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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

CHARLES B. SIMMONS, JR., Master in Equity

Appellate Case No. 2022-001578

Francisco Nicolas Miguel,

Respondent.

v.

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

of which Palmetto Asset Investments, LLC is the

Appellant.

FINAL BRIEF OF APPELLANT

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Christy v. Christy, 317 S.C. 145, 452 S.E.2d 1 (Ct. App. 1994)

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Parker v. Shecut, 359 S.C. 143, 597 S.E.2d 793 (2004)

Wells Fargo Bank, N.A. v. Fallon Properties South Carolina, LLC, et al 2018 WL 1075861
(February 28, 2018)

Wise v. S.C. Dep't of Corrs., 372 S.C. 173, 642 S.E.2d 551 (2007).

Rules

Rule 241 South Carolina Appellate Court Rules

STATEMENT OF THE ISSUE ON APPEAL

- I. DID THE MASTER ERR IN FINDING THAT THE PLAINTIFF SUBSTANTIALLY COMPLIED WITH THE REQUIREMENTS OF A PREVIOUS ORDER WITHIN A 45-DAY WINDOW WITHOUT MAKING FINDINGS OF FACT AS TO WHEN THE 45-DAY WINDOW BEGAN AND ENDED AND WHEN THE PLAINTIFF SUBSTANTIALLY COMPLIED?

STATEMENT OF THE CASE

This is an action to set aside a tax sale. The Plaintiff below (the Respondent herein, Miguel) brought the action against the County and the Defendant (the Appellant herein, Palmetto Asset Investments). The Defendant was the high-bidder at the tax sale and the Grantee of the Tax Deed. The Plaintiff prevailed at trial and the Master reversed that tax sale contingent upon the Plaintiff paying the back taxes within 45 days. However, the ruling was contingent upon the Plaintiff paying the back taxes. The Master ordered specifically that should the Plaintiff fail to pay the taxes (and/or redeem the property) within 45 days, the tax sale would be upheld. SEE January 7, 2020 ORDER. R. pp. 3-12. After voiding the tax sale and tax deed, the January 7, 2020 Order stated:

Payment shall be made to the County of Greenville within forty-five (45) days of the date of this Order. Upon receipt of an Affidavit of Mr. Wile, as attorney for the Tax Collector, that payment has not been made within forty-five (45) days of the date of this Order, this Order shall be voided and the tax sale that is the subject of this action shall be deemed valid. R. P. 12.

The Plaintiff did not pay the taxes within the 45 days after the January 7, 2020 Order as directed.

The Defendant appealed the decision (on grounds unrelated to the forty-five (45) day window and the nonpayment of the back taxes) and the Court of Appeals affirmed. R. p. 16.

Following the decision of the Court of Appeals, the Plaintiff still failed to pay the taxes as directed in the Order.

The Defendant sought an Order upholding the tax sale for failure of the Plaintiff to comply with Order within the 45-day period. The Plaintiff sought to set aside the Defendant's motion and moved to "enforce the judgment." Although the taxes remained unpaid, the Master found (in his October 10, 2022 Order) that the Plaintiff had substantially complied with the previous Order and once again found the tax sale was overturned. R. p. 25.

In the present appeal, the Defendant argues the Master erred in not enforcing his previous Order. Specifically, the Master failed to make findings of when the 45-day period began, when it ended and when the Plaintiff substantially complied.

Because the Master erred, the matter should be remanded with instructions and the Defendant's ownership of the property should be confirmed by the lower Court.

STANDARD OF REVIEW

An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support. *BB & T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d at 503.

ARGUMENT

The issue on appeal can be addressed by answering this question: Did the forty-five (45) day window (for the Plaintiff to pay the back taxes) run out before the Plaintiff complied? To answer this question we need to answers to these underlying questions: When did the forty-five (45) day window begin to run? What is the effect of the Motion to Alter or Amend? What happens after the appeal?

- I. DID THE FORTY-FIVE DAY PERIOD FOR THE PLAINTIFF TO PAY THE BACK TAXES RUN OUT BEFORE THE PLAINTIFF COMPLIED (SUBSTANTIALLY OR OTHERWISE)?

To determine when the forty-five day window began to run, it might be useful to examine the procedural history: The relevant procedural history is as follows:

- i. January 7, 2020 – First Order issued with 45-day contingency. R. p. 3.
- ii. January 7, 2020 – Plaintiff’s Counsel sends Email asking for redemption amount. SEE Email of Gaylord in Plaintiff’s Exhibit A to Motion. R. p. 83.
- iii. January 8, 2020 - County provides the amount by email. SEE Email of Wile in Plaintiff’s Exhibit A to Motion. R. p. 85.
- iv. January 10, 2020 – Plaintiff deposits funds with Counsel to pay back taxes. SEE Ledger in Plaintiff’s Exhibit A to Motion. R. p. 82.
- v. January 15, 2020 – Penalty by County if taxes are not paid.
- vi. January 17, 2020 – Defendant files Motion to Alter or Amend. R. p. 44.
- vii. January 29, 2020 - Court Denies Motion to Alter or Amend. R. p. 13.
- viii. February 24, 2020 – Defendant files Notice of Appeal.
- ix. June 1, 2022 - Court of Appeals files opinion (2022-UP-231) Affirming Master’s first Order. R. p. 16.
- x. June 23, 2022 Court of Appeals files electronic notice of Remittitur and sends Remittitur to clerk of lower court. R. p. 19.
- xi. July 5th, 2022 County Clerk files Remittitur. R. p. 19.
- xii. July 15, 2022 – Plaintiff allegedly makes effort to pay the back taxes.
- xiii. July 27, 2022 – County Tax Collector Confirms to Defendant that taxes are not paid. SEE Email of Hunter.
- xiv. August 9, 2022 - Defendant Files Rule to Show Cause. R. p. 45.
- xv. August 11, 2022 – Only after Defendant files Rule, Plaintiff’s counsel makes first effort to pay the back taxes. SEE Email of Larkins in Exhibit C to Plaintiff’s Motion.
- xvi. October 10, 2022 – Master’s 2nd Order - Master finds Plaintiff substantially complied with previous Order within 45-day window. R. p. 22.
- xvii. Notice of Second Appeal is Filed
- xviii. November 1st, 2022 - Plaintiff pays back taxes.

A. WHEN DID THE FORTY-FIVE (45) DAY WINDOW BEGIN TO RUN?

To determine if the forty-five (45) day period ran out before “substantial” compliance, we would need to first know when that window began to run. The Order which contained the forty-five (45) day contingency was issued on January 7, 2020. By the language of the Order, the window began to run the next day. R. p. 11. The Defendant’s Notice of Appeal was filed forty-seven (47) days later on February 24, 2020. The Plaintiff did not pay the back taxes during the forty-seven days between the Master’s Order and the Notice of Appeal.

B. WHAT IS THE EFFECT OF THE MOTION TO ALTER OR AMEND

Plaintiff's counsel argued below that the forty-five (45) day window cannot start to run before the Appeal because the Defendant filed a Motion to Alter or Amend and an Appeal was anticipated. See Transcript Page 16, Lines 15-18. R. p. 71, lines 15-18. Plaintiff argued below that the window does not begin to run until after Remittitur because that is the time of final disposition. Transcript Page 14, Lines 2-9. R. p. 69, lines 2-9.

Defendant's position is that the forty-five days began running on the day of the Order with the first day after the Order being day number "1". Defendant filed a Motion to Alter or Amend on January 17, 2020. SEE Motion. R. p. 44. The Court denied Defendant's Motion by Order dated January 29, 2020. SEE Order. R. p. 13. The Defendant is not aware of any case or rule that would stay obligations under the Order during the "reconsideration" period.

If the time for the Plaintiff to Comply with the Order is stayed or does not run during the pendency of the Motion to Alter or Amend, then (by our calculation) thirty-three (33) of the forty-five (45) days ran before the Notice of Appeal was filed on February 24, 2020. If thirty-three (33) days ran before the filing of the Notice of Appeal, then only twelve (12) days for compliance remained after the appeal.

Defendant believes that if the "reconsideration" period does not affect the 45-day window, then the window is closed prior to the filing of the Notice of Appeal and the tax sale should be upheld. However, if the rule is that the time period is stayed or does not run from the filing of the Motion to Alter or Amend until that issue is resolved (by Order dated January 29, 2020), then thirty-three days ran before the filing of the notice of Appeal.

C. WHAT IS THE EFFECT OF THE STAY DURING APPEAL?

It is without doubt or challenge that the requirements of the First Order are stayed at the filing of the Notice of Appeal and remain stayed during the pendency of the appeal. RULE 241 SCACR.

D. WHAT HAPPENS AFTER THE APPEAL?

- i. WHEN DID THE FORTY-FIVE DAY PERIOD RESUME? OR WAS THE CLOCK RE-SET?

It is unclear whether the balance of the forty-five (45) day period begins to run again after the conclusion of the appeal or if the clock is re-set so that the Plaintiff has forty-five (45) MORE days in which to comply/redeem. It is also unclear exactly when the clock begins to run again or is re-set.

The Clerk of Court for the South Carolina Court of Appeals sent the Remittitur to the clerk of court for the lower Court on June 23, 2022. R. p. 19. Remittitur states, “The above referenced matter is hereby remitted to the lower court or tribunal,” SEE Remittitur. R. p. 19. Also on June 23, 2022, the Court of Appeals filed electronic notice of Remittitur. The Greenville County Clerk of Court filed the Remittitur on July 5th, 2022. SEE filed Remittitur. R. p. 19.

So, when does the clock begin to run or resume running?

One view is that, the final disposition of a case occurs when the remittitur is returned by the clerk of the appellate court and filed in the lower court. *Christy v. Christy*, 317 S.C. 145, 452 S.E.2d 1 (Ct. App. 1994). However, other cases say once the remittitur is “sent down” from the appellate court, the lower court acquires jurisdiction to enforce the judgment. See *Miller v. Myrtle Beach Golf & Yacht Club*, 313 S.C. 412, 438 S.E.2d 248 (1993); see also *Parker v. Shecut*, 359 S.C. 143, 597 S.E.2d 793 (2004). When the remittitur has been properly “sent”, the appellate court no longer has jurisdiction over the matter. *Wise v. S.C. Dep’t of Corrs.*, 372 S.C. 173, 642 S.E.2d 551 (2007). Defendant suggests that the remittitur was “properly sent” or “sent down” on June

23, 2022 when the Court of Appeals issued its electronic notice and the lower court acquired jurisdiction on that date and therefore, the balance of the forty-five (45) day window began to run the following day.

Defendant argues that the electronic notice of the remittitur should trigger the beginning of the clock similar to the way an emailed notice of entry of judgment from the court triggers the time for serving notice of appeal. The SC Supreme Court has held that an email from the court, an attorney of record or a party, giving written notice of entry of judgment, triggers the time for serving notice of appeal. *Wells Fargo Bank, N.A. v. Fallon Properties South Carolina, LLC*, et al 2018 WL 1075861 (February 28, 2018).

Defendant's position is that the balance of the forty-five (45) day window began to run when the Court of Appeals sent electronic notice of Remittitur and that twenty-two more days ran after the electronic notice and before the Plaintiff made his 1st effort to pay the back taxes/redemption on July 15, 2022. Plaintiff argued below that the date the County Clerk filed the Remittitur should be the date of final disposition and 45-day window should start anew after the Remittitur is filed.

The Defendant asked the Master to make findings as to the start date of the window and the effect of the motion for reconsideration before the first appeal. SEE Transcript Page 16, Lines 15 thru 18. R. p. 71, lines 15-18. Clearly the Master understood the issue and was uncertain of the applicable rule. SEE Transcript Page 16, Lines 19 thru 25. R. p., lines 19-25.

The Master made no findings as to the beginning nor end of the forty-five (45) day window for compliance. SEE Order. R. pp. 22-27. The Master did find, however, that the Plaintiff substantially complied with the requirements of the previous Order within the forty-five (45) day window. SEE Order. R. p. 26.

The only allegation of any effort by the Plaintiff to pay the back taxes/redemption is his efforts made on July 15th, 2022. R. p. 68, lines 23-34. For the Master's Order of October 10, 2022 to be upheld, the Plaintiff's efforts on July 15, 2022 would have to have been be within the forty-five (45) day window.

CONCLUSION

For the reasons set forth above, Defendant believes the Court of Appeals should:

- i. Determine what time, if any, ran before the filing of the Notice of Appeal.
- ii. Clarify whether the time window was re-set after the conclusion of the appeal.
Defendant concedes that if the 45-day window is re-set after the conclusion of the first appeal, then the Plaintiff's effort to repay on July 15, 2022 is within the re-set window.
- iii. Clarify whether the time to comply with the Order after the appeal begins after the filing of the electronic notice of remittitur by the Court of Appeals OR after the filing of the Notice of Appeal by the County Clerk of Court.
- iv. Find that the Master erred IF the July 15, 2022 efforts of the Plaintiff to pay the back taxes/redemption fall outside (and after) the 45-day window considering the determinations and clarifications sought above.
- v. Remand the matter to the Master for findings consistent with the opinion of the South Carolina Court of Appeals.

Respectfully submitted,

August 9, 2023

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the APPELLANT'S FINAL BRIEF complies with Rule 211(b) SCACR.

August 9, 2023

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