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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-42-5798

Wells Fargo Bank, N.A., as Trustee For Option One

Mooring Secured Liquidity, Randy S. and

Mortgage Loan Trust 2000-D Asset Backed
Certificates, Series 2000-D

Tara P. Rutherford, Spartanburg County Tax
Collector, and Sherman Acquisitions.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Max T. Hyde, Jr.	Attorney for : <input type="checkbox"/> Plaintiff	<input checked="" type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

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Circuit Court Judge

[Handwritten Signature]

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Judge Code

3/5/2013
Date

For Clerk of Court Office Use Only

This judgment was entered on the 6th day of Mar, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 6th day of Mar, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

Hyde Law Firm, P.A.
753 East Main St., Ste. 1
Spartanburg, SC 29302

ATTORNEY(S) FOR THE DEFENDANT(S)
M Hope Blackley

CLERK OF COURT
Natalie Bishop

Court Reporter:

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

COUNTY OF SPARTANBURG)

C.A. No.: 2010-CP-42-5798

Wells Fargo Bank, N.A., as Trustee)
For Option One Mortgage Loan Trust)
2000-D, Asset Backed Certificates,)
Series 2000-D,)

ORDER

Plaintiffs,)

vs.)

Mooring Secured Liquidity, Randy S)
and Tara P. Rutherford, Spartanburg)
County Tax Collector, and Sherman)
Acquisitions,)

Defendants.)

This action came before the Court at a final hearing on February 12, 2013, regarding a challenge to the tax sale of the Subject Property. Sean M. Foerster, Esquire, appeared on behalf of the Plaintiff, Wells Fargo Bank, N.A., as Trustee for Option One Mortgage Loan Trust 2000-D, Asset Backed Certificates, Series 2000-D ("Wells Fargo"). Max T. Hyde, Jr., Esquire, and Alexander P. Lewis, Esquire, appeared on behalf of Defendant Mooring Secured Liquidity ("Mooring"). David Ingalls, Esquire, appeared on behalf of Defendants Randy S. and Tara P. Rutherford ("the Rutherfords"). John Harris, Esquire, appeared on behalf of Defendant Spartanburg County Tax Collector ("Spartanburg County").

Based on the evidence put forth at the hearing, the pleadings, and the arguments of counsel, this Court finds that the tax sale of the Subject Property was proper and denies Wells Fargo's requests to set aside the same. Furthermore, for the reasons set

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forth below, this Court grants Mooring's Counterclaim for Quiet Title of the Subject Property following the valid tax sale.

FINDINGS OF FACT

By deed dated June 16, 1998, and recorded on June 18, 1998 in the office of the Register of Deeds for Spartanburg County, South Carolina, in Deed Book 68A, Page 961, Durham Construction Company, Inc. conveyed to the Rutherfords the following described property, to-wit:

All that certain piece, parcel or lot of land with all improvements located thereon, situate, lying and being in the County of Spartanburg, State of South Carolina, and being shown and designated as Lot No. 25 on original plat of Palmetto Estates, prepared by Farley-Collins & Associates, dated August 7, 1968, and recorded in Plat Book 57, Page 518, RMC Office for Spartanburg County, S.C. For a more complete and particular description, reference is hereby made to the above referred to plat and record thereof. This being the same property conveyed to Randy S. Rutherford and Tara P. Rutherford by deed from Durham Construction Company, Inc., dated June 16, 1998 and recorded on June 18, 1998 in Deed Book 68A Page 961 R.M.C. Office for Spartanburg County, S. C.

Address: 327 Palmetto Circle, Greer, South Carolina 29651
TMS # 5 13-08 039.00

(hereinafter "the Subject Property").

On January 4, 2007, Wells Fargo instituted an action for foreclosure of the Subject Property bearing Civil Action Number 2007-CP-42-0039. An Order awarding judgment for Wells Fargo in that action was entered on February 28, 2007. Following the issuance of the aforementioned Order, the subject Property was set to be sold by way of a foreclosure sale on April 2, 2007. This Court received a letter from Counsel for Wells Fargo on March 29, 2007, advising the Court that the Rutherfords had declared Bankruptcy, and requesting that the Subject Property be removed from the sale roster. Pursuant to the request of counsel this Court issued a Form 4 Order placing the case on

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the SCRCR Rule 40(j) roster with leave to restore when the issues of bankruptcy were resolved.

Following the case being placed on the 40(j) roster, the Rutherfords neglected to pay their duly owed property taxes to Spartanburg County for the 2007 tax year. On November 3, 2008, following a tax execution to levy by distress and sell said property, and upon all required notices of delinquent taxes to the Rutherfords and due advertisement, the Delinquent Tax Collector of Spartanburg County, South Carolina, during the usual hours of sale, did sell and received payment for the Subject Property and gave receipt therefore to Mooring, the highest bidder at such sale for the sum of Thirty Thousand and 00/100 Dollars (\$30,000.00), in accordance with Section 12-51-60, code of Laws of South Carolina, 1976, as amended. Spartanburg County issued a Tax Deed to Mooring on January 15, 2010, and that deed was recorded on March 23, 2010, in Deed Book 95-V at Page 404 in the Office of the Register of Deeds for Spartanburg County, South Carolina.

After the sale of the Subject Property, Spartanburg County properly notified Wells Fargo of their right to redeem the property. The notice of the right to redeem was signed by Wells Fargo on October 9, 2009, as admitted by Counsel for Wells Fargo at the hearing of February 12, 2013. On December 3, 2009, almost two months after receiving notice that the property had been sold and the notice of the right to redemption, Wells Fargo made a motion to restore the prior Foreclosure Action to the docket. An Order of this Court granting such relief was entered on March 19, 2010.

This Court held a supplemental hearing on April 7, 2010, and the judgment numbers from the earlier foreclosure judgment were augmented to reflect the laps of time

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since the initial Order. Additionally, the Subject Property was placed on the foreclosure sale roster for May 3, 2010, despite the fact that Wells Fargo knew at that point in time that the property had been sold at the tax sale. Just prior to the sale date, counsel for Wells Fargo informed the Court that the sale should be canceled, and the Court granted that request.

The instant action to set aside the tax sale was filed by Wells Fargo against Mooring and the Rutherfords on November 1, 2010, just two days prior to the expiration of the applicable Statute of Limitations, and well over a year from the notice of the right to redemption of the property. A hearing was held on January 12, 2012, on Wells Fargo's Motion for Summary Judgment. By Order dated April 20, 2012, said motion was denied as untimely, and Spartanburg County was joined in the action as an indispensable party following disclosure to the Court that the Rutherfords had been paid the overage amount that had been held by Spartanburg County.

This Court also granted a Consent Motion for Joinder by all parties of Sherman Acquisitions based on the Counterclaim filed by Mooring for Quiet Title following the tax sale. Defendant Sherman Acquisitions was properly served with all applicable pleadings, the Court Order of Joinder, and was given proper notice of the final hearing in this matter, but failed to answer or otherwise plead, and are in default.

CONCLUSIONS OF LAW

I. Equity requires that the tax sale stand as valid.

This Court finds that equity requires that the results of the tax sale stand as valid and enforceable. Wells Fargo has made much to do concerning the effect that the Rutherfords' bankruptcy might have in invalidating the tax sale as *void ab initio*.

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Counsel for Wells Fargo presented several legal arguments, with supporting Bankruptcy case law, that the filing for Bankruptcy by the Rutherfords created an automatic stay of any action regarding the Subject Property. Additionally, Counsel for Wells Fargo stated that a violation by Spartanburg County of the automatic stay should cause the tax sale to be set aside. This Court finds these arguments to be unpersuasive in light of the equities that are presented in the case *sub judice*. Wells Fargo's own actions or lack thereof, unclean hands, and failure to diligently monitor the facts and circumstances surrounding the Subject Property give rise to a situation that requires equity, rather than Bankruptcy Law, to govern. This Court is one of equity, and the very principles of equity simply cannot allow for the result which Wells Fargo proposes.

Plaintiff's Counsel stated on numerous occasions during the hearing that the tax sale had occurred during the period in which the automatic stay was in effect from the United States Bankruptcy Court for the District of South Carolina. What is intriguing is what Wells Fargo failed to mention: that the Rutherfords have not and did not challenge the sale of the home by Spartanburg County during the period of the automatic stay. Surely if anyone would wish to contest the sale of the home during a period of protection from the Bankruptcy Court, it would be the Rutherfords. By accepting the overage amount from Spartanburg County, the Rutherfords evidenced an intent to waive their rights to challenge the tax sale on the basis of the Bankruptcy Court protection.

Critically, Counsel for Wells Fargo also did not mention that during the period of the automatic stay, Wells Fargo had been provided with notice of the right to redeem the Subject Property. The right to redeem was sent certified mail, return receipt requested as required by S.C. Code of Laws 12-51-120. Conspicuous in its absence was also

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Counsel's failure to mention that Wells Fargo made the conscious choice to do nothing about the redemption notice on this very critical issue until a period of over a year later.

In fact, Wells Fargo did nothing from the period of March 29, 2007, until the beginning of November of 2010, despite notifications both actual and implied:

- (1) That that the tax sale had occurred;
- (2) That Wells Fargo had a right to redeem the Subject Property;
- (3) That Mooring's tax deed had been recorded; and,
- (4) That the overage had been paid to the Rutherfords.

Critically, counsel for Wells Fargo *admits that Wells Fargo signed the notice of the right to redemption* of the Subject Property on October 9, 2009, but Wells Fargo even knowing that the property had been sold decided not to challenge the tax sale.

Rather, Wells Fargo decided it was better to:

- (1) Make a motion to restore their earlier foreclosure case to the active ~~list~~ ^{trial} roster;
- (2) Have a supplemental hearing before this Court to raise the earlier judgment amounts; and,
- (3) Set the property for a date certain on the foreclosure sale roster.

All of these actions were taken by Counsel for Wells Fargo on a piece of property it knew to already have been sold at tax sale to Mooring, and that it knew it had a right of redemption in. Additionally, Wells Fargo failed to file a judicial action within ¹⁰ ~~10~~ days after execution of the deed to prevent the payment of the overage by the County to the defaulting taxpayers. See S.C. Code § 12-51-130. These were not acts taken by a party who was concerned about protecting its rights in the property to prevent a tax sale. Had Wells Fargo been interested in protecting whatever rights they may have had in

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the property, they would have exercised their right to redeem the property, a right that they had proper notice thereof as required by the South Carolina Code.

It was only when confronted with the realization that the Statute of Limitations to challenge the tax sale was about to run that Wells Fargo suddenly decided that they would act. The doctrine of laches however bars such action, as Wells Fargo should have taken some earlier action prior to all other parties changing their position in reliance of Wells Fargo's inaction. Where multiple other parties change their position in reliance of the inaction of another, such as here, equity will step in prevent the party who has not acted diligently, and with unclean hands from creating or imposing an inequitable situation upon those who have acted diligently at all times. None of the other parties to this action would have changed their position had Wells Fargo properly taken diligent steps to assert their right to challenge the tax sale. Thus, the doctrines of laches and unclean hands will bar Wells Fargo from having the result that it seeks in the instant action.

This Court finds that Equity rewards the diligent. *See Collins v. Sigmon*, 299 S.C. 464, 468, 385 S.E.2d 835, 837-38 (1989) (applying the ancient maxim "equity aids the vigilant and diligent" and not those who sleep on their rights). If the tax sale were voided, this Court would be embracing an inequitable solution for all other parties, especially Mooring, and that is a result that cannot be allowed to occur. The South Carolina Supreme Court has stated:

"Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position then equity will ordinarily refuse to enforce those rights."

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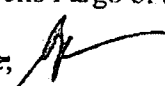
King v. James, 388 S.C. 16 (2010).

Further, the party seeking to establish laches must show: (1) a delay; (2) that was unreasonable under the circumstances; and, (3) prejudice. *Id.* The Defendants have each established that Wells Fargo delayed pursuing its rights and that the delay would result in prejudice to the Defendants. Therefore, based on the foregoing this Court finds that equity requires that the tax sale stand as valid.

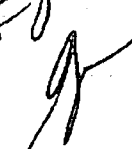
II. Quiet Title should be granted to Mooring.

Based on the above holding that the tax sale is valid, and because all other possible parties holding an interest in the Subject Property were presented with notice of and given an opportunity to be heard as it pertains to the Counterclaim for Quiet Title, this Court finds that the action for Quiet Title should be granted in Mooring's favor. Mooring's Title in the Subject Property is free and clear of any and all encumbrances.

IT IS THEREFORE ORDERED THAT:

1. The tax sale of the Subject Property to Mooring is upheld as valid and enforceable based on the principles of equity espoused herein;
2. That any and all claims by Wells Fargo surrounding the validity of the tax sale are denied, and hereby dismissed ~~with prejudice~~ 
3. That the other claims contained in Wells Fargo's Complaint regarding the payment to Wells Fargo of any overage are denied, and hereby dismissed ~~with prejudice~~ 
4. That Mooring's title in the Subject Property be known by all to be free and clear of any and all defects; and,

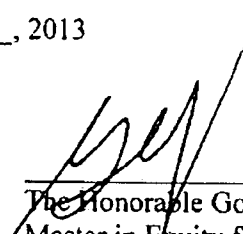
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5. That the Crossclaims by Spartanburg County against the Rutherfords be dismissed as moot based on the validity of the tax sale.

AND IT IS SO ORDERED.

This 5th day of March, 2013


The Honorable Gordon G. Cooper
Master in Equity for Spartanburg County

Spartanburg, South Carolina

CERTIFIED COPY

M. Hope Blackley
CLERK OF COURT
SPARTANBURG COUNTY
BY: [Signature] D.C.
DATED: 3/16/13

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