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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MARLBORO COUNTY
Roger E. Henderson, Circuit Court Judge

Appellate Case No. 2022-001791
Case No. 2021-CP-34-0150

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.

BRIEF OF RESPONDENT TREASURER FOR MARLBORO COUNTY

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STATEMENT OF THE CASE

This is an action brought by the Appellant RS&A Piping & Fabrication, Inc. a/k/a R.S. & A Piping, Inc. to set aside a tax sale conducted by the Marlboro County Delinquent Tax Collector. The Appellant failed to pay its property taxes for the tax year 2017. As a result, after proper notice, a tax sale for the subject property (Tax Map Number 003-01-01-062) was conducted on November 5, 2018.

By statute, the Appellant, as the defaulting taxpayer, had a right of redemption for one year after the tax sale. The redemption notice as required by Section 12-51-120 was mailed by the Delinquent Tax Collector on September 19, 2019. The Appellant alleges that the redemption notice was mailed two or three days *early* – on a Thursday rather than on the ensuing Saturday or Sunday – based on the language of Section 12-51-120. The one-year redemption period expired without the Appellant paying the taxes due, and as a result, a tax deed was issued to Backwoods, LLC, which was an assignee from Jerry Lewis, who was the highest bidder.

More than two years after the tax sale, the Appellant filed suit on May 17, 2021. The Complaint includes a cause of action seeking to set aside the tax sale as well as a cause of action for conversion of personal property allegedly located at the subject property. The conversion claim is not directed at the Delinquent Tax Collector. The suit was filed against the Respondent Treasurer of Marlboro County in addition to the other Respondents who are subsequent owners of the subject property.

The Respondent Treasurer of Marlboro County filed a motion to dismiss on two grounds: (1) that the Treasurer of Marlboro County is not a proper party, and (2) that the Appellant's action to set aside the tax sale was filed more than two years after the date of the tax sale and was

time-barred by operation of Sections 12-51-160 and 12-51-90(C) of the South Carolina Code of Laws. That motion was heard by Circuit Court Judge Roger E. Henderson on August 31, 2021. By Order filed November 4, 2021, Judge Henderson granted the motion and dismissed the Appellant's Complaint against all Respondents as time-barred. (R. 1-3).

The Appellant thereafter filed a motion for reconsideration pursuant to Rule 59(e), SCRCP. An additional hearing was held on that motion on September 29, 2022. Thereafter, by Order filed November 21, 2022, Judge Henderson denied the Rule 59(e) motion. (R. 4). The issue raised as to the proper party was resolved by the parties by consent although an order substituting the Marlboro County Delinquent Tax Collector in place of the Treasurer of Marlboro County did not get filed until December 20, 2022. (R. 5-6). The Order denying the Rule 59(e) motion already reflected the "Tax Collector for Marlboro County" in the caption. (R. 4).

The Appellant filed a timely appeal to this Court.

STANDARD OF REVIEW

An action to set aside a tax deed is in equity. *South Carolina Federal Savings Bank v. Atlantic Land Title Co., Inc.,* 314 S.C. 292, 442 S.E.2d 630, 631 (Ct. App. 1994). "When reviewing an equitable action heard first by a master-in-equity and appealed directly to an appellate court, the court should review the facts in accordance with its own view of the preponderance of evidence in the record." *Osterneck v. Osterneck*, 374 S.C. 573, 649 S.E.2d 127, 129 (Ct. App. 2007). However, "[t]his broad scope of review does not require the appellate court to ignore the fact that the master was in a better position to assess the credibility of witnesses and assign weight to their testimony." *Id*.

"Questions of statutory interpretation are questions of law, which this Court is free to decide without any deference to the tribunal below." *Duke Energy Corp. v. South Carolina Department of Revenue*, 415 S.C. 351, 782 S.E.2d 590, 592 (2016). Thus, the standard of review for issues of statutory interpretation is *de novo.*

ARGUMENTS

I. The Circuit Court correctly ruled that the Appellant's action to set aside the tax sale is time-barred by operation of Sections 12-51-160 and 12-51-90(C) of the South Carolina Code of Laws.

The Appellant RS&A Piping & Fabrication, Inc. brought this action to overturn a tax sale that occurred on November 18, 2018. This action, however, was not filed until May 17, 2021, which, as the Circuit Court correctly found, was more than two years after the date of the tax sale and is therefore time-barred pursuant to the provisions of Alternate Procedure for Collection of Property Taxes Act, S.C. Code Ann. § 12-51-40, *et seq*.

The Circuit Court based its ruling on two statutory provisions that must be read *in pari matria*: Section 12-51-160 and Section 12-51-90(C). Section 12-51-160 provides, in pertinent 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)." S.C. Code Ann. § 12-51-160. Section 12-51-90(C), which is directly referenced in Section 12-51-160, provides as follows: "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." S.C. Code Ann. § 12-51-90(C).

In its briefs, the Appellant relies on numerous cases that apply the statute of limitations set forth in Section 12-51-160 as it was written prior to the enactment of 2006 Act No. 238, which adopted Section 12-51-90(C) as a new provision and which significantly amended Section 12-51-160. The proper interpretation of the so-called "statute of limitations" in Section 12-51-

160 cannot be accurately discerned from the pre-2006 amendment case law. Yet, the Appellant includes no discussion of – nor even any mention of – the significant changes in the law resulting from the enactment of 2006 Act No. 238. Of course, none of the decisions of this Court that have been issued since the 2006 Act have analyzed the changes in Section 12-51-160 that were enacted in 2006.

Therefore, this appeal presents this Court with the opportunity to take a much-needed fresh look at timeliness restrictions applicable to an action to set aside a tax sale so as to give proper effect to the 2006 amendments, together with an infusion of some common sense and logic and perhaps even an equitable maxim or two, to allow for a proper and more current view of these cases. From the outset, the Appellant does not dispute that it did not file its action to set aside the tax sale within the two-year window beginning with the tax sale that occurred on November 18, 2018. Instead, the Appellant makes two arguments based on outdated case law: first, the limitations bar does not apply where there is a "jurisdictional defect" in the tax sale, and second, that the limitations bar begins to run when the defaulting taxpayer is ousted from possession. Both of those positions lack merit for the reasons discussed below.

As indicated, a proper legal analysis should start with consideration and analysis of changes resulting from the 2006 Act. The title to 2006 Act No. 238 states as follows:

> AN ACT … TO AMEND SECTION 12–51–90, AS AMENDED, RELATING TO REDEMPTION OF REAL PROPERTY FOLLOWING ITS SALE FOR DELINQUENT TAXES, SO AS TO PROVIDE THAT THE TAX DEED IS INCONTESTABLE TWELVE MONTHS AFTER ISSUE; TO AMEND SECTION 12–51–160, RELATING TO TAX DEEDS, SO AS TO CONFORM THE TIME AFTER WHICH THE DEED IS INCONTESTABLE TO THE TIME PROVIDED IN THE AMENDMENT TO SECTION 12–51–90 CONTAINED IN THIS ACT.

See, 2006 Act No. 238. The body of 2006 Act No. 238 then provides as follows:

Tax deeds, time after which incontestable

SECTION 3.

A. Section 12–51–90 of the 1976 Code, as last amended by Act 89 of 2001, is further amended by adding at the end:

<< SC ST § 12–51–90 >>

(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.

B. Section 12–51–160 of the 1976 Code is amended to read:

<< SC ST § 12–51–160 >>

Section 12–51–160. 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).

See, 2006 Act No. 238, § 3. This demonstrates that Section 12-51-90(C) did not previously exist; that provision was adopted anew in 2006. Then, Section 12-51-160 was amended to specifically apply the incontestable provision adopted as part of Section 12-51-90(C).

The obvious intent of the General Assembly in enacting Section 3 of 2006 Act No. 238 is spelled out in the title to the Act: Section 3 was intended to make a tax sale "incontestable" two years after the date of the tax sale and one year after the redemption period ends. In *Whetstone v. South Carolina Department of Highways and Public Transportation*, 272 S.C. 324, 252 S.E.2d 35 (1979), the Supreme Court stated its interpretation of a statute was supported by the "underlying legislative history as exemplified by the original title of the pre-codified Act." 252 S.E.2d at 37. *See also, Kennedy v. South Carolina Retirement System*, 345 S.C. 339, 549 S.E.2d

243, 248 (2001) (where the Court looked at the title of an Act to glean legislative intent); *Demas v. Convention Motor Inns*, 268 S.C. 186, 232 S.E.2d 724, 726 (1977) (noting that it is proper to discern legislative intent from the title of an Act); *Duvall v. South Carolina Budget & Control Board*, 377 S.C. 36, 659 S.E.2d 125, 130 (2008) (same).

That intent is further made evident by reference to the General Assembly's adopted heading to Section 3 which states "Tax deeds, time after which incontestable." Inexplicably, the Code Commissioner did not amend the heading to Sections 12-51-160 and 12-51-90 as codified in the Code of Laws to include the heading that was actually adopted by the General Assembly. However, that is immaterial. *See*, S.C. Code Ann. § 2-13-175 ("The catch line heading or caption which immediately follows the section number of any section of the Code of Laws must not be deemed to be part of the section and must not be used to construe the section more broadly or narrowly than the text of the section would indicate. The catch line or caption is not part of the law and is merely inserted for purposes of convenience to the person using the Code"). The heading provided by the General Assembly demonstrates the legislative intent to make a tax sale "incontestable" after two years.

In effect, the provisions of 2006 Act No. 238 have made it clear that the limitations bar set forth in Sections 12-51-160 and 12-51-90 is actually a statute of repose rather than what is typically referred to as a statute of limitations. In 2005, this Court in *Corbin v. Carlin* 366 S.C. 187, 620 S.E.2d 745 (Ct. App. 2005), had already recognized that Section 12-51-160, prior to any amendment, "appears to operate as a statute of repose." 620 S.E.2d at 748, n.2. But this Court left that question unanswered explaining "[w]hether the statute is one of limitations or one of repose, however, is not a question we must address in order to decide the issues on appeal." *Id*. Thus, the legal question remained unresolved, that is, until the enactment of 2006 Act No.

238, when the General Assembly removed any uncertainty and specifically declared as public policy that a tax sale becomes "incontestable" two years after the date of the tax sale. That clearly made the provision a statute of repose.

The Supreme Court has explained the distinction between a statute of limitations and a statute of repose as follows: "A statute of limitations is a procedural device that operates as a defense to limit the remedy available from an existing cause of action. A statute of repose creates a substantive right in those protected to be free from liability after a legislatively-determined period of time." *Langley v. Pierce*, 313 S.C. 401, 438 S.E.2d 242, 243 (1993). "[A] statute of repose is typically an absolute time limit beyond which liability no longer exists and is not tolled for any reason because to do so would upset the economic balance struck by the legislative body." *Id.* Thus, a statute that makes a matter "incontestable" after a certain period of time is a statute of repose in that it sets the absolute time limit for bringing a particular cause of action.

It is apparent that the General Assembly was acting in response to the *Corbin* decision with the enactment of 2006 Act No. 238. In *Corbin, supra*, this Court opined that the pre-2006 version of Section 12-51-160 was intended by the legislature "to create a time limit during which one who lost title to property through a tax sale, *after proper notice*, may attempt to regain title." 620 S.E.2d at 749. (Emphasis added). The General Assembly sought to correct the italicized language which judicially creates an exception to the two-year limitations period. The General Assembly clarified with the 2006 amendments that Section 12-51-160 and the newly adopted Section 12-51-90(C) make a tax sale "incontestable" two years after the date of the tax sale, regardless of whether there was "proper notice." That is evident from the plain and ordinary meaning of the term "incontestable" which is defined as "not to be contested" and "indisputable"

and "unquestionable." *See*, Webster's New World College Dictionary, 4th Edition. That is further evident from the explicit language of Section 12-51-90(C) making "the tax deed issued … incontestable *on procedural or other grounds*." *See*, S.C. Code Ann. § 12-51-90(C). (Emphasis added). "Other grounds" is an obvious reference to the "jurisdictional defect" language that was erroneously used years ago by the Supreme Court and has remained in the jurisprudence ever since.[1] It is well settled that the General Assembly's subsequent amendment of a statute can be considered clarification of the legislative intent. *See, Buist v. Huggins*, 367 S.C. 268, 625 S.E.2d 636, 640 (2006) (noting that a subsequent statutory amendment may be interpreted as clarifying statutory intent); *Stuckey v. State Budget & Control Board*, 339 S.C. 397, 529 S.E.2d 706, 708 (2000) ("[a] subsequent statutory amendment may be interpreted as clarifying original legislative intent"). And that is precisely the purpose of Section 3 of 2006 Act No. 238 – to clarify that a tax sale cannot be contested on any basis after the passage of two years from the date of the tax sale. Hence, Sections 12-51-160 and 12-51-90(C) create a statute of repose.

This interpretation of Sections 12-51-160 and 12-51-90(C), as applied by the Circuit Court in this case, is also consistent with the recognized need for some finality and certainty, which is particularly important in real property transactions and ownership. There must be some finality. The Supreme Court recognized that need as far back as 1946, when the Court observed

[1] In recognition that the terms "jurisdictional" and "subject matter jurisdiction" have been misused and misapplied in many contexts over the years, the South Carolina appellate courts have clarified over the past decade that "[a] court's subject matter jurisdiction is determined by whether it has the authority to hear the type of case in question." *Baddourah v. McMaster*, 433 S.C. 89, 856 S.E.2d 561, 565 (2021). The use of the term "jurisdictional defect" in the context of a tax sale seems to be a misnomer. A tax sale does not require or even involve a court unless there is an action filed to set aside a tax sale or potentially an action to quiet title, and even when an action is filed, the statutory procedures followed for the tax sale have no impact on whether the court hearing such an action has jurisdiction or not. This presents an additional reason why a fresh look is needed at the existing case law.

the following in *Leysath v. Leysath*, 209 S.C. 342, 40 S.E.2d 233 (1948):

> If the two year limitation does not apply to defects of the character now under consideration, what purpose does it serve? *If it only applies where the tax proceedings are regular in every respect, the purchaser would have no need of the protection which this limitation was designed to give. A statute of repose is not needed in favor of purchasers at valid tax sales.* The very purpose of such a statute is to shut off inquiry into such defects as are now complained of, and confirm the tax deed in spite of them, and unless it does this it is nugatory.

40 S.E.2d at 236-237. (Emphasis added).

This citation makes two invaluable points. First, as the italicized language points out, if the time-bar of Section 51-12-160 applies only to tax sales that are flawless and technically sound (i.e., no technical issues) – which is exactly what the Appellant argues in the present case – there is no need for a statute of limitations or a statute of repose or any other time-bar because there can be no liability. In that case, Section 51-12-160 is rendered legally meaningless and a nullity. Of course, such a construction flies in the face of the well-settled rule of statutory construction that "[t]he Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something." *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 574 S.E.2d 196, 198 (2002).

Second, and perhaps most importantly, there would practically speaking be no time-bar for an action to set aside a tax sale. If there is a technicality that qualifies as a "jurisdictional defect" (whatever that means exactly), such as in this case where the Appellant claims the mailing of the redemption notice a mere two or three days *early* is a jurisdictional defect, then there would never be a time-bar for an action to set aside a tax sale. In other words, if the Appellant did not file its action on May 17, 2021, but rather waited until 2071 (fifty years later), there would still be no time-bar under the Appellant's analysis. The subject property could have

been conveyed dozens of times in the intervening years, but the defaulting taxpayer would be within its right to bring an action to set aside tax sale in 2071 because there was a "jurisdictional defect" regardless of how minor, and as a result, the existing property owner would be ousted in favor of the defaulting taxpayer.

In sum, the law does not support such an absurd and frankly meaningless construction or application of Section 51-12-160; yet, that is precisely the argument that the Appellant is making and one the pre-2006 amendments case law admittedly seems to support …. at least to some extent. To reiterate, the Supreme Court recognized in *Leysath* that "[a] statute of repose is not needed in favor of purchasers at valid tax sales." 40 S.E.2d at 236. Instead, a statute of repose is needed in cases where the tax sale is contestable. Hence, the General Assembly – in establishing the public policy as is its prerogative – amended Section 12-51-160 and adopted Section 12-51-90(C) precisely to adopt a statute of repose or, as the title to Act No. 238 states, "to provide that the tax deed is incontestable twelve months after issue." That is precisely how Sections 12-51-160 and 12-51-90(C) should be interpreted and applied.[2] That is precisely how those statutes were interpreted and applied by the Circuit Court in dismissing the Appellant's action to set aside the tax sale. That decision should be affirmed.

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[2] The Supreme Court has adopted this reasoning in the case of *Federal Financial Co. v. Hartley*, 380 S.C. 65, 668 S.E.2d 410 (2008). In this post-2006 case, the Supreme Court described the limitations bar in Section 12-51-160 in terms of a statute of repose without using that precise terminology. The Supreme Court held: "The two year limitation in this statute is the period in which an owner who lost title to the property through a tax sale may bring an action to recover that property. Once two years have passed after the sale, the sale is not a cloud on the property's title." 668 S.E.2d at 412, *citing Corbin, supra*. Note also that the Supreme Court did not use the terminology of a "statute of limitations." Interestingly, while citing to this Court's decision in *Corbin* as to the purpose of Section 12-51-160, the Supreme Court deliberately excised the phrase "after proper notice" from the direct quote in *Corbin*. This demonstrates further that the Supreme Court views Sections 12-51-160 and 12-51-90(C) as establishing a statute of repose and that the pre-2006 case law needs a fresh look in light of the 2006 amendments and the Supreme Court's holding in *Hartley*.

Importantly, absolutely none of the cases cited by the Appellant in its briefs – including those that post-date the enactment of 2006 Act No. 238 – contain any discussion or analysis of the changes made by the 2006 amendments. Some cases refuse to even acknowledge those amendments were made. For instance, in *Forfeited Land Commission of Bamberg County v. Beard*, 424 S.C. 137, 817 S.E.2d 801 (Ct. App. 2018), this Court cited Section 12-51-160 as follows: "[a]n 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…." 817 S.E.2d at 805. The amended language in 2006 is replaced by a mere ellipsis, and Section 12-51-90(C) appears nowhere in the opinion. The opinion in *Reeping v. JEBBCO, LLC*, 402 S.C. 195, 740 S.E.2d 504 (Ct. App. 2013), at least quotes Section 12-51-160 in its entirety including the "as provided in Section 12-51-90(C)" phrase, but nowhere in that opinion does this Court quote or even remotely discuss what Section 12-51-90(C) says or how it changes the law that pre-dates 2006. In *King v. James*, 388 S.C. 16, 694 S.E.2d 35 (Ct. App. 2010), this Court cited the post-2006 version of Section 12-51-160, although it was relegated to a footnote, but the Court never discussed nor even cited to Section 12-51-90(C) nor gave any consideration to changes in the law resulting from 2006 Act No. 238. Likewise, in *Taylor v. Heirs of William Taylor*, 419 S.C. 639, 799 S.E.2d 919 (Ct. App. 2017), there is no mention of Section 12-51-90(C) nor any discussion as to how 2006 Act No. 238 impacts or changes the case law that pre-dates 2006. All of the other cases cited and relied on by the Appellant pre-date the 2006 amendment of Section 12-51-160 and the adoption of Section 12-51-90(C) – meaning those cases have no precedential value in interpreting or applying those statutes in a post-2006 case.[3]

[3] The Appellant also hems and haws as to whether it is relying on the unpublished decision of this Court in *Leake v. Ethridge*, 2005 WL 7083862 (S.C. Ct. App. 2005). However, as an unpublished opinion, *Leake* has no precedential value and should not be cited or relied on

At the beginning of this discussion, there was mention of a need for a fresh look at this area of the law not only to properly interpret and apply Sections 12-51-160 and 12-51-90(C) after 2006 Act No. 238, but also to apply some common sense and logic to the analysis and even some consideration of equitable principles. As far back as *Leysath* in 1946, the Supreme Court recognized that there are "jurisdictional defects" and conversely "mere irregularities." The Court regrettably chose "not to undertake to lay down a general rule defining those defects in tax proceedings which should be considered as mere irregularities, to which the statute under consideration would apply, and those which should be deemed jurisdictional, so as to render the statute inapplicable." *Leysath*, 40 S.E.2d at 237. That is regrettable because over 70 years later there has still been no attempt by the courts to distinguish "jurisdictional defects" from "mere irregularities." Of course, as discussed above, with 2006 Act No. 238, that is no longer necessary. But in the event this Court rejects the foregoing construction and application of Sections 12-51-160 and 12-51-90(C) in light of 2006 Act No. 238, the Court is nonetheless urged to recognize that there is a dichotomy between "jurisdictional defects" and "mere irregularities" and that there must be a recognition in the interests of good policy and common sense that the actions of the Delinquent Tax Collector in mailing the redemption notice two days *early* is not such a "jurisdictional defect" or fundamental defect to render the tax sale null and void forever – regardless when asserted. Yet, that is an issue in this case. The Appellant concedes that the redemption notice was sent two or three days early (on a Thursday rather than a Saturday or Sunday) and that act is a "technicality" at worst. (R. 51). With the intervening weekend, the U.S. mail, if received, would have been received within the 25-day window created by Section

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as precedent in any proceeding except in those in which the unpublished opinion is directly involved. *See*, Rule 268(d)(2), SCACR. Nonetheless, *Leake* is also not persuasive in addressing the interpretation and application of Section 12-51-160 because it pre-dates the 2006 amendments.

12-51-120. Yet, for that alleged defect, the Appellant asks this Court to rule that the tax sale is null and void and that there is no statute of repose or time limitation for the defaulting taxpayer to have filed an action to set aside the tax sale. Quite frankly, that is an absurd public policy and cannot be what the General Assembly has intended. *See, Kiriakides v. United Artists Communications, Inc.*, 312 S.C. 271, 440 S.E.2d 364, 366 (1994) ("However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention").

While "equitable maxims are not binding legal doctrines," they do "assist a court in applying and balancing equitable considerations," and of course, an action to set aside a tax sale is a matter in equity. *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 715 S.E.2d 348, 354 (Ct. App. 2011). As this Court has observed, "[t]he notion 'equity looks to substance rather than form' evolved out of judicial regard for that which ought to be done." *Id*. "This maxim applies by dispensing with pure formalities which would otherwise defeat the equity." *Id*. *See also, Blake v. Cannon*, 312 S.C. 135, 439 S.E.2d 302, 304 (Ct. App. 1993) ("[e]quity regards substance over form"). In application of these equitable maxims, the Court should readily recognize that the mailing of a redemption notice two or three days *early* – an admitted "technicality" by the Appellant – should not render a tax sale void and certainly should not render a tax sale voidable with no repose or time limitation on a legal challenge to that tax sale.

Lastly, as an alternative position, the Appellant argues that the two-year limitations bar begins to run only when the defaulting taxpayer is physically dispossessed or ousted from possession. That requirement appears nowhere in Section 12-51-160 or in Section 12-51-90(C). That argument is based entirely on obsolete pre-2006 case law and is patently inconsistent with

the language in Section 12-51-90(C) mandating that "the tax deed issued is incontestable on procedural or other grounds" once two years from the date of the tax sale has passed. S.C. Code Ann. § 12-51-90(C). It is likewise inconsistent with the legislative intent expressed in the title to 2006 Act No. 238 "to provide that the tax deed is incontestable twelve months after issue." *See*, 2006 Act No. 238. Finally, that argument is inconsistent with statutes of repose in general. In sum, the Appellant's argument that the two-year bar runs from physical ouster or dispossession lacks merit given the 2006 amendments

Based on the foregoing discussion, the Court is urged to take a fresh look at the existing case law addressing the interpretation and application of Section 12-51-160 as a so-called "statute of limitations." The Court should apply the reasoning of the Supreme Court in *Federal Financial Co. v. Hartley*, 380 S.C. 65, 668 S.E.2d 410 (2008), and interpret and apply the current versions of Sections 12-51-160 and 12-51-90(C) as establishing a statute of repose of two years after which any challenge to a tax sale is time-barred. The decision of the Circuit Court in dismissing the Appellant's claim to set aside the tax sale should be affirmed.

Finally, as to the Appellant's argument that the Circuit Court should not have reached the merits because the Treasurer of Marlboro County only sought dismissal as the wrong party-defendant, that issue was resolved by the consent of the parties and an order was issued substituting the Marlboro County Delinquent Tax Collector in place of the Treasurer of Marlboro County. (R. 5-6). That is a non-issue and should not result in the reversal of the Circuit Court's decision on the merits.[4]

[4] The Respondent Delinquent Tax Collector is not a party to the Appellant's conversion cause of action and, for that reason, has not addressed the Appellant's final ground for appeal.

CONCLUSION

Based on the foregoing discussion and analysis, the Respondent Treasurer for Marlboro County respectfully requests that his Court affirm the order of Circuit Court Judge Roger E. Henderson granting the Respondent's motion to dismiss.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned counsel for the Respondent Treasurer for Marlboro County certifies that the Final Brief of Respondent Treasurer for Marlboro County complies with Rule 211(b), SCACR.

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August 9, 2023

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Respondent Treasurer for Marlboro County certifies that the Final Brief of Respondent Treasurer for Marlboro County complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

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