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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

THE HONORABLE CHARLES B. SIMMONS, JR., Master in Equity

Appellate Case No. 2022-001578  
Circuit Court Case No. 2018-CP-23-03713

Francisco Nicolas Miguel ..... Respondent.  
and

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

Of which Palmetto Asset Investments, LLC is the..... Appellant.

FINAL BRIEF OF RESPONDENT FRANCISCO NICOLAS MIGUEL

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## **STATEMENT OF THE CASE**

On July 11, 2018, Francisco Nicolas Miguel (“Plaintiff” or “Miguel” or “Respondent”) filed a Complaint and Lis Pendens in the County of Greenville, Court of Common Pleas, to set aside a tax sale, tax deed and subsequent conveyance (the “Lawsuit”). (R. pp. 31-38) One of the named Defendants is Appellant, Palmetto Asset Investments, Inc. (“Palmetto” or “Appellant”), who purchased, via a tax sale, the property owned by Miguel located at 1 Hilltop Avenue, Greenville SC 29609, TMS# 0156000801100 (the “Subject Property”). (R. pp. 8,10, 31-36) Additionally, Defendant, Gabriel Angel Prestegui Gomez (“Gomez”) had entered into a Land Installment Agreement with Palmetto to purchase the Subject Property and was therefore a party to the Lawsuit. (R.pp.73-81) The Greenville County Tax Collector (“Greenville County”) was also a named Defendant. (R. pp.31-36)

Subsequent to the Lawsuit filed by Plaintiff, Plaintiff filed a Motion for Summary Judgment on September 25, 2019, asking the trial court to vacate the tax sale, void the tax deed and void the subsequent Land Installment Contract. (R. pp. 39-43) After a November 17, 2019 hearing, the trial court granted Plaintiff’s Motion for Summary Judgment by way of Order dated January 7, 2020. (R. pp. 3-12) The Order disposed of all claims in the Lawsuit in Plaintiff’s favor and instructed Plaintiff to pay the back taxes within forty-five (45) days. (R. pp. 3-12)

Within a few days of the January 7, 2020 Order, Plaintiff made attempts to obtain the amount of back taxes from the County, which included correspondence with the County regarding the prospects of an appeal by Palmetto and Plaintiff’s assumptions that any appeal would stay the tax payment.(R. pp. 83-85) In providing the amounts to Plaintiff, the County referenced additional payments that would be owed in the future, furthering the Plaintiff’s assumption of an appellate

stay going into effect upon any appeal by Palmetto. (R. pp. 83-85) Upon receipt from the County of the amount of back taxes, the Plaintiff paid an amount that exceeded it into his attorney's trust account – the excess amount further supporting the Plaintiff's assumption of an appellate stay going into effect upon an appeal by Palmetto. (R. p. 82)

On January 17, 2020, Palmetto filed a Motion to Alter or Amend the Judgment. (R. p. 44) On January 29, 2020, the trial court denied the Motion to Alter or Amend. (R. pp. 13-15) On February 24, 2020, Palmetto filed a Notice of Appeal. (R. p. 131)

The question now before this Court is whether the 45-day payment period in the January 7, 2020 Order was stayed during the pendency of Palmetto's prior appeal.

As of the February 24, 2020 date when Palmetto filed its appeal, 45 days had passed since the January 7, 2020 Order. However, Palmetto did not seek relief from the lower court on the issue of whether the purported 45-day period had expired. Nor did Palmetto raise the issue in its appeal.

Although Plaintiff's counsel had the funds well within the purported 45-day period to pay the back taxes, the back taxes were not paid because the Plaintiff was operating with the understanding that the Motion to Alter or Amend and Appeal had stayed the payment requirement in the Order.

On June 1, 2022, the Court of Appeals affirmed the Trial Court's decision (Appellate Case No. 2020-000390). (R. pp. 16-18) On July 5, 2022, Greenville County Clerk of Court filed the Remittitur. (R. p. 19) Within days, the Plaintiff attempted to pay the back taxes to the County; however, the County refused acceptance, noting their system indicated payment had already been made and would not allow them to accept further payment. (R. p. 68-70)

On August 9, 2022, Palmetto filed a *pro se* Motion for Rule to Show Cause with the trial court, requesting an order from the trial court upholding the tax sale and preventing Plaintiff from paying the back taxes. (R. pp. 46-47) The premise of the *pro se* Motion was that the 45-day period in the January 7, 2020 Order had passed. (R. pp. 46-47)

On August 11, 2022, Plaintiff's counsel attempted over the course of several days to obtain the amount of back taxes; however, the County did not provide it. (R. pp. 108-111) On August 16, 2022, Plaintiff's counsel informed the Court of the issues with obtaining the payment amount to satisfy the January 7, 2020 Order, the Plaintiff's position that the 45-day period had been stayed until the July 5, 2022 Remittitur filing (rendering August 19, 2022 the 45-day deadline), the urgency surrounding the issues, and the forthcoming Motion to Enforce Judgment and Determine Amount of Back Taxes Due which the Plaintiff intended to file. (R. pp. 87-92) Later that day, the Plaintiff filed a Motion to Enforce Judgment and Determine Amount Due. (R. pp. 48-51)

On September 26, 2022, Plaintiff filed a Motion to Strike Palmetto's Motion for Rule to Show Cause on the basis that it was filed on behalf of a corporate entity by a non-lawyer. (R. pp. 61-62) The Trial Court held a virtual hearing on the motions and on October 10, 2022, the Trial Court ruled in favor of Plaintiff on the pending motions. (R. pp. 22-27)

On October 17, 2022, Palmetto filed a Motion to Alter or Amend the trial court Order of October 10, 2022. (R. pp. 66-67) On October 20, 2022, the trial court denied the Motion to Alter or Amend. (R. pp. 28-30) Twelve days later, on November 1, 2022, the Plaintiff paid the back taxes. (R. pp. 133-139) On the same day, Palmetto filed the subject Notice of Appeal. (R. pp. 126-129)

### **STATEMENT OF FACTS**

## I. BACKGROUND INFORMATION

On or about September 3, 2013, Miguel bought the Subject Property from U.R. Home Trust and a Quit Claim Deed in favor of Miguel was recorded with the Greenville County Register of Deeds in Deed Book 2430 at Page 4393 (“Miguel Deed”). (R. pp. 71-72) At the top left corner of the Miguel Deed, the mailing address for the Grantee was filled in as 1 Hilltop Avenue, Greenville, SC 29609. (R. pp. 71-72) On or about November 3, 2015, Miguel provided a ‘Change of Mailing Address Notice’ to the Real Property Services Department for Greenville County and to the Tax Collector for Greenville County. (R. pp. 5-6,41-42) The Notice indicated that the new address for notifications to him was 117 Odom Circle, Greenville, SC 29611-2957.

The 2015 property taxes were not paid. (R. pp. 6) Unfortunately, all the delinquent tax notices and other correspondence were sent to Miguel’s old mailing address and not forwarded or otherwise directed to the new 117 Odom Circle address. (R. pp. 6) Miguel never received any Greenville County notices or other correspondence regarding the taxes. (R. pp. 6)

On or about October 24, 2016, the Property went to a tax sale whereby Palmetto purchased the Property. (R. pp. 7) On December 8, 2017, a Tax Deed indicating Palmetto’s ownership of the Property was recorded with Greenville County Register of Deeds in Deed Book 2527 at Page 3073 (the “Tax Deed”). (R. pp. 8, 10)

On or about February 8, 2018, Palmetto entered into a Land Installment Contract with Gomez, which was recorded in the Greenville County Register of Deeds in Deed Book 2531 at Page 2233. (R. pp. 8, 73-81) On or about July 11, 2018, Miguel filed the underlying Lawsuit. (R. pp. 31-36)

## II. FACTS PERTINENT TO THIS APPEAL

In the January 7, 2020 Order granting Plaintiff's Motion for Summary Judgment, the trial court found that the tax sale was not conducted in strict compliance with statutory requirements and was, therefore, set aside. (R. pp. 3-12) Further, the January 7, 2020 Order voided the Tax Deed and the Land Installment Contract. (R. pp. 3-12) The January 7, 2020 Order further stated, in pertinent part:

Plaintiff's right to redeem the property is reinstated and Plaintiff shall pay to Greenville County all delinquent taxes owed from 2015, together with statutory interest and penalties, and all taxes assessed against property for 2016, 2017, 2018 and 2019. 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 from Mr. Wile, as attorney for Defendant 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.

Upon payment noted above, Palmetto Asset Investments, LLC shall receive a refund of all amounts paid to Greenville County for the property a 1 Hilltop Avenue, Greenville, South Carolina, together with the statutory interest accruing on such amounts, from Greenville County upon Plaintiff's redemption of the property.

(R. pp. 3-12)

On January 7, 2020, Plaintiff's counsel emailed the following to the County Attorney:

Assuming Judge [Simmons'] decision is not appealed, do you have a total of the amounts paid by Palmetto Asset Investments, LLC that Mr. Miguel will need to refund? I would like to give him as much notice of the actual amount as possible.

(R. pp. 83-84)

On January 7, 2020, the County Attorney replied: "I will contact the tax collector's office and get those amounts to you – hopefully by tomorrow. ... FYI – the County will not appeal but I can't speak for Dick's client." *Emails from Wile*. (R. pp. 83)

On January 8, 2020, the County Attorney further replied to Plaintiff's counsel and provided the redemption amount, the outstanding taxes for years 2016-2018, and provided the amount outstanding for 2019 together with the additional amounts that would be owing if not paid until later. (R. pp. 85)

On January 10, 2020, Plaintiff paid an amount of money into his counsel's trust account for purposes of paying the back taxes, the amount exceeded the total provided by the County Attorney to Plaintiff's counsel. (R. pp. 82)

On January 17, 2020, Palmetto filed a Motion to Alter or Amend the Judgment. (R. pp. 44)

On January 29, 2020, the trial court issued an order denying the Motion to Alter or Amend. (R. pp. 13-15)

On February 24, 2020, Palmetto filed a Notice of Appeal. (R. pp. 131-132)

On June 1, 2022, the Court of Appeals affirmed the Trial Court's decision, holding "the tax collector failed to use diligence in ascertaining Respondent's correct address. (R. pp. 16-18) Therefore, the tax sale to Appellant was void because the tax collector failed to comply with the statutory requirement that notice of the delinquent taxes be mailed to the best available address." Further, the Court of Appeals remanded the matter back to the Trial Court. (Appellate Case No. 2020-000390). (R. pp. 19)

On July 5, 2022, Greenville County Clerk of Court filed the Remittitur. (R. pp. 19)

On July 15, 2022 – ten days after the Remittitur was filed, Plaintiff went to the Greenville County Tax Assessor's office to try and make payment of the back taxes; however, the County refused to accept payment, noting that their system showed it had been paid and would not accept another payment. (R. pp. 48-50)

On August 9, 2022 - thirty-five days after the Remittitur was filed, Palmetto filed a *pro se* Motion for Rule to Show Cause with the trial court arguing that the timeframe of forty-five (45) days that was referenced in the January 7, 2020 Order for Plaintiff to pay Greenville County delinquent taxes had expired. (R. pp. 45-47)

On August 11, 2022 - thirty-seven days after the Remittitur was filed, Plaintiff's counsel attempted to obtain the payoff amount directly from Greenville County in order to make the payment, to no avail. Plaintiff's counsel then immediately emailed the County Attorney asking for the outstanding payment amounts, also to no avail. (R. pp. 108-111)

On August 16, 2022, after days spent trying to obtain the payout information from the County without any success and forty-two days after the Remittitur was filed, Plaintiff's counsel corresponded with the trial court and opposing counsel informing the court of: the problems encountered by Plaintiff with obtaining the payoff amount from the County; the approaching August 19, 2022 45-day deadline after Remittitur filing; the apparent unwillingness of the County to accept payment; the urgency for resolution; the Plaintiff's forthcoming Motion to Enforce Judgment and Determine Amount of Back Taxes Due; and the Plaintiff's effort to preserve for the record the ability and willingness of Plaintiff to pay the amount of back taxes prior to the 45-day deadline. (R. pp. 87-98)

On August 16, 2022, Plaintiff filed its Motion to Enforce Judgment and Determine Amount Due. (R. pp. 48-51)

On September 26, 2022, Plaintiff filed a Motion to Strike Palmetto's Motion for Rule to Show Cause. (R. pp. 61-62)

On September 26, 2022, the Trial Court held a hearing on the pending motions.

On October 10, 2022, the Trial Court ruled on Palmetto's Motion for Rule to Show Cause, Plaintiff's Motion to Enforce the January 7, 2020 Order and Determine Amount of Back Taxes Due, and Plaintiff's Motion to Strike, articulating the following:

[C]orporations must be represented by an attorney licensed to practice law in South Carolina. *In re Unauthorized Practice of Law Rules*, 309 S.C. 304, 422

S.E.2d 123 (1992). Corporations, which are artificial creatures of state law, do not have a right to appear pro se in all instances, and must appear pro se by leave of the Court. S.C. Code Ann. § 40-5-320 (1986); S.C. Code Ann. § 40-5-80 (Supp. 2002); see also 191 S.C. 468, 5 S.E. 2d 181 (1939). South Carolina Rules of Civil Procedure, Rule 12 (f) provides, “[u]pon motion pointing out the defects complained of...the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.” Defendant’s Motion for Rule to Show Cause was submitted by Jonathan Underwood as a pro se litigant. Therefore, Plaintiff’s Motion to Strike is granted and Defendant’s Motion for Rule to Show Cause shall be stricken.

Pursuant to South Carolina Court of Appeals Rule 241,” the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision.” Rule 241, SCACR. 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. *McDowell v. S.C. Dep’t of Soc. Servs.*, 300 S.C. 24, 386 S.E.2d 280 (Ct. App. 1989). The Court finds that the Plaintiff made a good faith effort to comply with the Order within forty-five (45) days, and to rule against Plaintiff would be too harsh a penalty.

As such, the trial court found as follows in its Order dated October 10, 2022:

1. Defendant’s Motion for Rule to Show cause is stricken.
2. Plaintiff’s right to redeem remains valid. Plaintiff shall pay to Greenville County the amounts ordered by this Court on January 7, 2020 including all delinquent taxes owed from 2015, together with statutory interest and penalties, and all taxes assessed against the property for 2016, 2017, 2018, and 2019. Greenville County shall inform the Plaintiff the total amount due and owing.
3. Upon payment noted above, Palmetto Asset Investments, LLC shall receive a refund of all amounts paid to Greenville County for the property at 1 Hilltop Avenue, Greenville, South Carolina, together with the statutory interest accruing on such amounts, from Greenville County upon Plaintiff’s redemption.

(R. pp. 22-27)

On October 17, 2022, Palmetto filed a Motion to Alter or Amend the trial court Order of October 10, 2022. (R. pp. 66-67)

On October 20, 2022, the trial court denied the Motion to Alter or Amend. (R. pp. 28-30)

Twelve days later, on November 1, 2022, the Plaintiff paid the back taxes. (R. pp. 133-139) On the same day, Palmetto filed the subject Notice of Appeal. (R. pp. 126-129)

### ARGUMENT

#### **I. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION BY GRANTING RESPONDENT’S MOTION TO STRIKE THE MOTION FOR RULE TO SHOW CAUSE FILED BY APPELLANT.**

The October 10, 2022 Order of the lower court is the only order that Palmetto has the ability to appeal at this point in time. This October 10, 2022 Order simply struck Palmetto’s Motion for Rule to Show Cause and went on to reaffirm its earlier January 7, 2020 Order. (R. pp. 22-27) This Court of Appeals has already affirmed the January 7, 2020 Order by the Trial Court. (R. pp. 16-18) Therefore, the only appealable issue that Palmetto has is whether the trial court erred in striking Palmetto’s Motion for Rule to Show Cause.

The standard of review for a motion to strike was articulated in *Brown v. Coastal States Life Ins. Co.*, 264 S.C. 190 (1975). The Supreme Court held that “[t]he granting or refusal of a Motion to Strike . . . will not be reversed except for an abuse of discretion or unless the action of the trial judge was controlled by an error of law.” *Id.* 194-195. *See also, Wells Fargo Bank, N.A. v. Smith*, 398 S.C. 487 (Ct. App. 2012).

The real issue in front of this Court is whether the trial court abused its discretion in granting Plaintiff’s Motion to Strike. In reviewing this issue, it is clear that the trial court did not abuse its discretion in striking Palmetto’s Motion for Rule to Show Cause. Specifically, the basis of Plaintiff’s Motion to Strike was the fact that the Motion for Rule to Show Cause was filed on behalf of Palmetto, a limited liability company organized and registered under South Carolina law, by someone other than a South Carolina licensed attorney. (R. pp. 61-62)

With regard to a non-licensed attorney representing a corporation in South Carolina courts, the original rule was that a lay person could not represent a corporation. *State v. Wells*, 191 S.C. 468 (1939). However, the Supreme Court modified this rule to allow a non-lawyer officer, agent or employee to represent corporations in civil magistrate’s court proceedings. *In re Unauthorized Practice of Law*, 309 S.C. 304 (1992); *see also, Rule 21*, South Carolina Rules of Magistrates Court. Subsequently, the Supreme Court declined to extend the modification of allowing non-lawyers to represent corporations when the matter was in circuit or appellate court. *Renaissance Enters., Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649 (1999). The Supreme Court specifically held that “[w]e . . . decline to extend *Wells* to allow a non-lawyer to represent a corporation in circuit or appellate courts. Thus, a corporation may appear *pro se* only in magistrate’s court.” *Id.* at 653.<sup>1</sup>

Since a non-attorney made an appearance on behalf of Palmetto, and this matter was litigated in circuit court, the non-attorney is considered to be violating the rule that a licensed South Carolina attorney must represent a corporation in circuit court. Thus, at its discretion, the trial court may strike the pleading that was presented to the circuit court by the non-lawyer. Specifically, pursuant to Rule 12(f) of the South Carolina Rules of Civil Procedure, it states that “[u]pon motion pointing out the defects complained of . . . the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.”

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<sup>1</sup> The Supreme Court has also allowed *pro se* representation in probate court in *Medlock v. Univ. Health Servs.*, 404 S.C. 25, 28-29 (2013), which held that “a non-attorney may present claims against an estate and petition for allowance of claims in the probate court on behalf of a business entity without engaging in the unauthorized practice of law.”

Therefore, the trial court did not error or abuse its discretion when it decided to strike Palmetto's Motion for Rule to Show Cause. Because the motion to strike was granted, the merits of the Motion for Rule to Show Cause need not be addressed by this Court.

**II. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION OR MADE AN ERROR OF LAW WHEN IT HELD THAT THE PLAINTIFF SUBSTANTIALLY COMPLIED WITH THE JANUARY 7, 2020 ORDER.**

In the present appeal, Appellant argues the merits of its Motion for Rule to Show Cause despite the fact that the Trial Court had granted the Motion to strike it. Although Respondent does not believe that the merits of the Motion for Rule to Show Cause are properly before this Court, and without waiving that position, Respondent will address Palmetto's arguments.

Palmetto argues that the trial court erred in its failure to find Plaintiff did not comply with its previous January 7, 2020 Order. The essence of Palmetto's Motion for Rule to Show Cause is that Respondent failed to pay the back taxes within forty-five (45) days of the January 7, 2020 Order. Specifically, Palmetto claims that forty-seven days had passed between the January 7, 2020 Order and Palmetto's Notice of Appeal of that Order on February 24, 2020. However, on January 17, 2020, Palmetto filed a Motion to Alter or Amend the Judgment, which was a mere ten (10) days after the January 7, 2020 Order. On January 29, 2020, the trial court denied the Motion to Alter or Amend. (R. pp. 13-15)

Considering Palmetto's argument that the 45-day payment deadline had lapsed on February 21, 2020, it is striking that Palmetto did not raise this issue at that time. Rather, Palmetto filed its Notice of Appeal on February 24, 2020 wherein, at no point, did Palmetto raise this issue of timeliness. Curiously, Palmetto chose to file the appeal rather than pursue its Motion for Rule to Show Cause. The only reasonable explanation for this choice is that Palmetto knew, or was

operating under the assumption, that the January 29, 2020 Order had been stayed by Palmetto's prior Motion to Alter or Amend.

**A. APPELLANT SHOULD HAVE SOUGHT CLARIFICATION OF THE PURPORTED AMBIGUITY IN THE JANUARY 7, 2020 ORDER VIA MOTION TO ALTER OR AMEND WITHIN TEN DAYS OF THAT ORDER.**

In its current appellate brief, Palmetto's argument is clearly based on the proposition that the January 7, 2020 Order was ambiguous. Accordingly, the Appellant now requests that this Court go back to the January 7, 2020 Order and determine the specifics of that order; i.e., when the 45 day period began, when the 45 day period ended, and whether Plaintiff substantially complied with the January 7, 2020 Order.

If Palmetto thought the January 7, 2020 Order was ambiguous in its terms with regard to the 45 day window, Palmetto had the opportunity at the trial court level to ask the Court to clarify the 45 day dates when Palmetto filed its Motion to Alter or Amend the January 7, 2020 Order, or prior to filing its original Notice of Appeal. A point not specifically raised to and ruled upon by the trial court will not be considered on appeal. See *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007) (stating to be preserved for appellate review, issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity); *Sanderson v. Sanderson*, 391 S.C. 249, 705 S.E.2d 65 (Ct. App. 2010). If a lower court is not allowed to clarify any discrepancies in its order when properly and timely raised via motion to alter or amend, the issues are not preserved for appeal. *ESA Servs., LLC v. S.C. Dep't of Revenue*, 392 S.C. 11, 707 S.E.2d 431 (Ct. App. 2011); *Home Med. Sys., Inc. v. S.C. Dep't of Revenue*, 382 S.C. 556, 563, 677 S.E.2d 582, 586 (2009); *Revis v. Barrett*, 321 S.C. 206, 210,

467 S.E.2d 460, 463 (Ct. App. 1996) (holding issue was not preserved on appeal when appellants never filed a motion to alter or amend the judgment to clarify the order pursuant to Rule 59, SCRPC, nor sought clarification pursuant to Rule 60(a), SCRPC); *Nelums v. Cousins*, 304 S.C. 306, 307-08, 403 S.E.2d 681, 681-82 (Ct. App. 1991) (finding trial court's alleged failure to clarify discrepancies in written order was not preserved when party made no motion to amend the judgment).

In its Motion to Alter or Amend the January 7, 2020 Order, Palmetto only raised the issue that the evidence presented at the Summary Judgment hearing showed that the County strictly complied with the statutory requirements of the tax sale and therefore judgment for Plaintiff was improper. (R. p. 44) Palmetto never raised any issue regarding ambiguity with regard to the Trial Court's Order of when the 45-day window started and stopped, at a time when Palmetto (according to this most recent appeal) knew of the issue.

Further, when the Court denied the Motion to Alter or Amend the January 7, 2020 Order, Palmetto could have included the failure to clarify the beginning and end dates of the 45 day period in its first appeal to this Court. Palmetto failed to raise the issue at the trial court level and failed to raise it in the first appeal. The appropriate way to obtain a ruling when the issue is not mentioned in the order or not explicitly ruled upon is to file a motion to alter or amend the judgment to have it addressed. *Home Medical Sys. v. S.C. Dep't of Revenue*, 382 S.C. 556, 677 S.E.2d 582 (2009); *Talley v. South Carolina Higher Educ. Tuition Grants Comm'n*, 289 S.C. 483, 347 S.E.2d 99 (1986); *Skinner v. Elrod*, 308 S.C. 239, 417 S.E.2d 599 (Ct. App. 1992).

Palmetto is now attempting to backdoor a second review by this Court of the January 7, 2020 Order despite the fact that this Court, on June 1, 2022, affirmed the trial court's January 7,

2020 Order in Plaintiff's favor. (R. pp. 16-18)

The law does not allow a second bite at the apple. These were alleged issues that should have been raised at the lower court three and a half (3.5) years ago in the Motion to Alter or Amend. Considering the current positions taken by Palmetto, these issues were ripe prior to the February 24, 2020 Notice of Appeal by Palmetto. The fact that these alleged issues were not included at the trial court level or in the first appeal, renders the issues moot for any further review by this Court. As stated by the Supreme Court, "appellant's failure to state his position at the trial level renders him incapable of complaining to this Court." *Morrisett v. Barnes*, 285 S.C. 123, 125 (1985).

**B. THE PLAINTIFF MADE A GOOD FAITH EFFORT TO COMPLY WITH THE ORDER WITHIN THE TIME ALLOWED BY THE COURT**

The lower court chose to enforce the Order upon remittitur by determining the Plaintiff was still within the 45 days to obtain and pay the back tax amount when it attempted to do so on July 15, 2022.

In any case, the 45-day period in the January 7, 2020 Order did not run prior to the filing of the February 24, 2020 Notice of Appeal, nor did it run prior to the July 15, 2022 date. From its October 10, 2022 Order, it appears the lower court stayed the enforcement of the January 7, 2020 Order upon Palmetto's filing of the Motion to Alter or Amend, which the lower court could do under Rule 62, SCRPC. See *Rule 62, SCRPC* ("the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59"). (R. pp. 22-27)

The January 7, 2020 Order is considered a "Judgment" in accordance with Rule 54, SCRPC, as it includes an order dismissing the action and it, at the time, finally determined the

rights of the parties. *See* Rule 54(a), SCRCF. ("Judgment' as used in these rules includes any decree or order which dismisses the action as to any party or finally determines the rights of any party."). Accordingly, the January 7, 2020 Order was subject to the automatic 10-day stay under Rule 62(a), SCRCF, which states, in pertinent part: "Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry." Rule 62(a), SCRCF; *see Gateway Enters v. South Carolina Dep't of Revenue*, 341 S.C. 103, 106, 533 S.E.2d 896, 898 (2000)("Rule 62(a) provides 'no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry.' 'This automatic ten-day stay applies only to judgments as defined in Rule 54(a).") Thus, when adding these 10 days to the 12 days subject to the aforesaid Motion to Alter or Amend stay, the Notice of Appeal was filed just twenty-six (26) days later. Accordingly, the 45-day period in the January 7, 2020 Order had clearly not run as of the date of the Appellant's February 24, 2020 Notice of Appeal.

The Appellant does not dispute that the appeal in this case served as an automatic stay on the enforcement of the judgment per Rule 241(a), SCACR. *See Appellant's Brief, p. 4.* The final disposition of the case occurs when the remittitur is returned by the clerk of the appellate court and filed in the lower court. *McDowell v. South Carolina Dep't of Social Services*, 300 S.C. 24, 386 S.E.2d 280 (Ct. App. 1989). Until that time, the case is pending on appeal and subject to the stay. *Id.* Once the remittitur is filed in the lower court, the lower court acquires jurisdiction to enforce the judgment and take any action consistent with the appellate court ruling. *Muller v. Myrtle Beach Golf and Yacht Club*, 313 S.C. 412, 438 S.E.2d 248 (1993).

Whether the appellate stay merely tolled the remaining nineteen (19) days; whether the

appellate ruling was considered a “judgment” under Rule 54, SCRCPP subjecting it to a 10-day stay under Rule 62, SCRCPP; whether the remittitur reset the 45 days, or; whether the lack of any Tax Collector Affidavit was considered, the lower court was within its right to determine the Plaintiff could still pay the back taxes (upon actually receiving the amounts owed from the County).

It remains clear that the lower court, upon acquiring jurisdiction, chose to enforce the judgment as though the 45-day period had been stayed and not run prior to the good faith efforts undertaken by the Plaintiff, or prior to the August 2022 dates when the subject motions were filed.

Regardless of the timing analysis outlined above, Palmetto’s Motion for Rule to Show Cause is considered a motion for contempt. As such, the party alleging the contempt must show the following:

[C]ontempt results from the willful disobedience of a court order. (citation omitted) Before a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct. (citation omitted) Once the moving party makes out a prima facie case of contempt by pleading the order and showing its noncompliance, the burden shifts to the respondent to establish his defense and inability to comply. (citation omitted) A finding of contempt rests within the sound discretion of the trial judge.

*S.C. Dept. of Soc. Servs. v. Johnson*, 386 S.C. 426, 435 (Ct. App. 2009).

In the October 10, 2022 Order, the Trial Court specifically found the following facts:

[P]laintiff asserted that he, by and through counsel, inquired as to the redemption amount on January 8, 2020; attempted to redeem by payment directly to the Greenville County Tax Assessor on or about July 15, 2022 and August 11, 2022; and continued efforts to pay the redemption amount via correspondence with counsel thereafter.

(R. p. 24)

The trial court went on to state that “[t]he Court finds that the Plaintiff made a good faith effort to comply with the Order within forty-five (45) days, and to rule against Plaintiff would be too harsh

a penalty.” (R. p. 25)

As acknowledged by the lower court, the record is replete with the Plaintiff’s good faith efforts to comply with the Order. Plaintiff, via counsel, attempted to determine the amount due from Greenville County on or about January 8, 2020. (R. pp. 83-85) In the correspondence exchanged between counsel for Plaintiff and the County, it was readily apparent the assumption under which the parties were operating that an appeal would stay the payment requirement under the January 7, 2020 Order. (R. p. 84) In response to the email from Plaintiff’s counsel whereby it was made clear the Plaintiff’s expectation of any future appeal staying any payment obligation, the County Attorney provided information on future, additional amounts that would be added to the current debt, under the obvious assumption that the debt may not be paid immediately. (R. p. 85)

The subsequent actions of Plaintiff make his understanding even clearer, as he paid into his attorney’s trust account an amount in excess of the quoted, future amount. (R. p. 82) Then, ten days after the Remittitur was filed, Plaintiff went to the Greenville County Tax Assessor’s office to try and make payment of the back taxes; however, the County refused to accept payment, noting that their system showed it had been paid and would not accept another payment. (R. p. 57-58) Thereafter, the Plaintiff’s counsel attempted to make payment directly to the County on behalf of Plaintiff; yet, ran into the same issues. The Plaintiff’s attorney then attempted to get the matter resolved through the County attorney, to no avail. (R. p. 57-58) It wasn’t until the Plaintiff was forced to file a Motion with the Court to finally obtain the necessary information and ability to make the payment, which the Plaintiff did within days of the lower court’s order. (R. p. 48-51)

The trial court correctly found that Plaintiff was not willfully disobedient of the January 7,

2020 Order, and as such, was not in contempt of the court's order. The trial court did not err in so holding.

In sum, even if this Court addresses the merits of the stricken Motion for Rule to Show Cause, the Trial Court considered all facts and made specific findings that found Plaintiff had in fact substantially complied with the January 7, 2020 Order. (R. pp. 22-27)

### **CONCLUSION**

As to the January 7, 2020 Order, the Appellant has already had its opportunity to appeal to this Court about any perceived ambiguity in the Order. It failed to do so and should not be allowed a second bite at that apple now, 3.5 years later.

Additionally, the Trial Court struck the motion of Palmetto. Instead of appealing the simple issue as to whether the trial court should have entertained the motion instead of striking it, Palmetto attempts to dive into the allegations of the motion itself and circumvent the court's ruling. The real issue is whether the trial court abused its discretion, or created an error of law, by striking the Motion for Rule to Show Cause. This Court should hold that the trial court did not abuse its discretion in striking Palmetto's Motion for Rule to Show Cause.

However, even if this Court decides to look beyond the order denying the Motion for Rule to Show Cause, the trial court had more than sufficient evidence to determine that there was no contempt by Plaintiff. Additionally, the Trial Court had more than sufficient evidence to determine that Plaintiff had in fact substantially complied with the January 7, 2020 Order.

For the foregoing reasons, Plaintiff respectfully requests that this Court affirm the trial court's October 10, 2022 Order striking Palmetto's Motion for Rule to Show Cause and granting

Plaintiff's Motion to Enforce the January 7, 2020 Order and Determine Amount of Back Taxes  
Due.

Respectfully submitted,

s/M. Stokely Holder

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September 8, 2023  
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**Sep 08 2023**

**SC Court of Appeals**

**CERTIFICATE OF COUNSEL**

The undersigned hereby certifies that the Respondent's Final Brief complies with Rule 211(b) SCACR.

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