

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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JUL 25 2023

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

SC Court of Appeals

Roger E. Henderson, Presiding Judge

Case No. 2021-CP-34-00150

Appellate Case No. 2022-001791

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

v.

Ronald D. Kirby, Dylan T. Kirby, Treasurer for Marlboro County and Danny T. Williams, ... Respondents.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COUNTY OF MARLBORO

) COURT OF COMMON PLEAS
) FOURTH JUDICIAL CIRCUIT
) 2021-CP-34-00150

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

Plaintiff,

vs

Ronald D. Kirby, Dylan T. Kirby, Treasurer
For Marlboro County, and Danny T. Williams,

Defendants.

ORDER OF DISMISSAL

Defendant Treasurer for Marlboro County¹ filed a Motion to Dismiss on June 15, 2021, on the following grounds: (1) the Treasurer for Marlboro County was not the proper Defendant, as it has no involvement in the collection of delinquent property taxes and/or the sale of real property for the payment of taxes, and (2) Plaintiff's action for the recovery of real property cannot be maintained as it was filed more than two years after the date of the tax sale, pursuant to Sections 12-51-160 and 12-51-90 of the S.C. Code Ann. A hearing was held on August 31, 2021 at 9:30AM. In attendance were Plaintiff's attorney, Leonard R. Jordan, Jr., Defendant Treasurer of Marlboro County's attorney, Andrew Foster McLeod, and Defendants Ronald D. Kirby, Dylan T. Kirby, and Danny T. William's attorney, Allison Truitt Burch. At the hearing, Defendants Ronald D. Kirby, Dylan T. Kirby, and Danny T. Williams, also argued the statute of limitations prevented Plaintiff from bringing the action more than two years from the date of the sale.

¹ In Plaintiff's Summons and Complaint, the Treasurer for Marlboro County was named as a Defendant. Defendant made a Motion to Substitute Defendant Treasurer for Marlboro for the alleged proper party, the Tax Collector for Marlboro County, on August 8, 2021. This order of dismissal makes that issue moot.

Section 12-51-160 of the S.C. Code Ann. provides, "An action for the recovery of land sold pursuant to this chapter or for the recovery of the possession must not be maintained unless brought within two years from the date of sale as provided in Section 12-51-90(C)." Section 12-51-90(C) states "If the defaulting taxpayer, grantee from the owner, or mortgage or judgment creditor fails to redeem the item of real estate sold at the delinquent tax sale within the 12 months provided in subsection (A) and after the passing of an additional 12 months, the tax deed issued is incontestable on procedural or other grounds." Plaintiff, the defaulting taxpayer, failed to pay his taxes in 2017, and the property was sold on November 5, 2018. This suit was filed May 17, 2021, over two years from the date the tax sale.

After hearing the arguments of counsel and reviewing the statutes and case law relied upon by both parties, I find that the statute of limitations, as set forth in Sections 12-51-160 and 12-51-90 S.C. Code Ann. prevents Plaintiff from bringing the cause of action more than two years from the date of tax sale. The date of the tax sale was November 5, 2018. The two year statute of limitations expired November 5, 2020. However, this suit was not commenced until May 17, 2021, well after the expiration of the statute of limitations. Since the date of the tax sale, Defendants Ronald D. Kirby and Dylan T. Kirby have begun operating a small business on the property they purchased and have made improvements to the property.

As Plaintiff's first cause of action to overturn the tax sale is hereby dismissed, I find that Plaintiff's second action for conversion, which alleged that, more than a year and half after the date of tax sale, Defendant Ronald D. Kirby, Dylan T. Kirby, and Danny T. William removed and/or disposed of the Plaintiff's personal property left at the property, is hereby dismissed.

IT IS SO ORDERED.



Marlboro Common Pleas

Case Caption: Rs&A Piping & Fabrication, Inc. , plaintiff, et al VS Ronald D. Kirby ,
defendant, et al
Case Number: 2021CP3400150
Type: Order/Dismissal

So Ordered

s/Roger E. Henderson 2754

Electronically signed on 2021-11-04 10:48:48 page 3 of 3

STATE OF SOUTH CAROLINA)
COUNTY OF MARLBORO)

COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
2021-CP-34-00150

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

vs)

Ronald D. Kirby, Dylan T. Kirby, Tax)
Collector for Marlboro County, and)
Danny T. Williams,)
Defendants.)

**ORDER DENYING
MOTION TO RECONSIDER**

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

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

AND IT IS SO ORDERED.


The Honorable Roger E. Henderson
Fourth Judicial Circuit

Chesterfield, South Carolina
November 16, 2022

STATE OF SOUTH CAROLINA)
COUNTY OF MARLBORO)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2021-CP-34-00150

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

Plaintiff,)

-vs-)

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

Defendants.)

**ORDER TO SUBSTITUTE
MARLBORO COUNTY DELINQUENT
TAX COLLECTOR IN PLACE OF
TREASURER FOR MARLBORO COUNTY**

This matter comes before me on the Motion to Substitute Tax Collector for Marlboro County in Place of Treasurer for Marlboro County, filed by the Plaintiff on August 6, 2021. It appears that Treasurer for Marlboro County is an unnecessary party, and that the Marlboro County Delinquent Tax Collector is a necessary party, which should be added as a Defendant herein.

WHEREFORE, upon Motion of the Plaintiff, it is

ORDERED that the Treasurer for Marlboro County be dismissed as a party-Defendant and that the Marlboro County Delinquent Tax Collector be substituted as a party-Defendant.

AND IT IS FURTHER ORDERED that the caption of this case be amended hereafter as set forth above.

AND IT IS SO ORDERED.



Marlboro Common Pleas

Case Caption: Rs&A Piping & Fabrication, Inc. , plaintiff, et al VS Ronald D. Kirby ,
defendant, et al
Case Number: 2021CP3400150
Type: Order/Substitution of Parties

So Ordered

s/Roger E. Henderson 2754

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File #8576

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF MARLBORO)

FOURTH JUDICIAL CIRCUIT

CASE NO.: 2021-CP-34-00150

RS&A PIPING & FABRICATION, INC.)

(AKA) R.S.A. PIPING, INC.,)

PLAINTIFF,)

**NOTICE OF MOTION, MOTION
TO DISMISS**

VS.)

RONALD D. KIRBY, DYLAN T. KIRBY,)

TREASURER FOR MARLBORO COUNTY)

AND DANNY T. WILLIAMS,)

DEFENDANTS.)

TO: THE PLAINTIFF AND ITS ATTORNEY, LEONARD R. JORDAN, JR.:

YOU PLEASE TAKE NOTE That the Treasurer for Marlboro County will move not within 10 days of service hereof and at such time as the court may set for an order dismissing the above captioned matter as to Treasurer for Marlboro County on the following grounds:

1. The Treasurer for Marlboro County has no involvement in the process of the collection of delinquent taxes, the sale of real property for the payment of taxes and/or the issuance of delinquent tax sale deeds. These matters are controlled and coordinated by the Delinquent Tax Collector for Marlboro County which is a completely separate office. Therefore, this lawsuit should be dismissed as to the Treasurer for Marlboro County. The plaintiff has failed to name the proper party; and/or
2. This suit should be dismissed pursuant to Section 12-51-160 and 12-51-90 of the South Carolina code of Laws, 1976 as amended. According to the Plaintiff's complaint, the property in question

was auctioned or sold on November 5, 2018 (Plaintiff's complaint paragraph 12).

Section 12-51-160 South Carolina Code of Laws, 1976 as amended, states in part "An action for the recovery of land sold pursuant to this chapter or for the recovery of the possession must not be maintained unless brought within two years from the date of sale as provided in Section 12-51-90(C)."

Section 12-51-90(C) states "If the defaulting taxpayer, grantee from the owner, or mortgage or judgment creditor fails to redeem the item of real estate sold at the delinquent tax sale within the 12 months provided in subsection (A) and after the passing of an additional 12 months, the tax deed issued is incontestable on procedural or other grounds."

Based on these code sections there appears to be a two-year statute of limitations on bringing an action to overturn a tax sale from the date of the sale. According to plaintiff's complaint the date of the sale was November 5, 2018. The Statute of limitations expired November 5, 2020. This suit was not commenced until May 17, 2021 well after the expiration of the statute of limitations. Therefore, this Defendant is entitled to dismissal of this action for failure to comply with the statute of limitations for filing such an action.

WHEREFORE, having set forth its motion, the Defendant, Treasurer for Marlboro County is entitled to dismissal of this suit on one, all or a combination of the grounds stated herein.

This motion may be supported by any such caselaw, memorandum, affidavit, deposition testimony or statute which may be provided.

McLeod & Ruffner
s/Andrew F. McLeod
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S.C. Bar #64130
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June 15, 2021
Cheraw, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF MARLBORO)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2021-CP-34-00150

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

Plaintiff,)

-vs-

Ronald D. Kirby, Dylan T. Kirby, Treasurer)
for Marlboro County, and Danny T. Williams,)

Defendants.)

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

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

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

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

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

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

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

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

s/Leonard R. Jordan, Jr.
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 Attorney for Plaintiff

Columbia, South Carolina
 November 12, 2021

STATE OF SOUTH CAROLINA)
COUNTY OF MARLBORO)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2021-CP-34-00150

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

Plaintiff,

-vs-

Ronald D. Kirby, Dylan T. Kirby, Treasurer
for Marlboro County, and Danny T. Williams,

Defendants.

PLAINTIFF'S MEMORANDUM
(In Support of Motion to Reconsider
Order of Dismissal)

The Plaintiff seeks, among other things, to cancel the tax sale of its property and the resulting tax deed primarily due to the failure of the tax collector to mail the end-of-redemption notice to the Plaintiff/defaulting taxpayer, in accordance with S.C. Code Ann. §12-51-120, which reads as follows:

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

The Motion to Dismiss (filed by the Defendant, Treasurer for Marlboro County) and the subject Order of Dismissal address the applicability of S.C. Code Sections 12-51-160 and 12-51-

90 (the “Statutes”), which read as follows:

§12.51.160. Deed as evidence of good title; statute of limitations.

In all cases of tax sale the deed of conveyance, whether executed to a private person, a corporation, or a forfeited land commission, is prima facie evidence of a good title in the holder, that all proceedings have been regular and that all legal requirements have been complied with. An action for the recovery of land sold pursuant to this chapter or for the recovery of the possession must not be maintained unless brought within two years from the date of sale as provided in Section 12-51-90(C).

§12-51-90. Redemption of real property; assignment of purchaser’s interest.

(A) The defaulting taxpayer, any grantee from the owner, or any mortgage or judgment creditor may within twelve months from the date of the delinquent tax sale redeem each item of real estate by paying to the person officially charged with the collection of delinquent taxes, assessments, penalties, and costs, together with interest as provided in subsection (B) of this section. If prior to the expiration of the redemption period, the purchaser assigns his interest in any real property purchased at a delinquent tax sale, the grantee from the successful bidder shall furnish the person officially charged with the collection of delinquent taxes a conveyance, witnessed and notarized. The person officially charged with the collection of delinquent taxes shall replace the successful bidder’s name and address with the grantee’s name and address in the delinquent tax sale book.

(B) The lump sum amount of interest due on the whole amount of the delinquent tax sale based on the month during the redemption period the property is redeemed and that rate relates back to the beginning of the redemption period according to the following schedule:

Month of Redemption Period Property Redeemed	Amount of Interest Imposed
First three months	three percent of the bid amount
Months four, five, and six	six percent of the bid amount
Months seven, eight, and nine	nine percent of the bid amount
Last three months	twelve percent of the bid amount

However, in every redemption, the amount of interest due must not exceed the amount of the bid on the property submitted on behalf of the forfeited land commission pursuant to Section 12-51-55.

(C) If the defaulting taxpayer, grantee from the owner, or mortgage or judgment creditor fails to redeem the item of real estate sold at the delinquent tax sale within the twelve months provided in subsection (A) and after the passing of an additional twelve months, the tax deed issued is incontestable on procedural or other grounds.

In South Carolina, there is a long line of cases refusing to apply these Statutes, notwithstanding that the wording of these Statutes appears to mandate that a tax sale may be contested only by a suit to recover the real property sold at a tax sale, which suit is instituted “within two years from the date of sale.” The cases, discussed below, make it clear that, if there was a fundamental or jurisdictional defect in the tax sale proceedings, this defect negates the applicability of these Statutes altogether.

I. FUNDAMENTAL OR JURISDICTIONAL DEFECT

A. In *Leysath v. Leysath*, 209 S.C. 342, 348-49, 351, 40 S.E.2d 233, 236-37 (Ct. App. 1946), the Court distinguished between “defects, irregularities, informalities, errors and omissions” and “jurisdictional defects,” holding: “It appears to be the general rule that a short statute of limitation of the kind under consideration¹ does not apply where, by reason of some jurisdictional defect, the tax deed is absolutely void upon its face.” (emphasis added) That sale was determined to be tainted by mere irregularities,² which were not serious enough to be classified

¹ Section 2827 of the 1942 Code reads as follows:

In all cases of sale the sheriff's deed of conveyance, whether executed to a private person, a corporation or the sinking fund commission, shall be held and taken as prima facie evidence of a good title in the holder, and that all proceedings have been regular, and all requirements of the law have been duly complied with. No action for the recovery of land sold by the sheriff under the provisions of this article, or for the recovery of the possession thereof, shall be maintained unless brought within two years from the date of said sale.

² The “mere irregularities” cited in this case do not include notices to the taxpayer, which are required by statute. Such mere irregularities were as follows:

Appellant challenges the validity of the tax sale upon the grounds (1) that the attempted levy on the property was not made by the tax collector, but by the assistant tax collector, who was not an officer vested with authority to make such levy; (2) that when making the levy, he was not armed with the tax executions; (3) that he did not seize and take exclusive possession of the property; and (4) that the item of accumulated interest amounting to \$35.94 was improperly included in the tax executions. (emphasis added)

as jurisdictional or fundamental defects and which were intended to be set at rest by the statute, while distinguishing mere irregularities from, “. . . those defects which should be deemed jurisdictional, so as to render the statute inapplicable.” (emphasis added)

While *Leysath* involved “mere irregularities,” the present case involves “a jurisdictional defect,” similar to the defects discussed in the following cases.

B. *Good v. Kennedy*, 291 S.C. 202, 207, 352 S.E.2d 708, 711 (Ct. App. 1987), which also involved §12-51-120, the Court held that the tax collector did not exercise diligence in notifying the owner of his right of redemption, finding that

the general law is that where a statute requires as 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 a requirement is ‘generally regarded as jurisdictional, and therefore, the owner’s right of redemption cannot be cut off unless the required notice is given.’ (emphasis added)

C. *Donohue v. Ward*, 298 S.C. 75, 82-83, 378 S.E.2d 261, 265-66 (Ct. App. 1989), involved a tax sale wherein the tax collector failed to list, levy upon and sell the property in the name of the true owner. The Court found:

[S]ince this defect is jurisdictional, the bar of the statute of limitations does not apply. (emphasis added)

It is stated ‘all requirements of the law leading up to tax sales which are intended for the protection of the taxpayer against surprise or the sacrifice of his property are to be regarded mandatory and are to be strictly enforced.’ (emphasis added) (citations omitted)

[W]e therefore hold that failure to give the required notice is a fundamental defect in the tax proceedings which renders the proceedings absolutely void. (emphasis added)

D. In *Manji v. Blackwell*, 323 S.C. 91, 93-94, 473 S.E.2d 837, 838 (Ct. App. 1996), also involved §12-51-120. In selling the property, the tax collector mailed the final redemption notice to the owner by certified mail, but the notice was not sent restricted delivery. The trial court

declared the tax sale of the property null and void and set aside the resulting tax deed, "... because the delinquent tax collector failed to properly notify [the owner] of the end of the redemption period pursuant to S.C. Code Ann. §12-51-120 (Supp. 1995)." (emphasis added) In affirming the trial court, the Court held:

The sound view is that all requirements of the law leading up to tax sales which are intended for the protection of the taxpayer against surprise or the sacrifice of his property are to be regarded mandatory, and are to be strictly enforced. (emphasis added)

Where a statute requires as 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 a requirement is 'generally regarded as jurisdictional, and therefore, the owner's right of redemption cannot be cut off unless the required notice is given.' (emphasis added)

E. In *Rives v. Bulsa*, 325 S.C. 287, 293, 478 S.E.2d 878, 881 (Ct. App. 1996), the Court concluded that the tax collector failed to comply with the statutory requirements of the tax sale under §12-51-40(a) and (b) and that the deed was, therefore, null and void, finding that:

[T]he general law is that where a statute requires as 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 a requirement is generally regarded as jurisdictional, and therefore, the owner's right of redemption cannot be cut off unless the required notice is given. (emphasis added)

Failure to give the required notice is a fundamental defect in the tax proceedings which renders the proceedings absolutely void. (emphasis added)

F. *Corbin v. Carlin*, 366 S.C. 187, 194, 620 S.E.2d 745, 749 (Ct. App. 2005), directly involved the **Statutes**. The buyer at the tax sale claimed that the action was barred by the **Statutes**, as the suit was filed nine years after the tax sale. The Court concluded that, due to confusion over the multiple tracts of land and the actual owners thereof resulting in erroneous tax sale notices, finding that, "[t]he legislature intended to create a time limit for anyone who lost title to property through a tax sale, after proper notice, may attempt to regain title. In this case, [the owner] never

lost title to the property, as the tax sale should never have occurred.” (emphasis added)

G. *Smith v. Barr*, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App. 2007), affirmed the trial court’s decision that the taxpayers met their burden to show that the county tax office failed to properly post on the property the notice mandated by §12-51-40, holding that, since the property was not properly posted, the law mandated that the sale be set aside. The Court found that:

In South Carolina, ‘all requirements of the law leading up to tax sales which are intended for the protection of the taxpayer against surprise or the sacrifice of his property are to be regarded mandatory and are to be strictly enforced.’ (emphasis added)

[T]he failure to give the required statutory notice renders the tax sale invalid. (emphasis added)

H. In *Reeping v. Jebbco, LLC*, 402 S.C. 195, 199-202, 740 S.E.2d 504, 506 (Ct. App. 2013), which specifically involved the **Statutes**, the Court reversed the trial court’s decision that the action was barred by the statute of limitations. The notices mailed to the taxpayer were returned undeliverable, but the Tax Collector was informed on the face of the returned mail of the taxpayer’s correct address, which address was never used to notify the taxpayer of the tax sale proceedings. The Court concluded that the failure of the Delinquent Tax Office to use the best address of the taxpayer violated the notice requirements. The Court held that:

[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. (emphasis added)

[T]he statute of limitations did not preclude the [owner’s] claim in this case as the failure to give proper notice rendered the tax sale void. (emphasis added)

This court considered a notice issue in [*Donohue, supra*] and determined it was the kind of jurisdictional defect that rendered the statute of limitations inapplicable. (emphasis added)

[F]ailure to give the required notice is a fundamental defect in the tax sale

proceedings which renders the proceedings absolutely void. (emphasis added)

I. In *Taylor v. Taylor*, 419 S.C. 639, 656, 799 S.E.2d 919, 927-28 (Ct. App. 2017), which involved tax sales conducted in 1995 and 1997, many years prior to the suit to quiet title filed in 2011, the Court held that, due to an inexplicable switch of the parcel locations resulting in the County using inaccurate property descriptions, “. . . section 12-51-160 did not preclude a tax sale challenge because a failure to give the owners ‘proper notice rendered the tax sale void’. . . Accordingly, we find the master erred by determining [owners] could not challenge the tax sales because more than two years had passed from the date of the tax sales.” (emphasis added)

J. In *Forfeited Land Comm’n of Bamberg Cty. v. Beard*, 424 S.C. 137, 146-148, 817 S.E.2d 801, 806 (Ct. App. 2018), which involved a tax sale in 2007 and a suit to set aside tax deeds filed in 2010 and expressly involved the **Statutes**, the Court found that:

A number of courts have indicated that when a tax sale is not held in strict compliance with the statute, such a defect is jurisdictional and the statute of limitations may not run at all. (emphasis added)

Failure to give the required notice is a fundamental defect in the tax sale proceedings which renders the proceedings absolutely void. (emphasis added)

[T]he statute of limitations did not preclude the [property owner’s] claim where the failure to give proper notice rendered the tax sale void. (emphasis added)

It appears to be the general rule that a short statute of limitation[s] of the kind under consideration does not apply where, by reason of some jurisdictional defect, the tax deed is absolutely void upon its face. (emphasis added)

[T]he failure to provide the required statutory notice is the type of jurisdictional defect contemplated in *Leysath* that renders the tax sale void and the statute of limitations inapplicable. (emphasis added)

[T]he statute of limitations did not run because the tax sale was void from the onset. (emphasis added)

In summary, South Carolina case law overwhelmingly holds that, when there is a failure to give proper notice to a taxpayer, which failure constitutes a fundamental or jurisdictional defect

in the tax sale procedures performed by the tax collector, the resulting tax deed is void, and the **Statutes** are inapplicable.

II. PURCHASER NOT BEING PUT IN POSSESSION OF THE PROPERTY

Another legal theory that delays the running of the statute also applies. As indicated in the Plaintiff's Complaint, the subject Tax Deed was dated April 29, 2020, and recorded on May 13, 2020. This property was, therefore, not titled in the purchaser's name until less than 13 months before the filing of the present suit on May 17, 2021. As any of the Defendants, or any predecessor in title, could not have been put into possession of the subject property before becoming the owner thereof, the **Statutes** could not possibly have run in this case before the filing date of the present suit, based upon the following cases.

A. *Glymph v. Smith*, 180 S.C. 382, 389, 185 S.E. 911, 914 (1936), involves a two-year statute of limitations,³ which is similar to that in the **Statutes**. Between the tax sale in 1927 and this decision (1936), the owner had never been dispossessed of the property. The Court held that, "the two-year limitation provided for in this section does not begin to run, where the sheriff did not take possession of the land before tax sale, until the purchaser is put in possession by the sheriff." (p. 389) (emphasis added)

B. In *Leysath, supra*, at 348, the Court found that "[i]t has been held that the two-year limitation . . . is 'a mere limitation on the assertion of a right of action existing at common law and independent of the statute' . . . which does not begin to run until the purchaser is put into possession." (emphasis added) (citations omitted)

C. In *Dibble v. Bryant*, 274 S.C. 481, 485-487, 265 S.E.2d 673, 677 (1980), which

³ Section 2859 of the 1932 Code reads, in relevant part, as follows: ". . . no action for the recovery of land sold by the sheriff under the provisions of this article, or for the recovery of the possession thereof, shall be maintained unless brought within two years from the date of said sale."

involved a 1974 tax sale of abandoned property, the Court found that, "the requirements of notice to the owner and possession by the executing officer to be of universal application, notwithstanding the particular circumstances of a case." (emphasis added) The Court held that, "[t]he statute did not intend to bar the taxpayer's right until he had two years within which he could bring his action. He could not bring his action until there was a person on the land withholding possession from him." (emphasis added)

D. In *King v. James*, 388 S.C. 16, 26, 694 S.E.2d 35, 40 (Ct. App. 2010), the Court affirmed the Master in Equity's finding that the **Statutes** did not apply to the owner's 2006 suit to set aside the 1999 tax sale, as the owner "brought her action within two years of the buyer coming into possession." (emphasis added)

The Court recognized that the case law involving tax sales is divergent regarding if and when the statute of limitations begins to run, finding as follows:

On the one hand, we find case law that says when notice to the homeowner is not in strict compliance with the statute, such a defect is "jurisdictional," and the statute of limitations does not run at all. See *Donohue v. Ward*, 298 S.C. 75, 82, 378 S.E.2d 261, 265 (1989) (holding where a defect in notice is jurisdictional, such a defect "invalidates the tax proceeding and prevents the running of the limitations statute"); *Good v. Kennedy*, 291 S.C. 204, 207, 352 S.E.2d 708, 711 (1987) (holding "the general law is that where a statute requires as 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 a requirement is generally regarded as jurisdictional.. .") (internal quotations omitted).

On the other hand, we also find case law in which our courts interpreted previous versions of section 12-51-160 as saying even if the notice is defective, the statute of limitations still applies, but only begins to run when the purchaser comes into possession. See *Dibble v. Bryant*, 274 S.C. 481, 487, 265 S.E.2d 673, 677 (1980) (holding previous version of section 12-51-160 "was intended to bar a defaulting and ousted taxpayer from maintaining an action to defeat the title of the tax sale purchaser and recover the land if brought more than two years from the date the purchaser came into possession") (emphasis added); *Glymph v. Smith*, 180 S.C. 382, 384, 185 S.E. 911, 914 (1936) (holding even though the plaintiff brought the action six years after the tax sale, the two-year statute of limitations never began to run because the sheriff never took possession of the subject property, and the

purchaser was never put into possession following the execution of the tax deed); *Gardner v. Reedy*, 62 S.C. 503, 40 S.E. 947, 947 (1902) (holding the two-year statute of limitations would only begin to run if and when the purchaser took possession). (emphasis added)

In summary, South Carolina case law is also quite clear that, until the owner has been dispossessed (ousted) from his property following a tax sale and the purchaser at the subject tax sale has been put in possession, the **Statutes** do not commence to run. Even if the purchaser had claimed to have been put in possession immediately after the delivery of the Tax Deed, this suit was filed less than 13 months thereafter – so the two year limitation period could not have run.

III. LEAKE V. ETHRIDGE⁴

This case, which involves solely the County's failure to comply with S.C. Code Section 12-51-120 and the applicability of that **Statutes**, and is precisely on point with the facts and arguments in the present case.

In *Leake*, the Court held that,

[t]he statutory requirements mandate that the defaulting taxpayer be given notice of the approaching end of the redemption period, providing the delinquent tax collector shall make the notice by certified mail, return receipt requested “[n]either more than forty-five days nor less than twenty days before the end of the redemption period. (p. 5)

The Court found that the last day for redemption was October 6, 1998, and that “the earliest the County could have mailed the notice and remained in compliance with the statutory requirements was August 22, 1998. However, the notice was mailed on August 21, 1998. Thus, the notice was sent one day early.” (p. 6) (emphasis added)

The Court held that “[a]s the County failed to strictly comply with the statutory notice

⁴ This is an unpublished decision. A copy of this case was handed-up to the Judge by counsel for Defendants, Ronald D. Kirby, Dylan T. Kirby and Danny T. Williams, during the motion hearing on August 31, 2021.

requirements intended to protect the taxpayer against a sacrifice of his property, the tax sale must be set aside. Therefore, we hold the trial court erred in not setting aside the defective tax sale.” (emphasis added) (p. 6)

Finally, and importantly, the Court held that, “[b]ecause we reverse the decision of the trial court based on the failed notice of redemption and find that Ethridge was not barred by the statute of limitations, we do not need to address the other issues Ethridge raises on appeal.” (emphasis added) (p. 6)

Unquestionably, under both legal theories, the Plaintiff’s action to overturn the tax sale in the present case is not barred by the **Statutes**. Therefore, the Order of Dismissal must be reversed.

Notwithstanding, the outcome with regard to the **Statutes**, as the Motion to Dismiss did not mention the cause of action for Conversion, and as the Movant, Treasurer for Marlboro, had no standing to dispute that issue in any event (and expressed in its Answer that it had no knowledge of any of the allegations in the Complaint regarding the Plaintiff’s cause of action for Conversion), the decision to dismiss this case in its entirety was improper. Therefore, the Order of Dismissal must be reversed.

Respectfully submitted,

s/Leonard R. Jordan, Jr.

Leonard R. Jordan, Jr., #3221

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November 12, 2021

Leake v. Ethridge

Court of Appeals of South Carolina
 March 1, 2005, Submitted; March 24, 2005, Filed
 Unpublished Opinion No. 2005-UP-221

Reporter

2005 S.C. App. Unpub. LEXIS 377 *

David G. Leake and Amanda J. Leake, Respondents, v. Mitchell Ethridge, Jr., Appellant.

Notice: THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

Prior History: [*1] Appeal From Florence County, B. Hicks Harwell, Jr., Circuit Court Judge.

Disposition: REVERSED.

Counsel: Kenneth E. Merriman, of Florence, for Appellant.

R. Wayne Byrd, of Florence, for Respondent.

Judges: GOOLSBY, HUFF, and STILWELL, JJ., concur.

Opinion

PER CURIAM: Mitchell Ethridge, Jr. appeals the trial court's order upholding a tax sale of his real property. We reverse.¹

FACTS

Ethridge has owned the real property in question since 1988 and was in sole physical possession of the property until the hearing. He failed to pay the 1996 property taxes on the real property. On April 7, 1997, the County mailed a notice of delinquent tax to Ethridge explaining the property could be levied upon and sold at public auction if the taxes remained unpaid beyond August 29, 1997. On May 15, 1997, the County mailed a notice of levy to Ethridge via certified mail, return receipt requested. The notice advised that the property would be sold on October 6, 1997 if the taxes were not paid on or before August 29, 1997. The notice of levy was returned unclaimed on June 12, 1997. On July 16, 1997, the County posted a notice of levy on a tree on Ethridge's property.

After advertising the sale of the property for three weeks in two local papers, the County [*2] sold the property on October 6, 1997 to William E. Tallevast, Jr. On November 21, 1997, the County mailed Ethridge a notice that the property had been sold. In this letter, the County stated the last date of redemption for the property was October 6, 1998. The County mailed Ethridge an official notice of redemption via certified mail, return receipt requested on August 21, 1998. This notice of redemption listed the last date of redemption as October 6, 1998. The notice was returned to the County unclaimed. The Treasurer of the County issued a tax deed on January 11, 1999 to William D. Tallevast, Jr. Tallevast's estate subsequently issued a deed of distribution to William D. Tallevast, V and Robert Elliott Tallevast, who immediately sold the property to David G. Leake and Amanda J. Leake.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

On July 23, 2002, the Leakes brought a declaratory judgment seeking a declaration they are fee simple owners of the property and requesting an injunction requiring Ethridge to vacate the premises. In a counterclaim, Ethridge asserted the tax deed was void due to the County's failure to follow the statutory requirements for a tax sale. The trial court granted the Leakes' motion to amend their reply to [*3] assert the statute of limitations. The court found the County had complied with the applicable statutory requirements, held the statute of limitations barred Ethridge's counterclaim, and declared the Leakes to be the owners of the real property. This appeal followed.

LAW/ANALYSIS

I. Statute of Limitations

We first consider Ethridge's argument that his counterclaim to set aside the tax deed is not barred by the provisions of section 12-51-160 of the South Carolina Code. We agree.

Section 12-51-160 of the South Carolina Code (2004) provides, "No action for the recovery of land sold under the provisions of this chapter or for the recovery of the possession may be maintained unless brought within two years from the date of sale." The supreme court found the former version of this statute of limitations² inapplicable to one in possession of property asserting a claim of ownership in defense of an action brought by the purchaser at a tax sale more than two years after receiving the tax deed. Dibble v. Bryant, 274 S.C. 481, 487, 265 S.E.2d 673, 677 (1980). The court found the "statute was intended to bar a defaulting and ousted taxpayer from maintaining an action to defeat the title of the tax sale purchaser and recover the land if brought more than two years from the date the purchaser came into possession." Id. The court explained:

[t]o deny the [*4] possessor a claim of rightful ownership would be to deny him any defense, and would enable a purchaser at a tax sale to circumvent the valid legal remedies available to the defendant in possession of the property by merely waiting more than two years to bring his action to oust the defendant.

Id. at 487-88, 265 S.E.2d at 677.

Here, Ethridge remained in possession of the land. As in Dibble, Ethridge's efforts to defend the Leakes' action seeking to confirm title in themselves should not be thwarted by the statute of limitations. Accordingly, we find the trial court erred in finding the statute of limitations barred Ethridge's defense.

II. Redemption Notice

Ethridge argues the County failed to issue the notice of redemption in compliance with the statutory requirements and the noncompliance requires the tax sale to be set aside. We agree.

The appellate courts of this state have "consistently held the enforcing agencies of government to strict compliance with all the legal requirements surrounding tax sales." Dibble v. Bryant, 274 S.C. 481, 483-84, 265 S.E.2d 673, 676 (1980); Rives v. Bulsa, 325 S.C. 287, 292, 478 S.E.2d 878, 880 (Ct. App. 1996) (citations omitted). "The sound view is that all requirements of law leading up to tax sales which are intended for the protection of the tax payer against surprise or the sacrifice of his property are to be regarded [*5] as mandatory and are to be strictly enforced." Rives, 325 S.C. at 292-93, 478 S.E.2d at 881. The failure to give proper notice is a fundamental defect in the tax proceedings which renders the proceedings absolutely void. Donohue v. Ward, 298 S.C. 75, 83, 378 S.E.2d 261, 265 (Ct. App. 1989).

A defaulting taxpayer may redeem the real property "within twelve months from the date of the delinquent tax sale." S.C. Code Ann. §12-51-90 (Supp. 2004). The statutory requirements mandate that the defaulting taxpayer be given notice of the approaching end of the redemption period, providing the delinquent tax collector shall make the notice by certified mail, return

² The former version of the statute of limitations provided: "[n]o action for ... recovery ... shall be maintained unless brought within two years from the date of such [tax] sale." Dibble, 274 S.C. at 487, 265 S.E.2d at 677 (quoting S.C. Code Ann. § 12-49-570 (1976)).

receipt requested "[n]either more than forty-five days nor less than twenty days before the end of the redemption period." S.C. Code Ann. § 12-51-120 (Supp. 2004).

The County held the tax sale for Ethridge's property on October 6, 1997. The trial court accepted the County's argument at the hearing that the last day of redemption was actually October 5, 1998. However, the notice of sale sent November 21, 1997 and the notice of redemption sent August 21, 1998 both stated that October 6, 1998 was the last day for redemption. Therefore, we find the County is bound by the date it placed on its notices, rather than the date argued by its attorney at the hearing. With October 6, 1998 as the last day [*6] of redemption, the earliest the County could have mailed the notice and remained in compliance with the statutory requirements was August 22, 1998. However, the notice was mailed on August 21, 1998. Thus, the notice was sent one day early.

The County asserts the fact that the notice was sent one day early did not prejudice Etheridge because he never received the notice and never attempted to redeem the property. Although Etheridge did not seek to redeem the property, the County is not excused from the strict compliance mandated by the laws of tax sales. See Donohue, 298 S.C. at 83, 378 S.E.2d at 266 (finding without merit the argument that the defaulting taxpayer was not prejudiced by the tax collector's failure to give statutory notice). As the County failed to strictly comply with the statutory notice requirements intended to protect the taxpayer against a sacrifice of his property, the tax sale must be set aside. Therefore, we hold the trial court erred in not setting aside the defective tax sale.

Because we reverse the decision of the trial court based on the failed notice of redemption and find that Etheridge was not barred by the statute of limitations, we do not need to address the other issues Etheridge raises on appeal. [*7]

REVERSED.

GOOLSBY, HUFF, and STILWELL, JJ., concur.

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STATE OF SOUTH CAROLINA)
COUNTY OF MARLBORO)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2021-CP-34-00150

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

Plaintiff,

-vs-

Ronald D. Kirby, Dylan T. Kirby, Treasurer
for Marlboro County, and Danny T. Williams,

Defendants.

**MOTION TO SUBSTITUTE
TAX COLLECTOR FOR
MARLBORO COUNTY IN PLACE OF
TREASURER FOR MARLBORO COUNTY**

TO: WILLIAM O. SPENCER, JR., ATTORNEY FOR DEFENDANTS, RONALD D. KIRBY,
DYLAN T. KIRBY AND DANNY T. WILLIAMS; AND ANDREW F. MCLEOD,
ATTORNEY FOR DEFENDANT, TREASURER FOR MARLBORO COUNTY:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Plaintiff will
move before the Court, on August 31, 2021, at 9:30 AM, for an Order substituting the Tax
Collector for Marlboro County for and in place of the Treasurer for Marlboro County as a
Defendant in this case. This Motion is made pursuant to Rule 17(a) of the South Carolina Rules of
Civil Procedure and is based upon the following grounds:

1. The subject tax sale was conducted, and the Tax Sale Deed was issued, by the Tax
Collector for Marlboro County.

2. The Plaintiff accepts that the Tax Collector for Marlboro County is the real party
in interest in this case, which involves the Plaintiff's causes of action to reverse the tax sale and to
vacate the Tax Sale Deed, and that the Treasurer for Marlboro County is not a necessary party to
this suit.

3. Although the Defendant, Treasurer for Marlboro County, filed an Answer herein,
said Defendant filed a motion for dismissal of the lawsuit as to the Treasurer for Marlboro County,

which claims that the Treasurer for Marlboro County is not is not a proper party.

s/Leonard R. Jordan, Jr.
Leonard R. Jordan, Jr., #3221
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Attorney for Plaintiff

Columbia, South Carolina
August 6, 2021

CERTIFICATION

The undersigned attorney for the Plaintiff certifies that he has communicated with the attorney for the Defendant, Treasurer for Marlboro County, in an attempt to resolve this matter and that said attorney has not agreed to resolve this matter by Consent Order.

s/Leonard R. Jordan, Jr.
Leonard R. Jordan, Jr.

Columbia, South Carolina
August 6, 2021

) COURT OF GENERAL SESSIONS
) 2021-CP-34-00150

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) Bennettesville, SC
T) August 31, 2021

DEFENDANT) August 31, 2021

THE HONORABLE ROGER E. HENDERSON.

LEONARD JORDAN, ESQ.
Attorney for the Plaintiff

ANDREW F. MCLEOD, ESQ.
ALLISON T. BURCH, ESQ.
Attorney for the Defendant

28

I N D E X

(WHEREUPON, a pause in the proceedings.)

1 THE COURT: Okay. RS&A Piping and Fabrication
2 vs. Ronald Kirby. Leonard Jordan and Mr. McLeod. Looks
3 like Ms. Burch is here for Mr. Spencer.

4 MS. BURCH: I'm also for the record, your Honor.

5 THE COURT: Okay. All right, Mr. McLeod, if you
6 would identify this matter please.

7 MR. MCLEOD: May it please the Court, your
8 Honor. I'm Anthony McLeod here on behalf of the named
9 defendant the Ms. Treasure from Marlboro County. The case
10 is RSA Piping and Fabrications Incorporated also known as
11 RSA Piping, Inc. case number 2021-CP-34-00150. And the
12 other defendants Ronald Kirby, Dillon Kirby and I believe
13 Danny Williams are also -- they are represented by Ms.
14 Alli Burch who's here.to.

15 This is the Treasure of Marlboro County's motion
16 to dismiss this case, your Honor. This is a lawsuit that
17 was filed set aside a tax sale. And the motion that I
18 have filed on behalf of the Treasure, your Honor, simply
19 it's got two parts to it, your Honor. A number one and
20 two. I should have numbered them the other -- put the
21 first second, but the first one I just say that the
22 Treasure of Marlboro County has nothing to do with the
23 delinquent tax sale. Marlboro County has a delinquent tax
24 collector who is specifically charged with all aspects of
25 the tax sale process, so that should have been the proper

1 party. So obviously the motion to dismiss is related to
2 the fact that they didn't name the proper party in this
3 lawsuit.

4 The second part of this motion your Honor is
5 what brings us here today is a statute of limitations
6 issue. And that is what, you know, I want to take up and
7 argue obviously first. I filed my answer subject to the
8 motion and set out those defenses in the answer itself.
9 And, of course, I'm referring to the County, but I'm just
10 referring to the name defendant. The County believes that
11 the suit should be dismissed pursuant to section 12-51-160
12 of the code, your Honor, and that states in part that an
13 action for recovery of land, which this is what we have.
14 We have a defaulting taxpayer has filed this suit to
15 recover his land or the corporation's land. And it says
16 that the -- an action for the recovery of land sold
17 pursuant to the chapter and that it goes to possessions,
18 which really we're talking about real estate at the
19 moment, must not be maintained unless it's brought within
20 two years from the date of the sale as provided in section
21 12-51-190 capital C, okay.

22 So the complaint sets forth the date of the sale
23 as November the 5th 2018, which, you know, that's that's
24 -- everybody can agree on that. And of course this suit
25 to recover the property was filed May the 17th 2021, which

1 is two years and six months later. So what is the County
2 suppose to do in that situation other than to point out
3 the fact that by the way defaulting taxpayer, you know,
4 your time to bring a suit was two years to the date of the
5 sale. And this is clearly long outside that time frame.
6 And so we're asking it to be dismissed on that motion.

7 And they've got other issues which I like be
8 able to rebut that, but it also if you go on into section
9 12-51-190(C), which is quoted in the statute of
10 limitations section. You know, that one goes into saying
11 and it spells out that, you know, if the defaulting
12 taxpayer fails to redeem the property during the
13 redemption period, which is 12 months. And after passing
14 on an additional 12 months, the tax state issue is
15 incontestable on procedural or other grounds. So there it
16 is again where the code is setting forth this statute of
17 limitations that everybody suppose to live by. And so
18 that's why we're asking for this situation to be -- these
19 are the defaulting taxpayers bringing a suit to recover
20 their property. The property was sold for taxes. It went
21 through a couple different hands landed in the hands of
22 Mr. Burch's clients. And so possession hadn't been turned
23 over. All those checks have been marked and that's why we
24 think this is a statute of limitations case. And so, you
25 know, on top of the fact that you got issues. You got --

1 the fact that you got -- you know, number one they didn't
2 sue -- that they didn't sue the right person. So those
3 are the issues here. We reserve the right to rebut what
4 Mr. Jordan is, you know, I hate have to say, but that --
5 we're seeing it as a statute of limitations case, and this
6 is clearly outside the statute of limitations.

7 And also, I guess, as far as RSA Piping, I'm not
8 sure if it even still exist, but, I mean, they're suited
9 in the name of the corporation, so, your Honor, that may
10 not be brought up before the Court right now. That's just
11 the position the County and we consider it just the way it
12 is as far as we can tell at this point in time asking for
13 a dismissal.

14 THE COURT: Ms. Burch, you have any argument?

15 MS. BURCH: Yes, your Honor, may it please the
16 Court. I will just let Mr. Jordan do his responses. Our
17 position is the same as Defendant Marlboro County, and
18 then I also like the chance to respond.

19 THE COURT: Certainly. Okay, Mr. Jordan.

20 MR. JORDAN: May it please the Court. Your
21 Honor, taking the first motions first with regard to the
22 substitution of the improper naming of the Marlboro County
23 Treasurer in this case. We have admitted from the start
24 that that's the mistake we made. We tried to have a
25 consent order to amend that problem, and Mr. McLeod was

1 not interested in doing that. And ultimately we filed a
2 motion on August the 6th to actually substitute the
3 delinquent tax collector for Marlboro County in place of
4 the Treasurer of Marlboro County. So I think everybody
5 agrees that the Treasurer for Marlboro County is not the
6 appropriate party to be naming in this lawsuit. I agree,
7 and I've actually move to substitute the delinquent tax
8 collector in place of that defendant. And obviously if
9 we're still going on after today, that's what I want to
10 have the Court do. And I don't think there's any real
11 issue with regard to that. Mr. McLeod has indicated that
12 the tax collector is the proper party. So that's the
13 response to the motion to dismiss with regard to the
14 improperly named party.

15 Now, with regard to the statute of limitations
16 motion to dismiss, Judge, this is a tax lien case. It's a
17 tax sale case, and the statute is something -- the statute
18 of limitations which is 12-51-160 is something that is
19 considered all the time. I mean, it's a statute that has
20 to be dealt with in these kind of litigations.

21 However, there's -- in the last 15 years or so
22 there's been ten or 12 cases that basically makes hold
23 that if a tax sale is fundamentally defective, then the
24 tax sale is void. Several cases goes go on to say and the
25 tax sale does not -- is not affected by the statute of

1 limitations. So in this particular case, we brought the
2 suit under one statute under the failure of the County to
3 properly notice the end of redemption, that's statute
4 number 12-51-120. And, Judge, I got a copy of that
5 somewhere. I'll hand it up, so I'm getting ready to make
6 a note, but here's the statute.

7 And in this particular case, the error by the
8 County was to send the end of redemption notice too early.
9 It was sent to the -- and contrary to the statute the
10 statute requires it will be sent no earlier than 45 days
11 before the end of redemption period nor later than 20 days
12 before the end of redemption period. The notice in this
13 particular case was sent, I believe, 48 or 49 days before
14 the end of the redemption period, that clearly violates
15 not only the wording of the statute, but the intent of the
16 statute. The intent of the statute is to protect the
17 taxpayer. It was not done properly. I'm prepared to cite
18 many cases on this point, but if the case law is clear
19 that if the notice is not proper, then the sale is
20 fundamentally defective. And that effectively makes the
21 tax sale void, that's the word they use. Often they use
22 void fewer times they use invalid, but that's the way the
23 case law runs. But if the County did not do the tax sale
24 correctly, the Court holds that that's the case.

25 Now, you may think that well 45 days, 48, 49,

1 what's the difference. The case law is clear that if the
2 notice was not sent properly -- in other words, it was a
3 constructive notice argument, but if the notice was not
4 sent properly, it doesn't matter even if the person to be
5 notified received it and admitted to receive it, it's
6 still bad. And so it's not a notice provision, it's a
7 constructive notice provision. It's not whether or not
8 the taxpayer learned of the tax sale or end the redemption
9 period by virtue of a notice sent. It's whether the
10 notice was sent correctly. And if it's not sent
11 correctly, it doesn't matter whether they knew it or not.
12 It's very curious, but that's the way the case law is.

13 I do have an unpublished opinion that I found
14 that I'm hesitant to even bring up, so unless you direct
15 me to, I won't, but I will tell you that that case is
16 precisely on this point. And the cases that are cited in
17 that particular unpublished decision makes it absolutely
18 clear that the -- again, the things I have said about the
19 tax sale in case after case the Court rules and probably
20 the only case that I have found other than unpublished
21 opinion, but as a case of Mangie vs. Blackwell a 1996
22 case. And it clearly says that the right of redemption
23 cannot be cut off unless a required notice is given.
24 Again, that's the only case that really involves the
25 12-51-120 case of Reeves vs. Bolsa (sic) also a 1996. It

1 says tax proceedings are absolutely void if they require
2 notices are not given.

3 Corbin vs. Carlin in 2005 says section
4 12-51-106, which is a statute involving statute of
5 limitations it says it is not intended to bar this
6 particular case statute of limitations apply one where one
7 has lost his title properly through a tax sale after
8 proper notice. And the whole argument here, Judge, is the
9 notice was improper. It was not timely given by the
10 County.

11 Smith vs. Barr in 2007 says the failure to give
12 a required statutory notice renders a tax sale invalid.
13 The best case on point other than that unpublished opinion
14 is Reefing vs. Jebco LLC in 2013 that says that the
15 failure to give a required notice is a fundamental defect
16 in the tax proceedings which renders the proceedings
17 absolutely void. It goes on to say this court considered
18 notice issue in the Donahue vs. Ward, which is a 1989 case
19 and determined it was the kind of jurisdictional defect
20 that rendered the statute of limitations inapplicable.
21 And, again, that case is 2013.

22 Taylor vs. Taylor case in 2017 says quoting from
23 that Reefing vs. Jebco case section 12-51-160 did not
24 preclude a tax sale challenge because of a failure to give
25 the owner proper notice rendered the tax sale void. And

1 then finally 2018 case Land Commission of Bamberg County
2 vs. Beard says challenge to the tax sale was not barred as
3 the failure to give proper notice rendered the tax sale
4 void. And that when the tax sale is jurisdictionally
5 defective, the statute of limitation does not run at all.
6 So those cases -- all these cases, Judge, are recent
7 cases, but the law in -- the body of the law for a tax
8 sale goes back essentially -- it's consistent and the
9 courts -- the appellate courts have been consistent in
10 saying that fundamental defects rendered void the tax
11 sale. Now, okay, well, these statute of limitations are
12 trying to -- you're dealing with a purchase -- a tax payer
13 on trying to recover his property. There's nothing for
14 him to recover. He didn't lose his tax property at the
15 tax sale. The tax sale was void, so that's the logic
16 behind the case law in finding that the tax sale is void,
17 and therefore the tax sale is not effective or reserving
18 of the tax sale and not effective by the statute of
19 limitations. And that would be either section 12-51-160
20 or 12-51-90.

21 So, Judge, we would ask that the Court enter an
22 order effectively removing the Treasure from Marlboro
23 County as a party and substituting in that party's place
24 the delinquent taxpayer, a delinquent tax collector of
25 Marlboro County. Thank you, Judge.

1 THE COURT: All right, sir. Mr. McLeod or Ms.
2 Burch either one.

3 MS. BURCH: May it please the Court, your Honor.
4 My clients are Dillon Kirby, Ronald Kirby and Danny Kirby
5 who are the current owners and the mortgagee of this
6 property. I don't think that the South Carolina
7 Legislatures words in section 12-51-160 and 12-51-190 are
8 meaningless.

9 Your Honor, Mr. Jordan points to the fact that
10 he brings up a lot of case law regarding notice, but what
11 the issue is in this case is the notice of the right of
12 redemption, which is not just notes. There's lots of
13 things that you have to comply with in a tax sale, lots of
14 specific things that the County has to do. And those
15 cases that he's saying are on point aren't on point to
16 notice of right of redemption.

17 The case that Mr. Jordan sent both of us in
18 support, he mentions that unpublished opinion Lee vs.
19 Etheridge. I think this case is exactly on point.
20 Mr. Jordan agrees that this is on point. I think it is
21 most certainly on point because this case goes through --
22 it looks at whether that 45 to 25 day time period was
23 complied with, but the first thing the Court does is looks
24 at whether the statute of limitation applies. And in that
25 case, it was different because the defaulting tax payer

1 for years had remained on that property. Your Honor, it
2 had been there the whole time, so the purchaser didn't
3 come into possession of that property, that taxpayer he
4 hunkered down and stayed there. And so they looked and
5 went through that analysis of whether the statute of
6 limitation would apply before going to that analysis of
7 whether that 25 to 45 day time period was complied with.

8 There is no case law that goes to whether --
9 that looked at whether the -- whether the time period the
10 25 to 45 day time period is jurisdiction in nature. All
11 the cases all the recent cases look at whether the best
12 address was used by the County to notify that defaulting
13 tax payer. Those are all the recent jurisdictional cases.
14 There's no case law that looks at whether the 25 to 45 day
15 time period is jurisdictional. So, you know, there's
16 nothing that Mr. Jordan can point to that goes to this
17 issue. And that Lee vs. Etheridge case it shows how the
18 appellate courts would look at that analysis. They would
19 look at whether the statute of limitation applies first.
20 And that's exactly what they did in this case. And I'm
21 happy to pass that up for your Honor, but here, you know,
22 those words of the statute they're not meaningless.
23 There's a lot of protection afforded to defaulting tax
24 payers. And I believe that those have been complied with
25 here, so we would ask that since there's no case law on

1 point, but that statute of limitations it would apply in
2 this case, your Honor. Thank you.

3 THE COURT: May I see a copy of that unpublished
4 opinion?

5 MS. BURCH: Yes, your Honor.

6 THE COURT: Mr. McLeod.

7 MR. MCLEOD: Your Honor, may it please the
8 Court. And I would say that when you do get into that
9 issue about whether or not it's a jurisdictional matter
10 and whether or not the tax sale is void, the cases that a
11 lot these cases have been brought up are predate the
12 current statute and some of them are after the statute.
13 The ones after the statute I agree are not directly on
14 point with our situation here. And if you go and look at
15 those specifically, you got some kind of flagrant -- they
16 just flat didn't do something and that's not what we got
17 here. You're talking about what the Court in the Bamberg
18 case it was cited by Mr. Jordan. It makes the distinction
19 between something that's jurisdictional, and then
20 something that's considered a mere irregularity. And Your
21 Honor if you're going to get into that, then, you know,
22 he's talking about the days. If you look on the calendar,
23 the delinquent tax collector took the tax notes to the
24 post office on Thursday, and, of course, the 45 days was
25 going to be on Sunday.

1 So if you're talking about from Thursday to the
2 following Monday, if she would have taken them on that
3 Monday, then they wouldn't be here talking. And so that
4 in my view and my consideration of the case law would
5 be -- would fall into the mere irregularity category. And
6 our procedural -- what is specifically alleged in the
7 statute that you can't overturn it after two years. And
8 then you get into the other part about whether or not the
9 defaulting tax payer remains in possession, that seems to
10 be a big part of his case. We don't have that situation
11 here. So I think that they those two things throw us over
12 into the fact that it's just a straight up statute of
13 limitations case.

14 And unfortunately they didn't meet the statute
15 of limitations and so that's just where we are with it.
16 And you can look at all these cases, and they don't say
17 specifically what we're talking about. And I think every
18 one of them has some different extenuating circumstances.
19 And so we're going to say that, you know, that this is
20 a -- this is a mere -- you know, if you're going to go
21 that route, it's a mere regularity and the statute of
22 limitations apply. And he had two years to do it. And if
23 you go to that Lee case which he sent to us, and once I
24 read it the first time, I was like this doesn't look good.
25 But then when I read it closer, I was like, well, it's

1 exactly on point for the County because it said that the
2 statute was intended to bar a defaulting and ousted
3 taxpayer from maintaining an action to defeat the title
4 for tax sale because in the case that he's -- the
5 unpublished case that Ms. Burch handed up it's where the
6 winning bidder brought an action to quiet title. And then
7 they couldn't get into the argument about the fact that
8 the statute of limitations argument, but it goes on to say
9 in this very case that the statute was intended to prevent
10 the defaulting taxpayer just like we have here RSA Piping
11 is the defaulting tax payer.

12 Now, they're trying to bring an action two years
13 after the date of sale to say, oh, well, you got this
14 little situation here. You know, whether it was or
15 whether it was not a situation, they had a statute of
16 limitations and that's what we're here about today and
17 what's why we're asking the case to be dismissed, your
18 Honor. Thank you.

19 THE COURT: Thank you. Very briefly,
20 Mr. Jordan.

21 MR. JORDAN: Your Honor, I do hope you'll take
22 the time to read that case. I'm happy that the
23 defendant's in this case have brought it into evidence, so
24 we can refer to it here on out, but the portion of the
25 case involving a redemption notice, and that's on the back

1 page of that particular case, they wanted to decide this
2 case on a technicality and call it a technicality and not
3 call it a jurisdictional defect. They certainly had the
4 opportunity here. The case fail on the fact that the
5 notice was sent one day earlier. In our case, it's sent
6 three or four days earlier, but the Court decided to hang
7 on to that particular point and that notice in question
8 under 12-51-120 statute was one day early.

9 And the Court goes on to say the County is not
10 excuse from the strict compliance mandated by the laws of
11 tax sales as the County failed to strictly comply with the
12 statutory notice requirements intended to protect the tax
13 payer against sacrifice of his property, the tax sale must
14 be set aside, okay. We're not talking about the situation
15 where the tax sale is apparently good, but there's some
16 suggestion that it should be nevertheless overturned for a
17 technicality of some reason. This tax sale was set aside.
18 The final decision expressed here is that the trial court
19 based -- because we reverse the decision of the trial
20 court based on the failed notice of redemption and find
21 that Etheridge was not barred by the statute of
22 limitations, then we don't have to address the other
23 issues. But, again, this court -- and I think this
24 decision is absolutely right on point and clear that the
25 tax sale is not void. And we're not trying to enforce a

1 tax sale that was performed properly. It is void. The
2 title did not transfer because the tax sale was void,
3 simple as that.

4 THE COURT: Thank you. All right, counsel, I'm
5 going to take this matter under advisement. I'm going to
6 read these cases thoroughly and the other cases that you
7 pointed out to me. Let's take a ten minute break.

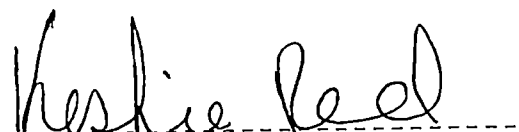
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 19, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of Common Pleas for Marlboro County, South Carolina, on the 31st day of August, 2022.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 21st day of January 2023.


Keshia Reed, Court Reporter

State of South Carolina)
) Court of General Sessions
County of Marlboro) 2021-CP-34-00150

RS&A Piping & Fabrication,)
Inc., et al.)
) Transcript of Record
)
)
V.)
)
Ronald D. Kirby, et al.

September 29, 2022
Bennettsville, South Carolina

B E F O R E:

The Honorable Roger E. Henderson, Judge

A P P E A R A N C E S:

Leonard R. Jordan, Jr., Esquire
Attorney for the Plaintiffs

Andrew F. McLeod, Esquire
Attorney for the Defendant, Treasurer for Marlboro County

Allison Truitt Burch, Esquire
Attorney for the Defendants, Danny Williams and Ronald D.
Kirby

Kathryn L. Reed
Transcriber

1 THE COURT: All right. Good morning, ladies and
2 gentlemen.

3 Mr. Jordan, this is your motion, if you want to identify
4 this matter, please.

5 MR. JORDAN: Yes, Your Honor. I am Leonard Jordan. I'm
6 from Columbia. My client -- or the plaintiff, RS&A Piping &
7 Fabrication, Incorporated, also the movant in the case. You
8 want me to just start my argument, or you want to have
9 everybody else introduce themselves?

10 THE COURT: Counsel can go ahead and introduce
11 themselves, and then we'll start the argument.

12 Mr. McLeod?

13 MR. MCLEOD: May it please the Court, Your Honor. I'm
14 Andrew McLeod. I'm here on behalf of the delinquent tax
15 collector of Marlboro County which was the party that was
16 substituted as the correct party in this lawsuit, 2021-CP-34-
17 00150.

18 MS. BURCH: Your Honor, Ally Burch (phonetic). I'm here
19 representing the defendants, Mr. Danny Williams and Mr. Ronald
20 Kirby.

21 THE COURT: All right. Thank you.

22 All right. Mr. Jordan, you may proceed.

23 MR. JORDAN: May it please the Court.

24 Your Honor, I'd like to start by thanking you for
25 accommodating me and the others with this hearing. I know

1 there was a special effort on your part, and I greatly
2 appreciate it. And we last appeared before you on August the
3 31st of last year. And you issued an order of dismissal in, I
4 believe, November of last year, and there was some timely
5 notice of -- to reconsider after that, and we're finally
6 getting around to having it heard. And again, I appreciate
7 your efforts in that regard. First time I've been in the new
8 judicial center here in Chesterfield County.

9 THE COURT: Well, I apologize for the delay, but once you
10 reach retired status, they make it a little more difficult to
11 schedule stuff, so.

12 MR. JORDAN: Well, I am glad that you were able to help
13 us out in that regard.

14 The motion in this case by the plaintiff, or by the
15 defendant treasurer -- and let me just start by saying I guess
16 a little bit of confusion on my part about which defendant
17 we're talking about. I had a motion to substitute the tax
18 collector, and I'm not sure that was ever granted. I don't
19 know that this matters at this point. But I just, you know,
20 point that out, that I sued the wrong party. I sued the
21 treasurer, and it was made known from the outset that I sued
22 the wrong party and I filed to substitute to get on the tax
23 collector. But I thought that motion had been dropped. And
24 again, depending on the outcome of today's hearing, it may be
25 something we don't even have to think about right now.

1 But anyhow, Judge, we are here on the order of dismissal
2 that you issued back in November of 2021. And although it's
3 not my primary argument, I want to say that this is -- this
4 order was based on the motion of the treasurer, which
5 certainly provides a little bit of confusion of where we are,
6 because the treasurer indicated it was not a proper party in
7 the lawsuit. And if it were an improper party and some other
8 party should have been named, we could have accomplished that
9 with a simple order substituting the tax collector. But that
10 wasn't the way we went.

11 The treasurer filed a motion to dismiss, and I would
12 submit that the treasurer, as admittedly not a proper party,
13 has no standing to even bring the motion to dismiss. So
14 that's an aside here, and of course, the whole purpose of this
15 motion that's pending today or the primary portion of my plans
16 of countering or having the Court reconsider its decision is
17 to prepare this case for appeal. So I brought this motion to
18 reconsider to kind of cover the points that were not covered
19 in the order of dismissal of this case.

20 And another preliminary item. Two things in the order of
21 dismissal that caused me to raise an issue to the Court. It
22 says in here that the Court relied on case law -- let's see;
23 it says the Court reviewed the case law relied upon by the
24 parties. In my recollection, and this was 13 months ago, but
25 my recollection is I'm the only one that discussed any kind of

1 case law. And certainly would not have presented any case law
2 that was adverse to my position. So I'm not sure the Court
3 actually reviewed any case law in this case.

4 I have submitted a memorandum that's attached to my
5 motion to reconsider. The memorandum has, I believe, 12 cases
6 cited in there, which, if nothing else, reflects a consistency
7 by the South Carolina Courts, Court of Appeals, and Supreme
8 Court, with regard to tax sales. And those cases, even when
9 you hold them together, they're all very consistent in my
10 view. They basically make it clear that defects in the tax
11 sale procedure would only cause problems with the county with
12 regard to the tax sale. And the tax sale in this case, I can
13 tell you what the technicality was. The problem with the tax
14 sale had to do with trying to comply with Section 12-51-120.
15 And Judge, if you want to have a copy of that statute, I can
16 certainly hand it up to you.

17 THE COURT: I've got it right here.

18 I JORDAN: That statute is what I call the notice of end
19 of redemption. The notice of end of redemption, which the
20 county is required to send out in a very, very concise
21 timeframe here. And the statute specifically provides neither
22 more than 45 days nor less than 20 days before the end of the
23 redemption period for the real estate sold for taxes, and then
24 it goes on: it shall give notice to the taxpayer. In this
25 particular case, Judge -- and it's a major technicality, okay?

1 I would say -- I got to call it a technicality. I don't
2 necessarily like cases that have to be decided on a
3 technicality, but unfortunately, tax sales are done that way.
4 Technicalities matter.

5 And in this particular case, the notice of the end of the
6 redemption period was sent out -- it was actually received by
7 the post office, stamped by the post office for September the
8 19th, 2017 -- excuse me -- 2019. And I've got copies of this
9 notice. I'm not sure if I can make that part of the record
10 here. This is the notice I'm speaking of. And Judge, if
11 you'll notice, on that certified mail receipt, it stamped by
12 the post office September 19th, 2019. I'll also submit that
13 the tax deed issued by the county at the end of the redemption
14 period also recites that the notice was sent September the
15 19th, 2019.

16 Now, in light of the fact that the sale date was November
17 the 5th of 2018, in light of the fact that the redemption
18 period continues for a period of 12 months. It doesn't say
19 365 days. It doesn't say one year. It says 12 months.
20 Continuous for 12 months. It would have wound up -- so the
21 end of redemption would have been the 5th day of November of
22 2019. However, if you look closely at the bottom of that
23 notice I just gave you, the final date to redeem was
24 established by the county of being November the 6th, not the
25 5th but the 6th of 2019.

1 All right. So that's -- one of those two dates, you
2 start counting. The number of days you get when you count
3 from, either the 6th of November or the 5th of November, going
4 back to the mailing date of September 19th, you come up with
5 either 47 or 48 days, which of course is more than 45 days.
6 And the statute clearly says not more than 45 days.

7 If anybody -- I have set this out in a calendar. If
8 you'd like me to submit that. I'll go ahead and submit it.
9 Here's the accounting of the -- accounting of the days, Judge.
10 You have to go back. We start at the date of the end of the
11 redemption and go back to the actual mailing date of September
12 the 19th, and that would be the 48th day. So if the correct
13 date was November the 6th, as the county says, then it's 48
14 days. If it was the 5th, as I would have calculated, then
15 it's 47 days. But in any event, it's more than 45 days.
16 Again, a technicality. I would -- when I first started
17 digging into this case, Judge, I would have actually
18 considered that to be kind of like a, you know, a mere
19 irregularity. That's another term they use in tax sale cases.

20 If you -- if you give two or three days more notice,
21 that's got to be a better thing, right? Okay. So that's not
22 the way tax sales work. Tax sales are completely constructive
23 notice in accordance with the state requirements for notice.
24 In the statute, it doesn't says give at least 45 days' notice.
25 It says not more than 45 days' notice. And that's, to me, a

1 major technicality in light of the wording of the statute.

2 Now, I previously sent Your Honor the motion that I filed
3 which includes the memorandum and all this case law and
4 everything. And at the last hearing, I kind of vaguely --
5 we'll say it that way -- vaguely submitted to the Court that
6 there was an unpublished opinion that the Court should
7 consider. And I didn't identify the case or anything like
8 that, but I kind of danced around it a little bit. And after
9 I sat down after my argument, Ms. Burch stood up and handed
10 you the case, which to me, I think kind of opens the door.
11 And you know, I certainly don't feel like I'm constrained to
12 not talk about it. I'm not sure what purpose of the rules
13 regarding was of unpublished opinions are, but at the end of
14 the day, number one, I didn't open the door. Number two, the
15 case is absolutely right on point factually with this case,
16 which makes it important. The other cases that I've cited,
17 giving what the black letter of the law is with tax sale
18 decisions, they don't have precisely the same facts. They
19 don't have anything to do with this technicality, the one that
20 I just raised about the 45 days. But this one case, Leech v.
21 Ethridge (phonetic), has that at its fact. And in that
22 particular case, Judge, the county sent the notice on the 46th
23 day before the end of the redemption period, like our case,
24 which is the 47th or 48th day, and the court ruled that they
25 didn't follow the requirements so the tax sale is void.

1 And to me, when you have a decision like that, that is
2 actually so precisely on point with our facts, it needs to
3 come in. The authority is important in our case. It provides
4 a kind of consistency in the law. And in this case, the Court
5 of Appeals, which would be of course hearing any appeal in
6 this case, has already decided this issue clearly. And in
7 that particular case, it declared, number one, that tax sale
8 notice requirements are for the protection of the taxpayer.
9 They are mandatory. The failure to give a notice of this
10 particular kind is a fundamental defect and the tax sale is
11 absolutely void. It goes on to say that the claim is not
12 barred by the statute of limitations.

13 Okay. Now the thing about statute of limitations, Judge,
14 you decided this case based on the statute of limitations, and
15 there are two: 12-51-160 and 12-51-90(c). And these statutes
16 could not be clearer. I cannot understand why the legislature
17 would use these statutes in place because they are completely
18 contradictory to the case law on tax sales in the State of
19 South Carolina. And this has been the case law for 75 years
20 or so. So now, certainly, have no -- place no blame on
21 anybody that has heard this case before about concluding that
22 these tax sales are -- the tax -- the statute of limitations
23 are applicable and they control this case. And based on the
24 tax sale -- based on the statute of limitations, it should be
25 dismissed. Because that's what the statutes say. Okay.

1 But unfortunately, the Supreme Court of South Carolina
2 disagrees with what the statutes says. Now, there's two
3 rationales for that. And the -- one of them is kind of
4 obscure rationales -- now, it's got its own little body of law
5 that says what those statutes mean is that the statute of
6 limitations doesn't start on the sale; it starts on the date
7 that the previous owner, the taxpayer, was dispossessed of the
8 property. Okay. So in this particular case, timing-wise --
9 and this was admitted in the pleadings in this case -- that
10 the defendants took possession of this property in June of
11 2020. Okay. So the sale was November 2019. So that a year
12 and a half different. And of course, our case was filed
13 within -- less than a year after they actually took possession
14 of the property. So that's -- based on that legal -- let's
15 call it a concept -- but it's -- you know, there's several
16 cases that say that the possession of the property is a key
17 element. As long as the taxpayer is maintaining the
18 possession of the property, they probably don't know they have
19 a problem, and therefore, they shouldn't be under the gun to
20 file some kind of -- some kind of action of counter the tax
21 sale that they probably don't even know exist. So the court
22 basically says the start of the process is when they get
23 dispossessed. And then it typically say by the sheriff, but
24 I'll say anywhere to dispossess the property would start it.
25 That's really the one body of law that is kind of

1 separate. It's got its own little niche, let's call it in
2 this theory. The other thought process is that the tax sale
3 statutory requirements are constructive. They have to be done
4 precisely right, or it's no good. And therefore, if the tax
5 sale requirement has not been followed one hundred percent,
6 and they do say that the requirements are mandatory. You
7 know, they go so far as to say these are fundamental defects,
8 and in jurisdictional defects, the county has no authority to
9 sell the property, and the tax sale is void. Or they say
10 absolutely void. Okay. If the tax sale is void, then how can
11 statute of limitations even start to fix the problem? Let's
12 say it that way. Because if nobody gets around to doing
13 anything, the tax sales are still void. Okay?

14 So from that perspective, the former owner still owns
15 property. It might not be titled in his name, but legally
16 speaking, it's his property because it was wrongfully taken
17 from him. I really enjoy doing tax sale litigation because
18 the case law is just right there. We don't have any
19 inconsistencies. We don't have anything that would make you
20 think, well, this is not an absolute way of doing things. It
21 is an absolute way of doing things.

22 The county must follow -- it's like four things they have
23 to do, and they've got to do it right. If they don't send it
24 registered certified mail, they send it certified return
25 receipt requested, restricted delivery -- and this wouldn't

1 apply in this case because we have a company. But to a
2 person, if they don't send it restricted delivery, the tax
3 sale is void. And in the case, it even says if they swear --
4 the taxpayer sits on the witness stand and swears that they
5 received it, it's not good enough. Okay. The court is clear.
6 It's not an actual notice that counts. It's constructive
7 notice. So the fact that they sent it wrong, whether it is
8 received or not, is absolutely not important.

9 You know, in this particular case, my clients never
10 received any notice of any part of the tax sale proceedings.
11 It was done correctly, notice-wise. They sent the notice
12 certified mail, return receipt requested. They said there
13 wasn't -- it wasn't signed for, so the property was posted.
14 Perfect. It was advertised in the newspaper for sale.
15 Perfect. And then you get around a year later for redemption
16 period, and that's where they messed up. You got to do four
17 things right, only four. And if the county doesn't do it
18 right, they shouldn't be complaining about results.

19 So that's our argument. I would certainly ask that the
20 Court consider my memorandum and effectively reverse the
21 decision to dismiss the case and allow the case to go forward
22 on merits.

23 Thank you, Judge.

24 THE COURT: Thank you, Mr. Jordan.

25 Mr. McLeod?

1 MR. MCLEOD: May it please the Court, Your Honor.

2 THE COURT: Yes, sir.

3 MR. MCLEOD: Andrew McLeod on behalf of -- and I filed an
4 answer in this and also this motion, citing the fact that the
5 treasurer was the wrong party. But I went ahead and set forth
6 all the defenses that could be -- that they believed the tax
7 collector was the proper party, and the plaintiff did file a
8 motion to substitute the party, which was still pending.
9 So -- the proper party. But we did go ahead and argue this
10 motion.

11 And we still -- the county or, you know, I'm just
12 referring to the county, the delinquent tax collector, we
13 believe that this is a statute of limitations case. The
14 statute is clear about the two years from the date of sale.
15 If you read the statute, that's what it says.

16 And so -- but this is the timeline that I have. You've
17 got a plaintiff, RS&A Piping. They bought this property in
18 1998. And it wasn't until 2017 -- for some reason they didn't
19 pay their taxes. So from 1998 to 2017, they must have been
20 paying taxes. And so then, the tax execution for the 2017 was
21 March 16th, 2018. This is after they got the tax notice in
22 2017 that said, hey, 2017 taxes are due. You got to pay them
23 by January 15th, 2018. None of that happened.

24 So then they get that the taxes are late. And then it
25 goes to the delinquent tax collector, and then so the notice

1 for the delinquent tax collector is mailed on June the 5th,
2 2018. The property was posted on October the 5th, 2018. The
3 ad for the sale was made October 18th, 2018; October 25th,
4 2018; and November 1, 2018. Marlboro Herald Advocate. And
5 then the property was sold for delinquent taxes on November
6 the 5th, 2018.

7 So then the notice of the expiration of the redemption
8 period was mailed, like we've heard, on September 19th, 2019,
9 which according to the calendar handed up was on a Thursday.
10 The 45-day period would have been on that Sunday. And so what
11 this case is about is the delinquent tax collector brought the
12 notice over to the post office on Thursday instead of waiting
13 and walking it over on Monday. So that's the rub that we're
14 talking about.

15 But if you back up, they also mail by regular mail the
16 same redemption notice earlier than the required period. So
17 they get one mailed by regular mail -- hey, here's the
18 redemption notice. Here's all the information provided --
19 before they send out the official one, certified mail. So
20 that one had already gone out.

21 So then they notify them the expiration of the redemption
22 period, and then the tax property was sold, and then the deed
23 to the property was recorded on May 13th, 2020. It was
24 actually signed on April the 29th, 2020. And so this suit was
25 filed May 17th, 2021, which is two years and six months after

1 the date of the sale, which is clearly outside the statute of
2 limitations.

3 So it's the position that the difference between taking
4 notice on Thursday rather than Monday, that would be
5 considered a defect, irregularity, or error. And it shouldn't
6 be considered a statutory defect. All the cases that they
7 point out in the memorandum, if you look at them, all of them
8 have some exact -- they didn't use the right address. They
9 didn't send it certified. They didn't post the property
10 correctly. So you don't have that situation here. This is
11 simply they went to the post office on Thursday instead of
12 waiting to go to the post office on Monday.

13 And then this is notice of the expiration of the period.
14 This isn't -- after you've taken all these other notices you
15 have, all these other mailouts, all these other times, all
16 these three weeks in the newspaper -- or three notices in the
17 newspaper.

18 So when you look at all the cases the plaintiff cited,
19 they're all over the board with the facts. There's some crazy
20 facts of people buying it and getting mortgages on tax sale
21 property, and it just goes on and on. There's nothing clean
22 about any of them. And there's nothing on any of those cases
23 that are on point.

24 And of course, he refers to the unpublished opinion,
25 which is not controlling. It's not -- and that's for a

1 reason. In the statute concerning the statute of limitations,
2 it's not referenced in the notes. So therefore -- but if you
3 actually look at that case, the first part of that case is all
4 about the fact that you got a successful bidder trying to use
5 the statute of limitations against the defaulting tax party.
6 It's not the same fact pattern that we have here. Here,
7 you've got the plaintiff as the defaulting taxpayer. They're
8 the one that brought this suit. In the case he's referring
9 to, the successful bidder brought the suit to get put in
10 possession of the property. The defaulting taxpayer brought a
11 counterclaim, and then the successful bidder was trying to use
12 the statute of limitations against him. So you got a whole
13 different set of situation, and that's why that case, like I
14 said, is not controlling, and I think it's not controlling for
15 a reason. And actually, in that case, it says that the
16 defaulting taxpayer is bound by the two-year statute of
17 limitations.

18 And then we go into -- and this is just something that I
19 noticed wasn't mentioned, but all the cases talk about a
20 surprise to the taxpayer. They're trying to stop the surprise
21 to the taxpayer, and I find that to be very interesting. And
22 I don't know who said it, but you know, there's only two
23 things in life you can't avoid: death and taxes. If you've
24 own property since 1998 and you've been paying taxes all that
25 time and all of a sudden in 2017, you don't pay taxes, where

1 is the surprise there? And then you get notice after notice
2 after notice, supposedly, and so I don't know what the
3 surprise is everybody's talking about, but the courts seem to
4 like that language a lot.

5 In this situation, I think you got an irregularity that
6 would not cause this matter to be void, and it wouldn't cause
7 it to be subject to the two-year statute of limitations, and
8 that's what position we got here. And that's why they're
9 given a two-year statute of limitations. Because if there is
10 a problem, then they got two years to address it. And so
11 that's the situation we have here.

12 And the issue and the strange notion about the party has
13 to be in possession after the deed before the statute of
14 limitations, you know, the cases, it makes some reference to
15 that. But the reference I make is to Section 12-51-40(b), and
16 it says, in matters of real property, the exclusive possession
17 is taken by a county officer when they mail the notice. So if
18 you want to talk about the statute and when the property is
19 dispossessed of the defaulting taxpayer, if you go by the
20 statute, it says when they mail out the notice -- the original
21 notice. And that's the statutory reference. It's 12-51-
22 40(b). And I say that's when the defaulting taxpayer is
23 dispossessed of the property.

24 So we talked about technicalities. I think that this is
25 a case where it was an error, and if they had brought it up

1 during the statute of limitations, they might have had an
2 argument, and they didn't. So therefore, it's just a matter
3 that needs to be dismissed based on the statute of
4 limitations.

5 The one case that I do find in the statute of limitation
6 notes, in the section regarding the statute of limitation is
7 the case of Johnson v. R. Bobby (phonetic). I've given the
8 other counsel a copy. I'll hand a copy up to the Court.
9 Facts aren't -- just like all the cases of the plaintiff, the
10 facts don't necessarily match our case. But it is a case
11 where the Supreme Court overturned the Court of Appeals about
12 a procedural matter concerning notice being mailed to both
13 taxpayers. They sent out one notice to two taxpayers at one
14 address, husband and wife. Somehow, the husband and wife got
15 separated, and they weren't living together. So originally,
16 they overturned it and said, oh, no, you had to send out two
17 notices, one to each tax person at that same address. When it
18 finally came back around through the system of appeals, the
19 court said no, you can send that one notice to one address to
20 both taxpayers if that's all you've got, and that's what they
21 had here. So this is just an example of how everything - the
22 one thing I agree with the plaintiff is there's nothing in the
23 tax code as far as the factual thing is right. It's all over
24 the place.

25 And the one thing I like about this case is the quote in

1 here is "he who seeks equity must do equity." And they said
 2 the defaulting taxpayer never bothered to notify the people
 3 that they had a different address or that the one taxpayer had
 4 a different address. So they never took any measures to make
 5 that arrangement. And so therefore, they were not allowed to
 6 get by on that technicality of only one notice sent to one
 7 address to two taxpayers. And so that's the case that I see
 8 that it does make a change, and that's the situation I think
 9 we have here.

10 I know in our motion to dismiss, the notice that was sent
 11 out on September 19th, they make three attempts. It didn't --
 12 it had come back. So it was sent to the post office address.
 13 That was the address that was on the taxes. That's the best
 14 address the delinquent tax collector had. And so the notice
 15 that they're arguing back that was sent out a couple days
 16 early, it got returned. So the taxpayer never made an effort
 17 to notify the tax department of their new and proper address.
 18 And so I think if you want equity, you've got to do equity. I
 19 don't think there was any equity done by the defaulting
 20 taxpayer here, and I think the statute of limitations apply.
 21 They filed this suit two and a half years after the date of
 22 the sale. Read the statute. That's what it talks about, the
 23 date of the sale. And so I think that's where we are. And
 24 we're just asking that the -- we think the original decision
 25 was correct to dismiss the case as far as the statute of

1 limitations is concerned.

2 THE COURT: Thank you, Mr. McLeod. Mr. McLeod, we need
3 to clean up about the tax collector being substituted, so we
4 can get --

5 MR. MCLEOD: I mean, we can. I mean, I think it -- if
6 that's some -

7 MR. JORDAN: What was the question?

8 MR. MCLEOD: Do we need to clean up about your motion to
9 substitute the delinquent tax collector based on my motion to
10 dismiss that you didn't file it properly.

11 THE COURT: I mean, regardless of what I do here, it's
12 lingering out. You know.

13 MR. MCLEOD: Right. Yes, Your Honor.

14 THE COURT: We need to probably clean it up.

15 MR. MCLEOD: Yeah.

16 THE COURT: So you don't have any objection to that
17 motion?

18 MR. MCLEOD: I don't think I can object. I think I made
19 the --

20 THE COURT: Yeah.

21 MR. MCLEOD: -- and then he filed the motion to --

22 THE COURT: I'll submit an order.

23 MS. BURCH: Yeah, I don't think anybody has any
24 objections about that, Your Honor.

25 THE COURT: Yeah, okay. All right.

1 All right, Ms. Burch?

2 MS. BURCH: Thank you, Your Honor. May it please the
3 Court.

4 Your Honor, Mr. McLeod did a great job of walking through
5 the history of this property, so I'm not going to re-go over
6 that.

7 Just real briefly, Your Honor, it was back in 2017 that
8 these taxes weren't paid, about five years ago now. The tax
9 sale was November 5th of 2018. Your Honor, if we simply read
10 the statute, the law of the State of South Carolina, not
11 looking at any case law, the statute says an action for the
12 recovery of land sold pursuant to this chapter or for the
13 recovery of the possession must not be maintained unless
14 brought within two years from the date of sale as provided on
15 12-51-90, which provides for the 12 months of redemption.

16 So Your Honor, just reading those words in the statute, I
17 think what we have to go back to. Going through the case law
18 that the plaintiff's attorney went through, he in his
19 memorandum admits that this is similar to what we have here.
20 It's not the situation we have here. In the Good v. Kennedy
21 (phonetic) case, notice was sent to the wrong address, and
22 that was found jurisdictional. The tax collector in another
23 case failed to post notice at the property. There was another
24 case where the wrong legal descriptions were used. Those were
25 instances where the court found it was jurisdictional. That's

1 not what we have here, Your Honor. So I don't think it's very
2 helpful to look at those cases.

3 In the unpublished opinion that we're talking about -- I
4 think Mr. McLeod also did a good job of looking at -- that
5 case is distinguishable from our situation here. In this
6 case, it's the defaulting taxpayer that's bringing this
7 action. And in the Leech case, that defaulting taxpayer had
8 been possession the entire time. He had been living at that
9 property. And so that's a very different situational thing
10 than we have in this case, Your Honor. And also, the analysis
11 in that case, they first looked at the statute of limitations,
12 whether the statute of limitations apply. So I do think that
13 even though it's an unpublished opinion, not precedent, you
14 know, it's different than what we have here.

15 Your Honor, I think we have to remember that these legal
16 issues involve real folks. And so my clients, Mr. Kirby and
17 Mr. Williams --

18 If y'all will stand up real quick.

19 Mr. Kirby operates his business on the property. Your
20 Honor, he's done a significant amount of work on the property.
21 Before he moved in, before he opened his business, there were
22 some break-ins that had happened and some break-ins before Mr.
23 Williams moved in and after Mr. Williams moved in. So Mr.
24 Kirby has brought in a cleanup crew. There was destruction of
25 the property. There was drugs found. There was crack pipes

1 found all on the property. He's done some major cleanup.
2 He's redone the plumbing, redone the wiring, put in two car
3 lifts. I mean, this is his livelihood, Your Honor.

4 So thank you, gentlemen, for being here. I appreciate
5 that.

6 I think we really have to remember that these legal
7 issues affect real lives and people's livelihood. And I'll go
8 back also to Mr. Jordan's argument that the defendants were
9 not in possession of the property. I think we have to look at
10 the words of the statute and the words of the statute that Mr.
11 McLeod pointed out. It's the date of the sale and potentially
12 earlier than that, as Mr. McLeod pointed out. I think there's
13 certainly a reason that the statute of limitations is still in
14 the law in South Carolina, Your Honor. It hasn't been
15 repealed, and I think there's a reason for that.

16 Thank you.

17 THE COURT: Thank you, Ms. Burch.

18 Mr. Jordan?

19 MR. JORDAN: Your Honor, just a few comments.

20 One thing I think is important about this case of Leech
21 v. Ethridge, it is quite interesting I think that the Court
22 declared the notice that was sent to be one day early --
23 sooner than it should have been sent to get within the 45
24 days. The interesting thing about that was that, based on the
25 actual sale date of the property, it was precisely on the 45th

1 day when it was sent, but the county, in its notice, said that
2 the end of the redemption period was a day later. So in this
3 particular scenario, the sale date was on October 5th, 1998,
4 and the notice regarding the redemption period was sent on
5 August 21, 1998, which was 46 days early. But if it had been
6 correctly stated of what the tax sale end of redemption period
7 was, then it would have been on time. You know, the Court
8 really went out of its way to reverse the lower court on that
9 particular issue. They found it obviously quite important to
10 their whole understanding of how the tax sale works to
11 actually reverse the lower court on that point.

12 And it certainly doesn't matter who the plaintiff is in
13 the case or who the defendants are or anything. What matters
14 is how the tax sale was conducted. It's all about what the
15 county does. Does it do it right, or does it do it wrong?

16 And Mr. McLeod, you know, was talking a good bit about
17 doing equity. I mean, the county's supposed to do equity,
18 too. If they say they send notices out to a correct address,
19 that they assume is a correct address, and that's all they can
20 do about it. They assume. okay. But once it's returned
21 undeliverable three and four and five and six times, they
22 ought to assume just the opposite and go hunt them out to find
23 where the actual taxpayer might be located. They didn't do
24 that in this case. They kept sending the notices to the same
25 address that they had.

1 Now again, we're not arguing this case on that particular
2 point. That's just -- I'm pointing it out as a matter of
3 equity. The county must do equity, too. They're actually
4 taking this property without judicial process. And they have
5 to do it in a correct manner. Statute provides that manner.
6 If they don't do it 100 percent correct with regard to the
7 four notices that they have to do, the tax sale is no good.
8 The case law is just solid, and it's extremely consistent on
9 that particular point. And I believe I had one other point,
10 but I can't think of it. So thank you for your time, Judge.
11 I appreciate it.

12 THE COURT: Thank you.

13 Do you have anything else?

14 MR. MCLEOD: Well, Your Honor, may it please the Court.

15 I would just say that the county does go out and hunt
16 them out. They have to pay somebody to go out there and post
17 the property, nail a notice on the property saying "seized,"
18 all the special language, which they did. Plaintiff admitted
19 that they did. And then they spent all that money running
20 that notice in the newspaper three weeks to the whole world to
21 know that -- and Marlboro County is not a big place. That,
22 you know, here's everybody who hadn't paid their taxes.

23 And so you got a post office box, and if it comes back
24 and it comes back return to sender, unable to forward,
25 unclaimed, and it doesn't have a forwarding address. One of

1 the cases he cited, the delinquent tax collector got back and
2 it actually had a forwarding address on there, and they didn't
3 turn around and try to send it back out to the forwarding
4 address, and it was wrong. In this situation, there was no
5 forwarding address that come back on this return.

6 So yes, if you want equity, you've got to do equity.
7 Where is the responsibility of the taxpayer to say, hey, I've
8 got -- my address has changed, this my new address, when they
9 know they owe taxes? You can't escape taxes, and that's why I
10 can really go on about this surprise element here, but I'm not
11 going to do that.

12 And where's protection for people who their taxes on
13 time? Where's the protection for the country who relies on
14 this money for their budget to put people out there for
15 essential services?

16 But anyway, the situation here, you're talk about
17 Thursday to Monday. I think that's an error. I don't think
18 it's a jurisdictional situation. This notice, like I say,
19 didn't even get received. They're complaining about a notice
20 that they didn't even get because they didn't bother to give
21 the county a correct address. The county did what they were
22 supposed to do by posting the property and running the ads in
23 the newspaper. And so that's it. And then they got -- they
24 still got two years after the date of sale to file a suit,
25 which they didn't do. So you know, I don't -- and like I

1 said, the unpublished opinion is unpublished for a reason. If
2 it was so important, then why didn't they publish it? It's
3 not controlling, and so therefore, I don't find it to be
4 something that has to be considered. And that's all I have to
5 add.

6 THE COURT: Thank you, Mr. McLeod.

7 Anything else, Ms. Burke?

8 MS. BURCH: No, Your Honor. I do think it's -- it's not
9 even exactly on point, Your Honor, so I do think that it
10 shouldn't be relied upon, and it's different, Your Honor.
11 Thank you.

12 THE COURT: Okay.

13 MR. JORDAN: Your Honor, one other comment on Leech v.
14 Ethridge case. In that case, as well as this case, the notice
15 itself, which was sent early in both cases, was not received
16 by the taxpayer. So that -- you know, the argument about,
17 well, you know, they were misled or not misled. They were --
18 you know, they should have given an address that could have
19 reached them. You know, that was not something that was
20 reached in the Leech decision. And again, in this case, all
21 we're saying, the one issue that we have with the tax sale is
22 that the tax sale final notice of the end of the redemption
23 period was mailed too early. And therefore, it violated the
24 statute and resulted in the tax sale being absolutely void
25 based on case law.

1 THE COURT: All right, Counsel. I am going to take this
2 under advisement. I'm going to review Mr. Jordan's memorandum
3 thoroughly. I've already been through it, but I want to go
4 through it a little bit more thoroughly, go through the
5 statutes, and consider your arguments. I've made notes on
6 everybody's argument. So I'll let you hear from me as soon as
7 I possibly can. Keeping in mind, with regards to this Leech
8 case, it has no precedential value. So I'm not bound by it.
9 There's a reason they state they don't publish, as Ms. Burke's
10 pointed out. But I still will read the case and look at it
11 and see what it says. And it's got some age to it now, 2005
12 case. Anyway, I'll let you hear from me.

13 Thank y'all.

14 MR. JORDAN: Thank you.

15 MR. MCLEOD: Thank you, Judge. Really appreciate it.

16 (End of Transcript of Record)

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CERTIFICATE OF TRANSCRIBER

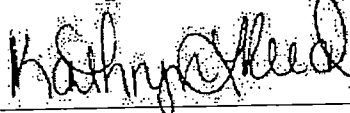
State of South Carolina)

County of Marlboro)

I, KATHRYN L. REED, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Marlboro County, South Carolina, on the 29th day of September, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 4, 2023



Kathryn L. Reed, CDLT-256
Transcriber

STATE OF SOUTH CAROLINA)
)
COUNTY OF MARLBORO)

RS&A Piping & Fabrication, Inc. a/k/a)
R. S. & A. Piping, Inc.,)
)
Plaintiff,)
)
-vs-)
)
Ronald D. Kirby, Dylan T. Kirby, Treasurer)
for Marlboro County, and Danny T. Williams,)
)
Defendants.)
)

IN THE COURT OF COMMON PLEAS

LIS PENDENS

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in this Court upon the Complaint of the above-named Plaintiff to overturn the Tax Sale, to terminate any and all interests, if any, which the Defendants, Ronald D. Kirby and Dylan T. Kirby, along with the Defendant, Danny T. Williams, may have or claim to have, and to confirm the title in the name of the Plaintiff, with regard to the real property described on the attached Exhibit "A."

s/Leonard R. Jordan, Jr.
Leonard R. Jordan, Jr., #3221
JORDAN LAW FIRM
211 Veterans Road, Suite D
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(803) 726-1950 Tel
(803) 726-1951 Fax
ljordan@ljordanlaw.com
Attorney for Plaintiff

Columbia, South Carolina
May 17, 2021

EXHIBIT "A"

All that certain piece, parcel, or lot of land, situate in the County of Marlboro, State of South Carolina, and being shown and designated as 0.41 acre on that certain plat entitled, "Plat of Lot, R. S. & A. Piping, Inc. Marlboro County, SC," dated February 11, 1998, made by John M. Jackson, PLS, and recorded in Plat Book 53 at page 08 in the Office of the Clerk of Court for Marlboro County, SC.

Reference is craved to the abovementioned recorded plat for a more particular description as to metes, courses and bounds.

This being the same property conveyed to Ronald D. Kirby and Dylan T. Kirby by Quit Claim Deed from Danny T. Williams, dated February 15, 2021, and recorded in the Office of the Register of Deeds for Marlboro County on February 24, 2021, in Book 747 at page 137.

TMS No. 003-01-01-062

STATE OF SOUTH CAROLINA)
COUNTY OF MARLBORO)

IN THE COURT OF COMMON PLEAS

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

Plaintiff,)

-vs-

Ronald D. Kirby, Dylan T. Kirby, Treasurer)
for Marlboro County, and Danny T. Williams,)

Defendants.)

SUMMONS
(Overtun Tax Sale)
(Conversion)
(Non-Jury)

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 211 Veterans Road, Suite D, Columbia, South Carolina 29209, within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for a judgment by default granting the relief demanded in the Complaint.

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

Columbia, South Carolina
May 17, 2021

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARLBORO	)	
RS&A Piping & Fabrication, Inc. a/k/a	)	
R. S. & A. Piping, Inc.,	)	
	)	
Plaintiff,	)	
	)	COMPLAINT
-vs-	)	(Overturn Tax Sale)
	)	(Conversion)
	)	(Non-Jury)
Ronald D. Kirby, Dylan T. Kirby, Treasurer	)	
for Marlboro County, and Danny T. Williams,	)	
	)	
Defendants.	)	
	)	

The Plaintiff, RS&A Piping & Fabrication, Inc. a/k/a R. S. & A. Piping, Inc., complaining of the Defendants herein, would respectfully show this Court that:

JURISDICTIONAL ALLEGATIONS

1. The Plaintiff is a dissolved (forfeited) corporation heretofore organized and existing under the laws of the State of South Carolina.
2. The Defendants, Ronald D. Kirby and Dylan T. Kirby ("Kirbys"), are, upon information and belief, citizens and residents of the County of Marlboro, State of South Carolina.
3. The Defendant, Treasurer for Marlboro County ("Treasurer"), is, upon information and belief, a citizen and resident of the County of Marlboro, State of South Carolina. By reference herein to "Treasurer," all county departments (e.g. Treasurer's Office, Auditor's Office and Assessor's Office) involved in the taxation and the tax sale of the subject real property are included by representation.
4. The Defendant, Danny T. Williams ("Williams"), is, upon information and belief, a citizen and resident of the County of Marlboro, State of South Carolina.
5. The real property (the "Property"), which is the subject of this action, is located in

Marlboro County and is described as follows:

All that certain piece, parcel, or lot of land, situate in the County of Marlboro, State of South Carolina, and being shown and designated as 0.41 acre on that certain plat entitled, "Plat of Lot, R. S. & A. Piping, Inc. Marlboro County, SC," dated February 11, 1998, made by John M. Jackson, PLS, and recorded in Plat Book 53 at page 08 in the Office of the Clerk of Court for Marlboro County, SC.

Reference is craved to the abovementioned recorded plat for a more particular description as to metes, courses and bounds.

This being the same property conveyed to Ronald D. Kirby and Dylan T. Kirby by Quit Claim Deed from Danny T. Williams, dated February 15, 2021, and recorded in the Office of the Register of Deeds for Marlboro County on February 24, 2021, in Book 747 at page 137.

6. This case involves a tax sale of the Property, and this Court has personal and subject matter jurisdiction over the Property, the parties and the issues raised herein.

FACTUAL BACKGROUND

7. The Property was assigned Marlboro County Tax Map No. 003-01-01-062.
8. At all relevant times prior to the recording of the Tax Deed (hereinafter described), the owner of record of the Property was the Plaintiff.
9. The Plaintiff became the owner, in fee simple, of the Property by deed from Tommy Leviner dated February 23, 1998, and recorded in the Office of the Clerk of Court for Marlboro County on February 23, 1998, in Book 373 at page 240.
10. The real property taxes on the Property were not paid for tax year 2017, and the Treasurer, upon information and belief, would be expected to assert that she levied on the Property on June 5, 2018, by mailing a notice to the Plaintiff (which notice was returned as undelivered) and that the Property was posted on October 5, 2018, as stated in the Tax Deed (hereinafter described).
11. When the taxes remained unpaid, the Treasurer scheduled a tax sale of the Property on November 5, 2018, and advertised the tax sale of the Property in the local newspaper, in

accordance with statute.

12. The Property was auctioned-off by the Treasurer on November 5, 2018; and according to the Tax Deed, the tax sale resulted in the purchase of the Property by Jerry Lewis with a high bid of \$3,800.00. Jerry Lewis assigned his bid to Backwoods, LLC.

13. The Treasurer purportedly attempted to notify the Plaintiff of the right of redemption (including the deadline to redeem and the redemption amount) by a notice dated August 27, 2019. This notice was purportedly mailed to the Plaintiff on September 19, 2019, as stated in the Tax Deed and as reflected on the Certified Mail Receipt in the Treasurer's tax sale file. This notice was returned undelivered.

14. After the redemption period ended, Jerry Lewis assigned his bid to Backwoods, LLC, and the Treasurer issued to Backwoods, LLC a Tax Deed to the Property, which deed was dated April 29, 2020, and was recorded in the Office of the Clerk of Court for Marlboro County on May 13, 2020, in Book 733 at page 53. A copy of said Tax Deed is attached hereto as Exhibit "A."

15. Subsequent to the issuance of the Tax Deed to Backwoods, LLC, it conveyed the subject property to Williams by Quit Claim Deed dated June 1, 2020, and recorded in the Office of the Clerk of Court for Marlboro County on June 4, 2020, in Book 733 at page 233.

16. Thereafter, Williams conveyed the subject property to the Kirbys by Quit Claim Deed dated February 15, 2021, and recorded in the Office of the Clerk of Court for Marlboro County on February 24, 2021, in Book 747 at page 137.

17. Williams, upon information and belief, holds a Mortgage on the subject property granted by the Kirbys, dated February 15, 2021, and recorded in the Office of the Clerk of Court for Marlboro County on February 24, 2021, in Book 714 at page 236.

FIRST CAUSE OF ACTION
(Overturn Tax Sale)

18. The Plaintiff realleges Paragraphs 1 through 17 above as fully as if repeated herein verbatim.

19. The Treasurer is charged with the responsibility of conducting tax sales in strict compliance with the requirements of Title 12, Chapter 51, Code of Laws of South Carolina, 1976, as amended.

20. Section 12-51-120 of the Code of Laws of South Carolina, as amended, requires, in relevant part, as follows:

Neither more than forty-five days nor less than twenty days before the end of the redemption period for real estate sold for taxes, the person officially charged with the collection of delinquent taxes shall mail a notice by “certified mail, return receipt requested-restricted delivery” as provided in Section 12-51-40(b) to the defaulting taxpayer and to a grantee, mortgagee, or lessee of the property of record in the appropriate public records of the county.

21. The notice required by said statute is intended to protect the property owner/taxpayer and is jurisdictional in nature.

22. The Treasurer failed to comply with said statute as the mailing date of the notice (September 19, 2019), relative to the last day to redeem the Property from the tax sale (November 6, 2019 – according to the notice), was mailed too early: it was mailed “more than forty-five days . . . before the end of the redemption period;” the mailing was at least 47 days “before the end of the redemption period.”

23. Since the said notice failed to comply strictly with §12-51-120, the Treasurer failed to give the statutorily required notice to the Plaintiff.

24. Since the tax sale was conducted in a manner which was not in strict compliance with Title 12, Chapter 51, the tax sale and the resulting deed are null and void.

25. The Plaintiff is informed and believes that it is entitled to an Order of this Court overturning the tax sale, declaring the Tax Deed to be void, declaring all deeds of the Property delivered, and all liens attached to the Property, subsequent to the Tax Deed to be void, and confirming the title of the Property in the name of the Plaintiff.

SECOND CAUSE OF ACTION
(Conversion)

26. The Plaintiff realleges Paragraphs 1 through 25 above as fully as if repeated herein verbatim.

27. Upon information and belief, Williams took possession of the Property in or about June 2020, and, upon information and belief, began removing and/or disposing of the Plaintiff's personal property.

28. Upon information and belief, the Kirbys took possession of the Property in or about February 2021, and, upon information and belief, continued removing and/or disposing of the Plaintiff's personal property.

29. The access of the Property by Williams and the Kirbys was without notice to the Plaintiff, was without the Plaintiff's permission, and afforded no opportunity to the Plaintiff to remove or otherwise protect its personal property, which had been left on the Property, thereby wrongfully depriving the Plaintiff of the rightful possession of its personal property.

30. Plaintiff is informed and believes that Williams and the Kirbys converted the Plaintiff's personal property to their own uses and benefit.

31. Such conversion involved, at least, the following list of personal property owned by the Plaintiff, to wit:

2- miller welding machines - \$2,000.00 each
1 - Lincoln mig welder - \$2,000.00
2 48" industrial fans - \$300.00/each

1 10" vice - \$1,800.00
 1 – hog head for pipe machine - \$800.00
 and shaft drive - \$300.00
 1 – victrailic groover - \$1,500.00
 1 – steel table - \$500.00
 1 – air compressor - \$1,500.00
 1 – Dewalt drill - \$150.00
 1 – game box on wheels - \$400.00
 1 – tripod - \$200.00
 2 – pipe jack stands - \$75.00/each
 1 – Dewalt electric drill - \$50.00
 1 – air hose reel - \$150.00
 1,000 ft. lead (welding) - \$3,000.00
 Bolt bin - \$1,200.00 – 1,500.00
 Conveyor belt drive motor - \$400.00
 Hammer drill - \$150.00
 1 – mobile job trailer with shelves (18 wheeler trailer) \$6,500.00
 1 large job box - \$500.00
 1 – 535 pipe machine - \$800.00
 2 – 4" gas valves (Honeywell) - \$450.00/each
 1 – oxy acetylene torch- \$300.00
 1 – 3 ton chain full - \$300.00
 1 – 1 ton chain full - \$225.00
 1 – man bracket - \$500.00
 100 ft. ¾" stainless steel all-thread - \$600.00
 2 – industrial spray guns - \$500.00/each
 2 – 4" gas valves - \$400.00/each
 All types/sizes of galvanized, stainless steel valves, strainers, clamps, tees, unims, complings, phalanges, bolts, nuts, of which the following are estimates:
 (15) 1" ss/sv – 90 - \$31.00/each
 (10) 1" ss/sv – 45 - \$28.00/each
 (15) 1" ss/se – flg. - \$45.00/each
 (8) 1" ss/sv – tee - \$42.00/each
 (6) 1" ss/sv – unims. - \$28.00/each
 Business records - \$5,000.00
 Personal and household items (pots, pans, dishes, glasses, towels, sheets, Christmas decorations, party supplies, lights, lamps, etc.) - \$1,000.00

32. The aforesaid list, although well-considered, is not intended to be exhaustive, and the Plaintiff reserves the right to expand the list when other items are recalled.

33. The conversion by Williams and the Kirbys was willful, wanton and in conscious disregard of the Plaintiff's rights in its personal property.

34. The Plaintiff is further informed and believes that Williams and Kirbys had an obvious and direct financial interest in the conversion.

35. The Plaintiff is informed and believes that it is entitled to a judgment against the Williams and Kirbys for its actual damages and for punitive damages in amounts to be determined at trial.

36. The Plaintiff is also informed and believes that it is entitled to the costs of this action, which should be included in said judgment.

WHEREFORE, having set forth its Complaint, the Plaintiff prays that:

- a. The tax sale be declared to be void;
- b. The Tax Deed conveying the Property to Backwoods LLC be declared to be void and cancelled of record;
- c. Each of the deeds and the mortgage conveying or encumbering the Property, which instruments were delivered subsequent to the Tax Deed, be declared to be void and cancelled of record;
- d. The Court confirm title to the Property in the name of the Plaintiff;
- e. A judgment be awarded to the Plaintiff on its cause of action for conversion; and
- f. For such other and further relief as this Court may determine to be just, equitable and proper.

Columbia, South Carolina
May 17, 2021

s/Leonard R. Jordan, Jr.
Leonard R. Jordan, Jr., #3221
JORDAN LAW FIRM
211 Veterans Road, Suite D
Columbia, South Carolina 29209
(803) 726-1950 Tel
(803) 726-1951 Fax
ljordan@ljordanlaw.com
Attorney for Plaintiff

EXHIBIT "A"

STATE OF SOUTH CAROLINA)

COUNTY OF MARLBORO)

Marlboro County

Assessor's ID

003-01-01-012

MAY 15 2020

TAX SALE

Doc ID: 000578950002 Type: LAN
 Kind: DEED
 Recorded: 05/13/2020 at 09:05:57 AM
 Fee Amt: \$29.80 Page 1 of 2
 Revenue Tax: \$14.80
 Instr# 202000000841
 Marlboro County, South Carolina
 Anita M. Williams Clerk of Court
 BK 733 PG 53-54

Pursuant to a tax execution issued on March 16, 2018, and as provided by Chapter 51 of Title 12 of the South Carolina Code of Laws, the below described property of R. S. & A. Piping, Inc., the defaulting taxpayers, was seized, levied upon, and sold for nonpayment of taxes.

Exclusive possession of the property was taken by mailing the notice on June, 5, 2018, and was received by the defaulting taxpayer on _____ or by posting the notice on the subject property on October 5, 2018. If made by the latter, notice was posted by Palmetto Posting, Inc.

Final notice was sent to the mortgage holder on _____ and/or to the defaulting taxpayer on September 19, 2019.

Advertisement of the sale of the property was made in the Herald-Advocate on October 18, 2018, October 25, 2018, and November 1, 2018.

The property was thereafter sold on November 5, 2018 at the Marlboro County Courthouse, at public outcry to Jerry Lewis for the sum of Three Thousand Eight Hundred and 00/100 (\$3,800.00) Dollars, being the highest bid, and assigned his bid to BACKWOODS LLC.

Twelve months have elapsed since the date of said sale, and the defaulting taxpayer or other parties interested after due notice have failed to redeem said property so sold for taxes.

NOW, THEREFORE, the Marlboro County Tax Collector (herein after referred to as "Grantor") for and in consideration of the sum of Three Thousand Eight Hundred and 00/100 (\$3,800.00) Dollars, to me paid by BACKWOODS LLC, 894 Highway 145 S., Chesterfield, SC 29709 (hereinafter referred to as "Grantee") has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee, his/her/their heirs and assigns, the following described property:

All that certain piece, parcel or lot of land, situate in the County of Marlboro, State of South Carolina, and being shown and designated as 0.41 ac on that certain plat entitled, "Plat of Lot, R. S. & A. Piping, Inc., Marlboro County, SC," dated February 11, 1998, made by John M. Jackson, PLS, and recorded in Plat Book 53 at Page 08 in the Office of the Clerk of Court for Marlboro County, SC.

Reference is craved to the abovementioned recorded plat for a more particular description as to metes, courses and bounds.

The above property was conveyed to R. S. & A. Piping, Inc., the defaulting taxpayer, by deed from Tommy Leviner, dated February 23, 1998, and recorded November 24, 1998, in Deed Book 0385 at Page 0278 in the office of the Clerk of Court for Marlboro County.

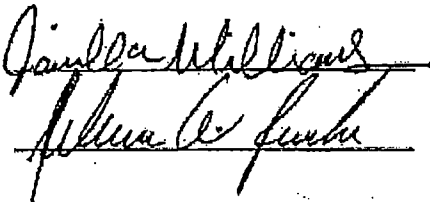
Tax Map Number: 003-01-01-062

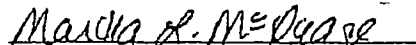
Together with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises mentioned unto the said Grantee, his/her/their heirs and assigns, according to the form, force and effect of the laws and usages of the State of South Carolina in such cases made and provided.

WITNESS my Hand and Seal this 29th day of April, 2020.

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**



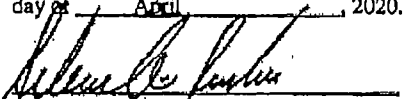

Martha L. McQuage
Tax Collector for Marlboro County

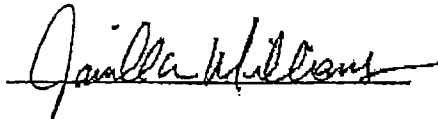
STATE OF SOUTH CAROLINA)
COUNTY OF MARLBORO)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Martha L. McQuage, Tax Collector for Marlboro County, sign, seal and as her act and deed, deliver the within-written Tax Sale Deed for the uses and purposes therein mentioned and that (s)he, with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me this 29th
day of April, 2020.


Notary Public for South Carolina
My Commission Expires: 9/19/2027



File #8576

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF MARLBORO	)	CASE NO.: 2021-CP-34-00150
	)	
RS&A PIPING & FABRICATION, INC.	)	
(AKA) R.S.A. PIPING, INC.,	)	
	)	
PLAINTIFF,	)	ANSWER OF THE DEFENDANT,
	)	TREASURER FOR MARLBORO
VS.	)	COUNTY
	)	(JURY TRIAL DEMANDED)
	)	
RONALD D. KIRBY, DYLAN T. KIRBY,	)	
TREASURER FOR MARLBORO COUNTY	)	
AND DANNY T. WILLIAMS,	)	
	)	
DEFENDANTS.	)	

The Defendant, Treasurer for Marlboro County, hereby answers the suit of the Plaintiff, subject to its Motion to Dismiss and reserving all rights thereunder, as follows:

I.

The Defendant, Treasurer for Marlboro County (County) denies each and every material allegation found in the Complaint which is not otherwise admitted qualified or explained herein.

II.

County asserts that the statute of limitation controlling actions to challenge a tax sale expires two years from the date of sale and that the Plaintiff's Complaint was filed outside of this two-year statute of limitations and, therefore, should be dismissed with prejudice.

III.

County asserts that Plaintiff has failed to name a proper party in that the Treasurer for Marlboro County is not a responsible party for the sale of real property for delinquent taxes and, therefore, the case should be dismissed for Plaintiff's failure to name a proper party.

IV.

County asserts that the Plaintiff lacks standing to bring this lawsuit since it alleges in its Complaint that it is a dissolved corporation.

V.

County admits, upon information and belief, the allegations contained in paragraph 1 of the Complaint.

VI.

County is without sufficient knowledge and information to admit or deny the allegations contained in paragraph 2 and demands strict proof thereof.

VII.

County denies the allegations contained in paragraph 3, except that the individual Treasurer, Delorice Barrington, is a citizen and resident of Marlboro County but denies that the Treasurer's job can be lumped in with the job of Auditor and Assessor and, further, the job of Treasurer, Auditor or Assessor has no involvement with the sale of real property for the collection of delinquent taxes in Marlboro County. This job is specifically and exclusively the job of the Delinquent Tax Collector for Marlboro County who has not been named a party to this lawsuit and, therefore, the same should be dismissed.

VIII.

County is without sufficient knowledge and information to admit or deny the allegations contained in paragraph 4 and demands strict proof thereof.

IX.

County admits so much of the allegations contained in paragraph 5 regarding the description of the action and of the real property in question but denies the remaining allegations contained therein.

X.

County admits the jurisdictional allegations contained in paragraph 6 and denies the remaining allegations contained therein.

XI.

County admits the allegations contained in paragraph 7.

XII.

Paragraph 8 of the Plaintiff's Complaint states a legal conclusion and, therefore, does not require a response. To the extent said paragraph may be construed to allege the fact as stated, County is without sufficient knowledge and information to admit or deny the same and demands strict proof thereof.

XIII.

County is without sufficient knowledge and information to admit or deny the allegations contained in paragraph 9 and demands strict proof thereof.

XIV.

County denies that the Treasurer levied against the property or mailed the notice to the Plaintiff. Such tasks are the exclusive jobs of the Delinquent Tax Collector for Marlboro County and, further, admits the portion of the paragraph that alleges the property was posted on the date as stated therein and in the tax deed.

XV.

County denies the allegations contained in paragraph 11 as stated but admits that the tax sale was advertised and conducted as stated therein.

XVI.

County denies the allegations contained in paragraph 12 as stated but admits that the property in question was auctioned on November 5, 2018 to the parties described therein.

XVII.

County denies the allegations as written in paragraph 13, except those notices were sent in accordance with the statute.

XVIII.

County denies the allegations contained in paragraph 14 as stated except it admits that a deed was issued to the parties as described therein, except that it denies the deed was issued by the Treasurer.

XIX.

County is without sufficient knowledge and information to admit or deny the allegations contained in paragraphs 15, 16 and 17 and would demands strict proof thereof.

XX.

Inasmuch as the allegations contained in paragraph 18 require a response, the same are denied unless otherwise qualified, admitted or explained herein above.

XXI.

County denies the allegations contained in paragraph 19 as written.

XXII.

The paragraph labeled 20 and 21 of the Complaint states a legal conclusion and, therefore, does not require a response. To the extent said paragraph may be construed to allege that there was failure to comply with any statutory or other requirements the same is denied.

XXIII.

County denies the allegations contained in paragraph 22 as written.

XXIV.

Plaintiff's paragraph labeled 23 of the Complaint, appears to state a legal conclusion and, therefore does not require a response. To the extent said paragraph may be construed to allege that there was failure to comply with any statutory or other requirement the same is denied.

XXV.

County denies the allegations contained in paragraph 24 and 25.

XXVI.

Inasmuch as the allegations contained in paragraph 26 require a response the same are denied unless otherwise admitted qualified or explained herein above.

XXVII.

County is without sufficient knowledge and information to admit or deny the allegations contained in paragraphs 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 and demands strict proof thereof, except that it denies that any the allegations contained therein apply to County.

XXVII.

County denies the "WHEREFORE" paragraph of the Complaint and all subsections thereof.

WHEREFORE, having set forth its Answer, the Defendant prays that the Complaint be dismissed with prejudice, and that it be awarded judgment against the Plaintiff for the costs and disbursements of this action and for such other and further relief as the court may deem just and proper.

McLeod & Ruffner

s/Andrew F. McLeod
Andrew F. McLeod, Bar #64130
Attorney for SCDOE
P.O. Drawer 1449
Cheraw, South Carolina 29520
(843) 537-5204
amcleod@hmandrllaw.com

June 15, 2021
Cheraw, South Carolina.

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF MARLBORO) FOURTH JUDICIAL CIRCUIT
) 2021-CP-13-_____

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

Plaintiff,

vs

Ronald D. Kirby, Dylan T. Kirby, Treasurer
For Marlboro County, and Danny T. Williams,

Defendants.

ANSWER FOR DEFENDANTS
RONALD D. KIRBY,
DYLAN T. KIRBY, AND
DANNY T. WILLIAMS
(JURY TRIAL DEMANDED)

TO: THE PLAINTIFF, RS&A PIPING & FIBRICATION, INC. A/K/A R. S. & A. PIPING, INC., AND LEONARD R. JORDAN, JR., ESQUIRE, AS ATTORNEY FOR THE PLAINTIFF:

The Defendants, Ronald D. Kirby, Dylan T. Kirby, and Danny T. Williams (herein after referred to as "Defendants"), answering the Plaintiff's Complaint would allege and show the following:

FOR A FIRST DEFENSE

1. That the Defendants deny each and every allegation contained in the Plaintiff's Complaint not hereinafter specifically admitted, explained or qualified and demands strict proof thereof.
2. That the Defendants do not have sufficient information to admit or deny the allegations contained in Paragraph 1 of the Plaintiff's Complaint, and demand strict proof thereof.
3. The Defendants admit the allegations contained in Paragraph 2 of Plaintiff's Complaint.
4. The Defendant does not have sufficient information to admit or deny the allegations contained in Paragraph 3 of Plaintiff's Complaint.

5. The Defendants admit the allegations contained in Paragraph 4 of Plaintiff's Complaint.
6. The Defendants admit the allegations contained in Paragraph 5 of Plaintiff's Complaint.
7. The Defendants admit the allegations contained in Paragraph 6 of Plaintiff's Complaint.
8. The Defendants admit the allegations contained in Paragraph 7 of Plaintiff's Complaint.
9. That the Defendants do not have sufficient information to admit or deny the allegations contained in Paragraph 8 of the Plaintiff's Complaint and demand strict proof thereof.
10. That the Defendants do not have sufficient information to admit or deny the allegations contained in Paragraph 9 of the Plaintiff's Complaint and demand strict proof thereof.
11. That the Defendants do not have sufficient information to admit or deny the allegations contained in Paragraph 10 of the Plaintiff's Complaint and demand strict proof thereof.
12. That the Defendants do not have sufficient information to admit or deny the allegations contained in Paragraph 11 of the Plaintiff's Complaint and demand strict proof thereof.
13. That the Defendants do not have sufficient information to admit or deny the allegations contained in Paragraph 12 of the Plaintiff's Complaint and demand strict proof thereof.
14. That the Defendants do not have sufficient information to admit or deny the allegations contained in Paragraph 13 of the Plaintiff's Complaint and demand strict proof thereof.

15. That the Defendants do not have sufficient information to admit or deny the allegations contained in Paragraph 14 of the Plaintiff's Complaint and demand strict proof thereof.
16. The Defendants admit the allegations contained in Paragraph 15 of Plaintiff's Complaint.
17. The Defendants admit the allegations contained in Paragraph 16 of Plaintiff's Complaint.
18. The Defendants admit the allegations contained in Paragraph 17 of Plaintiff's Complaint.
19. To the extent that an Answer is necessary to the allegations contained in Paragraph 18 of Plaintiff's Complaint, Defendants deny the allegations and demand strict proof thereof.
20. The Defendants deny the allegations contained in Paragraph 19 of Plaintiff's Complaint, Defendants deny the allegations and demand strict proof thereof.
21. The Defendants admit the allegations contained in Paragraph 20 of Plaintiff's Complaint.
22. The Defendants deny the allegations contained in Paragraph 21 of Plaintiff's Complaint, Defendants deny the allegations and require strict proof thereof.
23. That the Defendants do not have sufficient information to admit or deny the allegations contained in Paragraph 22 of the Plaintiff's Complaint and demand strict proof thereof.
24. The Defendants deny the allegations contained in Paragraph 23 of Plaintiff's Complaint, Defendants deny the allegations and demand strict proof thereof.
25. The Defendants deny the allegations contained in Paragraph 24 of Plaintiff's Complaint, Defendants deny the allegations and demand strict proof thereof.
26. The Defendants deny the allegations contained in Paragraph 25 of Plaintiff's Complaint, Defendants deny the allegations and demand strict proof thereof.

27. To the extent that an Answer is necessary to the allegations contained in Paragraph 26 of Plaintiff's Complaint, Defendants deny the allegations and demand strict proof thereof.
28. The Defendants admit the allegations contained in Paragraph 27 of Plaintiff's Complaint.
29. The Defendants admit the allegations contained in Paragraph 28 of Plaintiff's Complaint.
30. The Defendants deny the allegations contained in Paragraph 29 of Plaintiff's Complaint, Defendants deny the allegations and demand strict proof thereof.
31. The Defendants deny the allegations contained in Paragraph 30 of Plaintiff's Complaint, Defendants deny the allegations and demand strict proof thereof.
32. The Defendants deny the allegations contained in Paragraph 31 of Plaintiff's Complaint, Defendants deny the allegations and demand strict proof thereof.
33. The Defendants deny the allegations contained in Paragraph 32 of Plaintiff's Complaint, Defendants deny the allegations and demand strict proof thereof.
34. The Defendants deny the allegations contained in Paragraph 33 of Plaintiff's Complaint, Defendants deny the allegations and demand strict proof thereof.
35. The Defendants deny the allegations contained in Paragraph 34 of Plaintiff's Complaint, Defendants deny the allegations and demand strict proof thereof.
36. The Defendants deny the allegations contained in Paragraph 35 of Plaintiff's Complaint, Defendants deny the allegations and demand strict proof thereof.
37. The Defendants deny the allegations contained in Paragraph 36 of Plaintiff's Complaint, Defendants deny the allegations and demand strict proof thereof.

FOR A SECOND DEFENSE AND BY WAY OF AFFIRMATIVE DEEFENSE

(Failure to state a claim upon which relief can be granted)

38. The Defendants reiterate each and every allegation set forth above and is incorporated herein as if set forth verbatim.
39. On information and belief, the Complaint fails to state a claim upon which relief can be granted.

FOR A THIRD DEFENSE AND BY WAY OF AFFIRMATIVE DEFENSE:

(Unjust Enrichment)

40. That Defendants denies each and every allegation contained in the Plaintiff's Complaint not hereinafter specifically admitted, explained or qualified and demands strict proof thereof.
41. Plaintiff has been unjustly enriched because Defendants have been maintaining said Property and paid all taxes since Defendants acquired said Property. Plaintiff has not paid the property taxes since 2016, and has not challenged the validity of said tax deed since June 5, 2018.

**FOR A FOURTH DEFENSE AND BY WAY OF AFFIRMATIVE
DEFENSE**

(Statute of Limitations)

42. The Defendants reiterate each and every allegation set forth above and is incorporated herein as if set forth verbatim.
43. The Plaintiff's claims are barred by the applicable statute of limitations.

FOR A FIFTH DEFENSE AND BY WAY OF AFFIRMATIVE DEFENSE

(Laches, Waiver, and Estoppel)

44. The Defendants reiterate each and every allegation set forth above and is incorporated herein as if set forth verbatim.

45. The Defendants claims are barred by the doctrine of laches, waiver, and/or estoppels.

FOR A SIXTH DEFENSE AND BY WAY OF AFFIRMATIVE DEFENSE:

(Waiver)

46. That Defendants deny each and every allegation contained in the Plaintiff's Complaint not hereinafter specifically admitted, explained or qualified and demand strict proof thereof.

47. By Plaintiff knowing failure to assert, or to seek by any means to enforce, the alleged rights that are the subject of this action, Plaintiff have waived any claims for such relief, and their claims accordingly are barred by waiver.

FOR A SEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM

(Betterments)

48. In the event that final judgment is rendered in favor of Plaintiff, Defendant asserts that he has purchased the Property in this action, supposing at the time of such purchase that such title be good in fee simple.

49. Accordingly, Defendants is informed and believes that he shall be entitled to recover the full value of all improvements made upon the Property by Defendant in the manner described in S.C. Code Section 27-27-10, et seq. (as Amended).

**FOR A EIGHTH DEFENSE
AND BY WAY OF AFFIRMATIVE DEFENSE:**

(Unclean Hands)

50. That Defendants reincorporates and realleges all preceding paragraphs of his Answer as if fully repeated herein.

51. That Plaintiff's claims are barred by the doctrine of unclean hands.

FOR AN ADDITIONAL DEFENSE:

(Reservation and Non-Waiver of Additional Affirmative Defenses)

52. That Defendants reincorporates and realleges all preceding paragraphs of his Answer as if fully repeated herein.
53. The Defendants reserves any additional and future defenses, cross claims, and third party claims as may be revealed by additional information during the course of discovery and investigation and as is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, the Defendants Prays:

- A. That the Complaint of the Plaintiff be dismissed;
- B. That a Jury Trial be Demanded;
- C. That this Honorable Court shall find Plaintiff shall pay Defendant's reasonable attorneys fees; and
- D. For such other and further relief as this Honorable Court shall deem to be just and proper.

SPENCER LAW FIRM

s/ William O. Spencer, Jr.

William O. Spencer, Jr.
Allison Truitt Burch
Attorneys for the Defendant
P. O. Box 190 – 301 West Main Street
Chesterfield, S.C. 29709
(843) 623-2144

Chesterfield, South Carolina.
June 15, 2021.

STATE OF SOUTH CAROLINA)
COUNTY OF MARLBORO)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2021-CP-34-00150

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

Plaintiff,

-vs-

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

Defendants.

**REPLY TO COUNTERCLAIM
OF RONALD D. KIRBY, DYLAN T.
KIRBY AND DANNY T. WILLIAMS**

The Plaintiff, RS&A Piping & Fabrication, Inc. a/k/a R. S. & A. Piping, Inc., hereby responds to the Counterclaim contained in the Answer for Defendants Ronald D. Kirby, Dylan T. Kirby, and Danny T. Williams, and it would show this Honorable Court as follows:

1. Responding to Paragraphs 48 and 49, the Plaintiff is without sufficient knowledge to form a belief regarding the said allegations, and it therefore denies same and demands strict proof thereof.

2. Further responding to Paragraph 48 and 49, the Plaintiff asserts that this issue should only come before the Court after the relief requested in the Plaintiff's Complaint is granted.

WHEREFORE, having fully replied to Defendants' Counterclaim, the Plaintiff prays that the Court entertain the same only after the relief requested in the Complaint is granted.

Columbia, South Carolina
July 8, 2021

s/Leonard R. Jordan, Jr.
Leonard R. Jordan, Jr., #3221
JORDAN LAW FIRM
211 Veterans Road, Suite D
Columbia, South Carolina 29209
(803) 726-1950 Tel
(803) 726-1951 Fax
ljordan@ljordanlaw.com
Attorney for Plaintiff

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

DEC 19 2022

SC Court of Appeals

Roger E. Henderson, Presiding Judge

Case No. 2021-CP-34-00150

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

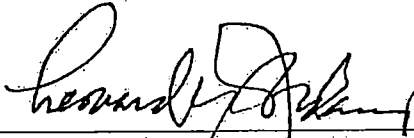
v.

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

NOTICE OF APPEAL

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

December 19, 2022


Leonard R. Jordan, Jr., #3221
JORDAN LAW FIRM
211 Veterans Road, Suite D
Columbia, South Carolina 29209
(803) 726-1950 Tel
(803) 726-1951 Fax
ljordan@ljordanlaw.com
Attorney for Appellant

Other Counsel of Record:

Allison Truitt Burch, Esquire
Andrew F. McLeod, Esquire

MARLBORO COUNTY
DELINQUENT TAX OFFICE
P O BOX 419
BENNETTSVILLE, SC 29512
000-000-0000

DATE: AUGUST 27, 2019

TO: R S & A PIPING INC
C/O PAM JACKSON
PO BOX 428
WALLACE SC 29596

FROM: MARTHA L MCQUAGE
MARLBORO COUNTY TAX COLLECTOR

RE: SALE OF PROPERTY FOR DELINQUENT TAXES

MAP # 003-01-01-062 DISTRICT

ITEM# 18-00899

2049 SEABOARD RD

14 MI NW BENN

5259 9502 2000 DTTE 5007

U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6.75
00899 003-01-01-062 USPS R	
R S & A PIPING INC	
PO BOX 428	
WALLACE SC 29596	

BENNETTSVILLE SC 29512
Postmark
SEP 19 2019

This letter is to advise you that the property listed above was sold at public auction for delinquent taxes on NOVEMBER 05, 2018. Section 12-51-90 of the South Carolina Code of Laws provides that the defaulting taxpayer, any grantee from the owner or any mortgage or judgement creditor may redeem the above property within (12) months from the date of the delinquent tax sale by paying to this office delinquent taxes, penalties, and costs together with the appropriate percent of interest on the total bid price at the tax sale. If you wish to redeem the above described property, the redemption amount will be as listed below:

\$ <u>1,659.15</u>	(03%) due on or before <u>FEBRUARY 06, 2019</u>
\$ <u>1,773.15</u>	(06%) due on or before <u>MAY 06, 2019</u>
\$ <u>1,887.15</u>	(09%) due on or before <u>AUGUST 06, 2019</u>
\$ <u>2,001.15</u>	(12%) due on or before <u>NOVEMBER 06, 2019</u>

FINAL DATE TO REDEEM THE ABOVE PROPERTY IS ON/BEFORE NOVEMBER 06, 2019 !!!

If you fail to redeem the property by said date, a tax deed will be issued to the successful bidder. **No Checks!!! Money Order, Cashiers Check, or Cash Only.**

NO CERTIFICATE OF TITLE REQUESTED OR PROVIDED FOR DEPOSIT WITH, P.A.
COUNTY AND CLERK OF COURT, P.A.
STATE OF SOUTH CAROLINA
COUNTY OF MARLBORO
Dennettsville, SC 29512-0801
16 N Liberty Street, Walling & East, P.A.
Dennettsville, SC 29512-0555

FILED, RECORDED, INDEXED
02/23/1998 01:46
Rec Fee: 10.00 St Fee: 2.60
Co Fee: 1.10 Pages: 4
Clerk of Court
William B. Funderburk

Know All Men by These Presents.

That I, Tommy Leviner

In the State aforesaid, for and - - - in consideration of the
sum of NINE HUNDRED (\$900.00) DOLLARS

to me paid by R.S. & A. Piping, Inc., c/o Mrs. Pamela Jackson
P. O. Box 373, Wallace, SC 29596

in the State aforesaid

have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release
unto the said R. S. & A. Piping, Inc., its successors & assigns:

All that certain piece, parcel or lot of land, situate in the
County of Marlboro, State of South Carolina, and being shown and
designated as 0.41 ac on that certain plat entitled, "Plat of Lot,
R. S. & A. Piping, Inc., Marlboro County, SC," dated February 11,
1998, made by John M. Jackson, PLS, and recorded in Plat Book 53 at
Page 08 in the Office of the Clerk of Court for Marlboro County,
SC.

Reference is craved to the abovementioned recorded plat for a more
particular description as to metes, courses and bounds.

Tax Map Number is 003-01-01-035.

003-01-01-062

FEB 24 1998

FILED, RECORDED, INDEXED
11/24/1998 01:01:22PM
Rec Fee: 10.00 St Fee: 2.60
Co Fee: 1.10 Pages: 4
Clerk of Court
William B. Funderburk
0000536 Bk: 0373 Pg: 0240

0003788 Bk: 0385 Pg: 0278

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said R. S. & A. Piping, Inc., its successors,

XNNM and Assigns forever.

And I do hereby bind myself and my - - - Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said R. S. & A. Piping, Inc., its successors

Heirs and Assigns, against me and my - - - Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

Witness My Hand and Seal
this 23 day of Feb. in
the year of our Lord one thousand nine hundred
and ninety-eight and
in the two hundred and twenty-first
year of Sovereignty and Independence of the
United States of America,

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Dorothy E. Wood
Walter C. Wood

Tommy Leviner (Seal)
____ (Seal)
____ (Seal)
____ (Seal)

0000536 Bks 0373 Pgs 0240

0003788 Bks 0385 Pgs 0279

STATE OF SOUTH CAROLINA)

COUNTY OF MARLBORO)

Marlboro County

Assessor's ID

003-01-01-012

TAX SAL

MAY 15 2020

Doc ID: 000576950002 Type: LAN
Kind: DEED
Recorded: 05/13/2020 at 09:05:57 AM
Fee Amt: \$29.80 Page 1 of 2
Revenue Tax: \$14.80
Instr# 202000000841
Marlboro County, South Carolina
Anita M. Williams Clerk of Court

BK 733 PG 53-54

Pursuant to a tax execution issued on March 16, 2018, and as provided by Chapter 51 of Title 12 of the South Carolina Code of Laws, the below described property of R. S. & A. Piping, Inc., the defaulting taxpayers, was seized, levied upon, and sold for nonpayment of taxes.

Exclusive possession of the property was taken by mailing the notice on June, 5, 2018, and was received by the defaulting taxpayer on _____ or by posting the notice on the subject property on October 5, 2018. If made by the latter, notice was posted by Palmetto Posting, Inc.

Final notice was sent to the mortgage holder on _____ and/or to the defaulting taxpayer on September 19, 2019.

Advertisement of the sale of the property was made in the Herald-Advocate on October 18, 2018, October 25, 2018, and November 1, 2018.

The property was thereafter sold on November 5, 2018 at the Marlboro County Courthouse, at public outcry to Jerry Lewis for the sum of Three Thousand Eight Hundred and 00/100 (\$3,800.00) Dollars, being the highest bid, and assigned his bid to BACKWOODS LLC.

Twelve months have elapsed since the date of said sale, and the defaulting taxpayer or other parties interested after due notice have failed to redeem said property so sold for taxes.

NOW, THEREFORE, the **Marlboro County Tax Collector** (herein after referred to as "Grantor") for and in consideration of the sum of **Three Thousand Eight Hundred and 00/100 (\$3,800.00) Dollars**, to me paid by **BACKWOODS LLC**, 894 Highway 145 S., Chesterfield, SC 29709 (hereinafter referred to as "Grantee") has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee, his/her/their/its heirs and assigns, the following described property:

All that certain piece, parcel or lot of land, situate in the County of Marlboro, State of South Carolina, and being shown and designated as 0.41 ac on that certain plat entitled, "Plat of Lot, R. S. & A. Piping, Inc., Marlboro County, SC," dated February 11, 1998, made by John M. Jackson, PLS, and recorded in Plat Book 53 at Page 08 in the Office of the Clerk of Court for Marlboro County, SC.

Reference is craved to the abovementioned recorded plat for a more particular description as to metes, courses and bounds.

COPY

The above property was conveyed to R. S. & A. Piping, Inc., the defaulting taxpayer, by deed from Tommy Leviner, dated February 23, 1998, and recorded November 24, 1998, in Deed Book 0385 at Page 0278 in the office of the Clerk of Court for Marlboro County.

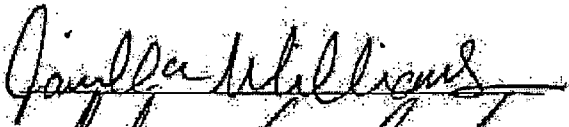
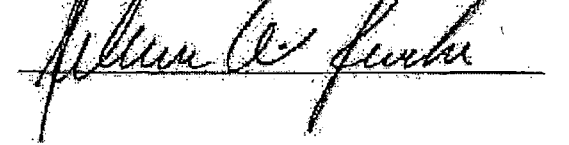
Tax Map Number: 003-01-01-062

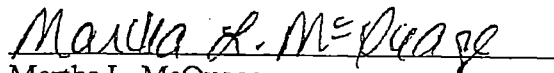
Together with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises mentioned unto the said Grantee, his/her/their heirs and assigns, according to the form, force and effect of the laws and usages of the State of South Carolina in such cases made and provided.

WITNESS my Hand and Seal this 29th day of April, 2020.

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**


Martha L. McQuage
Tax Collector for Marlboro County

STATE OF SOUTH CAROLINA)
COUNTY OF MARLBORO)

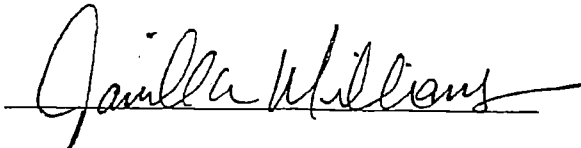
PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Martha L. McQuage, Tax Collector for Marlboro County, sign, seal and as her act and deed, deliver the within-written Tax Sale Deed for the uses and purposes therein mentioned and that (s)he, with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me this 29th

day of April, 2020.


Notary Public for South Carolina
My Commission Expires: 4/19/2027



RTN. Thomas E. Ingram, Jr.
Post Office Drawer 865
Cheraw, South Carolina 29520

Marlboro County
Assessor's ID
003-01-01-002

JUN 05 2020

TITLE NOT ABSTR

STATE OF SOUTH CAROLINA)

QUIT CLAIM DEE

COUNTY OF MARLBORO)

Doc ID: 000577810005 Type: LAN
Kind: DEED
Recorded: 06/04/2020 at 10:35:46 AM
Fee Amt: \$33.50 Page 1 of 5
Revenue Tax: \$18.50
Instr# 202000000943
Marlboro County, South Carolina
Anita M. Williams Clerk of Court
BK 733 PG 233-237

KNOW ALL MEN BY THESE PRESENTS, that Backwoods LLC, hereinafter the "Grantor", for and in consideration of the sum of FOUR THOUSAND EIGHT HUNDRED AND 00/100 DOLLARS (\$4,800.00) to it paid by Danny T. Williams, hereinafter the "Grantee", the receipt whereof is hereby acknowledged, have granted, bargained, sold and released and by these presents does hereby grant, bargain, sell and release unto the said Grantee, his heirs and assigns forever, the following described property:

SEE ATTACHED EXHIBIT A

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in any wise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, his heirs and assigns forever, so that neither the said Grantor, nor its successors or assigns, nor any other person or persons, claiming under it or them, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part or parcel thereof, forever.

WITNESS the Hand and Seal of the Grantor this 1st day of June in the year of our Lord Two Thousand Twenty and in the Two Hundred and Forty-Fourth year of the Sovereignty and Independence of the United States of America.

WITNESSETH:

BACKWOODS LLC

[Signature]
[Signature]

[Signature]
By: Jerry C. Lewis
Its: Manager

ATTEST:

[Signature]
Secretary

1

F SOUTH CAROLINA)
)
OF CHESTERFIELD)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within
ckwoods LLC, by Jerry C. Lewis, its Manager, sign, seal, and as his act and deed, deliver the within
ed for the uses and purposes therein mentioned and that s/he with the other witness whose signature
rove witnessed the execution thereof.

Apw K. Adams

o before me this 1st
e, 2020

[Signature]
. Ingram, Jr.
blic for South Carolina
ission Expires: 01/06/2026

Corporate Resolution

HEREAS, at a meeting of the members of Backwoods LLC, held after due and proper notice, at the company on the 21st day of May, 2020, the following resolution was unanimously adopted:

"BE IT RESOLVED that the company shall sell certain real estate generally described on Exhibit A attached hereto, to Danny Williams on such terms as may be negotiated by the Manager of the company.

RESOLVED FURTHER, that Jerry C. Lewis, the Manager of the company, is hereby authorized to execute and deliver on behalf of the company any and all documents necessary to effectuate the transfer.

There being no further business, the meeting was adjourned.

The undersigned Secretary for Backwoods LLC, do hereby certify the above to be a true and correct copy of the minutes taken and the resolution passed at the meeting held on the date and at the place herein mentioned.

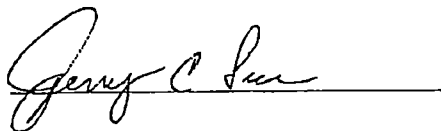
A handwritten signature in cursive script, appearing to read "Jerry C. Lewis", is written over a horizontal line.

EXHIBIT A

. that certain piece, parcel or lot of land, situate in the County of Marlboro, State of South Carolina, and being designated as 0.41 acre on that certain plat entitled, "Plat of Lot, R. S. & A. Piping, Inc, Marlboro County, February 11, 1998, made by John M. Jackson, PLS, and recorded in Plat Book 53 at Page 08 in the Office of f Court for Marlboro County, SC.

ference is craved to the abovementioned recorded plat for a more particular description as to metes, courses and

e within described property was conveyed to Backwoods LLC by deed of Martha L. McQuage, Tax
for Marlboro County, South Carolina, dated April 29, 2020 and recorded May 13, 2020 in Deed Book
es 53-54, Office of Clerk of Court, Marlboro County, South Carolina.

MARLBORO COUNTY, SOUTH CAROLINA
TAX ASSESSOR'S MAP NO.:
003-01-01-062

RTN: Thomas E. Ingram, Jr.
Post Office Drawer 865
Cheraw, South Carolina 29520

Doc ID: 000596250004 Type: LAN
Kind: DEED
Recorded: 02/24/2021 at 10:37:34 AM
Fee Amt: \$114.90 Page 1 of 4
Revenue Tax: \$99.90
Instr# 202100000368
Marlboro County, South Carolina
Anita M. Williams Clerk of Court

TITLE NOT ABSTR BK 747 PG 137-140

STATE OF SOUTH CAROLINA)
)
COUNTY OF MARLBORO)

QUIT CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, that Danny T. Williams, hereinafter the "Grantor", for and in consideration of the sum of TWENTY SEVEN THOUSAND AND 00/100 DOLLARS (\$27,000.00) to him paid by Ronald D. Kirby and Dylan T. Kirby, hereinafter the "Grantees", the receipt whereof is hereby acknowledged, have granted, bargained, sold and released and by these presents does hereby grant, bargain, sell and release unto the said Grantees, their heirs and assigns forever, the following described property:

SEE ATTACHED EXHIBIT A

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in any wise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantees, their heirs and assigns forever, so that neither the said Grantor, nor his heirs or assigns, nor any other person or persons, claiming under him or them, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part or parcel thereof, forever.

WITNESS the Hand and Seal of the Grantor this 15th day of February in the year of our Lord Two Thousand Twenty-One and in the Two Hundred and Forty-Fifth year of the Sovereignty and Independence of the United States of America.

WITNESSETH:

Adam K. Adam

Greg R. Williams

Danny T. Williams By
Lauren Danielle Williams
his Attorney-in-Fact
Danny T. Williams, by Lauren Danielle Williams,
his Attorney-in-Fact

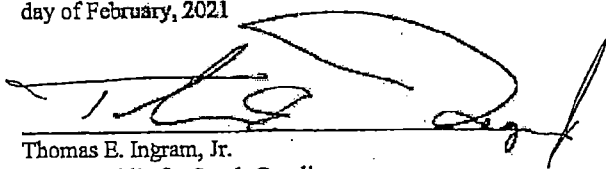
STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Danny T. Williams, by Lauren Danielle Williams, his Attorney-in-Fact, sign, seal, and as his act and deed, deliver the within written deed for the uses and purposes therein mentioned and that s/he with the other witness whose signature appears above witnessed the execution thereof.

Ap D K. Adams

SWORN to before me this 15th
day of February, 2021



Thomas E. Ingram, Jr.
Notary Public for South Carolina
My Commission Expires: 01/06/2026

EXHIBIT A

All that certain piece, parcel or lot of land, situate in the County of Marlboro, State of South Carolina, and being shown and designated as 0.41 acre on that certain plat entitled, "Plat of Lot, R. S. & A. Piping, Inc. Marlboro County, SC," dated February 11, 1998, made by John M. Jackson, PLS, and recorded in Plat Book 53 at Page 08 in the Office of the Clerk of Court for Marlboro County, SC.

Reference is craved to the abovementioned recorded plat for a more particular description as to metes, courses and bounds.

The within described property was conveyed to Danny T. Williams by deed of Backwoods LLC, dated June 1, 2020 and recorded June 4, 2020 in Deed Book 733 at Pages 233-237, Office of Clerk of Court, Marlboro County, South Carolina.

MARLBORO COUNTY, SOUTH CAROLINA
TAX ASSESSOR'S MAP NO.:
003-01-01-062

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

JUL 25 2023

SC Court of Appeals

Roger E. Henderson, Presiding Judge

Case No. 2021-CP-34-00150

Appellate Case No. 2022-001791

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

v.

Ronald D. Kirby, Dylan T. Kirby, Treasurer for Marlboro County and Danny T. Williams, ... Respondents.

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.



Leonard R. Jordan, Jr. #3221
JORDAN LAW FIRM
211 Veterans Road, Suite D
Columbia, South Carolina 29209
(803) 726-1950 Tel
(803) 726-1951 Fax
ljordan@ljordanlaw.com
Attorney for Appellant