

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

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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.

REPLY BRIEF

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STATEMENT OF THE CASE

The Appellants adopt and incorporate by reference the Statement of Case and Facts presented in their Initial Brief. The arguments discussed below are in response to arguments raised in the Respondents' Statement of Facts and Argument.

Without restating the issues or making redundant arguments which have been set forth thoroughly in their initial brief, the Appellants offer the following points of clarification and rebuttal to the arguments raised by the Respondents.

The Respondents in their Statement of the Facts do not address, dispute or contradict specifically what the Appellants claimed to be notice defects on the part of the delinquent tax collector which warrant the setting aside of the tax deed as it pertained to all Appellants.

ARGUMENT

- I. THIS COURT SHOULD REVERSE BECAUSE ALL SIX APPELLANT GRANTEEES AND TAXPAYERS WERE ENTITLED TO ALL STATUTORY SALE REQUIREMENTS NOT JUST THE ONE GRANTEE OF RESPONDENTS' ARGUMENT.

Without repeating their Arguments for the taxpayers and grantees of record, and in response to the Respondents' argument that Michael C. Brown, Sr. was the sole taxpayer and grantee of record entitled to the statutory notices, the Appellants herein by reference incorporate the same arguments made in the Brief of Appellants and would argue that Michael C. Brown, Sr. was "a" taxpayer and "a" grantee of record but not the only taxpayer and grantee of record as all Appellants were also. The Respondent Dorchester County recognized there were others but missed out on two completely and only included the name

of one Appellant in the newspaper advertisement (“MICHAEL C. BROWN, SR., ET AL”) as outlined in the Brief of Appellants.

II. THIS COURT SHOULD REVERSE BECAUSE THE FIVE APPELLANTS ALONG WITH MICHAEL C. BROWN, SR. AS HEIRS-AT-LAW OF THE PROBATED ESTATE WERE ALL GRANTEES OF RECORD NOT JUST MICHAEL C. BROWN OF RESPONDENTS’ ARGUMENT.

The Respondents argue that the claim of Appellants as grantees of record is based solely upon the Devise and Descent Form when the “Whereas” deed clearly showed that there were others with an interest in the subject property who were not conveying their interest in and to the subject property to Appellant Michael C. Brown, Sr. These persons, four in the “Whereas” deed, and two additional ones contained on the Devise and Descent Form, should have been provided the statutory mailing, publication and other notices as provided by law, for which arguments contained in the Brief of Appellants are incorporated herein by reference.

The Respondents state that immediately upon the death of Ernest Brown, the property vested in whomever were the heirs of the decedent Ernest Brown. This is true indeed. The properly court administered estate was filed and who other than immediate family would know the true heirs-at-law of the decedent. In this case, the Devise and Descent Form confirmed the heirs.

The Koth v. Pallachucola Club, 79 S.C. 514, 61 S.E. 77 (1908) case dealing with unraveling complicated estates is clearly distinguishable in this case and does not apply to this case because the court in that case did not have the benefit of a properly administered probate administration. The Respondents practically concede this point.

Moreover, the Respondents provide much speculation and surmise as to why the Devise and Descent Form was not filed with the Register of Deeds Office. Arguably, this could not have been a general practice at the time because such filings were not absolutely required. This point was not previously introduced into the record. Nonetheless, the Devise and Descent Form was of public record in a fully and properly administered estate. The Dorchester County Treasurer testified though the county was not required to perform a tax examination it was the practice of the Dorchester County Treasurer to do so and a title examination was conducted on the subject property in this case. Regarding this testimony, see R. p. 89, lines 2-13. Not including all of the grantees of record is a material defect or omission warranting the deed being set aside by a reversal in this case.

III. THIS COURT SHOULD REVERSE BECAUSE THE FAILURE TO MAIL NOTICES AND PUBLISH NOTICE TO ALL SIX GRANTEES OF RECORD ARE NOT MERE IRREGULARITIES AS CLAIMED BY THE RESPONDENTS BUT JURISDICTIONAL DEFECTS WHICH TOLL THE STATUTE OF LIMITATIONS.

Contrary to arguments of the Respondents that the failures complained of were mere irregularities, it is the contention of the Appellants that Dorchester County failed to provide many of the notice requirements and such have been found to be material failures or jurisdictional defects which 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. In this case, it is undisputed that two of the grantees of record received no notices

whatsoever and it is undisputed that the newspaper publication named only one taxpayer and grantee of record: "MICHAEL C. BROWN, SR., ET AL" though all but two of the grantees of record had been named in the tax deed issued by the Respondent Dorchester County as having been sent the required statutory notices. Under the applicable statutes and case law as outlined in the Brief of Appellants, such omissions are jurisdictional defects. In the Leysath v Leysath, 209 S.C. 342, 40 S.E.2d 233 (1946) case cited by the Respondents, the court found that it was a mere irregularity when the assistant tax collector rather than the tax collector makes the levy and when an item of accumulated interest was improperly included in the tax execution.

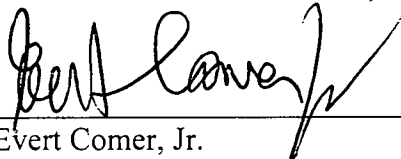
CONCLUSION

For these reasons, as well as those addressed in the Initial Brief of Appellants, the Court of Appeals should reverse the trial court and set aside the tax deed.

Respectfully submitted,

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Dated: August 2, 2013

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PROOF OF SERVICE

I certify that I have served a copy of the **REPLY BRIEF** 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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