

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite D. Murphy, Master-In-Equity

Case No. 2012-213177

RECEIVED

AUG 02 2013

SC Court of Appeals

C. S. Carter..... Plaintiff,

vs.

D. J. Brown aka Dan Brown aka Dan J. Brown, Eric Brown, Etholia Brown, Enoch Wesley Brown, Jr., Ernest Brown, Jr. Karen Brown, Lisa Brown, Michael Brown, Rena Brown, Michael C. Brown, Sr. aka Michael C. Brown, Clara B. Moses aka Clara Brown Moses, Mable Brown Moses aka Mable B. Moses, Westbury Ace Hardware, CPM Federal Credit Union, Ford Motor Credit, Sears Roebuck & Company, The St. Paul Campground Association aka St. Paul Campground and JOHN DOE, a fictitious name used herein to designate the unknown heirs at law, distributees, devisees, issue, personal representative, successors and/or assigns of Dorothy Brown and Ernest Brown aka Ernest D. Brown, D. J. Brown aka Dan Brown aka Dan J. Brown, Eric Brown, Etholia Brown, Enoch Wesley Brown, Jr., Ernest Brown, Jr., Karen Brown, Lisa Brown, Michael Brown, Rena Brown, Michael C. Brown, Sr. aka Michael C. Brown, Clara B. Moses aka Clara Brown Moses, Mable Brown Moses aka Mable B. Moses, all being deceased persons or who may be deceased persons, and MARY ROE, a fictitious name designating all other persons and legal entities unknown who may have or claim any right, title, estate, interest in or lien upon the real estate described herein, including any such as may be infants, minors, prisoners, incompetents, or under any other disability, including the Service Members' Civil Relief Act..... Defendants.

AND

Rena Brown aka Renee Brown aka Renee A. Lawrence, Eric Brown aka Eric W. Brown aka Eric Wesley Brown, Lisa Brown aka Lisa Brown-Hoff, Michael Brown aka Michael E. Brown aka Michael Enoch Brown, Karen Brown aka Karen M. Brown aka Karen Michelle Brown, and Michael C. Brown, Sr. aka Michael C. Brown aka Michael Clay Brown-----Third-Party Plaintiffs,

vs.

Dorchester County.....Third-Party Defendant.

OF WHOM

C. S. Carter and Dorchester County.....Respondents,

v.

Rena Brown aka Renee Brown aka Renee A. Lawrence, Eric Brown aka Eric W. Brown
aka Eric Wesley Brown, Lisa Brown aka Lisa Brown Hoff, Michael Enoch Borwn, Karen
Brown aka Karen M. Brown aka Karen Michelle Brown, and Michael C. Brown, Sr. Aka
Michael C. Brown aka Michael Clay Brown.....Appellants.

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**ATTORNEYS FOR RESPONDENT
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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN NOT SETTING ASIDE THE TAX DEED WHEN MAILING NOTICES OF THE TAX SALE PROCESS HAD NOT BEEN MADE UPON TWO OF THE GRANTEES OF RECORD?
2. DID THE TRIAL COURT ERR IN NOT SETTING ASIDE THE TAX DEED WHEN THE NEWSPAPER ADVERTISEMENT DID NOT CONTAIN THE GRANTEES OF RECORD BUT ONLY THE DEFAULTING TAXPAYER?
3. DID THE TRIAL COURT ERR IN RULING THAT THE GRANTEES CONTAINED IN THE PROBATED ESTATE WAS NOT ENTITLED TO RECEIVE NOTICES OF THE TAX SALE PROCESS?
4. DID THE TRIAL COURT ERR IN NOT GRANTING THIRD-PARTY PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT MOTION AS WELL AS MOTION FOR A NEW TRIAL OR TO ALTER OR TO AMEND JUDGMENT WHEN IT WAS SHOWN THE TAXING AUTHORITY FAILED TO INCLUDE ALL GRANTEES IN THE TAX SALE PROCESS?

STATEMENT OF THE CASE

On July 22, 2010, Plaintiff C.S. Carter brought this action seeking to confirm a tax deed issued to him dated March 16, 2009, and recorded March 24, 2009, in Deed Book 6995, at Page 46, in the Office of the Dorchester County Register of Deeds, pursuant to a sale of the subject property to him by tax deed on November 5, 2007. The Third-Party Plaintiffs, Michael C. Brown, Sr., Rena Brown, Eric Brown, Lisa Brown, Michael Brown, and Karen Brown, answered denying the allegations and asserted a third-party complaint against Third-Party Defendant/Respondent Dorchester County seeking to void the deed and other relief upon grounds that Dorchester County had failed to comply with certain requirements of law leading to the tax sale. The Third-Party Plaintiffs also contended that their counterclaim to set aside the tax deed was not barred by operation of the two-year statute of limitations set forth in S.C. Code Ann. Section 12-51-160 (2000) because Dorchester County had failed to strictly comply with the statutory notices and newspaper advertisements requirements leading to the tax sale.

The Third-Party Plaintiffs claimed Third-Party Defendant/Respondent Dorchester County had failed to mail required notices for tax deed sale to certain grantees of record, had failed to include the names of grantees of record in the newspaper advertisement notices and that such failures of Dorchester County to comply with the tax sale laws were fundamental and jurisdictional defects, not mere irregularities, that should not cut off the Third-Party Plaintiffs' right to redeem the property sold in the tax sale.

The Plaintiff, in response to the responsive pleadings, replied and counterclaimed against the Defendant/Third-Party Plaintiffs for quantum meruit/unjust enrichment, and in the alternative, sued the Third-Party Defendant, Dorchester County, in the event the Court

granted the Defendant/Third-Party Plaintiffs any relief. The Defendants/Third-Party Plaintiffs filed a Reply to the Counterclaim. The Third-Party Defendant, Dorchester County, answered denying the material allegations of the Defendants/Third-Party Plaintiffs.

The Defendants/Third-Party Plaintiffs subsequently filed a motion for summary judgment dated April 20, 2011, which was denied by the Court by Order Denying Third-Party Plaintiff's Motion for Summary Judgment dated October 31, 2011. Both parties filed memorandums of law in support of their positions. The case was heard on March 12, 2012, and resulted in an Order Confirming Tax Deed dated April 17, 2012, filed on May 4, 2012, and served May 8, 2012. A motion for a new trial or to amend or to alter judgment dated May 16, 2012, was denied by Order Denying Motion for a New Trial or to Alter or to Amend Judgment dated and filed on September 4, 2012, was served by mail on September 5, 2012. The Notice of Appeal followed on October 2, 2012.

FACTS

The real property which is the subject of this action was sold at a tax sale to C. S. Carter on November 5, 2007, for \$1,700.00 (R. p. 124, lines 13-22) for property valued at \$61,200.00 and as much as \$66,500.00 (R. pp. 115-116). The deed is dated March 16, 2009, and recorded March 24, 2009, in Deed Book 6995, at Page 46, in the Office of the Dorchester County Register of Deeds (Plaintiff's Exhibit No. 1, R. pp. 152-156).

This property previously had been conveyed to Ernest Brown, father and grandfather of the Third-Party Plaintiffs, by deed of Orie W. Lynch dated August 12, 1963, and recorded August 13, 1963, in Deed Book 132, at Page 502, in the Office of the Clerk of Court for Dorchester County (Defendants' Exhibit No. 1, R. pp. 157-158).

Ernest Brown died intestate on December 1, 1976, still owning the subject property, as contained in the probate administration of his estate. (Defendants' Exhibit No. 2, R. pp. 159-163, Estate of Ernest Brown for Petition for Letters of Administration and Order for Citation to Issue filed in 1987.)

Following the death of Ernest Brown in 1976, in 1980, certain persons, named as some of his heirs-at-law consisting of his wife, Dorothy Brown, and children, D. J. Brown, Ernest Brown, Jr., Clara Brown Moses, Mable Brown Moses, and Etholia Brown by an interest "Whereas" deed dated April 16, 1980, and recorded April 21, 1980, in Deed Book 409, at Page 18, in the Office of the Clerk of Court for Dorchester County, conveyed all of their "right, title, interest, and inheritance, to the subject property to Michael C. Brown, Sr., also a child of Ernest Brown. (Interest deed, Defendants' Exhibit No. 5, R. pp. 166-170.)

The same interest deed into Michael C. Brown, Sr. showed Enoch Wesley Brown, Jr., Michael Brown, Karen Brown, and Lisa Brown, as FOUR named grandchildren of Ernest Brown, as also being his heirs-at-law. However, they did not by this deed or a later deed convey their interest to Michael C. Brown, Sr. or anyone, so they retained their interest in and to the subject property.

Following the death of Ernest Brown in 1976, and the interest deed in 1980, the probate administration of the estate of Ernest Brown was filed in 1987 in the Probate Court for Dorchester County. (Defendants' Exhibit No. 2, Petition for Letters of Administration, R. pp. 159-163; and Defendants' Exhibit No. 3, Devise/Descent of Real Estate and Description of Real Estate, R. pp. 164-165.) This probate administration revealed the heirs-at-law surviving Ernest Brown to be his wife and the same six children as named in the

interest deed but FIVE named grandchildren, instead of four as stated in the interest deed in 1980, with two of them, Eric Brown and Rena Brown, not being included in the interest deed. Enoch Wesley Brown, Jr., who was named as a grandchild heir-at-law in the interest deed, was not named in the probate administration. The two grandchildren named in the probate administration and not in the interest deed, Eric Brown and Rena Brown, were not provided any of the statutory requirements leading up to the tax sale of the subject property.

All of the named grandchildren of Ernest Brown in the interest deed, including Enoch Wesley Brown, Jr. who was included in the interest deed, were included in the tax sale process. However, not all of the five grandchildren named in the probate administration were included in the tax sale process. (Interest deed as Defendants' Exhibit No. 5, R. pp. 166-170; and the probate administration petition for appointment as Defendants' Exhibit No. 2, R. pp. 159-63; and the Devise/Descent of Real Estate and Description of the Estate of Ernest Brown, Defendants' Exhibit No. 3, R. pp. 164-165).

The grandchildren of Ernest Brown, according to the interest deed in 1980, (Interest deed, Defendants' Exhibit No. 5, R. pp. 166-170), included in the tax sale process were:

1. Enoch Wesley Brown, Jr.
2. Michael Brown
3. Lisa Brown
4. Karen Brown

The grandchildren included in the probate administration in 1987 are listed below. Only Lisa Brown, Michael Brown and Karen Brown were included in the tax sale process in 2007.

1. Lisa Brown
2. Michael Brown

3. Karen Brown
4. Eric Brown (not included in interest deed or tax sale process)
5. Rena Brown (not included in interest deed or tax sale process)

The tax deed, Plaintiff's Exhibit No. 1 (Tax deed, R. pp. 152-156) cited Michael C. Brown, Sr., et al., and the exact four named grandchildren contained in the interest deed, Defendants' Exhibit No. 5 (R. pp. 166-170), as the ones to whom statutory notices had been mailed. The names of Eric Brown and Rena Brown, grandchildren, who were named in the probate administration, were not included in the tax deed issued to the Plaintiff C.S. Carter as having been mailed the notices. (Certified mail notices, Defendants' Exhibit Nos. 6-10, R. pp. 178-197) Furthermore the delinquent tax collector testified that no notices were sent to grantees Eric Brown and Rena Brown. (R. p. 97, lines 12-15)

The probate administration showed the FIVE grandchildren of the estate instead of the four in the interest deed to be Eric Brown, Michael Brown, Karen Brown, Rena Brown and Lisa Brown, children of Enoch Brown, a predeceased child of Ernest Brown. The name of Enoch Wesley Brown, Jr. was not included in the probate administration. The five grandchildren as contained in the probate administration did not convey their interests in and to the subject property. Therefore, Michael C. Brown, Sr. was only conveyed a part interest and not a fee simple interest in the subject property, according to both the interest deed and the probate administration, and that interest was only that of his mother, Dorothy Brown, and siblings, D. J. Brown, Ernest Brown, Jr., Clara Brown Moses, Mable Brown Moses, and Etholia Brown. He did not acquire the interests of the grandchildren of Ernest Brown, Eric Brown, Michael Brown, Karen Brown, Rena Brown and Lisa Brown. Therefore, the said grandchildren and Michael C. Brown, Sr. owned the property jointly, Michael C. Brown, Sr.

as taxpayer and Eric Brown, Michael Brown, Karen Brown, Rena Brown and Lisa Brown, as grantees of record.

Due to nonpayment of taxes, the subject property was sold at a tax sale and resulted in the present litigation. Plaintiff C.S. Carter brought this action seeking to confirm the tax deed issued to him and the grantees of record seeking to have the deed set aside claiming that because Dorchester County failed to strictly comply with the statutory requirements for the sale their counterclaim was not barred by operation of the two-year statute of limitations. The tax deed was confirmed and this appeal resulted.

ARGUMENTS

This action to set aside a tax deed is one in equity, according to cases such as Godfrey v. Webb, 277 S.C. 246, 285 S.E.2d 883 (1982). Also, an action to quiet title is equitable in nature, Bryan v. Freeman, 253 S.C. 50, 168 S.E.2d 793 (1969). Therefore, this Court may find facts according to its own view of the preponderance of the evidence. Townes Assocs. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976).

Furthermore, the South Carolina Supreme Court has "consistently held the enforcing agencies of government to strict compliance with all the legal requirements surrounding tax sales. Dibble v. Bryant, 274 S.C. 481, 483, 265 S.E.2d 673, 675 (1980). If the governmental agency charged with collecting delinquent ad valorem taxes fails to strictly comply with the statutory requirements of a tax sale, the sale is invalid. Manji v. Blackwell, 323 S.C. 91, 473 S.E.2d 837 (Ct. App. 1996). It is the contention of the Applicant that Dorchester County failed to comply with the strict requirements of the applicable statutes and the deed must be set aside.

In this case, there is an issue regarding the running of the two-year statute of limitation which would cut off the right of the Third-Party Plaintiffs to seek to have the deed set aside pursuant to S.C. Code Ann. Section 12-51-160 (2000), as amended. The property was sold at a tax sale on November 5, 2007 (Plaintiff's Exhibit No. 1, Tax deed, R. pp. 152-156) The Third-Party Complaint was filed on August 18, 2010. (R. pp. 32-42), and this is clearly outside of the two-year statute of limitations. However, it is the contention of the Third-Party Plaintiffs that Dorchester County failed to comply with the strict requirements of the applicable statutes and such failures prevented the statute of limitations from beginning to run. See King v. James, 388 S.C. 16, 694 S.E.2d 35 (S.C. App. 2010), which held that a resulting tax sale had to be set aside because the County failed to strictly comply with the notice requirements leading up to the tax sale even though the two-year statute of limitation had run.

I. THE TRIAL COURT ERRED IN NOT SETTING ASIDE THE TAX DEED WHEN MAILING NOTICES OF THE TAX SALE PROCESS HAD NOT BEEN MADE UPON TWO OF THE GRANTEEES OF RECORD.

It is the statutory and case law of this State that notices be sent to the defaulting taxpayer and any grantee of record. See S.C. Code Ann. Section 12-51-40 (2000) and S.C. Code Ann. Section 12-51-120 (2000), which provide for the required notices to the defaulting taxpayer and grantees of record.

It is undisputed that the names of Eric Brown and Rena Brown, two of the five grantees of the record of the probate administration, were not part of the statutory mail notices included in the tax sale process. No notices were mailed to them. See Defendants'

Exhibits Nos. 6, 7, 8, 9, and 10 (R. pp. 178-197) showing only the taxpayer and grantees of record as contained in the interest deed and the probate administration receiving the proper notices to be Lisa Brown, Michael Brown, and Karen Brown. Moreover, it was the testimony of the delinquent tax collector, R. p. 94, lines 7-25-p.97, that the only names sent the statutory mail notices, were Michael C. Brown, Sr., et al., and the four grandchildren contained on the interest deed: Enoch Wesley Brown, Jr., Michael Brown, Lisa Brown and Karen Brown. The notices did not include Eric Brown and Rena Brown, who were also grantees of record in the probate administration.

In this case, the delinquent tax collector testified that notices were only sent to Michael C. Brown, Sr., et al., Enoch Wesley Brown, Jr., Lisa Brown, Karen Brown and Michael Brown, and not to Eric Brown and Karen Brown. Also, see Defendants' Exhibit Nos. 6, 7, 8, 9, and 10, R. pp. 178-197, which show that only Michael C. Brown, Sr., et al., Enoch Wesley Brown, Jr., Lisa Brown, Rene Brown and Michael Brown were sent the notices.

Based upon the failure of Dorchester County to comply with the mailing notice requirement for the defaulting taxpayer and grantees of record, the trial judge should have set the deed aside on this ground alone.

II. THE TRIAL COURT ERRED IN NOT SETTING ASIDE THE TAX DEED WHEN THE NEWSPAPER ADVERTISEMENT DID NOT CONTAIN THE GRANTEEES OF RECORD.

It is undisputed that the newspaper publication notices listed only the name of "Michael C. Brown, Sr., et al." and not the names of Rena Brown, Eric Brown, Lisa Brown,

Michael Brown, and Karen Brown, who were devisees/grantees of the subject property as contained in the probate administration of Ernest Brown. Such designation as the name (in this case "Michael C. Brown, Sr.) plus "et al." is not covered in statutory requirements or case law of this State. See S.C. Code Ann. Section 12-51-40 (2000), generally, which provides the required notices for the taxpayer and grantees of record.

III. THE TRIAL COURT ERRED IN RULING THAT THE GRANTEEES CONTAINED IN THE PROBATE COURT RECORDS WERE NOT ENTITLED TO RECEIVE NOTICE OF THE TAX SALE PROCESS.

The provisions of S.C. Code Ann. Section 12-51-40 (f) (2000) also, provide, in part, "For the purpose of enforcing payment and collection of property taxes when the true owner is unknown because of the death of the owner of record and the absence of probate administration of the decedent's estate, the property must be advertised and sold in the name of the deceased owner of record." In this case, there was a probate administration of record which provided the names of the grantees who should have been included in the tax sale process. In this case, there is an administration of the estate and no requirement to unravel a complicated estate for the heirs-at-law of the one estate as discussed in Koth v. Pallachucola Club, 79 S.C. 517, 61 S.E.2d 78 (1908). Grantees acquiring an interest in real property by intestacy and properly probated estates are entitled to all steps and proper notice in the tax sale process. However, only the name of the defaulting taxpayer was included in the newspaper publication notices as shown by clippings from the two newspapers used in this matter, The Eagle Record and The Summerville Journal, Defendants' Exhibits Nos. 11 and 12, R. pp. 198-203, testimony of the delinquent tax collector, R. pp. 90, lines 10-25-p.-

93, lines 1-6. The trial court in its Order Confirming Tax Deed concluded, "The Probate Court records admitted into evidence are not vesting documents which would make any person listed on those documents grantees of record entitled to receive notice of the tax sale process, R. p. 10, paragraph 5, Order Confirming Tax Deed, R. pp. 3-14.

IV. THE TRIAL COURT ERRED IN NOT GRANTING THIRD-PARTY PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AS WELL AS MOTION FOR A NEW TRIAL OR TO ALTER OR TO AMEND JUDGMENT WHEN IT WAS SHOWN THE TAXING AUTHORITY FAILED STRICTLY TO COMPLY WITH THE TAX SALE PROCESS.

It is undisputed that the names of Eric Brown and Rena Brown, two of the five grantees in the probate administration record, were not part of the statutory mail notices included in the tax sale process. No notices were mailed to them. See certified notices, Defendants' Exhibit Nos. 6, 7, 8, 9, and 10 (R. pp. 178-197); and testimony of the delinquent tax collector (R. p. 94, lines 7-25-p. 97) showing that only the taxpayer and grantees of record receiving the proper notices, included Michael C. Brown, Sr., Enoch Wesley Brown, Jr., (who was not included in the probate administration), Michael Brown, Lisa Brown and Karen Brown. Moreover, it was the testimony of the delinquent tax collector (R. p. 94, lines 7-25-p. 97) that the only names sent the statutory mail notices, were Michael C. Brown, Sr., and the four grandchildren contained on the interest deed: Enoch Wesley Brown, Jr., Michael Brown, Lisa Brown and Karen Brown. The notices did not include Eric Brown and Rena Brown, who were also grantees of record in the probate administration. No notices were mailed to them. See Defendants' Exhibits Nos. 6, 7, 8, 9, and 10 (R. pp. 178-197), showing only the taxpayer and grantees of record as contained in

10 (R. pp. 178-197), showing only the taxpayer and grantees of record as contained in the interest deed and the probate administration receiving the proper notices to be Lisa Brown, Michael Brown, and Karen Brown. The provisions of S.C. Code Ann. Section 12-51-40 (f) (2000) also provide, in part, “ For the purpose of enforcing payment and collection of property taxes when the true owner is unknown because of the death of the owner of record and the absence of probate administration of the decedent's estate, the property must be advertised and sold in the name of the deceased owner of record.”

It is also provided in S.C. Code Ann. Section 12-51-120 (2000) that notice be sent to the defaulting taxpayer and grantees of record the notice of approaching end of redemption period.

No notices whatsoever were sent to Eric Brown and Rena Brown, who were two of the grantees of record as contained in the probate administration of Ernest Brown. The summary judgment motion (R. pp. 56-59) and the motion for new trial or to alter or to amend judgment (R. pp. 70-75) should have been granted upon the evidence and proof to this effect presented to the trial court. See Manji herein wherein the trial court granted the summary judgment declaring the tax deed null and void because the tax collector conceded that the appropriate notice was not sent as statutorily required. In this case, the evidence showed that none of the notices were sent to two of the grantees of record. The delinquent tax collector testified also that Eric Brown and Rena Brown were not mailed any statutorily required notices nor were any of the names of the grantees of record contained in the newspaper tax sale notices. For the reasons herein, the trial court should have granted to summary judgment motion and the later motion for a new trial or to alter or to amend

judgment.

CONCLUSION

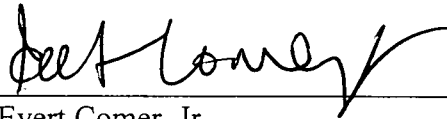
It is the contention of the Appellants that the foregoing failures of Dorchester County to give required mandatory notices by mail and publication, as contained in S.C. Code Ann. Section 12-51-40 (c) and (d) (2000) and S.C. Code Ann. Section 12-51-120 (2000), to all grantees of record are fundamental and jurisdictional defects, not mere irregularities, that should not cut off the Appellants' right to redeem property sold in a tax sale.

Therefore, this Court should overrule the trial judge and set the tax deed aside.

Respectfully submitted,

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Dated: August 2, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite D. Murphy, Master-In-Equity

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AND

Rena Brown aka Renee Brown aka Renee A. Lawrence, Eric Brown aka Eric W. Brown aka Eric Wesley Brown, Lisa Brown aka Lisa Brown-Hoff, Michael Brown aka Michael E. Brown aka Michael Enoch Brown, Karen Brown aka Karen M. Brown aka Karen Michelle Brown, and Michael C. Brown, Sr. aka Michael C. Brown aka Michael Clay Brown-----Third-Party Plaintiffs,

vs.

Dorchester County.....Third-Party Defendant.

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PROOF OF SERVICE

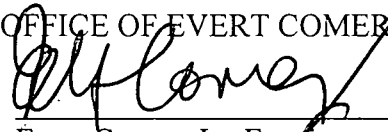
I certify that I have served a copy of the **FINAL BRIEF OF APPELLANTS** on counsel of record for the Respondents by depositing a copy of the same with **PROOF OF SERVICE** in the United States Mail, postage prepaid, on the 2nd day of August, 2013, addressed as follows:

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Dated: August 2, 2013