2016, 2017, 2018 and 2019. Payment shall be made to the County of Greenville within forty-five (45) days of the date of this Order, this Order shall be voided and the tax sale that is the subject of this action shall be deemed valid...

Palmetto Asset Investments, LLC shall receive a refund of all amounts paid to Greenville County for the property a 1 Hilltop Avenue, Greenville, South

Carolina, together with the statutory interest accruing on such amounts, from Greenville County upon Plaintiff's redemption of the property.

On January 17, 2020, Defendant Palmetto Asset Investments, LLC filed a Motion to Alter or Amend Judgment, which was denied on January 29, 2020. On January 17, 2020, Defendant Palmetto Asset Investments, LLC filed a Motion to Alter or Amend, which this Court denied on January 29, 2020. Defendant Palmetto Asset Investments, LLC filed a Notice of Appeal on February 24, 2020. Remittitur was filed in Greenville County on July 5, 2022. The Court of Appeals affirmed that the tax collector failed to comply with the statutory requirement that notice of the delinquent taxes be mailed to the best available address. On September 26, 2022, Plaintiff filed a Motion to Strike Plaintiff's Rule to Show Cause.

On August 9, 2022, Defendant Palmetto Asset Investments, LLC by and through John Underwood filed a Motion for Rule to Show Cause with the Greenville County Clerk of Court alleging Plaintiff had not redeemed the subject property pursuant to this Court's Order dated January 7, 2022. On August 16, 2022, Plaintiff filed a Motion to Enforce and Judgment and Determine Amount Due seeking the Court's intervention. Plaintiff asserted that he, by and through counsel, inquired as to the redemption amount on January 8, 2020; attempted to redeem by payment directly to the Greenville County Tax Assessor on or about July 15, 2022 and August 11, 2022; and continued efforts to pay the redemption amount via correspondence with counsel thereafter.

#### **LAW AND DECISION OF THE COURT**

Corporations must be represented by an attorney licensed to practice law in South Carolina. *In re Unauthorized Practice of Law Rules*, 309 S.C. 304, 422 S.E.2d 123 (1992). Corporations, which are artificial creatures of state law, do not have a right to appear pro se in all

instances, and must appear pro se by leave of the Court. S.C. Code Ann. § 40-5-320 (1986); S.C. Code Ann. § 40-5-80 (Supp. 2002); see also 191 S.C. 468, 5 S.E. 2d 181 (1939). South Carolina Rules of Civil Procedure, Rule 12 (f) provides, “[u]pon motion pointing out the defects complained of...the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.” Defendant’s Motion for Rule to Show Cause was submitted by Jonathan Underwood as a pro se litigant. Therefore, Plaintiff’s Motion to Strike is granted and Defendant’s Motion for Rule to Show Cause shall be stricken.

Pursuant to South Carolina Court of Appeals Rule 241,” the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision.” Rule 241, SCACR. The final disposition of a case occurs when the remittitur is returned by the clerk of the appellate court and filed in the lower court. *McDowell v. S.C. Dep’t of Soc. Servs.*, 300 S.C. 24, 386 S.E.2d 280 (Ct. App. 1989). The Court finds that the Plaintiff made a good faith effort to comply with the Order within forty-five (45) days, and to rule against Plaintiff would be too harsh a penalty.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. Defendant’s Motion for Rule to Show cause is stricken.
2. Plaintiff’s right to redeem remains valid. Plaintiff shall pay to Greenville County the amounts ordered by this Court on January 7, 2020 including all delinquent taxes owed from 2015, together with statutory interest and penalties, and all taxes assessed against the property for 2016, 2017, 2018, and 2019. Greenville County shall inform the Plaintiff the total amount due and owing.

3. Upon payment noted above, Palmetto Asset Investments, LLC shall receive a refund of all amounts paid to Greenville County for the property at 1 Hilltop Avenue, Greenville, South Carolina, together with the statutory interest accruing on such amounts, from Greenville County upon Plaintiff's redemption.

AND IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE TO FOLLOW]



Greenville Common Pleas

**Case Caption:** Francisco Nicolas Miguel vs. Palmetto Asset Investments LLC ,  
defendant, et al  
**Case Number:** 2018CP2303713  
**Type:** Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

Electronically signed on 2022-10-10 10:44:29 page 6 of 6

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF GREENVILLE  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2018CP2303713

Francisco Nicolas Miguel		Palmetto Asset Investments LLC Gabriel Angel Prestegui Gomez	A Kevin Hunter II Greenville County Tax Collector
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PLAINTIFF(S) DEFENDANT(S)

Submitted by: Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order; (formal order to follow)  Statement of Judgment by the Court:  
**ORDER INFORMATION**

The matter is before the court pursuant to a Motion to Alter or Amend filed by Palmetto Asset, LLC on October 17, 2022.  
 Based upon a review of the Motion and the record, the Motion is denied in that the order filed October 10, 2022 addresses the issues raised in the current Motion.  
**And It Is So Ordered.**

This order  ends  does not end the case.  
 Additional Information for the Clerk: \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional

ELECTRONICALLY FILED - 2022 Oct 20 10:21 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303713

taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

ELECTRONICALLY FILED - 2022 Oct 20 10:21 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303713

	3023	10/18/2022
<b>Circuit Court Judge</b>	<b>Judge Code</b>	<b>Date</b>

**For Clerk of Court Office Use Only**

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

**Samantha Nicholson Larkins** 360 E. Main St Suite One  
Spartanburg, SC 29302

**John Underwood** 1 Landing Ferry Way Greer, SC 29650  
**C. Richard Stewart** PO Box 8903 Greenville, SC 29604  
**John R Devlin Jr.** PO Box 10387 Greenville, SC 29603-0387

\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**Court Reporter**

\_\_\_\_\_  
**- Clerk of Court**

**Court Reporter:**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.**

\_\_\_\_\_  
**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Greenville Common Pleas

**Case Caption:** Francisco Nicolas Miguel vs. Palmetto Asset Investments LLC ,  
defendant, et al  
**Case Number:** 2018CP2303713  
**Type:** Master/Order/Form 4

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

Electronically signed on 2022-10-19 15:25:19 page 3 of 3





4. Hunter is the Tax Collector for Greenville County, South Carolina and is responsible for the proper administration of delinquent property tax sales in Greenville County, South Carolina.

5. This is an action seeking to establish the invalidity of a delinquent property tax sale related to a parcel of real property in Greenville County, South Carolina undertaken to satisfy delinquent property taxes and to restore Plaintiff's right of redemption relating to such property. This Court has jurisdiction over the dispute and is the proper venue for the matter.

#### **GENERAL ALLEGATIONS**

6. By deed dated August 29, 2013 and recorded on September 3, 2013 in the Office of the Register of Deeds for Greenville County, South Carolina, Ralph E. Scopa, Jr., as Trustee of the U.R. Home Trust conveyed certain real property in Greenville County, South Carolina which is the subject of this action to Nicolas. Such real property is hereinafter referenced as "the Property" and is described as follows:

**All that piece, parcel or lot of land, situate, lying and being in Greenville County, State of South Carolina, being known and designated as Lots 9 and 10, being more fully described in Plat Book G, Page 139 recorded in the RMC Office for Greenville County. Reference is hereby made to said plat for a more complete description of metes and bounds thereof.**

**This being the same property conveyed to Ralph E. Scopa, Jr. as Trustee of the UR Home Trust by deed of Dorothy E. McCall, dated December 7, 2012 and recorded on December 12, 2012 in Book 2416, Page 1349 in the RMC Office for Greenville County.**

**TMS# 0156000801100**

7. The deed conveying the Property to Nicolas identified his address as 1 Hilltop Avenue, Greenville, SC 29609.

8. On or about November 13, 2015 Nicolas provided, or caused to be provided, to the Real Property Services Department for Greenville County, South Carolina and the Tax

Collector for Greenville County notification of his change of address. The notification advised that Nicolas's new address was 117 Odom Circle, Greenville, SC 29611-2957. Accordingly, all subsequent tax notices and other correspondence relating to the property should have been mailed or otherwise delivered to Nicolas at 117 Odom Circle, Greenville, SC 29611-2957.

9. The ad valorem property taxes assessed against the Property for 2015 were not paid and Hunter was directed to take possession of and sale the Property to satisfy the unpaid assessment in accordance with S.C. Code Ann. §12-51-40 et. seq.

10. All delinquent tax notices and other notices relating to the sale of the Property for delinquent taxes provided by Hunter were mailed to the address, 1 Hilltop Avenue, Greenville, SC 29609, instead of 117 Odom Circle, Greenville, SC 29611-2957.

11. No delinquent tax notices or notices relating to the sale of the Property for delinquent taxes were mailed to the address, 117 Odom Circle, Greenville, SC 29611-2957.

12. Nicolas was not provided with proper notice of the sale of the Property to satisfy the 2015 delinquent property taxes conducted by Hunter on October 24, 2016 and such sale of the Property is invalid.

13. Palmetto provided the high bid for the Property at the auction conducted by Hunter on October 24, 2016 and received from Hunter a Tax Deed dated December 5, 2017 that was recorded on December 8, 2017 in Book 2527, Page 3073.

14. On or about February 5, 2018 Palmetto and Prestegui entered an Installment Contract for Sale of Real Estate which was recorded on February 8, 2018 in Deed Book 2531, Page 2233 in the Office of the Register of Deeds whereby Prestegui agreed to purchase from Palmetto the Property on an installment payment basis.

**FOR A FIRST CAUSE OF ACTION**

(Set Aside Tax Sale, Tax Deed and Subsequent Contract with Third Party)

15. The foregoing allegations of this Complaint are incorporated herein by reference and re-asserted.

16. Nicolas failed to pay the 2015 ad valorem taxes assessed against the Property when due, but was not provided notice of the delinquent taxes or of the tax sale conducted by Hunter as required by SC Code Ann. 12-5140 and 12-51-120.

17. Nicolas is ready, willing and able to pay Hunter a sum of money sufficient to pay the delinquent taxes and redeem the property from the tax sale.

18. Therefore, the tax sale, the conveyance to Palmetto from Hunter and the Contract between Palmetto and Prestegui should be set aside and should be declared to be void and of no effect.

WHEREFORE, Plaintiff prays of this Honorable Court for the following relief:

a. That the tax sale of the Property conducted to satisfy the delinquent 2015 taxes be set aside and be declared to be void and of no effect.

b. That the tax deed described in Paragraph No. 13 be set aside and be declared to be void and of no effect.

c. That the Installment Contract for Sale of Real Estate described in Paragraph No. 14 be set aside and be declared to be void and of no effect.

d. That Nicolas's right to redeem the Property upon payment of the delinquent taxes, together with any applicable penalties and interest, be restored.

e. That the costs of this action, including a reasonable attorney's fee be assessed against Defendants.

f. For such other and further relief as this Court deems just and reasonable.

July 11, 2018  
Spartanburg, South Carolina

s/ Ryan E. Gaylord  
Max T. Hyde, Jr. (SCB 17014)  
Ryan E. Gaylord (SCB 101946)  
**HYDE LAW FIRM, P.A.**  
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ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL DISTRICT
COUNTY OF GREENVILLE	)	
Francisco Nicolas Miguel,	)	
	)	
Plaintiff,	)	<b>LIS PENDENS</b>
	)	
v.	)	<b>C.A. NO: 2018-CP-23-</b>
	)	
Palmetto Asset Investments, LLC,	)	
Gabriel Angel Prestegui Gomez, and	)	
A. Kevin Hunter, II, Greenville County Tax	)	
Collector,	)	
	)	
Defendants.	)	
_____	)	

NOTICE IS HEREBY GIVEN THAT an action has been or will be commenced and is now or will be pending in this Court, upon Complaint of the above-named Plaintiff against the above-named Defendants, seeking to set aside a Tax Sale, Tax Deed and Subsequent Instrument relating to the real property described herein below (“the Property”).

The Property is described as follows:

**All that piece, parcel or lot of land, situate, lying and being in Greenville County, State of South Carolina, being known and designated as Lots 9 and 10, being more fully described in Plat Book G, Page 139 recorded in the RMC Office for Greenville County. Reference is hereby made to said plat for a more complete description of metes and bounds thereof. This being the same property conveyed to Ralph E. Scopa, Jr. as Trustee of the UR Home Trust by deed of Dorothy E. McCall, dated December 7, 2012 and recorded on December 12, 2012 in Book 2416, Page 1349 in the RMC Office for Greenville County.**

**TMS# 0156000801100**

July 11, 2018  
Spartanburg, South Carolina

s/ Ryan E. Gaylord  
Max T. Hyde, Jr. (SCB 17014)  
Ryan E. Gaylord (SCB 101946)  
**HYDE LAW FIRM, P.A.**  
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ATTORNEYS FOR PLAINTIFF

ELECTRONICALLY FILED - 2018 Jul 11 1:14 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303713

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL DISTRICT
COUNTY OF GREENVILLE	)	
Francisco Nicolas Miguel,	)	
	)	
Plaintiff,	)	<b>MOTION FOR SUMMARY</b>
	)	<b>JUDGMENT</b>
v.	)	<b>C.A. NO: 2018-CP-23-03713</b>
	)	
Palmetto Asset Investments, LLC,	)	
Gabriel Angel Prestegui Gomez, and	)	
A. Kevin Hunter, II, Greenville County Tax	)	
Collector,	)	
	)	
Defendants.	)	

---

NOW COMES, Plaintiff, Francisco Nicolas Miguel, by and through his undersigned counsel, and pursuant to Rule 56 of the South Carolina Rules of Civil Procedure moves for summary judgment declaring the 2016 tax sale (hereinafter “the Sale”) of 1 Hilltop Avenue, Greenville, South Carolina (hereinafter “the Property”) to be defective and setting aside the Sale and the subsequent instruments of title regarding the Property. In support of this motion, Plaintiff shows unto the Court:

1. There is no genuine issue of material fact with regard to the process followed and actions taken by the Office of the Greenville County Tax Collector in furtherance of the Sale, and Plaintiff is entitled to judgment as a matter of law. S.C. R. Civ. P. 56(c).

2. “..(A)ll requirements of the law leading up to tax sales are to be regarded as mandatory and strictly enforced. They are intended for the protection of the taxpayer against surprise of the sacrifice of his property.” *Leysath v. Leysath*, 209 S.C. 342, 40 S.E.2d 233, 235 (1946).

3. To take exclusive possession of real property to effect a tax sale for delinquent taxes the tax collector must mail “a notice of delinquent property taxes, assessments, penalties and costs to the defaulting taxpayer... 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’”. S.C. Code Ann. § 12-51-40(b) (1976).

4. “If the ‘certified mail’ notice has been returned, (the tax collector must) 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...” S.C. Code Ann. § 12-51-40(c) (1976).

5. Following the sale and prior to the end of the one-year redemption period for real estate sold for delinquent taxes, the tax collector must “mail a notice by ‘certified mail, return receipt requested-restricted delivery’ as provided in Section 12-51-40(b) to the defaulting taxpayer... The notice must be mailed to the best address of the owner available to (the tax collector)...” S.C. Code Ann. § 12-51-120 (1976).

6. “(W)here a statute requires a condition precedent to foreclosing a taxpayer’s rights in property sold for taxes that he be given notice of his right to redeem, such requirement is ‘generally regarded as jurisdictional, and therefore, the owner’s right of redemption cannot be cut off unless the required notice is given’”. *Good v. Kennedy*, 291 S.C. 204, 207, 352 S.E.2d 708, 711 (S.C. App. 1986), quoting 72 Am.Jur.2d State and Local Taxation Section 1010 (1974); accord, 85 C.J.S. Taxation Section 859 (1954). “Moreover, where a statute permits the giving of such notice by mail, the person authorized to send the notice must exercise diligence to ascertain

the correct address of the property owner.” *Good v. Kennedy*, 291 S.C. 204, 207-08, 352 S.E.2d 708, 711 (S.C. App. 1986), citing 85 C.J.S. Taxation Section 868 (1954).

7. A tax collector’s receipt of information that indicates the existence of a new, updated address for a taxpayer requires further inquiry. *Good v. Kennedy*, 291 S.C. 204, 207-08 (S.C. App. 1986), *Benton v. Logan*, 323 S.C. 338, 340 - 43, 474 S.E.2d 446, 447-48 (S.C. App. 1996).

8. Greenville County uses a mail service vendor to print and mail its property tax bills. (Depo. D. Adkins 6:15 – 7:4). Prior to mailing tax bills, the mail service vendor verifies taxpayer addresses through the NCOA system, a database coordinated by the Postal Service and other addressing entities. (Depo. D. Adkins 9:1-13) (Depo. A. Hunter 9:14-18). The mail service vendor sends the tax bill to the verified address, and only to the verified address, as determined through the NCOA system and reports any new, verified address to Greenville County. (Depo. D. Adkins 9:1-22). The existence and record of a new, NCOA verified address is available to and accessible by the Greenville County Tax Collector’s Office. (Depo. A. Hunter 13:11-13).

9. Greenville County’s mail service vendor discovered a new, verified address for Plaintiff when mailing the 2015 tax bill. (Depo. D. Adkins 13:22 – 14:15). The 2015 tax bill was mailed to the new, verified address, and Greenville County Records were updated on November 13, 2015 to note the discovery of the new, verified address by the mail service vendor. (Depo. D. Adkins 13:22 – 14:15, 17:11-13, Ex. 1, Ex. 3).

10. Greenville County endeavors to send tax bills to the “best known available address”. (Depo. D. Adkins 11:21-23). The tax bills mailed to Plaintiff for years 2015, 2016, and 2017, which was mailed only a few days prior to the end of the one-year redemption period,

were all mailed to the NCOA verified address, 117 Odom Circle, Greenville, SC 29611-2957. (Depo. D. Adkins, Ex. 1) (Depo A. Hunter, Ex. 5, Ex. 6).

11. All notices mailed to Plaintiff by the Greenville County Tax Collector's Office in furtherance of the Sale were mailed to 1 Hilltop Avenue, Greenville, SC 29609. (Resp. to Req. for Prod. of Docs. of A. Hunter). The notice mailed pursuant to S.C. Code Ann. § 12-51-40(b) was delivered; however, the signature on the return receipt green card was illegible and provides no confidence to the Greenville County Tax Collector's Office that it was delivered to Plaintiff. (Depo. D. Henderson 17:25 – 18:6). The Greenville County Tax Collector's Office believes the property probably should have been posted. (Depo. D. Henderson 17:17-24) (Depo. A. Hunter 28:16 – 29:1). The notice mailed pursuant to S.C. Code Ann. § 12-51-120 was returned. (Resp. to Req. for Prod. of Docs. of A. Hunter).

12. Despite the fact that Greenville County only mails tax bills to NCOA verified addresses, the Tax Collector's Office ignores that source of information in conducting tax sales. (Depo. A. Hunter 13:11-15, 15:7-18).

13. Ultimately, Plaintiff received no notice of the Sale at his home address, 117 Odom Circle, Greenville, SC 29611-2957, and was not afforded the opportunity to avoid the Sale or redeem the Property. (Aff. F. Nicolas).

14. The receipt of a new, verified address through Greenville County's mail service vendor together with the inability to confirm delivery of tax sale notices to Plaintiff at 1 Hilltop Avenue, Greenville, SC 29609 should have caused the Greenville County Tax Collector's Office to investigate further the best address of Plaintiff and mail notice of the Sale to the new, verified address.

15. The Greenville County Tax Collector's Office did not exercise diligence in conducting the Sale. It ignored relevant information regarding Plaintiff's address and failed to provide proper notice of the Sale to Plaintiff.

16. The Sale should be set aside for failure to comply with S.C. Code Ann. § 12-51-40(b) and S.C. Code Ann. § 12-51-120 in that the notices required by those sections were not mailed to Plaintiff at the best address available.

17. Further, as admitted by the Greenville County Tax Collector's Office, this property should have been posted because of the inability to confirm delivery of the notice mailed pursuant to S.C. Code Ann. § 12-51-40(b). The Sale should be set aside for failure to competently take exclusive possession of the Property by posting pursuant to S.C. Code Ann. § 12-51-40(c).

NOW THEREFORE, for the reasons set forth, Plaintiff prays of this Court for an Order declaring the tax sale to be defective and setting aside the Sale and the subsequent instruments of title regarding the Property.

Respectfully submitted this 25<sup>th</sup> day of September, 2019.

s/ Ryan E. Gaylord

Max T. Hyde, Jr. (SCB 17014)

Ryan E. Gaylord (SCB 101946)

**HYDE LAW FIRM, P.A.**

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[ryan@maxhydelawfirm.com](mailto:ryan@maxhydelawfirm.com)

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
FOR THE 13<sup>th</sup> JUDICIAL CIRCUIT  
Case No: 2018-CP-23-03713

Francisco Nicolas Miguel, )  
 )  
Plaintiff, )

vs )

**MOTION TO ALTER OR AMEND  
JUDGMENT**

Palmetto Asset Investments, LLC, )  
Gabriel Angel Prestegui Gomez, and )  
A. Kevin Hunter, II, Greenville County Tax )  
Collector, )  
 )  
Defendants. )

NOW COMES, Defendant, Palmetto Asset Investments, LLC, by and through undersigned counsel, and pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure hereby Moves this Court to alter or amend its Order Granting Summary Judgment dated January 7, 2020.

The grounds for this Motion are that the evidence presented at the Summary Judgment hearing supports only a finding that the County strictly complied with the statutory requirements of the Tax Sale procedure and therefore Summary Judgment for the Plaintiff is improper.

The Defendant will support this Motion with a Memorandum of Law to be submitted prior to the hearing of this matter.

Respectfully submitted,

January 17, 2020

s/Jeffrey T. Spell  
Jeffrey T. Spell  
1721 Ashley River Road  
Charleston, South Carolina 29407  
(843) 452-3553  
jeff@jeffspell.com

*Attorney for the Defendant*  
Palmetto Asset Investments, LLC

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
Francisco Nicolas Miguel, )  
Plaintiff, )  
 )  
vs. )  
 )  
Palmetto Asset Investments, LLC, et al )  
 )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
Case Number: 2018- CP - 23-03713

MOTION FOR RULE TO SHOW CAUSE

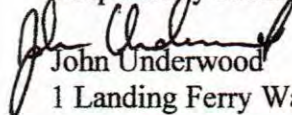
FILED  
JUL 27 2022  
CLERK OF COURT  
GREENVILLE, SC

Defendant Palmetto Asset Investments, LLC (hereafter, Palmetto) draws attention to the Court that the timeframe for the redemption by Plaintiff as ruled by this Court has expired.

- 1) Item 3 of "ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT" allowing plaintiff to redeem property has expired per this court's order.
- 2) The Plaintiff was ordered to pay to Greenville County Tax Collector all delinquent taxes owed by Plaintiff from 2015 along with interest and penalties within (45 days). Kevin Hunter, Greenville County Tax Collector, confirmed that the Plaintiff has not complied with the court order as of July 27<sup>th</sup>, 2022, via email to Defendant. (see attachment 1)
- 3) This Court gave Plaintiff (45) days from the order dated January 6<sup>th</sup>, 2022, to comply. Furthermore, it has been (45) days past the appeal signed May 1, 2022 and filed June 1, 2022 and Plaintiff has not complied with this court's order.
- 4) The County Attorney has been contacted to provide an Affidavit to this fact and the Affidavit is forth coming.

Therefore, the ruling to set aside the 2016 tax sale should be voided and the tax sale shall be deemed valid to Palmetto per this court's order. "...that payment has not been made within forty-five (45) days of the date of this Order, this Order shall be voided and the tax sale that is the subject of this action shall be deemed valid."

Respectfully submitted

  
John Underwood  
1 Landing Ferry Way  
Greer, SC 29650  
john05261@gmail.com

000046

Attachment 1

**John Underwood** <john05261@gmail.com>

Jul 27, 2022, 11:31 AM (13 days ago)

to Kevin, Sharay

Sharay and Kevin

1 Hillop Ave, Greenville - 0156000801100.

There was a court case (2018CP2303713) about this tax deed and the previous owner only has 45 days (from appeal 2020-000390 of 1 May 2022, filed 1 June 2022) to come in and pay back taxes from 2015 to now plus interest and penalties.

Has anyone come in and paid these court ordered tax payments from Francisco Nicolas Miguel on this property? If so, when were they paid?

If not I need help with getting the County Attorney to issue an Affidavit on behalf of the Tax Collector saying these taxes were not paid within 45 days of appeal case being decided.

This will uphold the tax deed.

Thanks,  
John Underwood

**Hunter, Kevin**

Jul 27, 2022, 3:56 PM (13 days ago)

to me, Sharay

John, I do not see anything indicating that the bills from 2015 to present were repaid to us although the bills are paid.

*A. Kevin Hunter, Ph.D.*

**A. Kevin Hunter, II, Ph.D.**  
**Major, U.S. Army, Ret**  
**County Tax Collector**  
**Greenville County Square**  
**301 University Ridge, Suite 700**  
**Greenville, SC 29601**  
**PH: 864/467-7050**  
**Fax: 864/467-7189**

**000047**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL DISTRICT
COUNTY OF GREENVILLE	)	
Francisco Nicolas Miguel,	)	
	)	
Plaintiff,	)	<b>MOTION TO ENFORCE</b>
	)	<b>JUDGMENT AND DETERMINE</b>
	)	<b>AMOUNT DUE</b>
	)	
v.	)	<b>C.A. NO: 2018-CP-23-03713</b>
	)	
Palmetto Asset Investments, LLC,	)	
Gabriel Angel Prestegui Gomez, and	)	
A. Kevin Hunter, II, Greenville County Tax	)	
Collector,	)	
	)	
Defendants.	)	
	)	

NOW COMES, Plaintiff, Francisco Nicolas Miguel, by and through his undersigned counsel, moves to enforce judgment and determine amount due,

NOW THEREFORE, for the reasons set forth, Plaintiff prays of this Court for an Order requiring the Greenville County Tax Collector to allow the Plaintiff to pay taxes and redeem the Subject Property pursuant to the Order Granting Plaintiff's Motion for Summary Judgment and provide sum due from Plaintiff to do so.

1. This Court issued an Order Granting Plaintiff's Motion for Summary Judgment on January 7, 2020. The Order provided:

- a. "The 2016 tax sale of the property located at 1 Hilltop Avenue, Greenville, South Carolina was not conducted in strict compliance with statutory requirements and is set aside.
- b. The Tax Deed recorded on December 8, 2017 in Deed Book 2527, Page 3023 in the Office of the Register of Deeds for Greenville County, South Carolina and the

Installment Contract for Sale of Real Estate which was recorded on February 8, 2018 in Deed Book 2531, Page 2233 in the Office of the Register of Deeds for Greenville County, South Carolina are voided.

- c. Plaintiff's right to redeem the property is reinstated and Plaintiff shall pay to Greenville County all delinquent taxes owed from 2015, together with statutory interest and penalties, and all taxes assessed against property for 2016, 2017, 2018 and 2019.
  - d. Palmetto Asset Investments, LLC shall receive a refund of all amounts paid to Greenville County for the property a 1 Hilltop Avenue, Greenville, South Carolina, together with the statutory interest accruing on such amounts, from Greenville County upon Plaintiff's redemption of the property."
2. On January 17, 2020, Defendant Palmetto Asset Investments, LLC filed a Motion to Alter or Amend Judgment, which was denied on January 29, 2020.
  3. Defendant Palmetto Asset Investments, LLC filed a Notice of Appeal on February 24, 2020.
  4. Pursuant to South Carolina Court of Appeals Rule 241," the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision."
  5. Remittitur was filed in Greenville County on July 5, 2022.
  6. On or about July 15, 2020, Mr. Miguel attempted to exercise his right to redeem and pay the taxes according to the Order, but the taxes for the subject property were listed as paid and the Greenville County Tax Assessor's Office would not accept payment.

7. On or about August 11, 2022, by and through the undersigned counsel, Mr. Miguel contacted the Greenville County Attorney's Office to exercise his right to redeem and pay the taxes. Ongoing conversations ensued regarding the same.

8. Without an Order from the Court, Plaintiff's right to redeem the Property will be voided.

9. Plaintiff asks that the court requiring Greenville County Tax Assessor to provide the total amount due to redeem the property and accept payment from Plaintiff.

10. Undersigned counsel certifies that consultation with opposing counsel would serve no useful purpose as to the foregoing motion for injunction or temporary restraining order.

Respectfully submitted this 16<sup>th</sup> day of August, 2022.


s/ Samantha N. Larkins  
Max T. Hyde, Jr. (SCB 17014)  
Samantha N. Larkins (SCB 102790)  
**HYDE LAW FIRM, P.A.**  
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[samantha@maxhydelawfirm.com](mailto:samantha@maxhydelawfirm.com)

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG


VERIFICATION

FRANCISCO NICOLAS MIGUEL, the Plaintiff herein, being first duly sworn, deposes and says that he has read the foregoing Motion, and that the facts set forth therein are true to his own knowledge, except as to any matters therein set forth upon information and belief, and as to any such matters she believes them to be true.

  
\_\_\_\_\_  
FRANCISCO NICOLAS MIGUEL

Subscribed and sworn to before me this  
the 16 day of August, 2022.

  
\_\_\_\_\_  
Notary Public

  
\_\_\_\_\_  
Print Notary Name

My Commission Expires:  
08 15 2025

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
FOR THE 13<sup>th</sup> JUDICIAL CIRCUIT  
Case No: 2018-CP-23-03713

Francisco Nicolas Miguel, )  
 )  
Plaintiff, )

vs )

**MEMORANDUM OF LAW  
IN SUPPORT OF DEFENDANT'S  
RULE TO SHOW CAUSE**

Palmetto Asset Investments, LLC, )  
Gabriel Angel Prestegui Gomez, and )  
A. Kevin Hunter, II, Greenville County Tax )  
Collector, )  
 )  
Defendants. )

The Defendant, Palmetto Asset Investments, LLC offers this brief in support of its Rule to Show Cause in the above matter.

**BACKGROUND**

This is an action to set aside a Tax Sale. The Defendant, Palmetto Asset Investments, LLC was the buyer at the Tax Sale and is the owner of the property by virtue of a Tax Deed.

This Court found in favor of the Plaintiff on a Motion for Summary Judgment and issued its Order on January 7, 2020 which provided in part:

Plaintiff's right to redeem the property is reinstated and Plaintiff shall pay to Greenville County all taxes owed from 2015, together with statutory interest and penalties and all taxes assessed against property for 2016, 2017, 2018 and 2019. Payment shall be made to the County of Greenville within forty-five (45) days of the date of this Order. Upon receipt of an Affidavit from Mr. Wile, as attorney for the Defendant Tax Collector, that payment has not been made within forty-five (45) days of the date of this Order, this Order shall be voided and the tax sale that is the subject of this action shall be deemed valid.

According to the Order, if the Plaintiff failed to redeem the property by paying the County within forty-five (45) days from the date of the Order, then the tax sale would be upheld, and the

Defendant would remain the owner of the property. The Defendant has not, to this day, paid the County as Ordered.

On January 17<sup>th</sup>, 2020, ten (10) days after the Order was filed, the Defendant filed a Motion to Alter or Amend. The lower Court issued an Order denying Defendant's Motion on January 29<sup>th</sup>, 2020. On February 24<sup>th</sup>, twenty-five (25) days after the lower Court issued its Order denying the Defendant's Motion to Alter or Amend, the Defendant filed a Notice of Appeal.

Rule 241 SCACR provides, as a general rule:

The service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court.

There was NO stay prior to the filing of the Notice of Appeal.

There is no question that the forty-five (45) day period during which the Plaintiff could redeem the property per the Court's Order was stayed during the pendency of the appeal. However, at least thirty-three (33) of the forty-five (45) days ran out before the filing of the Notice of Appeal was filed.<sup>i</sup>

The matter went to the South Carolina Court of Appeals where the lower Court decision was affirmed by an Opinion filed June 1, 2022. The South Carolina Court of Appeals issued REMITTITUR on June 23, 2022 by letter to the Greenville County Clerk of Court of the same date which stated the "matter is hereby remitted to the lower court". The Court of Appeals' remittitur letter was delivered to all counsel of record by email dated June 23, 2022.

Once remitted, the Plaintiff had twelve (12) remaining days to redeem the property. The Plaintiff did not redeem the property by paying the taxes, interest, and penalties within forty-five

(45) days as Ordered. Because the property was not redeemed during the forty-five (45) period, the tax sale should “be deemed valid” per the Court’s Order.

The Defendant filed a Rule to Show Cause on August 9<sup>th</sup>, 2022 seeking confirmation from the Court that the Tax Sale is deemed valid as Ordered.

### REMITTITUR

Remittitur ends the jurisdiction of the appellate court and returns jurisdiction to the lower court. Once remittitur is sent down from the appellate court, the lower court acquires jurisdiction to enforce the judgment and take any action consistent with the appellate court ruling. See *Muller v. Myrtle Beach Golf & Yacht Club*, 313 S.C. 412, 438 S.E.2d 248 (1993); see also *Parker v. Shecut*, 359 S.C. 143, 597 S.E.2d 793 (2004).

While Defendant’s counsel cannot find a case on the issue of notice of remittitur by email, a rule was established by the South Carolina Supreme Court in 2018 regarding an email notice and the time to file a Notice of Appeal. It is established that an email that provides written notice of entry of an order or judgment, if sent from the court, an attorney of record, or a party, triggers the time to serve a notice of appeal. *Wells Fargo Bank N.A. v. Fallon Properties South Carolina, LLC*, et al 2018 WL 1075861. It follows that the *Wells Fargo* rule regarding email notice at the initiation of an appeal would be consistently applied at the end of the appeal.

Defendant suggests above, that thirty-three (33) of the forty-five (45) days allowed to redeem ran out before the filing of the Notice of Appeal and automatic stay. Even if this Court does not agree that thirty-three (33) days ran out before the automatic stay, there can be no doubt that forty-five (45) more days ran out after remittitur prior to the Defendant’s filing of the Rule to Show Cause.

**CONCLUSION**

Because the Plaintiff failed to redeem the property within the forty-five (45) day redemption period set forth in this Court's Order, the Court should declare the tax sale and tax sale deed valid.

September 22, 2022

s/Jeffrey T. Spell  
Jeffrey T. Spell  
1721 Ashley River Road  
Charleston, South Carolina 29407  
(843) 452-3553  
jeff@jeffspell.com

*Attorney for the Defendant*  
Palmetto Asset Investments, LLC

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<sup>1</sup> If we were to include the twelve (12) days during which time the lower Court was considering the Defendant's Motion to Alter or Amend, then the full forty-five (45) days would have run before the filing of the Notice of Appeal.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL DISTRICT
COUNTY OF GREENVILLE	)	
Francisco Nicolas Miguel,	)	
	)	
Plaintiff,	)	<b>MEMORANDUM IN SUPPORT OF</b>
	)	<b>PLAINTIFF’S MOTION TO</b>
	)	<b>ENFORCE JUDGMENT AND</b>
	)	<b>DETERMINE AMOUNT DUE</b>
	)	
v.	)	<b>C.A. NO: 2018-CP-23-03713</b>
	)	
Palmetto Asset Investments, LLC,	)	
Gabriel Angel Prestegui Gomez, and	)	
A. Kevin Hunter, II, Greenville County Tax	)	
Collector,	)	
	)	
Defendants.	)	
	)	

NOW COMES, Plaintiff Francisco Nicholas Miguel, by and through the undersigned counsel, hereby submit this memorandum in support of Plaintiff’s Motion to Enforce Judgment and Determine Amount Due, as follows:

**FACTS**

1. Plaintiff filed this action July 11, 2018 to set aside a tax deed related to taxes from 2015.
2. This Court issued an Order Granting Plaintiff’s Motion for Summary Judgment on January 7, 2020. The Order provided:

“The 2016 tax sale of the property located at 1 Hilltop Avenue, Greenville, South Carolina was not conducted in strict compliance with statutory requirements and is set aside...

The Tax Deed recorded on December 8, 2017 in Deed Book 2527, Page 3023 in the Office of the Register of Deeds for Greenville County, South Carolina and the Installment Contract for Sale of Real Estate which was recorded on February 8, 2018 in Deed Book 2531, Page 2233 in the Office of the Register of Deeds for Greenville County. South Carolina are voided...

Plaintiff's right to redeem the property is reinstated and Plaintiff shall pay to Greenville County all delinquent taxes owed from 2015, together with statutory interest and penalties, and all taxes assessed against property for 2016, 2017, 2018 and 2019. Payment shall be made to the County of Greenville within forty-five (45) days of the date of this Order, this Order shall be voided and the tax sale that is the subject of this action shall be deemed valid...

Palmetto Asset Investments, LLC shall receive a refund of all amounts paid to Greenville County for the property a 1 Hilltop Avenue, Greenville, South Carolina, together with the statutory interest accruing on such amounts, from Greenville County upon Plaintiff's redemption of the property."

3. On January 8, 2020, Plaintiff's Counsel Ryan E. Gaylord contacted Jeffrey D. Wile, then Counsel for the Greenville County Tax Assessor's Office to determine the amount due for redemption. See **Exhibit A**. This amount was paid to the Trust Account for Hyde Law Firm, P.A. for the purpose of redemption. **Exhibit B**.

4. On January 17, 2020, Defendant Palmetto Asset Investments, LLC filed a Motion to Alter or Amend Judgment, which was denied on January 29, 2020.

5. Defendant Palmetto Asset Investments, LLC filed a Notice of Appeal on February 24, 2020.

6. Remittitur was filed in Greenville County on July 5, 2022. The Court of Appeals affirms that the tax collector failed to comply with the statutory requirement that notice of the delinquent taxes be mailed to the best available address.

7. On or about July 15, 2020, Mr. Miguel attempted to exercise his right to redeem and pay the taxes according to the Order, but the taxes for the subject property were listed as "paid" and the Greenville County Tax Assessor's Office would not accept payment.

8. On or about August 11, 2022, by and through the undersigned counsel, Mr. Miguel again contacted the Greenville County Attorney's Office to exercise his right to redeem and pay the taxes. Ongoing conversations ensued regarding the same, in which Greenville County was

unsure of the statutory interest to be paid and continued to refuse to accept payment despite the Court's Order. See Exhibits C, Correspondence with Christopher Antley, Assistant County Attorney for Greenville County; see also Exhibit D, Correspondence with John Devlin, Attorney for Greenville County. Plaintiff continued to request the County provide an amount to be redeem the Property and hold funds accordingly. *See id.*

9. On August 16, 2022, Plaintiff was forced to file this Motion to Enforce and Judgment and Determine Amount Due seeking the Court's intervention.

### LAW AND ANALYSIS

10. Pursuant to South Carolina Court of Appeals Rule 241," the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision." Rule 241, SCACR.

11. The final disposition of a case occurs when the remittitur is returned by the clerk of the appellate court and *filed* in the lower court. *McDowell v. S.C. Dep't of Soc. Servs.*, 300 S.C. 24, 386 S.E.2d 280 (Ct. App. 1989) (emphasis added). Once the remittitur is sent down from the appellate court, circuit court acquires jurisdiction to enforce the judgment and take an action consistent with the appellate court's ruling. *Muller v. Myrtle Beach Golf & Yacht Club*, 313 S.C. 412, 415, 438 S.E.2d 248, 250 (1993).

12. Here, Remittitur was not filed in Greenville County until July 5, 2022. This is when Greenville County Circuit Court acquired jurisdiction to enforce any judgment in this matter.

13. Plaintiff's forty-five (45) days to redeem the property would begin running from July 5, 2022 when the Remittitur was clocked in Greenville County. Therefore, Plaintiff would have until **August 19, 2022** to redeem the Property. Plaintiff attempted to pay the Greenville

County Tax Assessor on or about July 15, 2022. However, Greenville County would not accept payment. Greenville County would not issue any statement in writing of the Plaintiff's attempts to make payment. Greenville County again refused to accept payment on August 11<sup>th</sup> and 18<sup>th</sup>, 2020.

14. Defendant argues that the time for redemption began running in January 2020. Plaintiff stood prepared to redeem the Property in 2020 and remains ready to do so now. Plaintiff attempted prior to the Appeal and again thereafter. Since the Greenville County's system marked the taxes as paid, Plaintiff was unable to submit payment. Greenville County was also unclear as to the "statutory interest" required to be paid per the Order. The Defendant's Motion to Amend, subsequent Appeal and Greenville County have prevented his ability to redeem.

15. Greenville County did not provide until August 18, 2022 a figure of \$6,072.80 to redeem the property good for a period of thirty (30) days.

16. Seemingly, the County would have forced Plaintiff to seek the Court's intervention regardless of the timing of payment due to their refusal to accept payment and misunderstanding of the Order. Hence, Plaintiff seeks the above-stated relief from the Court.

17. Plaintiff has attempted to redeem the Property within the proper time-frame.

18. Even if the Court intends to hear, Defendant's Rule to Show Cause, Plaintiff cannot be found in willful contempt for failure to redeem the property, but rather has made repeated efforts to do so.

### CONCLUSION

Based on the foregoing, facts, supporting case law, arguments, and forth coming oral arguments, Plaintiff respectfully requests the Court enforce the prior Order on Granting Plaintiff's Motion for Summary Judgment allowing Plaintiff to redeem the subject property, and issuing an Order determining the amount due to Greenville County.

**RESPECTFULLY SUBMITTED,**

September 26, 2022

Spartanburg, South Carolina

/s/Samantha N. Larkins

Max T. Hyde, Jr. (SC Bar # 17014)

Samantha N. Larkins (SC Bar # 102790)

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[samantha@maxhydelawfirm.com](mailto:samantha@maxhydelawfirm.com)

**ATTORNEYS FOR PLAINTIFF**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL DISTRICT
COUNTY OF GREENVILLE	)	
Francisco Nicolas Miguel,	)	
	)	
Plaintiff,	)	<b>MOTION TO STRIKE</b>
	)	
v.	)	<b>C.A. NO: 2018-CP-23-03713</b>
	)	
Palmetto Asset Investments, LLC,	)	
Gabriel Angel Prestegui Gomez, and	)	
A. Kevin Hunter, II, Greenville County Tax	)	
Collector,	)	
	)	
Defendants.	)	
	)	

---

Plaintiff, Francisco Nicolas Miguel, by and through his undersigned counsel, moves pursuant to SCRCOP 12(f) to strike Defendant Palmetto Asset Investments, LLC's Rule to Show Cause in the above matter based upon the following:

1. On August 9, 2022, the corporate Defendant Palmetto Asset Investments, LLC through the individual, John Underwood, submitted a Motion for Rule to Show Cause.
2. Defendant Palmetto Asset Investments, LLC is a limited liability company organized under the laws of the State of South Carolina.
3. Corporations must be represented by an attorney licensed to practice law in South Carolina. *In re Unauthorized Practice of Law Rules*, 309 S.C. 304, 422 S.E.2d 123 (1992).
4. Accordingly, Defendant's Rule to Show Cause must be stricken as it is improperly before the Court.

Wherefore, Plaintiff prays for an order of this Court:

1. Striking Defendant's Rule to Show Cause.

Respectfully submitted this 26<sup>th</sup> day of September, 2022.

s/ Samantha N. Larkins  
Max T. Hyde, Jr. (SCB 17014)  
Samantha N. Larkins (SCB 102790)  
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[samantha@maxhydelawfirm.com](mailto:samantha@maxhydelawfirm.com)

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL DISTRICT
COUNTY OF GREENVILLE	)	
Francisco Nicolas Miguel,	)	
	)	
Plaintiff,	)	<b>MEMORANDUM IN SUPPORT OF</b>
	)	<b>PLAINTIFF'S MOTION TO STRIKE</b>
	)	
v.	)	<b>C.A. NO: 2018-CP-23-03713</b>
	)	
Palmetto Asset Investments, LLC,	)	
Gabriel Angel Prestegui Gomez, and	)	
A. Kevin Hunter, II, Greenville County Tax	)	
Collector,	)	
	)	
Defendants.	)	
	)	

NOW COMES, Plaintiff, Francisco Nicolas Miguel, by and through his undersigned counsel, moves to strike Defendant Palmetto Asset Investments, LLC's Rule to Show Cause in the above matter pursuant to Rule 12(g), SCRCF, on the basis that the corporate Defendant Palmetto Asset Investments, LLC ("Palmetto") filed the Rule to Show Cause pro se and did not follow proper procedure in doing so:

**FACTS**

Plaintiff filed this action to set aside a Tax Sale for delinquent taxes owed from 2015 and reinstate Plaintiff's right of redemption. On January 7, 2020, this Court issued an Order Granting Plaintiff's Motion for Summary Judgment. Said Order was upheld after Defendant's Motion to Alter or Amend and an Appeal to the South Carolina Court of Appeals.

On August 9, 2022, the corporate Defendant Palmetto Asset Investments, LLC through the individual, John Underwood, submitted a Motion for Rule to Show Cause. This Motion was provided to the Clerk of Court with a Motion and Order Information Form and Coversheet. On the

Motion Coversheet, Mr. Underwood struck through portion of the coversheet designating "Defendant's Attorney" and wrote in his personal contact information.

Administrative Docketing Coordinator, Karen K. Hermann, emailed Mr. Underwood and myself informing him that an LLC must be represented by an attorney for the Judge to hear this Motion. Accordingly, Palmetto Asset Investments, LLC's attempts to validate the 2016 tax sale through a pro se individual, John Underwood, is improperly before the court.

Now therefore, Plaintiff moves to strike the Motion for Rule to Show Cause and for the Court to Enforce the Judgment pursuant to Plaintiff's said Motion. Further, even if the Motion for Rule to Show Cause were filed properly by counsel for the corporate Defendant, Palmetto Asset Investments, LLC, the Court did not issue an Order for a Rule to Show Cause, nor was the Plaintiff served with an Order for a Rule to Show Cause.

#### **LEGAL STANDARD**

Corporations must be represented by an attorney licensed to practice law in South Carolina. *In re Unauthorized Practice of Law Rules*, 309 S.C. 304, 422 S.E.2d 123 (1992). Corporations, which are artificial creatures of state law, do not have a right to appear pro se in all instances, and must appear pro se by leave of the Court. S.C. Code Ann. § 40-5-320 (1986); S.C. Code Ann. § 40-5-80 (Supp. 2002); see also 191 S.C. 468, 5 S.E. 2d 181 (1939). In *State Ex. Rel. Daniel v. Wells*, the

South Caroline Rules of Civil Procedure, Rule 12 (f) provides, "[u]pon motion pointing out the defects complained of...the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter."

## ARGUMENT

Mr. Underwood filed this Rule to Show Cause as a pro se individual appearing on behalf of the corporate Defendant Palmetto. He was conscious of his lack of representation as he wrote on the Motion Coversheet, striking through the portion for attorney information and noting that he could hire counsel. The Motion is defective and pursuant to Rule 12(f) should be stricken.

Further, a Rule to Show Cause is a contempt complaint. There was no summons attached, and the Rule to Show Cause was only forwarded to the Plaintiff through an email from the Clerk of Court. There was no summons nor was there any order of this court ruling Plaintiff should show why he is in willful contempt of court. Additionally, a Rule to Show Cause would not be the appropriate Motion for any alleged non-compliance with the Court's Order. Plaintiff desires to comply with the Court order by paying to redeem the property and given the opportunity he will do so. As such, Plaintiff filed a proper Motion to Enforce the Court Order so that he would be provided this opportunity.

## CONCLUSION

Defendant Palmetto did not file its Rule to Show cause through a licensed attorney, the Rule to Show Cause is not properly before the Court, and this pleading must be stricken. Respectfully submitted this 23rd day of September, 2022.

s/ Samantha N. Larkins  
Max T. Hyde, Jr. (SCB 17014)  
Samantha N. Larkins (SCB 102790)  
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[samantha@maxhydelawfirm.com](mailto:samantha@maxhydelawfirm.com)  
ATTORNEYS FOR PLAINTIFF

000065

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
FOR THE 13<sup>th</sup> JUDICIAL CIRCUIT  
Case No: 2018-CP-23-03713

Francisco Nicolas Miguel, )  
 )  
Plaintiff, )

vs )

**MOTION TO ALTER OR AMEND**

Palmetto Asset Investments, LLC, )  
Gabriel Angel Prestegui Gomez, and )  
A. Kevin Hunter, II, Greenville County Tax )  
Collector, )  
 )  
Defendants. )

The Defendant, Palmetto Asset Investment, LLC, by and thru undersigned counsel and pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, hereby moves for an Order of this Court altering or amending its Order of October 10, 2022, a copy of which is attached hereto as an exhibit.

The Court found that “the Plaintiff made a good faith effort to Comply with the (previous) Order within forty-five (45) days.”

The following facts are undisputed:

1. The previous Order of this Court was issued on January 7, 2020 and contained a forty-five (45) day deadline for the Plaintiff to redeem the subject property.
2. The Defendant’s Notice of Appeal was filed on February 24<sup>th</sup>, 2020.
3. Forty-seven (47) days passed between the Order and the Notice of Appeal, and the Plaintiff made no effort to redeem the property.
4. The Court of Appeals issued Remittitur on June 23<sup>rd</sup>, 2022.

5. The Plaintiff claims to have made his first effort to redeem the property on July 15<sup>th</sup>, 2022.
6. Twenty-two (22) more days passed after The Court of Appeals issued remittitur and before the Plaintiff attempted to redeem the property.

The Plaintiff's only effort to redeem the property came after the forty-five (45) day prescribed period had run.

The Defendant respectfully asks this Court to alter or amend its Order to find that the Plaintiff's effort came too late (beyond the forty-five day period) or in the alternative, the Defendant would ask this Court to clarify its findings to explain when the forty-five (45) day window began and ended and how it is that the Plaintiff's actions on July 15<sup>th</sup> fell within the period prescribed.

Respectfully submitted,

October 17, 2022

s/Jeffrey T. Spell  
Jeffrey T. Spell  
1721 Ashley River Road  
Charleston, South Carolina 29407  
(843) 452-3553  
jeff@jeffspell.com

*Attorney for the Defendant*  
Palmetto Asset Investments, LLC

1 that the right to redeem was certainly still effective.

2 Of course, our final date that we're arguing here  
3 today is August 19. But if we were to follow Mr. Spell's  
4 logic, where he seeks to use the date of June 23, when there  
5 was an email notice about the court of appeals' decision, he  
6 would also claim that maybe there were 12 days left. It  
7 would be during that time that remittitur still was not  
8 filed. So it was July 5 that the remittitur was actually  
9 filed and clocked.

10 THE COURT: By you saying finally clocked, are you  
11 talking with the clerk of court's office here in Greenville?

12 MS. LARKINS: That's right, in Greenville.

13 THE COURT: All right.

14 MS. LARKINS: So it's very difficult to understand  
15 how if that wasn't even filed and clocked in Greenville, that  
16 we should be operating under an assumption that the time is  
17 running on when Mr. Miguel should go and pay these taxes. It  
18 doesn't make sense why he should go and pay those taxes if  
19 the remittitur wasn't even filed. Again, there wasn't a  
20 final disposition, and there's still going to be a question  
21 with Greenville County about what that amount should be.

22 And so with that, still pending, it doesn't seem like  
23 he could rightfully do that. He did try, however, on July  
24 15, but also two separate times while there was ongoing  
25 conversation, with myself and Greenville County counsel to

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1 physically go down there and pay that and was met with the  
2 inability to do so. So his lack of ability to pay this into  
3 the court is part of the problem. We would have loved to  
4 have had that money sitting there with Greenville, and just  
5 be having this legal argument about when that was  
6 appropriate. And that is part of what muddies this as well,  
7 is that inability to do so.

8 THE COURT: All right, Mr. Spell, anything else  
9 briefly for the record?

10 MR. SPELL: Briefly, only that I think that the  
11 court asked if there was any evidence that Mr. Miguel  
12 attempted to pay these taxes prior to the notice of appeal.  
13 And I believe that the answer to that is no, that there is no  
14 evidence or suggestion that he tried to pay it. I believe  
15 that Mr. Wile had his hand in writing the order, I believe.  
16 And it's clear that the day after the order was issued, the  
17 dollar amount was set. And I believe that the problems that  
18 face the county accepting the money today, which I'm  
19 sympathetic to, would not have been there during the first 45  
20 days after the order, because we had this very clear email  
21 from Jeffrey Wile dated January 8, 2020.

22 THE COURT: All right. Obviously, I've looked  
23 through the issues, researched the law. Good lawyers, good  
24 issues. I'm going to find that Mr. Miguel has complied with  
25 the order.

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1 First, I think it's clear that within the 45 day  
2 period, he made a good faith effort, multiple good faith  
3 efforts to pay the amount. Second, to not rule in his favor,  
4 I think would be a harsh penalty, when he has clearly acted  
5 in good faith.

6 So Ms. Larkins, if you would prepare an order and send  
7 it to Ms. Herrmann, my docket coordinator within 10 days.  
8 And prior to that time, of course, send a copy to Mr. Spell,  
9 and to Mr. Devlin.


10 So is there anything else? And I certainly understand  
11 some of y'all think brilliant ruling. Some of y'all think  
12 how could you rule that? But so I'm not inviting for another  
13 opportunity to -- for me to change my mind. But is there  
14 anything else we need to address in the order at this point?

15 MR. SPELL: Your Honor, I think it'd be very helpful  
16 if the court found that the 45 days began at a certain point  
17 and ended at a certain point. I think that that in the  
18 order, you're finding, whatever it is, would be helpful.

19 THE COURT: All right. And I'll -- Ms. Larkins,  
20 I'll certainly take a look at that issue. I don't know -- I  
21 just don't know if it's critical to my ruling. But I'll  
22 certainly look at that, because it would make a clean issue  
23 for appeal, and that's probably not a bad idea to have that  
24 clarified on appeal, especially in today's electronic world.  
25 so anything else then?

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Recording Requested By and  
When Recorded Mail to: *Grantor address*  
1 HILLTOP AVE  
GREENVILLE, SC 29609

 2013074389 QCD  
Book DE 2430 Page 4393-4394  
September 03, 2013 10 56 18 AM Cons \$1 00  
Rec \$10 00 Cnty Tax EXEMPT State Tax EXEMPT  
**FILED IN GREENVILLE COUNTY, SC**  
Recording Time, Book & Page

## SOUTH CAROLINA QUITCLAIM DEED ( Title not Examined)

COUNTY: GREENVILLE  
CITY: GREENVILLE

TAX MAP NUMBER: 0156000801100  
DATE: AUGUST 29, 2013

Grantor

Grantee

RALPH E. SCOPA, JR  
AS TRUSTEE OF THE U. R. HOME TRUST

FRANCISCO NICOLAS MIGUEL

The designation Grantor and Grantee as used herein shall include the named parties and their heirs, successors and assigns and shall include singular, plural, masculine, feminine or neuter as required by context

KNOW ALL MEN BY THESE PRESENTS, that Grantor, for and in consideration of the sum of **ONE and 0/100 Dollars (\$1.00 ) LOVE AND AFFECTION**, the receipt and sufficiency of which is hereby acknowledged, to Grantor paid by Grantee, does hereby remise, release and forever quitclaim unto Grantee all of Grantor's right, title and interest, if any, in and to the real estate (the "Premises") described as follows:

**ALL THAT PIECE, PARCEL, OR LOT OF LAND, SITUATE, LYING AND BEING IN GREENVILLE COUNTY, STATE OF SOUTH CAROLINA, BEING KNOWN AND DESIGNATED AS LOTS 9 AND 10, BEING MORE FULLY DESCRIBED IN PLAT BOOK G, PAGE 139 RECORDED IN THE RMC OFFICE FOR GREENVILLE COUNTY. REFERENCE IS HEREBY MADE TO SAID PLAT FOR A MORE COMPLETE DESCRIPTION OF METES AND BOUNDS THEREOF.**

**THIS BEING THE SAME PROPERTY CONVEYED TO RALPH E. SCOPA, JR AS TRUSTEE OF THE UR HOME TRUST BY DEED OF DOROTHY E. MCCALL , DATED 12/7/12, RECORDED 12/12/12 IN BOOK 2416, PAGE 1349 IN THE RMC OFFICE FOR GREENVILLE COUNTY.**

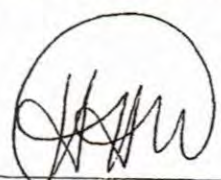
TMS# 0156000801100

TO HAVE AND TO HOLD unto Grantee and Grantee's heirs, successors and assigns forever, the Premises and the appurtenances thereto belonging or in anywise appertaining, and all the estate, right, title, interest and claim whatsoever of Grantor, if any

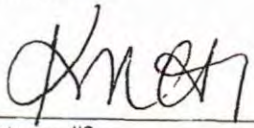
000071

29

IN WITNESS WHEREOF, Grantor has caused this Quitclaim Deed to be executed under seal this 29 day of August, 2013  
SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

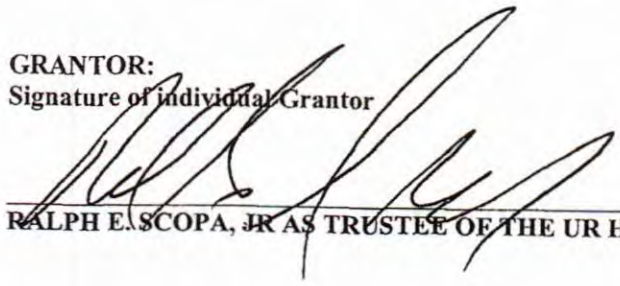


Witness #1



Witness #2

GRANTOR:  
Signature of individual Grantor



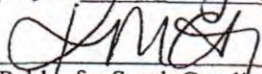
RALPH E. SCOPA, JR AS TRUSTEE OF THE UR HOME TRUST (SEAL)

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

Acknowledgment for Individual Grantor

I, a Notary Public for South Carolina, do hereby certify that THE ABOVE SIGNED Grantor, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

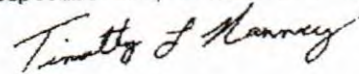
Witness my hand and official seal this the 29 day of August, 2013.

  
Notary Public for South Carolina

My Commission Expires:  
1/4/20

FILED FOR RECORD IN GREENVILLE COUNTY, SC ROD  
2013074389 Book: DE 2430 Page: 4393-4394  
September 03, 2013 10 56 18 AM

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*Timothy J. Kearney*

GRANTEE: 1 HILLTOP AVE  
ADDRESS: GREENVILLE, SC  
29609

Space above for recording information.

STATE OF SOUTH CAROLINA	)	
	)	INSTALLMENT CONTRACT FOR SALE OF
COUNTY OF GREENVILLE	)	REAL ESTATE

**THIS AGREEMENT**, made and entered into this 5<sup>th</sup> day of February, 2018, by and between **Palmetto Asset Investments, LLC**, hereinafter referred to as "Seller", and **Gabriel Angel Prestegui Gomez**, hereinafter referred to as "Buyer".

WITNESSETH:

**NOW, THEREFORE**, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), each to the other in hand paid and of the mutual covenants and agreements contained herein the Seller and Buyer hereby agree as follows:

1. **Description of Property.** The Seller agrees to sell to the Buyer and the Buyer agrees to purchase from the Seller, the property and all improvements thereon and appurtenances thereto hereinafter referred to as "the property" and being described as follows:

See Attached **Exhibit A**

2. **Purchase Price and Terms.** The purchase price of the property is **\$42,500.00**, to be paid as follows:
  - a. Buyer is to make down payment of **\$5,000.00** on the date of the contract execution, and Seller is financing **\$37,500.00**.
  - b. Buyer shall pay **120 monthly payments of \$538.02**, with the first payment being due on **March 1, 2018** and the last payment being due on **February 1, 2028**.

- c. Buyer may choose to pay additional sums to pay off property at an expedited rate with no penalty, and any additional sums will be deducted from the balance owed.
  - d. Payments shall be made by depositing said payment in any form into *South State Bank Account #: 8010000045868*. Buyer name and address must be added to the deposit slip to ensure proper credit.
3. **Occupancy.** Buyer shall have the right to occupy the premises immediately upon execution of this contract.
4. **Late Payment Charge.** Buyer agrees to pay a late charge of forty dollars (\$40) as a late penalty on any installment which is more than five (5) days past due. In addition, interest shall be charged on late payments at the highest rate allowable by law from the date the payment was due. If Buyer's payment is ninety (90) days late, Seller may start eviction proceedings against Buyer.
5. **Payment of Taxes.** Buyer shall be responsible for payment of all real property taxes. All taxes shall be due upon receipt of the tax notice from the Seller, annually. In the event taxes are not timely paid, seller shall pay the same, with the costs of taxes plus penalties being added to the buyer's next monthly payment. If this amount is not paid by the buyer, buyer shall be considered in default unless the matter is settled to seller's satisfaction.
6. **Insurance.** Buyer shall keep the improvements now existing, if any, or hereafter erected on the subject property insured as may be required from time to time by the Seller against loss by fire, casualty, or other occurrence, and any other hazards specified by the Seller, in an amount not less than the debt due under this Installment Contract, or in such amounts as may be required by the Seller, and in companies acceptable to it, and that all such policies and renewals thereof shall be held by the Seller, and have attached thereto loss payable clauses in favor of, and in form acceptable to the Seller, and Buyer shall pay all premiums therefore when due; and Buyer does hereby assign to the Seller the proceeds of any policy insuring the subject premises and does not hereby authorize each insurance company concerned to make payment for loss directly to the Seller, to the extent of the balance owing on the installment Contract debt, whether due or not.

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7. **This Agreement is subject to:**

- (a.) Zoning and building laws or ordinances.
- (b.) Roads and highways.
- (c.) Covenants, conditions, exceptions, reservations, restrictions or easements of record.
- (d.) Any facts which an accurate survey would disclose.

8. **Repairs and Maintenance.** Buyer shall be solely responsible for all repairs and maintenance to the premises, and Buyer covenants not to commit, permit or suffer any waste to the property, to keep the property in good repair and not suffer any mechanics' or material men's liens to attach thereto. Buyer further covenants not to abandon said property and not to use, permit or suffer the use of any of the property for any illegal or immoral purpose, or, without written consent of the Seller, for any purpose other than that for which it is not intended, nor without such consent to effect, permit, or suffer any alteration or removal of, or any addition to, the buildings or improvements now or hereafter situated in or upon the property. Buyer further covenants and agrees to comply with all laws and ordinances which may in any manner affect the property.

9. **Inspection of Premises.** Seller reserves for seller and seller's employees or agents the right to enter upon the property at any reasonable time during the term of this Agreement for the purpose of inspecting and examining the property or for the purpose of protecting Seller's rights, title and interest in and to the property or to save it from waste, for the purpose of exercising any right conferred upon Seller hereunder.

10. **Title to Remain With Seller; Default.** Buyer agrees that legal and equitable title to the property shall remain in the Seller until the Seller executes and delivers a deed to the Buyer in accordance with this Agreement. If Buyer fails to timely pay any payment when due, or if Buyer fails to timely comply with any other agreement, covenant, or obligations of Buyer hereunder, then in either of any said events, the entire unpaid balance under the terms of this Agreement shall, at the option of the Seller, immediately become due and payable and Seller may, at Seller's option, (a.) terminate by simple declaration of Seller's election to do so, with or without notice,

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all of Buyer's rights under this Agreement and all of Buyer's right, title and interest in the property; and/or (b.) terminate all of Buyer's rights under this Agreement and all of Buyer's right, title and interest in the property in any appropriate legal proceeding, legal or equitable; and/or (c.) enforce Buyer's obligations hereunder in any appropriate legal proceeding, legal or equitable. Buyer agrees to pay all of the Seller's costs and expenses, including a reasonable sum for attorney's fees incurred by Seller, in terminating Buyer's rights or enforcing Seller's rights under this Agreement. Upon Seller exercising Seller's right of termination as provided in this paragraph, all rights and interest hereby created and then existing in Buyer and in all claiming under Buyer, shall wholly cease and terminate, in which case Buyer shall have been deemed to have expressly waived any and all rights as Buyer may have by virtue of equitable interest in the property, special equity, equity of redemption or otherwise. Buyer shall thereupon surrender, without demand, peaceful possession of the property in as good condition as it is now, reasonable wear and tear excepted. In the event the Buyer neglects or refuses to surrender such possession, it shall be lawful for Seller to enter upon and take possession of said property without notice and remove all persons and their property. All sums paid by Buyer to Seller prior to default shall belong to Seller and shall be deemed reasonable rent for the use and occupancy of the property.

11. **Seller's Non-Waiver Due to Delay.** Failure or delay of the Seller to enforce any right or to exercise any option hereunder available because of any default shall not operate as a waiver of the right of the Seller to thereafter enforce such right or to exercise such option or any other right, or option, for the same or subsequent default.
12. **Assignment of Rents.** Buyer hereby assigns to Seller all rents, issues and profits of the subject premises from and after any default hereunder, and agree that, should legal proceedings be instituted pursuant to this instrument, any judge having jurisdiction may, at chambers or otherwise, appoint a receiver of the subject premises, with full authority to take possession of the subject premises and collect the rents, issues and profits, including a reasonable rental to be fixed by the Court in the event said premises are occupied by the Buyer and after deducting all charges and expenses attending such preceding and the execution of its trust as receiver, shall

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apply the residue of the rents, issues and profits toward the payment of the debt secured hereby.

13. **Condemnation.** Buyer hereby assigns, transfers and sets over to Seller, up to the amount of the total indebtedness of Buyer to Seller hereunder, all of Buyer's right, title and interest in and to all awards and claims in connection with condemnation of any of the property for public use, or for injury to any portion thereof, and the proceeds of all such awards or claims, after payment therefrom all reasonable expenses incurred, including fees for attorneys representing Seller in any such proceeding, shall be paid to Seller. Seller is hereby authorized in the name of Buyer to execute and deliver valid acquittances thereof and to appeal from or otherwise appropriately litigate any or all of such awards or claims. Seller shall be under no obligation hereunder to sell or convey all or any part of the property, or right or interest therein which is condemned.
14. **Proceeds of Insurance.** All moneys received by Seller under any policy or policies of insurance or any condemnation award or other award claims after payment therefrom of all reasonable expenses incurred in connection therewith, including fees for attorneys representing Seller, may at the option of the Seller, without notice, be used for the purpose of repairing, restoring, or improving the damaged structure upon the property, or may be credited on the indebtedness as Seller may elect.
15. **No Transfer Without Seller's Consent.** Buyer shall not sell, rent, lease, assign, or transfer the property or any interest therein without Seller's prior written consent. If all or any part of the property or any interest therein is sold or transferred without Seller's prior written consent, Seller may, at Seller's option, require immediate payment in full of all sums due under this Installment Contract.
16. **Payment in Full.** Upon receipt of the full payment of monies due under the terms of this Agreement, the Seller shall execute and deliver a Quit-Claim Deed conveying Seller's interest to the above-described property, if any, to the Buyer, subject to covenants, conditions, exceptions, reservations, restrictions or easements of record.
17. **Property sold "AS IS."** Buyer acknowledges that Buyer has inspected and examined the property, is satisfied with its condition and acknowledges that Buyer is

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buying the property "as is." Buyer acknowledges that no representations, written or verbal, express or implied, have been made by any person, regarding the condition of the dwelling or structures, and that no such representations have been relied upon by Buyer.

18. **No Merger of Terms and Conditions.** The covenants, warranties, conditions, representations, and acknowledgements contained in this Agreement shall not merge with any subsequent deed of conveyance but shall survive the same.
19. **Time for Performance.** Time is of the essence of this Agreement.
20. **Buyer's Liability.** Buyer shall be solely responsible for any and all claims, and demands, and liabilities occurring on the property or arising out of the use of the property or in any way related to the property which is the subject of this Installment Contract.
21. **Buyer's Indemnification of Seller.** Buyer agrees to indemnify and hold harmless the Seller against any loss or damage, including Seller's reasonable expenses and attorney's fees, in regard to any of Buyer's obligations, covenants, agreements, representations, and warranties under this Installment Contract.
22. **Notices.** Any notice to Buyer provided for in this Installment Contract shall be given by delivering it or by mailing it by First Class Mail. The notice shall be directed to the property address or any other address Buyer designates by notice to Seller. Any notice to Seller shall be given by First Class Mail to Seller's address stated herein or any address Seller designates by notice to Buyer. Any notice provided for in this Installment Contract shall be deemed to have been given to Buyer or Seller when given as provided in this paragraph.
23. **Jurisdiction, Venue, and Construction.** The parties agree that this Installment Contract shall be construed in accordance with the laws of the State of South Carolina, and that the exclusive jurisdiction and venue for any action arising out of the matters contained or referred to in this Agreement shall be in the County in which the property is located.

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24. **Paragraph Headings.** The paragraph headings contained in this Installment Contract are for convenient reference only, and shall not constitute part of this Agreement, nor shall they be used in construing any of the terms and conditions contained herein.

25. **Persons Bound by Agreement.** The obligation, covenants, agreements, representations, and warranties contained in this Installment Contract shall be binding upon, and the benefits and advantages hereunder shall inure to the respective heirs, executors, administrators, successors and assigns of the parties hereto.

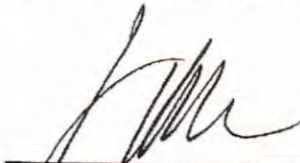
**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement in duplicate by setting their hands and seals hereto as of the day and year first above-written.

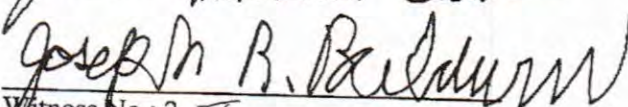
**(THIS SPACE LEFT INTENTIONALLY BLANK)**

**000079**

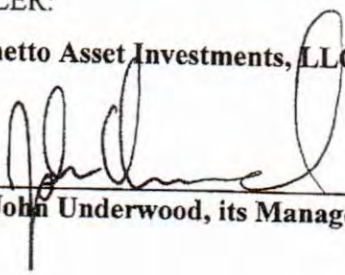
SIGNED, SEALED AND DELIVERED

IN THE PRESENCE OF:


  
Witness No.: 1 Antonina Coker

  
Witness No.: 2 JOSEPH R. BALDWIN

SELLER:  
Palmetto Asset Investments, LLC

  
By: John Underwood, its Manager

BUYER:

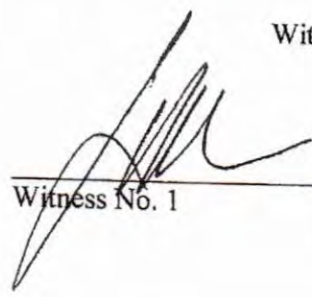
  
Gabriel Angel Prestegui Gomez

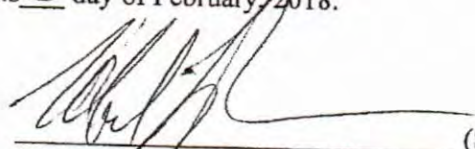
STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF SPARTANBURG )

PROBATE

Personally appeared before me, the undersigned witness, who, first being duly sworn, states that (s)he saw the within named Buyer and Seller sign, seal, and as their act and deed, deliver the within Installment Contract for Sale of Real Estate and that (s)he with the other witnesses subscribed above, witnesses the execution thereof. I further attest that the subscribing witnesses herein certified to me under oath or by affirmation that they are neither parties to, nor beneficiaries of, this transaction.

Witness my official hand a seal this 5<sup>th</sup> day of February, 2018.

  
Witness No. 1

  
\_\_\_\_\_  
Melissa L. James (SEAL)  
Notary Public for South Carolina  
My Commission expires October 14, 2025

MELISSA L. JAMES  
Notary Public, State of South Carolina  
My Commission Expires Oct. 14, 2025

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EXHIBIT A

All that piece, parcel, or lot of land, situate, lying, and being in the State of South Carolina, County of Greenville, being known and designated as Lots No. 9 and 10, being more fully described on a plat recorded in Plat Book G at Page 139 in the Office of the Register of Deeds for Greenville County, South Carolina. Reference is made to said plat for a more detailed description.

LESS however any portion previously conveyed and subject to restrictions of record.

This being the same property conveyed to Palmetto Asset Investments, LLC by deed of A. Kevin Hunter, II, Tax Collector for Greenville County, dated December 5, 2017 and recorded December 8, 2017 in Deed Book 2527 at Page 3073 in the Office of the Register of Deeds for Greenville County, South Carolina.

Property Address: 1 Hilltop Avenue  
Greenville, SC 29609

TMS #: 0156.00-08-011.00

**000081**

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Matter Number		18-0032		Miguel, Francisco (RE-LIT)		Trust Balance Forward	\$0.00	
Client Name		Francisco Miguel				Trust Ending Balance	\$5,400.00	
Start Date		01/10/2020		End Date		01/10/2020		
Date	Deposits	Withdrawals	Account #	Payee	Description	Transaction ID	Transaction Type	APY Transacto...
01-10-2020	\$5,400.00		11046.00	Trust Deposit	CASH from F. Miguel, to be applied towards property taxes	28596	TR	

**Samantha Larkins**

**From:** Wile, Jeffrey <JWile@greenvillecounty.org>  
**Sent:** Tuesday, January 7, 2020 4:09 PM  
**To:** Ryan Gaylord  
**Subject:** Francisco Nicolas Miguel v. Palmetto Asset Investments, LLC et al

You're welcome, Ryan. FYI – the County will not appeal but I can't speak for Dick's client.

Jeff

*Jeffrey D. Wile*  
Assistant County Attorney  
301 University Ridge, Suite 2400  
Greenville, SC 29601  
Phone: (864) 467-7110  
Fax: (864) 467-5964  
[jwile@greenvillecounty.org](mailto:jwile@greenvillecounty.org)

**From:** Ryan Gaylord [mailto:ryan@maxhydelawfirm.com]  
**Sent:** Tuesday, January 07, 2020 3:56 PM  
**To:** Wile, Jeffrey  
**Subject:** RE: Francisco Nicolas Miguel v. Palmetto Asset Investments, LLC et al

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Thanks.

**From:** Wile, Jeffrey [mailto:JWile@greenvillecounty.org]  
**Sent:** Tuesday, January 07, 2020 3:51 PM  
**To:** Ryan Gaylord <ryan@maxhydelawfirm.com>  
**Cc:** Dick Stewart <dstewart@attorneyrichardstewart.com>  
**Subject:** Francisco Nicolas Miguel v. Palmetto Asset Investments, LLC et al

Ryan:

I will contact the tax collector's office and get those amounts to you -- hopefully by tomorrow.

Jeff

*Jeffrey D. Wile*  
Assistant County Attorney  
301 University Ridge, Suite 2400  
Greenville, SC 29601  
Phone: (864) 467-7110  
Fax: (864) 467-5964  
[jwile@greenvillecounty.org](mailto:jwile@greenvillecounty.org)

**From:** Ryan Gaylord [mailto:ryan@maxhydelawfirm.com]  
**Sent:** Tuesday, January 07, 2020 3:29 PM  
**To:** Wile, Jeffrey  
**Cc:** Dick Stewart  
**Subject:** Francisco Nicolas Miguel v. Palmetto Asset Investments, LLC et al

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Jeff:

Assuming Judge Summer's decision is not appealed, do you have a total of the amounts paid by Palmetto Asset Investments, LLC that Mr. Miguel will need to refund? I would like to give him as much notice of the actual amount as possible.

Sincerely,

Ryan

Ryan E. Gaylord  
**HYDE LAW FIRM, P.A.**  
360 East Main Street  
Spartanburg, South Carolina 29302  
p (864) 804-6330  
[ryan@thehydelaawfirm.com](mailto:ryan@thehydelaawfirm.com)  
[www.maxhydelaawfirm.com](http://www.maxhydelaawfirm.com)



**HYDE**  
LAW FIRM, P.A.

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**Samantha Larkins**

**From:** Wile, Jeffrey <JWile@greenvillecounty.org>  
**Sent:** Wednesday, January 8, 2020 2:19 PM  
**To:** Ryan Gaylord  
**Subject:** Francisco Nicolas Miguel v. Palmetto Asset Investments, LLC, et al.

Ryan:

Here are the figures that I received from the Tax Collector's Office:

**Redemption Amount:**

2015 Taxes: \$850.81  
Costs: \$325.00  
Interest: \$960.00

**Total:** \$2,135.81

**In addition:**

2016 Taxes: \$737.38  
2017 Taxes: \$771.79  
2018 Taxes: \$830.54

**Total:** \$2,339.71

**Also:**

2019 Taxes have not been paid – If paid on or before January 15, 2020 -- \$893.73 – If paid after January 15<sup>th</sup> and before February 1<sup>st</sup> -- \$909.50

Let me know if you have any questions.

Jeff

Jeffrey D. Wile  
Assistant County Attorney  
301 University Ridge, Suite 2400  
Greenville, SC 29601  
Phone: (864) 467-7110  
Fax: (864) 467-5964  
jwile@greenvillecounty.org

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**000085**

**Samantha Larkins**

---

**From:** John Devlin <john.devlin@devlawsc.com>  
**Sent:** Tuesday, August 16, 2022 4:51 PM  
**To:** Samantha Larkins  
**Subject:** RE: Miguel v. Palmetto Investments, LLC, Gabriel Gomez, and Greenville County; 2018-CP-23-03713

Samantha- no problem re contact with Chris. We're all jumping into this late.

Do you know what the "statutory interest" is that the judge's order said your man had to pay? Nether Chris nor I know, but that is hardly definitive. If you don't know we will try to find out.

John R. Devlin, Jr.

**Devlin Antley**  
ATTORNEYS AT LAW

27 Cleveland Street, Suite 201 (29601)  
Post Office Box 10387  
Greenville, SC 29603  
864-242-4050-office  
864-242-4277-fax  
[john.devlin@devlawsc.com](mailto:john.devlin@devlawsc.com)

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**From:** Samantha Larkins <samantha@maxhydelawfirm.com>  
**Sent:** Tuesday, August 16, 2022 4:29 PM  
**To:** Herrmann, Karen <KHerrmann@greenvillecounty.org>  
**Cc:** matthew@themccordlawfirm.com; Max Hyde <max@maxhydelawfirm.com>; John Devlin <john.devlin@devlawsc.com>  
**Subject:** RE: Miguel v. Palmetto Investments, LLC, Gabriel Gomez, and Greenville County; 2018-CP-23-03713

Good afternoon:

I can be available any of the dates and times provided.

I intended on filing the attached Motion regarding this issue today. It is my client's position that he has until August 19<sup>th</sup> to pay the property taxes owed and redeem the subject property. If there is anyway the Court could find time to hear us this week, we would greatly appreciate it. We would like to preserve for the Court efforts to pay the required amount to redeem the property, and our inability to do so.

000087

John, I have been communicating with Chris Antley and apologize if my communications should have been directed to you.

Thank you,  
Samantha

Samantha Nicholson Larkins  
*Attorney at Law*  
**HYDE LAW FIRM, P.A.**  
360 E. Main Street, Suite One  
Spartanburg, SC 29302  
P: (864) 804-6330  
F: (864) 804-6449  
[samantha@maxhydelawfirm.com](mailto:samantha@maxhydelawfirm.com)  
[www.maxhydelawfirm.com](http://www.maxhydelawfirm.com)



**HYDE**  
LAW FIRM, P.A.

**From:** John Devlin <[john.devlin@devlawsc.com](mailto:john.devlin@devlawsc.com)>  
**Sent:** Tuesday, August 16, 2022 3:27 PM  
**To:** Herrmann, Karen <[KHerrmann@greenvillecounty.org](mailto:KHerrmann@greenvillecounty.org)>  
**Cc:** Samantha Larkins <[samantha@maxhydelawfirm.com](mailto:samantha@maxhydelawfirm.com)>; [matthew@themccordlawfirm.com](mailto:matthew@themccordlawfirm.com)  
**Subject:** RE: Miguel v. Palmetto Investments, LLC, Gabriel Gomez, and Greenville County; 2018-CP-23-03713

Those dates and times all work for me right now. I will hold them pending hearing from the others.

John R. Devlin, Jr.

**Devlin Antley**  
ATTORNEYS AT LAW

27 Cleveland Street, Suite 201 (29601)  
Post Office Box 10387  
Greenville, SC 29603  
864-242-4050-office  
864-242-4277-fax  
[john.devlin@devlawsc.com](mailto:john.devlin@devlawsc.com)

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**From:** Herrmann, Karen <KHerrmann@greenvillecounty.org>  
**Sent:** Tuesday, August 16, 2022 3:22 PM  
**To:** John Devlin <john.devlin@devlawsc.com>  
**Cc:** samantha@maxhydelawfirm.com; matthew@themccordlawfirm.com  
**Subject:** RE: Miguel v. Palmetto Investments, LLC, Gabriel Gomez, and Greenville County; 2018-CP-23-03713  
**Importance:** High

Judge Simmons is good with a conference call in this matter.

He is available on August 29<sup>th</sup> at 9:00, the 30<sup>th</sup> at 8:45 or the 31<sup>st</sup> at 9:30.

Please check your calendars and copy all with your reply.

Thank you.

**Karen K. Herrmann**  
Administrative Docketing Coordinator  
Judge Charles B. Simmons, Jr.  
Greenville County Courthouse, Suite 313  
305 East North Street  
Direct Dial 864-467-8258/ Fax 864-467-8401

**From:** John Devlin <john.devlin@devlawsc.com>  
**Sent:** Tuesday, August 16, 2022 2:50 PM  
**To:** Herrmann, Karen <KHerrmann@greenvillecounty.org>  
**Cc:** samantha@maxhydelawfirm.com; matthew@themccordlawfirm.com  
**Subject:** Miguel v. Palmetto Investments, LLC, Gabriel Gomez, and Greenville County; 2018-CP-23-03713

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Dear Karen:

I represent the County in the above tax sale lawsuit. Jeff Wile of the County Attorney's office was handling it before his retirement last fall, when I was substituted as counsel of record. It has very recently come back from an appeal.

I have seen a Rule to Show Cause in the Court recently filed by a John Underwood. My contacts at the Greenville County Attorney's office advise me that they have been receiving communications from the parties about whether or not a deadline has passed and whether or not taxes have been paid on the property in question. The County does not wish to make any judgment calls as to whether or not any deadlines have been missed or complied with, and I was hoping that at some point in the near future the judge would be kind enough to have a conference call with counsel about the status of this matter. I am on vacation all of next week, so my availability is any time the rest of this week, or whenever it can be arranged the week of August 29.

In the meantime, I would appreciate it if counsel for the other parties would communicate with me rather than representatives from the County Attorney's office. Thank you in advance.

000089

John R. Devlin, Jr.

# Devlin Antley

ATTORNEYS AT LAW

27 Cleveland Street, Suite 201 (29601)  
Post Office Box 10387  
Greenville, SC 29603  
864-242-4050-office  
864-242-4277-fax  
[john.devlin@devlawsc.com](mailto:john.devlin@devlawsc.com)

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ELECTRONICALLY FILED - 2022 Sep 26 10:25 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303713

000090

**Samantha Larkins**

**From:** John Devlin <john.devlin@devlawsc.com>  
**Sent:** Thursday, August 18, 2022 12:52 PM  
**To:** Samantha Larkins; Jeff Spell  
**Cc:** Max Hyde  
**Subject:** RE: Miguel v. Palmetto Investments, LLC, Gabriel Gomez, and Greenville County; 2018-CP-23-03713

Samantha:

I am not sure what you mean by "certain payments". You will have to get a lot more specific than that before I am able to take your proposal to the County. Documentary proof of those payments, whatever they might be, would be helpful.

I will leave you and Mr. Spell to work out the timing issue and any possible tolling of the 45 days while a resolution is being sought.

John R. Devlin, Jr.

**Devlin Antley**  
ATTORNEYS AT LAW

27 Cleveland Street, Suite 201 (29601)  
Post Office Box 10387  
Greenville, SC 29603  
864-242-4050-office  
864-242-4277-fax  
[john.devlin@devlawsc.com](mailto:john.devlin@devlawsc.com)

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**From:** Samantha Larkins <samantha@maxhydelaawfirm.com>  
**Sent:** Thursday, August 18, 2022 12:20 PM  
**To:** John Devlin <john.devlin@devlawsc.com>; Jeff Spell <jeff@jeffspell.com>  
**Cc:** Max Hyde <max@maxhydelaawfirm.com>  
**Subject:** RE: Miguel v. Palmetto Investments, LLC, Gabriel Gomez, and Greenville County; 2018-CP-23-03713

Good afternoon:

John: Mr. Miguel will pay the amount listed as you have below to redeem. However, I did want to ask for clarification and hopefully simplicity's sake—if certain payments made for the relevant time period **000091**

by Mr. Miguel, can his redemption amount be reduced by his prior payments? If so, the County would only need to make one reimbursement to Palmetto Asset rather than to Mr. Miguel as well.

Jeff: I hope that we can stipulate to this legal issue of timing without the need for a hearing on the matter. I would point to the following case law. "The final disposition of a case occurs when the remittitur is returned by the clerk of the appellate court and filed in the lower court. McDowell v. South Carolina Department of Social Services, 300 S.C. 24, 386 S.E.2d 280 (Ct.App.1989). Until that time, the case is pending on appeal. Once the remittitur is sent down from the appellate court, the lower court acquires jurisdiction to enforce the judgment and take any action consistent with the appellate court ruling. Muller v. Myrtle Beach Golf and Yacht Club, --- S.C. ----, 438 S.E.2d 248 (1993).

Christy v. Christy, 317 S.C. 145, 452 S.E.2d 1 (S.C. App. 1995)." It appears Judge Simmons is inclined to agree.

If we can stipulate to the 45 days running from 7/5/22 to 8/19/22, then Mr. Miguel will make payment to the County today.

Thank you,  
Samantha

**From:** John Devlin <[john.devlin@devlawsc.com](mailto:john.devlin@devlawsc.com)>  
**Sent:** Thursday, August 18, 2022 11:36 AM  
**To:** Jeff Spell <[jeff@jeffspell.com](mailto:jeff@jeffspell.com)>; Samantha Larkins <[samantha@maxhydelawfirm.com](mailto:samantha@maxhydelawfirm.com)>  
**Subject:** RE: Miguel v. Palmetto Investments, LLC, Gabriel Gomez, and Greenville County; 2018-CP-23-03713

Dear all:

The payment amount due from the original landowner, assuming he is allowed to redeem, is \$6,072.80. That number is good for 30 days from today's date.

John R. Devlin, Jr.

**Devlin Antley**  
ATTORNEYS AT LAW

27 Cleveland Street, Suite 201 (29601)  
Post Office Box 10387  
Greenville, SC 29603  
864-242-4050-office  
864-242-4277-fax  
[john.devlin@devlawsc.com](mailto:john.devlin@devlawsc.com)

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**000092**

From: Jeff Spell <[jeff@jeffspell.com](mailto:jeff@jeffspell.com)>  
Sent: Thursday, August 18, 2022 9:33 AM  
To: Herrmann, Karen <[KHerrmann@greenvillecounty.org](mailto:KHerrmann@greenvillecounty.org)>; John Underwood <[john05261@gmail.com](mailto:john05261@gmail.com)>  
Cc: John Devlin <[john.devlin@devlawsc.com](mailto:john.devlin@devlawsc.com)>; Samantha Larkins <[samantha@maxhydelawfirm.com](mailto:samantha@maxhydelawfirm.com)>  
Subject: RE: Miguel v. Palmetto Investments, LLC, Gabriel Gomez, and Greenville County; 2018-CP-23-03713

That will be fine

Sent from my T-Mobile 4G LTE Device

----- Original message -----

From: "Herrmann, Karen" <[KHerrmann@greenvillecounty.org](mailto:KHerrmann@greenvillecounty.org)>  
Date: 8/18/22 9:29 AM (GMT-05:00)  
To: John Underwood <[john05261@gmail.com](mailto:john05261@gmail.com)>, Jeff Spell <[jeff@jeffspell.com](mailto:jeff@jeffspell.com)>  
Cc: John Devlin <[john.devlin@devlawsc.com](mailto:john.devlin@devlawsc.com)>, Samantha Larkins <[samantha@maxhydelawfirm.com](mailto:samantha@maxhydelawfirm.com)>  
Subject: RE: Miguel v. Palmetto Investments, LLC, Gabriel Gomez, and Greenville County; 2018-CP-23-03713

Good Morning all,

If it is agreeable to everyone, I would like to initiate this call about 11:20 so the Judge has time to get to an out of office meeting.

Please let me know if this will be a problem.

Thank you.

**Karen K. Herrmann**  
Administrative Docketing Coordinator  
Judge Charles B. Simmons, Jr.  
Greenville County Courthouse, Suite 313  
305 East North Street  
Direct Dial 864-467-8258/ Fax 864-467-8401

From: Herrmann, Karen  
Sent: Wednesday, August 17, 2022 8:33 AM  
To: 'John Underwood' <[john05261@gmail.com](mailto:john05261@gmail.com)>; Jeff Spell <[jeff@jeffspell.com](mailto:jeff@jeffspell.com)>  
Cc: John Devlin <[john.devlin@devlawsc.com](mailto:john.devlin@devlawsc.com)>; Samantha Larkins <[samantha@maxhydelawfirm.com](mailto:samantha@maxhydelawfirm.com)>  
Subject: RE: Miguel v. Palmetto Investments, LLC, Gabriel Gomez, and Greenville County; 2018-CP-23-03713  
Importance: High

I have this on Judge Simmons docket for tomorrow at 11:30.

I will need your phone numbers for the call.

I won't be able to include Mr. Spell until he files a notice of appearance.

Thank you.

000093

**Karen K. Herrmann**  
Administrative Docketing Coordinator  
Judge Charles B. Simmons, Jr.  
Greenville County Courthouse, Suite 313  
305 East North Street  
Direct Dial 864-467-8258/ Fax 864-467-8401

From: John Underwood <[john05261@gmail.com](mailto:john05261@gmail.com)>  
Sent: Wednesday, August 17, 2022 8:30 AM  
To: Herrmann, Karen <[KHerrmann@greenvillecounty.org](mailto:KHerrmann@greenvillecounty.org)>; Jeff Spell <[jeff@jeffspell.com](mailto:jeff@jeffspell.com)>  
Cc: John Devlin <[john.devlin@devlawsc.com](mailto:john.devlin@devlawsc.com)>; Samantha Larkins <[samantha@maxhydelawfirm.com](mailto:samantha@maxhydelawfirm.com)>  
Subject: Re: Miguel v. Palmetto Investments, LLC, Gabriel Gomez, and Greenville County; 2018-CP-23-03713

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All,

I and my attorney are both available tomorrow (Thursday) at 11:30 for a conference call.

Thanks,  
John Underwood

On Tue, Aug 16, 2022 at 4:45 PM Herrmann, Karen <[KHerrmann@greenvillecounty.org](mailto:KHerrmann@greenvillecounty.org)> wrote:

Mr. Underwood,

Judge Simmons is requesting a conference call in this matter, and we heard from Matt McCord and he stated he does not represent you at this time, so the Judge would like you to participate in the call.

We have this Thursday at 11:30 for the call.

Please let us know asap if you are available.

I will hold that date and time on the Judge's docket.

Thank you.

**Karen K. Herrmann**  
Administrative Docketing Coordinator  
Judge Charles B. Simmons, Jr.  
Greenville County Courthouse, Suite 313  
305 East North Street  
Direct Dial 864-467-8258/ Fax 864-467-8401

From: John Devlin <[john.devlin@devlawsc.com](mailto:john.devlin@devlawsc.com)>  
Sent: Tuesday, August 16, 2022 4:41 PM  
To: Herrmann, Karen <[KHerrmann@greenvillecounty.org](mailto:KHerrmann@greenvillecounty.org)>; Samantha Larkins <[samantha@maxhydelawfirm.com](mailto:samantha@maxhydelawfirm.com)>;  
Matthew McCord <[matthew@themccordlawfirm.com](mailto:matthew@themccordlawfirm.com)>  
Subject: RE: Miguel v. Palmetto Investments, LLC, Gabriel Gomez, and Greenville County; 2018-CP-23-03713

000094

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Either time works for me. Y'all just let me know.

John R. Devlin, Jr.

# Devlin Antley

ATTORNEYS AT LAW

27 Cleveland Street, Suite 201 (29601)  
Post Office Box 10387  
Greenville, SC 29603  
864-242-4050-office  
864-242-4277-fax  
[john.devlin@devlawsc.com](mailto:john.devlin@devlawsc.com)

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**From:** Herrmann, Karen <[KHerrmann@greenvillecounty.org](mailto:KHerrmann@greenvillecounty.org)>  
**Sent:** Tuesday, August 16, 2022 4:40 PM  
**To:** Samantha Larkins <[samantha@maxhydelawfirm.com](mailto:samantha@maxhydelawfirm.com)>; Matthew McCord <[matthew@themccordlawfirm.com](mailto:matthew@themccordlawfirm.com)>; John Devlin <[john.devlin@devlawsc.com](mailto:john.devlin@devlawsc.com)>  
**Subject:** RE: Miguel v. Palmetto Investments, LLC, Gabriel Gomez, and Greenville County; 2018-CP-23-03713

John,

Let me know if you are open one of these times.

Thanks.

**Karen K. Herrmann**  
Administrative Docketing Coordinator  
Judge Charles B. Simmons, Jr.  
Greenville County Courthouse, Suite 313  
305 East North Street  
Direct Dial 864-467-8258/ Fax 864-467-8401

**From:** Samantha Larkins <[samantha@maxhydelawfirm.com](mailto:samantha@maxhydelawfirm.com)>  
**Sent:** Tuesday, August 16, 2022 4:38 PM  
**To:** Herrmann, Karen <[KHerrmann@greenvillecounty.org](mailto:KHerrmann@greenvillecounty.org)>; Matthew McCord <[matthew@themccordlawfirm.com](mailto:matthew@themccordlawfirm.com)>; John Devlin <[john.devlin@devlawsc.com](mailto:john.devlin@devlawsc.com)>  
**Subject:** RE: Miguel v. Palmetto Investments, LLC, Gabriel Gomez, and Greenville County; 2018-CP-23-03713 **000095**

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Thursday at 11:30 am is best but I can be available at 2 pm if need be.

Thank you,  
Samantha

**From:** Herrmann, Karen <KHerrmann@greenvillecounty.org>  
**Sent:** Tuesday, August 16, 2022 4:36 PM  
**To:** Matthew McCord <matthew@themccordlawfirm.com>; John Devlin <john.devlin@devlawsc.com>  
**Cc:** Samantha Larkins <samantha@maxhydelawfirm.com>  
**Subject:** RE: Miguel v. Palmetto Investments, LLC, Gabriel Gomez, and Greenville County; 2018-CP-23-03713  
**Importance:** High

Thank you Matt,

The Judge informed Mr. Underwood that he could not move forward as an LLC unless he was represented by an attorney.

If you do not represent him at this time, I am not sure if you should be on the call.

Ms. Larkins,

I could do a call **Thursday at 11:30 or 2:00 in this matter.**

**Karen K. Herrmann**  
Administrative Docketing Coordinator  
Judge Charles B. Simmons, Jr.  
Greenville County Courthouse, Suite 313  
305 East North Street  
Direct Dial 864-467-8258/ Fax 864-467-8401

**From:** Matthew McCord <matthew@themccordlawfirm.com>  
**Sent:** Tuesday, August 16, 2022 4:32 PM  
**To:** John Devlin <john.devlin@devlawsc.com>  
**Cc:** Herrmann, Karen <KHerrmann@greenvillecounty.org>; samantha@maxhydelawfirm.com  
**Subject:** Re: Miguel v. Palmetto Investments, LLC, Gabriel Gomez, and Greenville County; 2018-CP-23-03713

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John and Karen,

I am not representing Mr. Underwood with this litigation matter. I called the County Attorney's office simply to get a little info and see if there was a quick fix to the affidavit issue and to find out if the taxes were paid. When I learned that this issue was still contested I let him know that I wasn't able to move forward with representation in this case. I was not aware that a rule to show was filed until yesterday when Mr. Antley gave me a call about it.

**Sincerely,**  
Matthew McCord, Esq.  
The McCord Law Firm, LLC  
109 E North St.

**000096**

Greenville, SC 29601  
864-593-2292

\*\*\*NOTE: WE ARE MOVING!!

On September 1, 2022 our office will be located at 214 Adley Road, Greenville SC 29607\*\*\*

On Tue, Aug 16, 2022 at 3:27 PM John Devlin <[john.devlin@devlawsc.com](mailto:john.devlin@devlawsc.com)> wrote:

Those dates and times all work for me right now. I will hold them pending hearing from the others.

John R. Devlin, Jr.

## Devlin Antley

ATTORNEYS AT LAW

27 Cleveland Street, Suite 201 (29601)  
Post Office Box 10387  
Greenville, SC 29603  
864-242-4050-office  
864-242-4277-fax  
[john.devlin@devlawsc.com](mailto:john.devlin@devlawsc.com)

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**From:** Herrmann, Karen <[KHerrmann@greenvillecounty.org](mailto:KHerrmann@greenvillecounty.org)>

**Sent:** Tuesday, August 16, 2022 3:22 PM

**To:** John Devlin <[john.devlin@devlawsc.com](mailto:john.devlin@devlawsc.com)>

**Cc:** [samantha@maxhydelawfirm.com](mailto:samantha@maxhydelawfirm.com); [matthew@themccordlawfirm.com](mailto:matthew@themccordlawfirm.com)

**Subject:** RE: Miguel v. Palmetto Investments, LLC, Gabriel Gomez, and Greenville County; 2018-CP-23-03713

**Importance:** High

Judge Simmons is good with a conference call in this matter.

He is available on August 29<sup>th</sup> at 9:00, the 30<sup>th</sup> at 8:45 or the 31<sup>st</sup> at 9:30.

Please check your calendars and copy all with your reply.

Thank you.

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ELECTRONICALLY FILED - 2022 Sep 26 10:25 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303713

**Karen K. Herrmann**  
Administrative Docketing Coordinator  
Judge Charles B. Simmons, Jr.  
Greenville County Courthouse, Suite 313  
305 East North Street  
Direct Dial 864-467-8258/ Fax 864-467-8401

**From:** John Devlin <[john.devlin@devlawsc.com](mailto:john.devlin@devlawsc.com)>  
**Sent:** Tuesday, August 16, 2022 2:50 PM  
**To:** Herrmann, Karen <[KHerrmann@greenvillecounty.org](mailto:KHerrmann@greenvillecounty.org)>  
**Cc:** [samantha@maxhydelawfirm.com](mailto:samantha@maxhydelawfirm.com); [matthew@themccordlawfirm.com](mailto:matthew@themccordlawfirm.com)  
**Subject:** Miguel v. Palmetto Investments, LLC, Gabriel Gomez, and Greenville County; 2018-CP-23-03713

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Dear Karen:

I represent the County in the above tax sale lawsuit. Jeff Wile of the County Attorney's office was handling it before his retirement last fall, when I was substituted as counsel of record. It has very recently come back from an appeal.

I have seen a Rule to Show Cause in the Court recently filed by a John Underwood. My contacts at the Greenville County Attorney's office advise me that they have been receiving communications from the parties about whether or not a deadline has passed and whether or not taxes have been paid on the property in question. The County does not wish to make any judgment calls as to whether or not any deadlines have been missed or complied with, and I was hoping that at some point in the near future the judge would be kind enough to have a conference call with counsel about the status of this matter. I am on vacation all of next week, so my availability is any time the rest of this week, or whenever it can be arranged the week of August 29.

In the meantime, I would appreciate it if counsel for the other parties would communicate with me rather than representatives from the County Attorney's office. Thank you in advance.

John R. Devlin, Jr.

**DevlinAntley**  
ATTORNEYS AT LAW

27 Cleveland Street, Suite 201 (29601)  
Post Office Box 10387  
Greenville, SC 29603  
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864-242-4277-fax  
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**Francisco Nicolas Miguel v. Palmetto Asset Investments, LLC - 2020-000390**

Singleton, Mary C. &lt;msingleton@sccourts.org&gt;

Wed 7/20/2022 3:54 PM

To: Jeff Spell <jeff@jeffspell.com>; max@maxhydelawfirm.com  
<max@maxhydelawfirm.com>; ryan@thehydelawfirm.com <ryan@thehydelawfirm.com>  
Cc: regaylord@gmail.com <regaylord@gmail.com>

 1 attachments (147 KB)

Miguel v. Palmetto - Order.pdf;

Dear Counsel:

Attached please find correspondence from the Court of Appeals. Do not respond to this email. Send all correspondence to [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org).

Sincerely,

**Mary-Caitlyn Singleton**  
Senior Appeals Specialist  
SC Court of Appeals  
1220 Senate St.  
Columbia, SC 29201  
Ph: (803) 734-1890  
F: (803) 734-1839  
E-Filing Email: [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

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**000099**

**RECEIVED**

**Jul 20 2023**

**SC Court of Appeals**

**CERTIFICATE OF COUNSEL**

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

July 19, 2023

s/Jeffrey T. Spell

Jeffrey T. Spell  
925 Wappoo Rd. Ste. B  
Charleston, South Carolina 29407  
(843) 452-3553  
Attorney for the Appellant

**000100**