STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

THE HONORABLE SHANNON M. PHILLIPS
CASE NO. 2022-CP-42-2073
APPELLANT CASE NO.: 2024-000032

Edgar Mora Romero and Upstate House Projects, LLC — Appellants,

versus

Nathan T. Rosemond, — Respondent

APPELLANTS' FINAL BRIEF

Richard H. Rhodes, Esquire
William H. Rhodes, Esquire
Burts, Turner & Rhodes
260 North Church Street
Spartanburg, SC 29306
(864) 585-8166

Attorneys for Appellants

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13. The Lower Court erred in holding that the Respondent was the owner of the subject real property, the error being that the Respondent's lack of diligence and inaction caused the Appellant to become a bona fide purchaser for value of the subject property.

STATEMENT OF THE CASE

Procedural Summary

Edgar Mora Romero (Appellant) filed this action on June 9, 2022 seeking to quiet title to real property purchased at an estate auction; the Respondent filed an Answer and Counterclaim contending that he should be the owner of the subject real property because a Tax Sale conducted in November 1996 had not been performed properly.

By Order of the court the matter was referred to the Master-in-Equity on October 5, 2023. A hearing was scheduled for December 11, 2023.

By Order filed December 21, 2023, the Master-in-Equity held that since the Tax Sale had not been conducted properly, the Respondent should be the owner of the subject real property.

This appeal has ensued.

Factual Summary

Coy Gideon and Michael Coy Gideon (Gideons) were the former owners of the subject real property.[1] The Gideon's home was located on Lot 12; the adjoining lot was Lot 13. Lot 13 was unimproved, and this is the lot which is the subject of this action. In August 1995, the Gideons conveyed both lots to the Respondent who was related by marriage. The deed was recorded in Deed Book 63-D, page 647. When the deed was recorded, the taxes on the subject lot, had not been paid. Notice of the delinquency had been sent to the Gideons three (3) months prior to the conveyance to the Respondent. Notwithstanding, the Gideons conveyed the property to the Respondent without paying the taxes. Since the taxes were not paid, a Tax Sale was conducted on November 4, 1996.

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[1] When the action was commenced, Coy Gideon and Michael Coy Gideon were joined. They were the owners of the property when taxes on the subject property became delinquent. It was later stipulated that they were not necessary parties to this action.

Milton Antonakos was the person who purchased the subject real property at the Tax Sale. The Tax Deed was recorded on February 27, 1998 in Deed Book 67-K, page 535. Approximately 10 years later, Milton Antonakos died and his estate auctioned all of his real property which included the subject lot.

The property of the Antonakos estate was sold by an auction team. The Appellant was the successful bidder on the subject lot and one other lot. Title to the subject lot was placed in his name by deed recorded on January 14, 2015 in Deed Book 107-Z, page 542.

When the Antonakos estate transferred title to the subject property, the deed incorrectly described the subject lot. This was not discovered until the Appellant was ready to build on the lot and had had a survey prepared. A corrective deed was recorded on May 4, 2022 in Deed Book 136-Z, page 417.]

The survey of the subject lot showed that a rock wall on the Respondent's lot (Lot 12) was encroaching. The Appellant met with the Respondent concerning the encroachment. After their meeting, no agreement was reached. This action ensued.

In an effort to assist with the understanding of the facts of this case, a Chronology is listed below:

January 31, 1979 –	The Gideons purchased Lot 12 and Lot 13 (Lot 13 is the subject lot) Consideration was $13,405.00
May 1, 1995 -	The Tax Office notified Gideons that taxes on Lot 13 were not paid.
August 23, 1995 -	The Gideons sold Lot 12 and Lot 13 (Lot 13 is the subject lot) to the Respondent. Consideration was $7,000.00
August 5, 1996 -	A For Sale sign was posted on Lot 13 by the Tax Office.

November 4, 1996 -	The subject lot was sold at a Tax Sale
February 27, 1998 -	A Tax Deed for subject lot was issued to Milton Antonakos
Nov. – Dec. 2014 -	The Auction Team placed a For Sale sign on subject lot
January 14, 2015 -	The Antonakos estate transferred title to subject lot to Appellant
January 28, 2022 -	A Plat and survey was prepared of subject lot
May 4, 2022 -	A Corrective Deed from Antonakos Estate was prepared which correctly described the subject property

Note

Prior to the Appellant learning that the incorrect legal description had been used in his deed, he brought an action to quiet title. [C/A 2021-CP-42-00223.] However, that action used the legal description contained in the deed from the Antonakos Estate which was not the correct legal description.

Note

After purchasing the subject property, the Appellant deeded the lot to Upstate House Projects, LLC (the family business). [Deed Book 132-E, page 981.] This was done before the Appellant was aware that the attorney for the Antonakos Estate had used the incorrect legal description. During the trial of this case, counsel for the Respondent requested that Upstate House Projects, LLC be joined as a party Plaintiff. The Appellant did not object, however the Appellant contends that Upstate House Projects, LLC is not a necessary party because it never received title to the subject real property.

STANDARD OF REVIEW

Actions which are brought to set aside a Tax Sale are equitable in nature. King v. James, 388 S.C. 26 (Ct. App. 2010). Actions which are brought to quiet title to real property are considered equitable in nature. Van Every v. Chinquapin Hollow, Inc., 265 S.C. 474 (1975). When an appellate court reviews matters in equity, it has the authority to find its own view of the preponderance of the evidence SunTrust Bank v. Bryant, 392 S.C. 264 (Ct. App. 2011).

ARGUMENTS

I. The Lower Court erred in holding that the Respondent was the owner of the subject real property (Exceptions 1-11).

In its Order, the Lower Court held that the ultimate and dispositive issue was whether the Respondent received statutory notice of the Tax Sale (Tr. 2). In making this holding, the court noted that the legislative intent and the surrounding case law were designed to give the defaulting taxpayer proper notice.

It is true that the case law interpreting the Tax Sale Act requires strict compliance with the statute. This is because a Tax Sale is a harsh remedy and therefore all efforts must be made to protect the defaulting taxpayer from surprise or from the sacrifice of his property.

In the case at bar, the Respondent was **not** the defaulting taxpayer. Instead, the defaulting taxpayers were his relatives. It is respectfully submitted that this distinction (coupled with the facts of this case), distinguishes this case from the law that governs tax sales.

A reading of the cases cited by the trial court shows a similar pattern: At the time of the Tax Sale, the defaulting taxpayer was the owner of the property and the defaulting taxpayer took immediate action to regain ownership. As noted above, the Respondent was not the owner of the property when the taxes became delinquent, and he did not take appropriate actions after receiving title to the subject property.

The theme of the cases which interpret the Tax Sale Act is to protect the defaulting taxpayer. Our courts have preserved inviolate the rights of a defaulting taxpayer. However, in this case, the Respondent was not the defaulting taxpayer.

In the case at bar, the Delinquent Tax Office complied with Code §12-51-40(a) by giving notice to the defaulting taxpayer (Gideon) on May 11, 1995 (See Tax Deed, Tr. 123). This was approximately 3 ½ months before the Gideons transferred the title to the Respondent. As noted in the Complaint of this case, the Tax Sale against the Gideons was approved by the court in Cause of Action 2021-CP-42-00223. [This action was brought before it was learned that the deed conveying this property from the Antonakos Estate to the Appellant used the description for a different lot.] Thus, the Tax Sale was done properly with the exception that the Tax Office did not detect that the Gideons sold the property to the Respondent prior to the Tax Sale.

Accordingly, the mistake of the Delinquent Tax Office would not automatically be binding on the Respondent. However, it is respectfully submitted that the facts of this case, and the inactions of the Respondent, do not allow the Respondent to use his lack of notice of the Tax Sale as a basis for being awarded ownership of the property.

In the case at bar, when the Delinquent Tax Office conducted the Tax Sale, the error of not detecting that the Respondent had purchased the property was not an error which was as egregious as in Dibble v. Bryant, 274 S.C. 481 (1980). In Dibble, the Delinquent Tax Office waited three (3) years before seeking an unpaid tax. The Tax Office did not name the current owner of the property which had been deeded the property for over a year. Conversely, in the case at bar, the defaulting taxpayer (Gideons) were notified of the delinquency prior to their selling the property to the Respondent.

More importantly, the actions/inactions of the Respondent and the passage of so much time make it inequitable to hold that the Respondent should still be the owner of the property. For clarity and brevity, this argument will be presented in outline form:

Action of the Respondent's Family Members – Three and a half (3 ½) months before the Gideons conveyed the property to the Respondent, the Tax Office notified the Gideons of the delinquent taxes on the subject property (Tr. 123). It is hard to believe that the family would not convey this information to their relative who was being deeded this property in part as a gift.

Before the property was sold for delinquent taxes, the property was posted with a For Sale sign. The representative of the Delinquent Tax Office noted that when he posted the property, he gave personal notice to the Gideons (Tr. 125). It is hard to believe that the family would not convey this information to their relative who is being given the property.

Milton Antonakos Estate – Mr. Antonakos purchased the subject property at the Tax Sale and received a Tax Deed. He subsequently died, and his estate auctioned the subject property with several other lots. Prior to the sale, the subject lot was posted with a For Sale sign which was clearly visible. The Respondent testified that he did not see the For Sale sign (Tr. 57). However, the For Sale sign was very visible and this is what attracted the Appellant to the property.

Prior to the auction of the property, the auctioneer mailed a letter to the Respondent which advised him that the lot was being sold (Tr. 57). The reason that the auctioneer wrote the letter was to generate interest in the sale of the property. It is interesting to note that the Respondent never denied receiving the letter from the auctioneer which gave notice of the sale. [Uncontradicted testimony can be used as an admission against interest Davenport v. Davenport, 265 S.C. 524,528 (1975). Unrefuted testimony can be very persuasive evidence that the alleged testimony is accurate Dickson v. Dickson, 334 S.C. 222, 229 (Ct. App. 1999).]

Actions of the Respondent – The Respondent purchased this property from family members (Tr. 73). The conveyance was in part a gift, and the amount paid was for less than fair market value. When the Respondent purchased the property, he did not have a title search performed (Tr. 74). The deed transferring title to the Respondent had the Tax Map Numbers for **both** lots which had been handwritten on the deed. This showed that there were **two** tax notices. At the trial, when the Respondent was asked about the two tax map numbers, he testified that he did not know what that meant.

In the case of Arceneaux v. Arrington, 284 S.C. 500 (Ct. App. 1985), the Court held that a party who receives title to property is charged with **knowledge** of the contents of the recorded deed. Pursuant to the holding in Arceneaux, the Respondent was deemed to have knowledge that he purchased two lots with two separate tax notices. Accordingly, the Respondent's argument that he "thought" there was only one lot and one tax notice is unfounded.

About a year after the Respondent purchased the property, the subject lot was posted with a For Sale sign by the Delinquent Tax Office. The Respondent contends that he did not see the For Sale tax sign. However, the sign was in plain view. Mr. Antonakos saw the sign and he successfully bid in the property at the Tax Sale.

Actions of the Respondent After the Estate Sale – After purchasing the property, the Appellant eventually had a survey performed. The plat showed a slight encroachment of a brick wall. The Appellant's father (Jesus Mora) met with the Respondent on-site. Mr. Mora's testimony was as follows: He told the Respondent that he owned the lot and wanted the brick wall

encroachment removed; during this meeting, the Respondent never contended that he owned the lot; the Respondent's concern seemed to focus on removing the encroachment (Tr. 68). At the trial, the Respondent never refuted any of Mr. Mora's testimony which related to this meeting. [See Davenport supra and Dickson supra.]

This action was commenced in 2022. Throughout the litigation, the Respondent contended that he was unaware that there were two tax notices. [As noted above, the holding in Arceneaux makes this argument unfounded.] Despite the Respondent's assertion that he thought that there was only one lot, he took no steps to show ownership of the subject lot: the Complaint filed in this case documented that there were two tax notices; notwithstanding, the Respondent still did not pay or offer to pay the taxes for the years 2022 and 2023. The actions of the Respondent are a blatant example of trying to have it "both ways": The Respondent contends that he did not pay the taxes because he thought there was only one tax notice, however when he learned there were two tax notices, he still did not pay the taxes.

The position of the Respondent is untenable. His contention that he was unaware of two tax notices is not credible. The Respondent's deed clearly shows two lots and two tax map numbers. And, the facts of this case substantiate that the Respondent had to know that there were two tax notices.

In closing, the Appellants contend that the Respondent's credibility is questionable. The Court's attention is invited to the following:

> **Respondent's Mortgages** – The Appellant introduced into evidence two mortgages given by the Respondent. The first mortgage in 1995 used both lots as collateral (Tr. 127). The subsequent mortgage in 2003 only used one lot (Tr. 129). The obvious purpose was to show that as time passed, an abstractor picked up the fact that only one lot could be used because the subject lot had been sold. The testimony of the Respondent was hard to follow, but the jest was that he

simply did not know why it only had one lot. Of particular significance is the fact that when he tried to explain the mortgages, his testimony was inconsistent. He initially said that there was only one mortgage (Tr. 95), but then he wanted to "clarify his answer" by explaining that there was another mortgage.

Respondent's Use of Lot 13 – The Respondent, in an attempt to show that he occupied and used Lot 13, said that his tenant would sometimes drive through Lot 13 to gain ingress and egress (Tr. 87). This testimony is suspect. The plat shows that there is a fence (Plat, Tr. 106). The Respondent agreed and testified that there is a fence all around the property (Tr. 86). The fence would prevent gaining access to the street from Lot 13.

Respondent's Cutting Grass – The Respondent, in an attempt to show he occupied and used Lot 13, testified that his wife's brother cut the grass on both lots (Tr. 86). This testimony is not credible because Lot 13 is unimproved and overgrown with trees (Aerial Photograph, Tr. 126).

Neighbor's Use of Lot 13 – During the trial, the Assessor's Office aerial photograph of Lot 13 was introduced into evidence (Tr. 126). This shows that the Respondent's neighbor on the south side of Lot 13 was using a substantial portion of the lot for parking. The Respondent testified that he was aware that this was being done, but he chose to do nothing about it (Tr. 83). Such an action is inconsistent with claiming ownership of the property.

II. The Appellant is a Bona Fide Purchaser for Value (Exceptions 12 and 13)

As noted above, the subject property was sold at an estate sale. The sale was open to the public and a For Sale sign was placed on the subject property. The Appellant's father (Jesus Mora) saw this sign and liked the location of the property.

After seeing the property Mr. Mora contacted his son, the Appellant. They both went on-site and inspected the lot. It was decided that they would bid on the property and try to purchase it. They were the successful bidder. They paid the purchase price and the closing costs. After receiving title to the property, the Appellant waited for the appropriate time to build a home. When they were ready to build, they had a survey performed. The survey revealed that a brick wall from Lot 12 encroached the property a few feet. This encroachment ultimately gave rise to this action being brought.

The Appellant and his family expended time and money to purchase the subject property. By being the successful bidder and taking title, the Appellant became a bona fide purchaser for value. After purchasing the property, the Appellant paid the taxes for nine (9) years (two of which were during the pendency of this subject action). As a result, the Appellant invested substantial time and money in the subject property.

It is respectfully submitted that the facts of this case, and the Doctrine of Laches, prevent the Defendant from being the owner of the subject property. A brief summary of Laches is as follows:

- A situation in which a party does not seasonably assert his rights, and his unreasonable delay causes another party to incur expenses or to enter into obligations which could have been avoided. Chambers of SC v. County Council for Lee County, 315 S.C. 418 (1993) and Robinson v. Estate of Harris, 388 S.C. 645 (2010).

- A neglectful, unreasonable and unexplained length of time to do what should have been done. Byars v. Cherokee County, 237 S.C. 548 (1961).

- A delay which works as a disadvantage to another. The Doctrine comes into play when a fact pattern places a litigant in a position of being unable to be restored to his/her former state. Midstate Trust v. Wright, 323 S.C. 303 (1996).

Laches is determined on a case by case basis; the test is whether a person's delay has worked injury/prejudice to another. Whitehead v. State of South Carolina, 352 S.C. 215 (2002). In the case at bar, the Respondent's delay and lack of diligence has created prejudice to others. Third parties have invested money to own the property and third parties have diligently paid the taxes.

In Argument I, above, the Appellant addressed the Respondent's assertion that he thought there was only one tax notice. In addition to the holding in Arceneaux, the Court's attention is invited to the case of Taylor v. Mill, 310 S.C. 526 (1992), In Taylor, the Supreme Court held that county taxes become a first lien on property and attach at the beginning of each year. The Court held that tax liens are public records and a party must use due diligence to discover taxes on the property which he/she owns. In the case at bar, the Respondent has not exercised any due diligence.

The Respondent received the property in part as a gift from family. He chose not to have a title search when he made the purchase. During the pendency of the subject action, he had notice of the unpaid taxes on the subject lot. However, he did not pay or offer to pay the 2022 or 2023 taxes. The Respondent's actions do not justify his being able to claim ownership 28 years later.

CONCLUSION

It would be unfair and inequitable to allow the Respondent to be the owner of the subject property. The Delinquent Tax Office should have notified the Respondent of the Tax Sale. However, the sale was over 28 years ago. The actions and inactions of the Respondent are much more egregious than the error of the Tax Office.

This is not a comparative negligence case. However, this case is a case in equity. In equity cases, the actions and conduct of the parties are essential facts. The court has the authority to use these facts in reaching a just result. The significant facts of this case are as follows:

- The house and two lots were essentially a gift from family to the Respondent;
- The Respondent's family either failed to tell him about the taxes or the Respondent did not listen to them;
- The title conveying the property to the Respondent clearly defined two lots and had two distinct tax map numbers on the face of the deed;
- The Respondent chose not to have a title search on the property at the time of the conveyance;
- The Respondent ignored, or did not see, two For Sale signs on the subject lot;
- The Respondent's use of the subject lot was marginal, if at all;
- The Respondent chose to do nothing about a neighboring property owner using a portion of the lot to park vehicles;
- After the subject action was commenced, and it was documented that there were two distinct lots with two tax notices, the Respondent still chose to not pay, or offer to pay, the taxes.

The Appellant is not asking this Court to abrogate the case law surrounding tax sales. Instead, the Appellant is asking this Court to hold that the facts of this case distinguish the "strict compliance rule" which governs tax sales.

In the case of Ex-Parte Dibble, 279 S.C. 592 (Ct. App. 1983), this Court held that our courts have the inherent power to do all things reasonably necessary to ensure that just results are reached. The Court said that "a civilization is not possible without a competent system to administer justice" id at. p. 596.

The late Chief Justice Bruce Littlejohn once said that the Lady of Justice is "blindfolded, but she is not blind". The jurist was pointing out that courts must take steps necessary to see that justice is done.

In the case at bar, it is respectfully submitted that this Court should hold that the Appellant is the owner of the subject property.

Respectfully submitted,

Richard H. Rhodes, Esquire
William H. Rhodes, Esquire
260 North Church Street
Spartanburg SC 29306
(864) 585-8166
Attorneys for Appellants

April 10, 2024

CERTIFICATE OF COUNSEL

This is to certify that the Appellants' Final Brief complies with the Supreme Court's Rule 210(b).

Richard H. Rhodes
William H. Rhodes
Attorneys for Appellants

Date: April 10, 2024