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COUNTERSTATEMENT OF THE CASE

This case finds its beginnings in what was a simple business dispute between owners of a company. Pee Dee Land Company is a South Carolina limited liability company which owns property in Florence County through its subsidiary Waverly Woods at Claussen, LLC. It was involved in an action before the Circuit Court because it was deadlocked as a result of a dispute between its owners, neither of which had a majority interest, and Pee Dee Land Company, therefore, could not act. The Circuit Court for Florence County then appointed Attorney James W. Peterson, Jr. of the Florence Bar as a receiver on March 3, 2008. See *Jonathan D. Chandler v. Pee Dee Land Company, LLC and James Mark Lawhon*, Civil Action No. 2006-CP-21-025.

Pee Dee Land Company timely moved the Circuit Court to reconsider the appointment. The Motion to Reconsider was not ruled upon until May 23, 2008 when it was denied by the Circuit Court.

After the Circuit Court's initial appointment of the Receiver, but before the Receiver knew of the appointment, the Florence County Tax Assessor sent a notice to Pee Dee Land Company regarding the multiple lot discount under S.C. CODE ANN. §§12-43-224 and 12-43-225 for multiple lots owned by Pee Dee Land Company's wholly-owned subsidiary Waverly Woods at Claussen, LLC and the May 1, 2008 deadline for seeking such discount.

From March 3, 3008 to May 23, 2008, it was not clear who, if anyone, had any legal authority to act on behalf of Pee Dee Land Company. Therefore, no one applied for the tax discount by the deadline.

The tax discount would have been granted by the County Assessor except for the timeliness. After the Circuit Court's denial of the Motion to Reconsider, Peterson as Receiver then applied for the multiple lot discount with the County Assessor. The County Assessor denied the application.

A. The Action in the Circuit Court between the Receiver for Pee Dee Land Company and Florence County.

James Peterson as Receiver then filed a Petition for Rule to Show Cause on August 25, 2009 to show why he should not be allowed to file an application for the multiple lot discount after the deadline. [R.pp. 21-24; Petition.] Florence County appeared and opposed the Petition. [R.pp. 25-26; County's Response.] The County also filed a legal Memorandum Supporting the Position of the County and asserted that there was no exception for a waiver of the deadline to file an application for the multiple lot discount. [R.pp. 28-29; Memorandum.]

On September 30, 2009, the Circuit Court exercised its equity power, found this to be an exceptional circumstance where it was unclear who could apply for the multiple lot discount prior to May 1, 2008, and ordered the County Assessor to apply the multiple lot discount to the lots in question and accordingly reduce the taxes owed. The Circuit Court also ordered the Assessor to remove any levies or delinquency penalties placed on any of the lots owned by Pee Dee Land Company or Waverly Woods at Claussen, LLC as a result of the multiple lot discount issue. [R.pp. 1-3; Order.]

The deadline to appeal the decision with the South Carolina Court of Appeals was October 31, 2009. Florence County did not appeal the decision, and the judgment in this case was for all purposes at that point in time final. Neither Florence County nor the

County Assessor have ever made any motion for relief from the Circuit Court's judgment, and they have made the decision to abide by the judgment of the Circuit Court. [R.pp. 313-318; Affidavit of County Attorney.]

The case would have and should have ended there, except the Treasurer of Florence County's decision to interfere.

B. The Treasurer's Unauthorized Appeal of the Circuit Court's Order to the S.C. Court of Appeals.

Dean Fowler, Jr., Treasurer of Florence County, however, purported to file a Notice of Appeal with the Court of Appeals on October 29, 2009 in the name of Florence County. [R.pp. 30-36; Notice of Appeal.]

On December 1, 2009, the Florence County Attorney sent a letter to counsel for the Treasurer communicating that the Florence County Council had never authorized an appeal to be filed in the matter and Florence County Council did not wish to proceed with the appeal. [R.p. 311-312; Letter.]

Pee Dee Land Company, which by this time was no longer under a receivership, filed a Motion to Dismiss with the Court of Appeals on the ground that the Treasurer was not a party to the case and had no standing to appeal. [R.pp. 56-62; 63-64; Receiver's Motion to Substitute Party; Motion to Dismiss.]

The Court of Appeals dismissed the appeal on this basis in an order filed July 26, 2010. [R.pp. 8-9; Order.]

After the Court of Appeals dismissed the appeal, the Treasurer did not file a Petition for Rehearing, no order denying a petition for rehearing has been issued, and no petition for a writ of certiorari has been filed. The case ended and the Order of the Circuit

Court has long been the law of this case. The Remittitur was issued by the Court of Appeals on August 17, 2010. [R.p. 10; Remittitur.]

C. The Treasurer's Petition for Writ of Prohibition Before This Court.

Dean Fowler, Jr., purportedly in his official capacity as Florence County Treasurer, not being satisfied with the decision of the Circuit Court, or with the decision of the Court of Appeals, then filed a Petition for a Writ of Prohibition with this Court on August 2, 2010. [R.pp. 92-163; Petition.]

This Court denied the Petition and did not grant any relief to the Treasurer in an order filed October 6, 2010. [R.p. 11; Order.]

D. The Treasurer's and the Auditor's Untimely Attempt to Intervene in the Lawsuit Between Pee Dee Land Company and Florence County Before the Circuit Court.

While the Treasurer's Writ of Prohibition was pending before this Court, the Treasurer also filed a Motion to Intervene and for Relief from Judgment with the Circuit Court on September 30, 2010. [R.pp. 218-220; Treasurer's Motion.]

Well over a year after the Circuit Court issued its initial order, the Auditor, who had never previously appeared or participated in this case in any manner, also sought to intervene and moved for relief from judgment in the Circuit Court on November 24, 2010. [R.pp. 221-223; Auditor's Motion.]

On April 25, 2011, the Circuit Court held a hearing on the motions to intervene and for relief from judgment. [R.pp. 241-281; Hearing Transcript.]

In an order filed May 24, 2011, the Circuit Court denied the Treasurer's and the Auditor's Motions to Intervene for multiple reasons including:

1. There was no longer a pending action in which to file motions;

2. The Motions to Intervene were untimely and allowing intervention would result in prejudice to Pee Dee Land Company;

3. The Treasurer and the Auditor had no interest in the subject matter of the litigation because under the multiple lot discount statute, only the County Assessor is charged with determining the discount; and

4. Florence County adequately represented any interest of the Treasurer and the Auditor.

[R.pp. 12-18; Order, pp. 1-7.]

Having decided that the Treasurer and the Auditor could not intervene in the litigation, the Circuit Court did not need to reach the merits of their Motions for Relief from Judgment. The Circuit Court nevertheless ruled that those motions should be denied as well for the following reasons:

1. The Treasurer's Motion for Relief from Judgment was filed in the wrong court because the case was pending before this Court when he filed his motion;

2. The Treasurer's and the Auditor's Motions for Relief from Judgment were both untimely because such motions must be made within a reasonable time; and

3. The South Carolina Court of Appeals and this Court had already considered the issues raised by the Treasurer and denied relief.

[R.pp. 18-20; Order, pp. 7-9.]

E. The Treasurer's and Auditor's Appeal of the Order Denying the Motions to Intervene and for Relief from Judgment to the S.C. Court of Appeals.

On June 17, 2011, the Treasurer and the Auditor went back to the S.C. Court of Appeals and appealed the Circuit Court's Order denying their motions to intervene and for relief from judgment. [R.pp. 224-240; Notice of Appeal.]

The Treasurer and Auditor filed their Initial Appellants' Brief with the Court of Appeals and asked the Court of Appeals to vacate both the Circuit Court's September 30, 2009 Order and its May 24, 2011 Order.

F. This Court's Certification of the Appeal.

On September 19, 2011, Pee Dee Land Company filed an Emergency Petition for Writ of Temporary and Permanent Injunction and for Writ of Mandamus and Motion to Certify and Expedite the Treasurer's and Auditor's pending appeal. Pee Dee Land Company sought a writ from this Court in its original jurisdiction to prevent the Treasurer's and the Auditor's unlawful attempt to sell the property of Pee Dee Land Company for non-payment of taxes at a tax sale that was scheduled for October 3, 2011.

On September 30, 2011, this Court issued an order temporarily enjoining the sale of Pee Dee Land Company's property pending consideration by the full Court of Pee Dee Land Company's requests for an injunction and a writ of mandamus. Pursuant to Rule 204(b), SCACR, this Court also certified this appeal that was pending before the Court of Appeals.

INTRODUCTION

The specific issue in this appeal is the Treasurer's and Auditor's assertion that the Circuit Court erred when it denied their motions to intervene in this case. However, Pee Dee Land Company requests that this Court not only affirm the Circuit Court's denial of their motions to intervene, but that this Court do so in a way that unequivocally ends this or any other litigation by or at the behest of the Treasurer and the Auditor that relates to the efficacy of the original September 30, 2009 Order of the Circuit Court which ordered the County Assessor to apply the multiple lot discount to the lots in question and accordingly reduce the taxes owed.

While this appeal is ostensibly about the correctness of the Circuit Court's order denying the Appellants' motions to intervene, there is an underlying context in which this case finds itself that it why the case needs extra clear finality from this Court. In reality this case between the original parties would have long been over except that the Treasurer has hijacked the case and held onto it as legal hostage in his long standing battle with Florence County Council over the power of his office. See *Fowler v. Florence County and County Administrator*, Civil Action No. 2010-CP-21-1248 and *Fowler v. Florence County, County Administrator, and Florence County Finance Director*, Civil Action No. 2011-CP-21-1034.

The reason for requesting an affirmance in this way is because of the repeated actions of the Treasurer, now joined by the Auditor, of refusing to recognize and comply with any of the several decisions of the various Courts of the Judicial Branch of the government of the State of South Carolina.

The Treasurer also refuses to recognize and comply with the decision of Florence County to abide by and not appeal the September 30, 2009 Order of the Circuit Court.

Here are just some of the statements and actions of the Treasurer which demonstrate that he considers he is not accountable to any other authority of any kind and that there is no branch of government either judicial or legislative that possesses any power to exercise as a check and balance on him:

> "I don't work as an employee of the county."
>
> In response, the Florence County Administrator has stated: "He [the Treasurer] would like to be autonomous. . . . He would like to have absolute control over everything that he does, but yet he is an employee of the county. His authority is limited by state law."

http://www2.scnow.com/news/pee-dee/2011/apr/27/florence-county-treasurer-files-another-suit-again-ar-1771838/.

> The Treasurer has told the owner of Pee Dee Land Company that he "wasn't going to do a damn thing"
>
> After a county council meeting over the Treasurer's refusal to allow Pee Dee Land Company to pay its taxes under the multiple lot discount statute, the Treasurer said that "the court hasn't ordered him or the county Auditor Wayne Joye to do anything."
>
> "The people have authority over me, and I respond to the people."

http://www2.scnow.com/m/news/2010/nov/18/tax-related-dispute-flares-florence-county-council-ar-1107482/.

Even in their own Appellants' Brief in this appeal, the Treasurer and the Auditor have vehemently stressed that even if they lose this appeal, they will continue to defy the September 30, 2009 Order of the Circuit Court applying the multiple lot discount and will fight for months and even years not to have to perform their duties necessary for the collection of the amount of the tax. See Appellants' Brief, pp. 28-29.

In a case between Pee Dee Land Company and Florence County that ended by October 2009, the Treasurer and the Auditor have managed to cause uncalled for damage and expense to Pee Dee Land Company by:

1. appealing the case to which the Treasurer was not a party where he took on the role of Florence County when he had no authority to do so;

2. attempting to seek a Writ of Prohibition from this Court;

3. refusing to honor the September 30, 2009 Circuit Court Order directing the Assessor to apply the multiple lot discount and the Assessor's request of the Treasurer to honor the Assessor's attempt to comply with the Order;

4. the filing of motions to intervene and for relief from judgment after the case was over;

5. putting the properties up for a tax sale after refusing to accept payment of the taxes as ordered by the Circuit Court; and

6. appealing the order denying the motions to intervene and for relief from judgment.

The frivolous litigious actions of the Treasurer and the Auditor should be put to an end. In addition, either as relief in this appeal, or in our corresponding Petition in this Court's Original Jurisdiction, the Treasurer and the Auditor should be required to pay Pee Dee Land Company the legal costs it has incurred because of this frivolous litigation.

ARGUMENT

I. The Circuit Court did not abuse its sound discretion in denying the Appellants' Motions to Intervene.

The pivotal issue in this appeal is whether the decision of the Circuit Court in denying the Treasurer's and the Auditor's motions to intervene should be affirmed. If the Circuit Court's ruling denying their motions to intervene stands, there is nothing further to be reviewed in this appeal.

If the Treasurer and the Auditor cannot intervene in the litigation between Pee Dee Land Company and Florence County, that should render any other issues they have attempted to raise in their appeal irrelevant. As non-parties without an interest in the litigation, they have no right to seek relief from the Circuit Court's September 30, 2009 Order. They have no standing to challenge whether the Circuit Court had subject matter jurisdiction over the dispute that resulted in the September 30, 2009 Order. They have no standing to contest whether Pee Dee Land Company was entitled to the multiple lot discount or whether the company qualified for the discount.

Rule 24(a) of the South Carolina Rules of Civil Procedure sets forth the following requirements for intervention by a non-party:

> Upon timely application anyone shall be permitted to intervene in an action . . . (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impeded his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Rule 24(a), SCRCP.

An applicant moving to intervene under this rule must therefore show all four of the following:

1. timely application;

2. an interest relating to the property or transaction which is the subject of the action;

3. that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and

4. its interest is inadequately represented by other parties.

Ex parte Reichlyn, 310 S.C. 495, 498, 427 S.E.2d 661, 663 (1993). Not meeting just one of these requirements will defeat intervention.

The Circuit Court found that the Appellants (1) had not made a timely application; (2) did not have any interest in the subject matter of action; and (3) were adequately represented by Florence County to the extent that they had any interest. [R.pp. 15-18; Order, pp. 4-7.]

The Appellants face a tough standard of review in their attempt to overturn the Circuit Court's denial of their motions to intervene on these separate and independent grounds. In reviewing the denial of a motion to intervene, the appellate court must determine whether the trial judge abused his discretion. South Carolina Tax Comm'n v. Union County Treasurer, 295 S.C. 257, 260, 368 S.E.2d 72, 74 (Ct. App. 1988); see also Ex parte Horry County State Bank, 361 S.C. 503, 507, 604 S.E.2d 723, 725 (Ct. App. 2004).

"The decision to grant or deny a motion to . . . intervene in an action pursuant to Rule 24, SCRCP, lies within the sound discretion of the trial court." Ex parte Gov't Employees Ins. Co., 373 S.C. 132, 135, 644 S.E.2d 699, 701 (2007). The appellate courts

will not disturb a trial court's decision on appeal unless a "manifest abuse of discretion is found resulting in an error of law. Moreover, the error of law must be so opposed to the lower court's sound discretion as to amount to a deprivation of the legal rights of the party." Id.

The Appellants have failed to show any abuse, much less manifest abuse, of the Circuit Court's discretion.

A. The Appellants' Motions to Intervene were untimely and allowing intervention would have resulted in further prejudice to Pee Dee Land Company.

The Circuit Court found that neither the Treasurer nor the Auditor had made timely applications to intervene in the litigation between Pee Dee Land Company and Florence County. A court must consider the following factors in determining whether a motion to intervene is timely:

> '1) the time that has passed since the applicant knew or should have known of his or her interest in the suit;
>
> 2) the reason for the delay;
>
> 3) the stage to which the litigation has progressed; and
>
> 4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denying intervention.'

Ex parte Reichlyn, 310 S.C. 495, 500, 427 S.E.2d 661, 664 (1993) (quoting Davis v. Jennings, 304 S.C. 502, 504, 405 S.E.2d 601, 603 (1991)).

The Treasurer filed his Motion to Intervene a year after the Circuit Court's September 30, 2009 Order was filed. The Auditor did not file his Motion to Intervene until November 24, 2010, more than a year after the Circuit Court's September 30, 2009 Order

was filed.

The Treasurer's actions demonstrated that he knew of his alleged interest in the litigation between Pee Dee Land Company and Florence County well before the Motions to Intervene were filed. The Treasurer filed an improper Notice of Appeal with the South Carolina Court of Appeals on October 29, 2009 and approximately a month later filed a brief in that invalid appeal, raising the same issues to the Court of Appeals that he raised in his Motion to Intervene and for Relief from Judgment. [R.pp. 30-36; 37-53; 218-220; Notice; Brief; Motion.]

The Treasurer waited almost a year from the time he knew he had an alleged interest in the suit to intervene. The Auditor, having the same counsel as the Treasurer and having piggybacked the Treasurer's motion, likewise should have known of any alleged interest in the suit well before his November 24, 2010 motion.

The Treasurer and the Auditor have offered no justifiable reason for the delay in filing their motions to intervene.

They have offered excuses and blame the County Attorney for suggesting them to look into whether the Treasurer could be substituted for the County in the first appeal after the Treasurer improperly filed the first appeal in the name of Florence County. But that does not excuse him from filing the appeal in the first place which he should have known was improper instead of timely filing a motion to intervene with the Circuit Court. See Ex parte Condon, 354 S.C. 634, 583 S.E.2d 430 (2003) (dismissing the Attorney General's appeal where he did not formally intervene and become a named party prior to filing an appeal).

Furthermore, the litigation between Pee Dee Land Company and Florence County had progressed to a stage where it was final and complete where Florence County chose to accept the decision of the Circuit Court and not appeal.

Pee Dee Land Company had already been prejudiced by having to unnecessarily spend an inordinate amount of money on attorneys' fees and costs to defend the continued unsubstantiated litigation brought by the Treasurer in the Circuit Court, the South Carolina Court of Appeals, and the South Carolina Supreme Court. Pee Dee Land Company has been unable to pay the taxes on the property at issue as the Treasurer has refused to accept payment. Pee Dee Land Company has faced the possibility of losing its property at a tax sale that the Treasurer had scheduled until this Court stopped it.

If intervention were granted, Pee Dee Land Company would suffer further prejudice by incurring additional attorneys' fees and costs to defend an order that is more than two years old. Pee Dee Land Company is entitled to have its dispute with Florence County brought to a final closure, especially when Florence County has accepted the judgment. It is extremely prejudicial to Pee Dee Land Company to have this litigation go on and on.

The Circuit Court rightly found that the Treasurer's and Auditor's Motions to Intervene were untimely.

B. The Appellants have no interest in the subject matter of this litigation and do not have standing to challenge the Circuit Court's September 30, 2009 Order.

The Circuit Court also correctly denied the motions to intervene because the Treasurer and the Auditor do not have standing to challenge the Circuit Court's September

30, 2009 Order and do not have any interest relating to the property or transaction which is the subject matter of this action.

Under Rule 24(a)(2) regarding Intervention of Right, the applicant must "claim[ ] an interest relating to the property or transaction which is the subject of the action and [demonstrate] he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest."

Under the express terms of the statute governing multiple lot discounts, it is the Assessor charged with determining the discount: "[T]he county assessor shall appraise each lot as an individual property and then discount his gross actual market value estimate of the developer's lot holdings under [certain] conditions." S.C. CODE ANN. § 12-43-224. Further, the "application for the discounted value shall be made to the assessor of the county in which the real property is located . . . ." Id.

More generally county assessors shall:

> [B]e the *sole person responsible for the valuation of real property*, except that required by law to be appraised and assessed by the department, and the values set by the assessor *may be altered only by the assessor or by legally constituted appellate boards, the department, or the courts.*

§ 12-37-90(h) (emphasis added).

The Treasurer and the Auditor have no interest under this statute and have no role in determining whether the discounted rate applies or the amount of the discount. The Auditor is required to adopt the valuations of the Assessor. § 12-39-350. The Auditor is required to accept the Assessor's valuation, not substitute his own. The Treasurer is then required to accept the Auditor's resulting duplicate. § 12-45-60 (entitled, "Only taxes on duplicates or ordered by auditor shall be collected") ("County treasurers are prohibited

from collecting any tax except such as has been first entered upon the tax duplicates of their respective counties or upon the orders of the auditors of such counties."). The Treasurer's only obligation under the statutory scheme is to "collect the taxes in the manner prescribed by law and give receipts to the persons paying them." § 12-45-70(A).

The system for taxation, including for the multiple lot discount, can be therefore be simply characterized as follows: the Assessor assesses; the Auditor accepts those valuations and issues the bill; the Treasurer collects the amount invoiced, deposits the money, and issues a receipt. Most importantly, the Assessor is the only one who assesses the value of the property and determines whether any discount applies.

"A mere general interest in the subject matter of the litigation is not sufficient" to warrant intervention. South Carolina Tax Comm'n v. Union County Treasurer, 295 S.C. 257, 262, 368 S.E.2d 72, 75 (Ct. App. 1988). That is all the Treasurer and the Auditor have – a mere interest in issuing the bill and then collecting the amount assessed. They have no interest in whether or not the discount should be granted under the multiple lot discount statute.

Moreover, the Circuit Court's Order was directed to the Assessor, ordering the Assessor to apply the tax discount to the properties at issue. The Assessor has not and does not oppose the Circuit Court's Order. The Assessor has been willing to comply with the Circuit Court's Order but has been prevented by the Treasurer and the Auditor. See Florence County's Return to the Emergency Petition for Writ of Temporary and Permanent Injunction in the Original Jurisdiction of This Court, pp. 7, 11. The Circuit Court did not err in ruling that the Treasurer and the Auditor lacked standing to challenge an order

addressed to the Assessor.

The Appellants attempt to use their statutory authority over adding penalties when a taxpayer fails to pay its taxes owed as support for their argument that they have an interest in the litigation. The Appellants, however, only have authority to add and then decide to waive penalties on taxes properly owed. See S.C. CODE ANN. §§ 12-45-180 and 12-45-185. The Treasurer is seeking to assess penalties on the higher, illegal assessed value – not the assessed value at the discounted rate as ordered by the Circuit Court. The Circuit Court did not override any exclusive authority of the Appellants over penalties because there would have never been any penalties had the property been properly assessed at the discount rate in the first instance.

The Circuit Court correctly determined that the Appellants had no interest in the litigation and should not be permitted to intervene.

C. Florence County adequately represented any interest of the Appellants.

The Circuit Court further concluded that intervention by the Treasurer and the Auditor was not warranted because Florence County adequately represented any interest they may have had. Intervention is not permitted where "the applicant's interest is adequately represented by existing parties." Rule 24(a)(2), SCRCP. On reviewing the Circuit Court's decision as to whether adequacy of representation existed, the appellate court "appraise[s] all of the circumstances of a particular case as to whether the interests sufficiently overlap so as to deny intervention." Ex parte Horry County State Bank, 361 S.C. 503, 507, 604 S.E.2d 723, 725 (Ct. App. 2004). The burden of demonstrating inadequacy of representation is on the Appellants. Id. at 508, 604 S.E.2d at 725.

Florence County through the County Attorney appeared and defended itself against the Receiver's Petition for Rule to Show Cause. [R.pp. 25-26; 313-318; Response; County Attorney Affidavit.]

Florence County also submitted a memorandum of law to the Circuit Court, arguing that Florence County was not required to mail notice of the tax deadline, but had done so; that the Notice had been mailed to the proper address for Pee Dee Land Company and it must be assumed that the Notice was received by the proper representative; and that regardless of whether notice had been mailed or not, received or not, the statutory scheme meant the passing of the deadline operated as an unwaivable bar. [R.pp. 28-29; Memorandum.]

Florence County benefits if the tax discount is not applied because it means more tax revenue for the County. The County has the same interest as the Treasurer and Auditor do in seeing to it that maximum tax revenues are ultimately collected. The Circuit Court's ruling that Florence County adequately represented any interest of the Treasurer and the Auditor should be affirmed.

D. There was no longer a pending action in which to file motions.

The Circuit Court denied the motions to intervene on the additional basis that the action between Pee Dee Land Company and Florence County had been over for a long period of time, and there was no longer a pending action in which any person may move to intervene. The litigation between Pee Dee Land Company and Florence County was for all purposes final on October 31, 2009 when the time for filing a Notice of Appeals with the South Carolina Court of Appeals expired. Florence County did not appeal the Circuit

Court's September 30, 2009 Order. The Treasurer's first Notice of Appeal with the South Carolina Court of Appeals was improper and dismissed by the Court of Appeals. That Notice of Appeal did not extend the life of the case. The litigation between Pee Dee Land Company and Florence County has long been concluded, and it would defeat the finality of the judicial process if outsiders could intervene and overturn judgments at any time without regard to when the case had definitively concluded.

The Appellants contend that most courts routinely permit post-judgment intervention and cite to several cases holding as such. The Appellants did not timely intervene post-judgment even though they knew of their interest immediately following the Circuit Court's September 30, 2009 Order. They rather took on a process that involved an invalid appeal and a later attempt to invoke the original jurisdiction of this Court. Those efforts did not continue the litigation between Pee Dee Land Company and Florence County. In any event, the Circuit Court ruled that the Appellants' motions to intervene were untimely whether or not there was still a pending action, and that ruling should be affirmed. See supra Part I.A.

II. The Circuit Court did not abuse its sound discretion in denying the Appellants' Motions for Relief from Judgment.

The Circuit Court, despite having no obligation to do so, also denied the Treasurer's and the Auditor's motions for relief from judgment for three separate and independent reasons. This Court also reviews the Circuit Court's denial of a Rule 60(b), SCRCP motion for an abuse of discretion, which only exists if the Circuit Court commits an error of law or makes a factual finding that lacks any evidentiary support. Tri-County Ice and Fuel Co. v. Palmetto Ice Co., 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990).

A. The Treasurer's Motion for Relief from Judgment was filed in the wrong court.

Rule 60(b), SCRCP requires that "[d]uring the pendency of an appeal, leave to make the motion must be obtained from the appellate court." When the Treasurer filed his Motion for Relief From Judgment with the Circuit Court on September 30, 2010, this case was still pending in the South Carolina Supreme Court. The South Carolina Supreme Court did not deny the Petition for Writ of Prohibition until October 6, 2010. The Treasurer did not seek leave from the Supreme Court to file his motion for relief from judgment. The Treasurer's Motion for Relief from Judgment was accordingly invalid because it was improperly filed in the wrong court, and the Circuit Court did not err in so ruling.

The Treasurer argues in his brief that this provision of Rule 60(b) did not apply because he did not have an appeal pending. The Treasurer, however, had himself brought the case before this Court, an appellate court, and then while seeking relief from this Court simultaneously tried to seek relief from the Circuit Court on the very same grounds. At a minimum, under Rule 60(b), the Treasurer should have sought leave from this Court before also filing a motion with the Circuit Court while this Court was considering the same issues.

B. The Motions for Relief from Judgment were not filed within a reasonable time.

Under Rule 60(b)(4), SCRCP, under which the Treasurer and Auditor contend they were seeking relief, any motion for relief from judgment must still be filed within a reasonable period of time. See McDaniel v. U.S. Fid. and Guar. Co., 324 S.C. 639, 644,

478 S.E.2d 868, 871 (Ct. App. 1996) (confirming reasonable time requirement applies to Rule 60(b)(4)). The Circuit Court determined that both the Treasurer's and the Auditor's motions for relief from judgment were not filed within a reasonable period of time for the same reasons their motions to intervene were untimely. See supra Part I.A. There is nothing in this ruling by the Circuit Court that was an abuse of its discretion. Waiting a year and more after they knew about the Circuit Court's September 30, 2009 Order to file their motions for relief from judgment was unreasonable.

C. The South Carolina Court of Appeals and the South Carolina Supreme Court had already rejected the same arguments raised by the Treasurer and the Auditor in the Circuit Court.

The Circuit Court found that the Treasurer had already raised the same issues to the South Carolina Court of Appeals and the South Carolina Supreme Court and both of those Courts have denied any relief; therefore, if the Circuit Court were to grant either of the Motions to Intervene or the Motions for Relief from Judgment, doing so would have the effect of overruling the decision of the South Carolina Court of Appeals and the decision of the South Carolina Supreme Court.

The Treasurer argued to the Court of Appeals that it should be allowed to intervene and that Court did not grant the requested relief. [R.pp. 73-80; Treasurer's Brief in Opposition to Motion to Dismiss.]

The Treasurer then raised the full merits of its arguments as to why the Circuit Court's September 30, 2009 Order was void to this Court in its Petition for Writ of Prohibition. [R.pp. 92-163; Petition.] This Court also refused to grant the Treasurer's requested relief. The case, which should have been over when Florence County chose not

to appeal, should have at least been over when this Court declined to vacate the Circuit Court's September 30, 2009 Order. Because this Court has refused to vacate the Order, the Circuit Court would have been at odds with this Court's decision had it allowed the Treasurer and Auditor to intervene and then have vacated its own order. The Circuit Court correctly denied the motions for relief from judgment on this basis as well.

III. The Appellants' remaining issues with respect to whether the Circuit Court had subject matter jurisdiction over its September 30, 2009 Order and whether Pee Dee Land Company was entitled to the multiple lot discount or whether the company qualified for the discount are not properly before this Court and have not been preserved for appeal.

The Treasurer and the Auditor raise a number of issues that are not properly before this Court and have not been preserved for appeal. They seek to have this Court address whether the Circuit Court had jurisdiction over its September 30, 2009 Order and whether Pee Dee Land Company qualified for and should have been allowed to receive the multiple lot discount.

First, the only order that the Treasurer and the Auditor could appeal was the Circuit Court's May 24, 2011 Order denying their motions to intervene and for relief from judgment. As non-parties, the Treasurer and the Auditor cannot appeal the Circuit Court's September 30, 2009 Order and any issues in that order. That order is not properly on appeal.

Moreover, the Circuit Court did not rule on any of these issues in its May 24, 2011 Order. For an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial court. In the interest of Michael H., 360 S.C. 540, 546, 602 S.E.2d 729, 732 (2004). The Treasurer and the Auditor never filed a motion asking the Circuit

Court to reconsider these other issues they have raised in this brief. They are not properly preserved for appeal.

In additional to not being parties with standing to raise these other issues and in addition to not having preserved these issues for appeal, there is also no merit to them.

IV. The Circuit Court properly exercised its equity power in ordering the Assessor to apply the multiple lot discount to Pee Dee Land Company's multiple lot property.

The Appellants contend that the Circuit Court did not have subject matter jurisdiction when it issued its September 30, 2009 Order and also had no authority to set aside the statutory deadline.

The Appellants assert this case is a tax case and they alone have any authority. The fact the Circuit Court had a business dispute case involving a deadlocked company over which the Circuit Court using its equity power appointed a receiver but whose appointment was under challenge when the time to file for a multiple lot reduction expired makes no difference to the Appellants. The Circuit Court issued a decision they do not agree with and it does not matter to the Appellants that Florence County, the named party, decided to accept the ruling of the Circuit Court and not incur more litigation and not appeal. It does not matter to the Treasurer and the Auditor that they were not in the case.

This is not a tax case. The decisions by a Circuit Court or a Family Court often make decisions about property, ownership, possessory rights, equitable jurisdiction, etc. that have tax consequences but that does not change the nature of the case, nor negate the jurisdiction of the Circuit Court, nor destroy the equitable authority of the Circuit Court.

The code section the Appellants stand on is S.C. CODE ANN. § 12-60-3390:

Dismissal of Action Covered By Chapter Brought In Circuit Court. Which states: "If a taxpayer brings an action covered by this chapter in circuit court, the circuit court shall dismiss the case without prejudice."

This case was not brought under that chapter. This case was brought to resolve a dispute between two business people who had a falling out and as a result the company was deadlocked. Pee Dee Land Company was deadlocked in a dispute between the two owners which was pending in the Circuit Court. They are real estate developers.

Because the owners of the corporate entities were deadlocked, the Circuit Court exercised its equitable power and appointed a Florence attorney, James W. Peterson, Jr., as Receiver for the two companies with authority to act on their behalf. The Order appointing Peterson as Receiver was dated March 3, 2008 but not delivered to Mr. Peterson until April 21, 2008. One of the parties made a Motion to Reconsider the appointment of Peterson, and the Circuit Court ruled on that Motion and denied it by Order dated May 23, 2008.

The deadline for the development company, over which Attorney Peterson had been appointed Receiver, to apply for a multi-lot rate discount under S.C. CODE ANN. §12-43-225(b) was May 1, 2008.

After the Motion to Reconsider Peterson's appointment was denied on May 23, 2008 and Peterson had clear authority to act on behalf of the two entities, Peterson filed a Petition in the Circuit Court, as Receiver, against Florence County setting forth these facts and asking the Court to exercise its equitable and legal powers to order Florence County to apply the multiple lot discount.

This was brought before the Circuit Court and as the Circuit Court found, until the Motion to Reconsider the appointment of Peterson as Receiver was finally ruled upon on May 23, 2008, there was no person with uncontested authority to act on behalf of Pee Dee Land Company.

The Circuit Court itself, under its equity power, having issued the Order which was under challenge appointing Attorney Peterson as the Receiver, then in the further exercise of its equity power granted relief for the company to apply for the discount to which it was otherwise clearly entitled to obtain.

The Appellants argue that the Circuit Court cannot use its equity power to interpret or construe a clear statute to mean something different from what it states. They perceive that is what the Circuit Court has done and perceives it as an encroachment onto his exclusive turf which no court or county government can trespass upon.

They misunderstand and misstate what a court does when it exercises its equitable power. Many statutes have plain language. A statute of limitations has plain language as the statute here. If a court of law is asked to construe one of these statutes, it must give the statute the plain meaning of the words used. What the Appellants do not see is the distinction between what a court of law does when it construes statutory meaning and what a court of equity does in preventing a harsh result if a proper showing is made to justify the equity court's exercise of its equity power.

The Circuit Court in this case was not interpreting or construing the statute. We all know it is well settled that a court does not substitute its ideas for the language in the statute to ascertain the statute's meaning. Despite the vehemence of the Appellants' language that

is not what the Circuit Court was doing in this case and it is not what a court does in exercising its equity power.

When the court finds a sound basis upon which to exercise its equity power to relieve a litigant from an inappropriately harsh effect of a statute that is a very different thing from when a court is interpreting the meaning of the statute for general application. Interpreting or construing a statute is a legal decision, not an exercise of equitable power.

The Circuit Court appropriately issued the September 30, 2009 Order and set aside the statutory deadline under the unusual circumstances present and had subject matter jurisdiction to do so.

V. Timeliness was the only issue ever contested as to whether Pee Dee Land Company was entitled to the multiple lot discount.

The Appellants also assert that there is no evidence in the record that Pee Dee Land Company would have been entitled to the multiple lot discount even if it had complied with the statutory deadline. Again, while they do not have standing to address this issue as non-parties, it nonetheless has no merit.

There was no need to provide this proof because it not a contested issue between Pee Dee Land Company and Florence County. The only contested issue between the parties to the case was timeliness. The Receiver alleged in his position that the Florence County Assessor took the position that the discount was waived because of the lack of a timely application, and Florence County admitted the allegation. [R.pp. 22; 25; Petition, ¶ 6; Response, ¶ 3.] The County did not assert any other basis for denying the discount.

There is also evidence in the record that shows that Pee Dee Land Company was entitled to the multiple lot discount. In his affidavit, the County Attorney avers that "[t]he

multiple lots were clearly eligible for the multiple-lot discount and the case presented the Court with only the legal question of the effect of the deadline on entities who temporarily had no one with authority to act due to an Order of that same Circuit Court." [R.pp. 317-318; Affidavit of County Attorney, pp. 5-6.]

The argument of the Appellants that Pee Dee Land Company would not have qualified for the multiple lot discount even if its application had been submitted by May 1, 2008 is unfounded.

CONCLUSION

Pee Dee Land Company requests this Court to affirm the Circuit Court and provide additional relief as set forth below:

1. The Circuit Court's Order denying the Appellants' Motions to Intervene should be denied where the Circuit Court acted within its sound discretion.

2. Should this Court affirm the denial of the Motions to Intervene, no further issues need to be reached in this appeal.

3. If this Court should reach any further issues, the Circuit Court's Order denying the Appellants' Motions for Relief from Judgment should also be denied where the Circuit Court acted within its sound discretion.

4. The Appellants' remaining issues with respect to whether the Circuit Court had subject matter jurisdiction over its September 30, 2009 Order and whether Pee Dee Land Company was entitled to the multiple lot discount or whether the company qualified for the discount are not properly before this Court and have not been preserved for appeal.

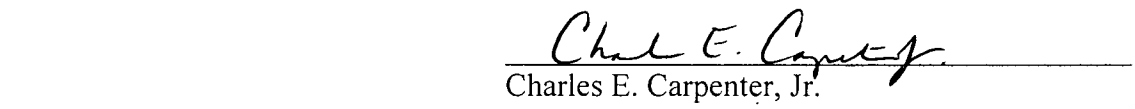
5. The Circuit Court properly exercised its equity power in ordering the Assessor to apply the multiple lot discount to Pee Dee Land Company's property.

6. Timeliness was the only issue ever contested as to whether Pee Dee Land Company was entitled to the multiple lot discount and no additional proof was needed to show that Pee Dee Land Company qualified for the multiple lot discount; the County conceded that the company qualified for the discount.

7. The Appellants should be permanently enjoined from any further litigation that relates to the September 30, 2009 Order or any further interference with the September 30, 2009 Order and required to pay the legal fees and costs incurred by Pee Dee Land Company as a result of the frivolous litigation of the Appellants, either as relief in this appeal or in the corresponding Emergency Petition in this Court's Original Jurisdiction.

(signature page following)

Respectfully submitted,



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December 1, 2011.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Final Brief of Respondents complies with Rule 211(b), SCACR.

Respectfully submitted,

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December 1, 2011.

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Carpenter Appeals and Trial Support, LLC, attorneys for Respondent, Pee Dee Land Company, LLC, do hereby certify that I have this date served the foregoing Final Brief of Respondent, dated December 1, 2011, by personally depositing a copy of the same in a United States Postal Service mailbox, postage prepaid, addressed to the parties indicated below:

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