THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

(Case No. 2021-CP-34-00150)

Roger E. Henderson, Presiding Judge

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.

BRIEF OF INDIVIDUAL RESPONDENTS RONALD D. KIRBY, DYLAN T. KIRBY AND DANNY T. WILLIAMS

Florence, South Carolina

August 14, 2023

TURNER, PADGET, GRAHAM & LANEY, P.A.

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II. *HAVE* THE APPELLATE COURTS OF THIS STATE *EVER ALLOWED* FOR NON-APPLICATION OF THE LEGISLATED STATUTE OF LIMITATIONS WHERE THE NEW OWNER HAS TAKEN POSSESSION OF THE TAX-SALE PROPERTY AND THE ONLY POSSIBLE PROCEDURAL FLAW IN THE TAX-SALE PROCESS IS THE MAILING OF THE UNCLAIMED REDEMPTION NOTICE A COUPLE OF DAYS EARLIER THAN THE NOTICE WINDOW?

III. YEARS LATER AND WITHOUT PRESENTMENT OF A DEMAND FOR PERSONAL PROPERTY, *CAN* A DELINQENT TAX PAYER WHO ABJECATES ITS RESPONSIBILITY TO PAY TAXES AND THEREBY LOSES LEGAL AND ACTUAL POSSESSION OF REAL PROPERTY BRING AN ACTION AGAINST SELECTIVE SUBSEQUENT PURCHASERS OF THE REAL PROPERTYFOR THE CONVERSION OF PERSONAL PROPERTY THAT THE DELINQENT TAXPAYER ABANDONED ON THE PREMISES?

STATEMENT OF THE CASE

After purchasing the real property in this action in 1998 and paying taxes thereon each and every year for eighteen (18) years, the Appellant was hardly surprised when taxes were also due for 2017 – taxes which were *not* paid. Appellant's property was legally seized by County levy on June 5th of 2018 and posted by county officials on October 5, 2018. R. p. 80 and 87 (Complaint ¶10 and Complaint Exhibit A). A statutory tax sale was noticed for November 5, 2018. The Appellant's delinquent taxes were *not* paid in 2018 before the tax sale and the property was sold. R. pp. 80-81 (Complaint ¶¶11-12).

The delinquent 2017 taxes were also not paid in 2018 -- 2019 within the allowed statutory redemption period. No action was taken in 2020. Appellant's complaint of personal property conversion and complaint to set-aside the tax sale was filed May 17, 2021 -- two and a half years after that tax sale and nearly three years after the property's seizure.

By motion filed June 15, 2021, the Marlboro County Treasurer moved to dismiss the Appellant's action (1) because it was brought against the wrong county official and (2) because it was brought more than two years after the underlying tax sale (and approximately three years after property possession was statutorily seized away from the delinquent taxpayer). Although the case was filed by Appellant against the County Treasurer, the trial court allowed the substitution of the County Delinquent Tax Collector and heard argument from the local county attorney (known to this local judge) regarding the applicability of the statute of limitations.[1] The county's motion

[1] The first basis for the motion was rendered moot by the trial court's order allowing substitution of the appropriate county official. Although the Order of Substitution was filed belatedly, on December 20, both the trial court's Order denying the Motion to Reconsider (dated November 16 and filed November 21) and the Appellant's Notice of Appeal to this Court (dated December 19) incorporated the corrected caption and substituted party (again, just a different county official: tax collector, not Treasurer).

was joined by counsel for the individual Respondents (R. p. 33 lines15-18) who had also pleaded the statute of limitations in their Answer, R. p. 99 (¶¶ 42, 43) and astutely advised the wise trial court "those words of the statute – they're not meaningless." R. p. 40, lines 20-22.

STANDARD OF REVIEW

Conversion is an action at law. Bateman v. Rouse, 358 S.C. 667, 596 S.E. 2d 368 (Ct. App. 2004); Blackwell v. Blackwell, 289 S.C. 470, 346 S.E. 2d 731 (Ct. App. 1986). Thus, the trial court's factual findings will not be disturbed on appeal unless without evidence which reasonably supports those findings. Fesmire v. Digh, 382 S.C. 296, 683 S.E. 2d 809 (Ct. App. 2009). If a suit presents mixed questions of law and equity, each is treated separately on appeal with regard to the applicable standard of review. Kuznik v. Bees Ferry Associates, 342 S.C. 579, 538 S.E. 2d 15 (Ct. App. 2000); Ahrens v. State, 392 S.C. 340, 709 S.E. 2d 54 (2011).

An action to set aside a tax deed is in equity. S.C. Fed. Say. Bank v. Atl. Land Title Co., Inc., 314 S.C. 292, 294, 442 S.E.2d 630, 631 (Ct. App. 1994). Therefore, this Court may take its own view of the preponderance of evidence. Townes Assoc., Ltd v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775-76 (1976).

STATEMENT OF FACTS

Appellant owned the subject property in Marlboro County for nearly a decade before it failed to pay property taxes thereon for the year 2017. R. p. 80 (Complaint ¶¶ 9,10). Thereafter, a tax execution was issued (S.C. Code §12-45-180), a notice of levy was issued, the property was posted as seized, and the sale was advertised in a newspaper. S.C. Code §12-51-40. These important pre-sale procedural steps were described by the County attorney to the trial judge (R. p. 59 line 16 – p.60 line 6) and Appellant conceded "Perfect" compliance with each such step. R. p. 58 page 12 lines 11 – 15). Instead, Appellant focuses *solely* on a post-sale self-described "technicality" (R. p. 51 line 25 and p. 52 lines 1, 3, 4) whereby the redemption notice was mailed on a Thursday (too early) rather than the following Monday. (R. p. 60 line 7 – p. 61 line 12).[2]

Contrary to the suggestion of Appellant both in its Brief and trial court argument, the Appellant did not maintain possession of the subject property until the deed to Mr. Williams in June of 2020. To the contrary, legal possession of the property was seized by county officials before the sale pursuant to their "perfect" notice and physical posting of the property as provided in the statutes. Likewise, Counsel Burch for Respondents Williams and Kirby represented the trial court, without objection or contradiction, that the subject property was the site of drug activity,

[2] The actual Notice of Redemption with this early mailing "technicality" is not clearly in the trial court record. The notice documents were not attached to Appellant's Motion to Reconsider or Memorandum and were not marked by the trial court as an exhibit. Nevertheless, it does appear they were handed to the Court at the hearing on the Motion to Reconsider (R. p. 52 lines 8 – 15), and the mailing dates were not questioned in the hearing. Moreover, the dates are confirmed in the County tax deed attached to the Complaint. R. p. 87 (Complaint Exhibit A). Thus, individual Respondents have determined not to file a motion to exclude item 13 in the Appellant's Designation of Matter to be included in the Record on Appeal. Items 14, 16, and 17 of that designation also do not appear to have been previously submitted to the trial court but are inconsequential to the issues raised by this appeal.

break-ins, vandalism, and destruction before individual Respondents took possession[3] – but these representations were not yet shown by evidence to the Court.

What is clear from the record, however, is that Marlboro County and then Backwoods LLC were in constructive and legal possession of this property in the interim with unknown security measures and unknown personal property remaining on site.

[3] R. p. 68 line 15 – p. 69 line 5)

ARGUMENT

I. THE LEGISLATURE DOES NOT AUTHORIZE A DELINQUENT TAX PAYER TO BRING AN ACTION TO SET-ASIDE A TAX DEED MORE THAN TWO YEARS AFTER THE TAX SALE – AND PARTICULARLY NOT WHEN THE NEW OWNER HAS TAKEN POSSESSION OF THE PROPERTY.

The two-year limitation period found in S.C. Code § 12-51-160 is clear. This legislated finality is not an invitation to circular logic where it does not apply to certain tax sales but does apply to others; rather, the statute itself opens with the expressed legislative directive that it applies "in all cases of tax sale..." Statutes of Limitation are legislated for reasons independent of underlying merits. Limitations periods are needed for finality. As Judge Henderson simply observed in his Order, the Respondents "have begun a small business on the property they purchased and have made improvements to the property." This finding is not disputed in Appellant's Brief.

The importance of civil action limitation periods, which have been chosen and codified by legislative act, has long been recognized by our Courts. For example, as recognized by our Court of Appeals in City of North Myrtle v. Lewis-Davis, 360 S.C. 225, 231, 599 S.E.2d 462 (S.C. App. 2004),

> "[S]tatutes are designed to promote justice by forcing parties to pursue a case in a timely manner. Parties should act before memories dim, evidence grows stale or becomes nonexistent, or other people act in reliance on what they believe is a settled state of public affairs." State ex rel. Condon v. City of Columbia, 339 S.C. 8, 19, 528 S.E.2d 408, 413-14 (2000).
>
> Statutes of limitation evolved over time with definite purposes in mind. They protect people from being forced to defend themselves against stale claims. The statutes recognize that with the passage of time, evidence becomes more difficult to obtain and is less reliable. Physical evidence is lost or destroyed, witnesses become impossible to locate, and memories fade. With passing time, a defendant faces an increasingly difficult task in formulating and mounting an effective defense. Additionally, statutes of limitation

> encourage plaintiffs to initiate actions promptly while evidence is fresh and a court will be able to judge more accurately.
>
> Moriarty v. Garden Sanctuary Church of God, 334 S.C. 150, 163-64, 511 S.E.2d 699, 706 (Ct.App.1999).
>
> Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system. 54 C.J.S. Limitations of Actions § 2, at 16-17 (1989). Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. 51 Am. Jur.2d, Limitation of Actions § 18, at 603 (1970). One purpose of a statute of limitations is "to relieve the courts `of the burden of trying stale claims when a plaintiff has slept on his rights.'" McKinney v. CSX Transp., Inc., 298 S.C. 47, 49-50, 378 S.E.2d 69, 70 (Ct.App.1989) (quoting Burnett v. New York Cent. R.R., 380 U.S. 424, 428, 85 S.Ct. 1050 1054, 13 L.Ed.2d 941, 945 (1965)). Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation. 51 Am.Jur.2d Limitation of Actions § 17, at 602-03 (1970).

Appellant would have judicial activism create an exception to the case-specific statutory limitation (*expressly directed at any such tax-deed action*) based upon any theoretical or technical flaw alleged in the proceedings. How is the legislative goal of finality and certainty served by such selective application? *It isn't!* But that's what Appellant suggests: if an argument is made for voiding a tax sale, no matter how technical and no matter how tardy, then the statute of limitations – separately enacted by the same legislative body suddenly does not apply.

Limitation's Triggering Event Spelled Out in Statute

Contrary to the suggestion that the Statute of Limitations is not triggered unless or until there is a loss of possession, the statute itself expressly provides for its own triggering event – "the date of sale as provided in Section 12-51-90(c)." S.C. Code § 12-51-160. Moreover, the Appellant's Brief (Page 14-16) is wrong that Appellant had not been dispossessed; Appellant was dispossessed by "perfect" property seizure even before the tax sale.

While some courts have wrestled with some distinction between seizure-based dispossession and exclusive adverse possession, ***there is nothing in this record suggesting that Appellant remained on-site, subordinate to the Sheriff's presumed legal possession***, at this industrial/commercial site turned drug haven in the interim. Moreover, the hypothetical argument that there might be different types of possession for purposes of the statutory limitations period cries out for the clarity found in the statutory trigger itself of the sale date.

II. *NO* PUBLISHED OPINIOIN OF THE APPELLATE COURTS OF THIS STATE HAS *EVER* ALLOWED FOR CIRCUMVENTION OF THE LEGISLATED STATUTE OF LIMITATIONS WHERE THE NEW OWNER HAS TAKEN POSSESSION OF THE TAX-SALE PROPERTY AND THE ONLY POSSIBLE PROCEDURAL FLAW IN THE TAX-SALE PROCESS IS THE MAILING OF THE UNCLAIMED REDEMPTION NOTICE A COUPLE OF DAYS PRIOR TO THE NOTICE WINDOW.

A. Baiting a discussion about an unpublished opinion in the trial court does not "Open the Door" to Disregard of SCACR 268(d)(2), nor does it render such opinion controlling precedent.

Considerable page space within the Appellant's Statement of The Case (pages 3-4) is devoted to the trial court's receipt of, and discussion about, a distinguishable and unpublished 2005 opinion of this Court. In this section of its Brief, the Appellant identifies the case. Then, on page 13 of its Brief, Appellant suggest that Respondents' counsel "opened the door" to its not-so-subtle circumvention of SCACR 268 (d)(2) and its claim that the case is "precisely on point" and "would be dispositive." Nevertheless, in this argument section, Appellant discusses, but does not cite, the case -- artificially professes that it "simply does not want to violate Appellate Court Rules." The Appellant "doth protest too much, methinks." Wm. Shakespeare, Hamlet.

A similar disingenuous approach was taken in the trial court where it was Appellant's counsel that first raised the unpublished case with Judge Henderson, R. p. 36 lines 13-18), teasing the Court that he wouldn't name the case "unless you direct me to" while still erroneously claiming that it was "precisely on this point" and "absolutely clear." Having been baited, Respondents counsel below aptly discusses and distinguishes the non-binding case[4] and Judge Henderson asked for a copy. R. p. 41 lines 3-4. Subsequently, Appellant began its false suggestion that Respondent opened the door – as seen in its Motion to Reconsider, R. p. 11 ¶4, and accompanying Memorandum. R. p. 21 (footnote 4).[5]

[4] Respondents' counsel acknowledged the "on point" discussion in the unpublished opinion of the redemption notice but then noted that this court "first thing.... Look[ed] at whether the statute of limitation applies." R. p. 39 lines 17-24. And in that regard, Counsel noted to the trial court, "it was different because the defaulting tax payer for years had remained on that property." R. p.39 line 25 – p. 40 line 1.

Moreover, at the hearing on the motion to Reconsider, counsel for the individual Respondents again advised "just [read] those words in the statute and noting that the case law relied upon by the Appellant "it's not the situation we have here." R. p. 67 line 20. And specifically, with regard to the unpublished case (R. p. 68 lines 3-14), "that's a very different situational thing than we have in this case, Your Honor." (R.p.68 lines 9-10). In fact, Respondent's counsel told the Court that the unpublished opinion was "not even exactly on point, Your Honor, so I do think that it shouldn't be relied upon, and it's different, Your Honor." R. p. 73 lines 8-10 (joining with county counsel's comments on the same page, lines 1-4).

[5] Further misrepresentative of Respondent's trial counsel, the Appellant's Brief, page 3, says "Respondent's counsel actually stated that the [unpublished] case 'shows the appellate courts would look at that analysis'" – an accurate quote but out-of-context. Appellant's Brief erroneously suggests the context is "whether the [redemption notice] time period is jurisdictional." That is not the context at all – the context is in the very next sentence of the transcript, "They [the appellate courts] would look at whether the statute of limitations applies first." And that's exactly what they did in the unpublished case. Counsel then offers to provide the trial judge with a copy whilst wisely noting "you know, those words of the statute – they're not meaningless." R. p. 40 lines 17-22 (dash added).

B. **Exceptions to Statute of Limitations Found in Published Opinions Do Not Apply.**

Despite the numerosity of cases cited by Appellant and despite the existence of case law side-stepping the Statute of Limitations, these cases are all distinguishable or simply offer nothing to control the outcome here.

1. **Distinguished by Tax Debtors in *Actual* Possession – Even if Subordinate to Levy/Seizure**

Unlike the unpublished opinion and its predecessor, Dibble v. Bryant, 274 S.C. 481, 265 S.E. 2d 673 (1980), relied upon by the Appellant to try and circumvent the legislated deadline, the Appellant here did not remain in possession of the property as in those cases – the distinction specifically relied upon in those cases to find the statute of limitations in applicable to one in possession. That is not these appellants.

2. **Distinguished Because Statute of Limitation Not Even Raised.**

Like Dibble, the Court in Manji v. Blackwell, 323 S.C. 91, 93-94, 473 S.E.2d 837, 838 (Ct. App. 1996) reached the merits of statutory notice compliance because the non-paying owner remained in possession thereby rendering the two-year time limit inapplicable under the rationale of Dibble. Moreover, there is no indication that the statute of limitation was even raised in Manji. Manji says nothing to help the delinquent taxpayer here circumvent the two-year legislated deadline.

In Good v. Kennedy, 291 S.C. 202, 207, 352 S.E.2d 708, 711 (Ct. App. 1987), the Court of Appeals considered a most timely challenge to a tax deed – one brought the month after the issuance of a tax deed. Because the appellate court concluded that county officials had not sent statutory notice under S.C. Code §12-51-120 to the "best address available", the Court in this timely action was able to reach the merits and conclude that the owner's right of redemption could

not be cut off. ***The Court's use of the characterization of "jurisdictional" did not signify any circumvention or preclusion statutory deadlines – such deadlines were not an issue.***

3. Distinguishable By Application of The Soldiers and Sailor's Relief Act

Donohue v. Ward, 298 S.C. 75, 82-83, 378 S.E.2d 261, 265-66 (Ct. App. 1989) was an action by dispossessed non-paying original owners, one of whom was active-duty military, to void the tax sale. It is not clear in the opinion when the action was begun, the tax sale for the property occurred on January 3, 1984 and the subsequent sale to Ward was on January 16, 1986 with a subsequent construction loan mortgage. Again, it is distinguishable in that one of the non-paying original owners was within the protections of the Federal Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. §§501 *et seq*. As at threshold matter, the Court found that "Congress plainly and unmistakenly stated its intent ... that the period of military service shall not be included in determinizing whether or not a statute of limitation has run against a serviceman..."

4. Distinguishable Because Not A Tax Sale, Taxes Actually Paid

The case of Corbin v. Carlin, 366 S.C. 187, 194, 620 S.E.2d 745, 749 (Ct. App. 2005), also cited by Appellant, is distinguishable. While Corbin affirmed a trial court's refusal to apply the limitation found in S.C. Code §12-51-160, the Court found "the instant action was not one to set aside tax sale falling under the provision of section §12-51-160, but instead was an action to quiet title and for Corbin to assert his proper ownership rights..." The trial court had actually failed to even rule on the application of S.C. Code §12-51-160. Also very different from the case at bar, the subsequent buyer, Carlin, "assumed" the land in question (Tract B) was not within the boundaries of the surveyed land he purchased. Also very different from the case at bar, taxes on the land in question (Tract B) were never really unpaid as they were paid by Corbin as part of a 5.99-acre tract (described as "Tract 1"). Somehow, as the result of a three-way exchange, tax notices for Tract B were sent separately from Tract 1 for 1990 to the prior owner triggering a false tax delinquency.

5. Distinguishable By Systemic Postal Realignment & Lack of Improvements

In Reeping v. Jebbco, LLC, 402 S.C. 195, 199-202, 740 S.E.2d 504, 506 (Ct. App. 2013), the Court of Appeals reversed the trial court's application of the Statute of Limitations to an action to set aside a tax sale, but the Court clearly stated that it was "not undertak[ing] to lay down a general rule defining those defects" which would "render the statute inapplicable." Notably, unlike the circumstances here, the delinquent taxpayer was the victim of a systemic postal address realignment and the county's failure to incorporate multiple address corrections made available to them. In addition, it appears the taxpayer did not learn of the tax sale until a third-party offered to help collect excess monies from the sale. Notably, nothing in the opinion suggests the tax sale purchasers had made improvements to the property.

6. Distinguishable By A Pre-Sale Procedural Defect, Not Post Sale

In Forfeited Land Comm'n of Bamberg Cty. v. Beard, 424 S.C.137, 817 S.E.2d 801 (Ct. App. 2018), former Chief Judge Lockemy of the Court of Appeals noted the apparent divergence in cases with regard to the application of the statute of limitations following a tax sale. In Beard, the Court of Appeals reversed the trial court's application of the two-year bar because the underlying defect was so fundamental – failure to post the notice of levy on the property prior to the sale – not a defeat found in the case at bar. Moreover, the Court of Appeals noted that the delinquent taxpayer (actually the tenant of the devisee) remained in possession well beyond the sale – yet another categorial reason courts have found the two-year limitation inapplicable.

III. YEARS LATER AND WITHOUT PRESENTMENT OF A DEMAND FOR PERSONAL PROPERTY, A DELINQENT TAX PAYER WHO HAS LOST LEGAL AND ACTUAL POSSESSION OF REAL PROPERTY TO BONA FIDE TAX-SALE PURCHASERS OF THE REAL PROPERTY, *CANNOT* BRING AN ACTION AGAINST SELECTIVE SUBSEQUENT PURCHASERS FOR THE CONVERSION OF PERSONAL PROPERTY THAT THE DELINQENT TAXPAYER ABANDONED ON THE PREMISES.

Having failed to maintain legal possession and control of the subject property by simply paying taxes; the Appellant wants to blame the unsubstantiated loss of personal property on its abandoned site against two subsequent purchasers who were not even participants in the seizure or initial tax sale. ***Because the Appellant's conversion claim is inherently linked to its claim to set-aside the tax sale, the trial court appropriately acted to dismiss the conversion claim as well.***

The Plaintiff's Complaint alleges that the real property was posted on October 5, 2018 following the June 5, 2018 mailing of a Notice of Levy. These allegations are confirmed in the tax deed to Backwoods LLC. R. p. 80 and 87 (Complaint ¶10 and Complaint Exhibit A). The Plaintiff's Complaint further confirms the abandonment of any personal property left on the seized site by alleging that such personal property "had been left on the [Real] Property" .... R. p. 83 (Complaint ¶29).

The Plaintiff further alleges that Respondent Williams did not take possession of the real property until June of 2020 – two years after the "perfect" Notice of Levy and personal property abandonment and after two intervening property possessors – the County and Backwoods LLC. Even more remotely, the Plaintiff's Complaint alleges that the Kirby Respondents did not take possession until February of 2021 – over two and a half years after the "perfect" Notice of Levy and after the intervening possession of three others (County, Backwoods LLC, and Williams).

Strangely, despite acknowledging the perfection of pre-sale procedures, the Appellant complains that it was "without notice" and "afforded no opportunity" to "remove or protect its personal property" and this somehow is a wrongful deprivation by the Respondents as successors

in possession. R. p. 83 (Complaint ¶29). ***To the contrary, the Appellant had 18 years of notice that taxes applied to the property, and the Appellant had "perfect" pre-sale procedural notice, and had a year of statutory redemption time thereafter to remove or protect its property.*** Moreover, no one knew better than Appellant what personal property it had at the location that was removeable. ***Judge Henderson's dismissal is in recognition of these truths.***

The law is clear that conversion cannot arise from the exercise of a legal right over property. Conversion requires a wrongful act. Castell v. Stephenson Finance Co., 244 S.C. 45, 135 S.E. 2d 311 (1965) (conversion is a *wrongful* act). Here, there is no contention that the individual Respondent's acquisition of the property was wrongful or not *bona fide* – even if the redemption technicality did allow for a set-aside of the tax sale (which it does not after these two-plus years).

Even if the Appellant had a right to claim personal property located on the real property *legally* purchased by the individual Respondents, the continued possession of any such property by the bona fide purchaser would not alone support an action for conversion. Roberts v. James, 160 S.C. 291, 158 S.E. 689, 691 (1931). ('Trover will not lie against one rightfully in possession. Such possession must first be transformed into a wrongful one by a refusal to surrender the property.').

Here, the Appellant did not plead that it had made any demand for personal property surrender. Nothing is pleaded about individual Respondents having any notice that personal property at the site was claimed by the delinquent, non-responsive tax payer Appellant. Thus, nothing is pleaded to suggest individual Respondents knew that possession of any personal property was unauthorized. Accord Moseley v. Oswald, 376 S.C. 251, 656 S.E.2d 380 (2008) (real property ownership may be relevant, but issue is whether control over personal property was unauthorized). Indicative of the lack of merit in its conversion claim, the cause of action for conversion is not asserted against the County or Backwoods LLC who, according to the Plaintiff's

own Complaint would be indispensable parties in the possessory chain of the real property. Accord Rule 12(b)(7)(dismissal for failure to join party); BancOhio Nat. Bank v. Neville, 310 S.C.323, 426 S.E.2d 773 (1993).

Moreover, if the statute has run on any possible challenge to the tax deed, then the individual Respondents clearly have a greater interest in the real property location than the Appellant. One with a greater interest in property cannot be liable to one with a lesser interest for conversion. Jones v. Equicredit Corp., 347 S.C. 535, 556 S.E.2d 713 (Ct. App. 2001).

Again, the conversion claim is inherently linked to the possession of the real property where the personal property was allegedly located. The are not "unconnected" as Appellant suggested in its Motion to Reconsider, R. p. 11 (¶ 5 of Motion); to the contrary, they are completely related because the individual Respondent's possession of the real property is not otherwise challenged. The county tax collector's statutory seizure of the real property includes any personal property thereon or attached thereto. S.C. Code §12-51-40. Moreover, the County's seizure of the premises – lock, stock, and barrel --was not challenged as wrongful in any way.

CONCLUSION

Appellant is a delinquent tax payer which received perfect pre-sale notice of its tax delinquency and the following public sale. Over two years after that sale and some three years after the original due date for its unpaid taxes, the Appellant brought this statutorily barred action to set aside that tax sale. No case, published or unpublished, has ever circumvented the clear legislated deadline under such circumstances.

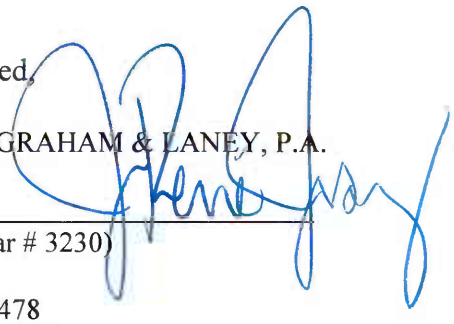
Relatedly, the Circuit Court's dismissal of the pendent claim of conversion for personal property allegedly present and abandoned on the seized and sold realty was appropriate given the Appellant's failure to state a cause of action and failure to name other intermediate property owners and possessors. Moreover, the individual Respondent's bona fide purchase without any pleaded notice of lacking authority over personal property on the site forecloses any claim of wrongful possession and conversion.

Respectfully submitted,

Florence, South Carolina

August 14, 2023

TURNER, PADGET, GRAHAM & LANEY, P.A.



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CERTIFICATE OF COUNSEL

Except for the two-sentence deletion allowed by this Court's Order of August 14, 2023, the undersigned hereby certifies that the Final Brief filed with the Court on or about this date complies with Rule 211(b), SCACR.

TURNER, PADGET, GRAHAM & LANEY, P.A.

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PROOF OF SERVICE

I, Jon Rene Josey, attorney for the Respondents Ronald D. Kirby, Dylan T. Kirby and Danny T. Williams, hereby certify that I have this 14th day of August, 2023, served the Final Brief of Respondents Ronald D. Kirby, Dylan T. Kirby and Danny T. Williams and Certificate of Compliance of Counsel upon Leonard R. Jordan, Jr., Attorney for Appellant, R. S. & A. Piping, Inc. and Andrew F. Lindemann, Esquire, Attorney for Respondent, Treasurer for Marlboro County, by E-Mailing to them at the addresses indicated below:

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The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: RS&A Piping & Fabrication, Inc. a/k/a R. S. & A. Piping, Inc. v. Ronald D. Kirby, Dylan T. Kirby, Treasurer for Marlboro County and Danny T. Williams
Appellate Case No.: 2022-001791
TPGL File No.: 18280.101

Dear Ms. Kitchings:

Enclosed please find the original unbound Final Brief of Respondents along with two (2) bound copies of the same. In addition, I am enclosing a Certificate of Compliance SCACR Rule 211(b) and Proof of Service. Please file these originals.

By copy of this letter, I am providing opposing counsel Leonard R. Jordan, Esquire and Andrew F. Lindemann, Esquire, with copies of each of these documents.

Should you have any questions or require anything additional, please let me know.

Sincerely,

TURNER PADGET GRAHAM AND LANEY P.A.

J. René Josey, Esquire

JRJ:alb/Enclosures
cc: Leonard R. Jordan, Esq. (Via E-Mail)(w/ enc)
Andrew F. Lindemann, Esq. (Via E-Mail)(w/ enc)