

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from the Spartanburg County Court of Common Pleas

The Honorable Shannon M. Phillips
Case No. 2022-CP-42-2073
Appellant Case No. 2024-000032

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SC Court of Appeals

Edgar Mora Romero and Upstate House Projects, LCC,

Appellants,

v.

Nathan T. Rosemond,

Respondent,

RESPONDENT'S FINAL BRIEF

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QUESTIONS PRESENTED

- 1. Did the Master-In-Equity err in holding the Respondent the rightful owner of the subject real property?**
- 2. Can Appellant successfully raise the claim that Appellant is a Bona-Fide Purchaser for Value, and thus the rightful owner of the disputed property?**

PROCEDURAL HISTORY

On June 9th, 2022, the Appellant filed a complaint in the Court of Common Pleas Seventh Judicial Circuit, requesting the court validate the Tax Sale of the disputed property at issue and further requested a declaratory judgement ordering quieting title of the disputed property to the Appellant. The Respondent filed an answer and counterclaim stating that the Respondent is the rightful owner of the disputed property because the respondent failed to receive notice of any delinquent tax on the property as required by law and therefore the tax sale was void.

By order of the court the case was transferred to the Master-In-Equity on October 5, 2023. On December 11th, 2023, a hearing was scheduled and conducted on the matter. Following the hearing and the evidence presented, by order filed on December 21, 2023, the Master-in-Equity held that because the respondent did not receive the necessary notice of the delinquent tax and tax sale of the property, the Respondent was the rightful owner of the property.

Now the Appellant has appealed the Master-in- Equity's ruling.

COUNTER-STATEMENT OF THE CASE

The Respondent, Nathan T Rosemond, purchased property from Coy Gideon and Michael Gideon in 1995. The deed was correctly recorded on August 23, 1995, in Deed Book 63 -D Page

647. (R. p. 121). The deed granted Mr. Rosemond two adjacent lots, Lot 12 and Lot 13. Lot 13 is the property currently in dispute. The Legal Description is as follows:

“All that certain lot, parcel or tract of land, with all improvements now constructed thereon, or hereafter constructed thereon, situate, lying and being in the State of South Carolina, County of Spartanburg, Beech Springs Township, located in the City of Greer, Dis 9-H, located on the West side of School Street and being shown as Lot Number Twelve (12) on plat of Academy View, by H. S. Brockman, Surveyor, dated October 25, 1923, recorded in Plat Book 8, Page 23, RMC Office for Spartanburg County and having a width of 50 feet and a depth of 150 feet.” Hereafter referred to as, “Lot 12” (Property not in dispute).

“All that certain parcel or lot of land situate, lying and being in Spartanburg County, State of South Carolina, in the City of Greer on the West side of School Street and being known and designated as Lot Number (13) on plat of Academy View, recorded in Plat Book 8, Page 23, RMC Office for Spartanburg County.” Hereafter referred to as, “Lot 13” (*Property in dispute*).

After Mr. Rosemond purchased these lots in 1995, Spartanburg County updated their ownership record on Lot 12 to reflect Mr. Rosemond as the owner. However, the county never updated their records to reflect Mr. Rosemond as the owner of Lot 13. (R. p. 091). As such, Mr. Rosemond never received any tax bills for Lot 13 and taxes on Lot 13 were not paid. (R. pp. 082-088).

Mr. Rosemond currently rents Lot 12 and 13. Lot 12 has a house located on the property which Mr. Rosemond owns and has rented to a tenant since 1995. Lot 13 is connected to Lot 12 as if part of one property unit. Mr. Rosemond and his tenant have occupied the lots as one complete property. (R. pp. 087-088). Mr. Rosemond dutifully paid taxes on Lot 12 under the belief that the connecting lots were subject to one tax. (R. p. 088). Mr. Rosemond maintained this belief as he did not receive any notice to suggest his belief was incorrect. Mr. Rosemond did not receive any notice, actual or constructive, of any outstanding tax owed on Lot 13. (R. p. 082). Furthermore, Mr. Rosemond was not notified of any Tax Sale as required by S.C. Code 12-51-40(a). Id.

Mr. Rosemond was unaware that Lot 13 had been sold in a Tax Sale on November 4, 1996. Mr. Rosemond had no knowledge that a tax deed for Lot 13 was issued to Milton Antonakos on February 27th, 1998. Again, Mr. Rosemond had no knowledge that Milton Antonakos transferred Lot 13 to the Appellant on January 14, 2015. Furthermore, Mr. Rosemond had no knowledge that any deed for Lot 13 had been issued, until the Appellant alleged that Mr. Rosemond's wall was encroaching on Lot 13. The Appellant claimed the Appellant was the owner of Lot 13 and initiated this lawsuit. (R. pp. 088-089).

Since the Tax sale of Lot 13, Mr. Rosemond had no reason to believe his ownership of the property was disputed by any person. Since 1995 Mr. Rosemond has rented Lot 13 to the same tenant, who uses the property for entry and exit. (R. pp. 087-089). Furthermore, Mr. Rosemond's tenants have solely maintained Lot 13. (R. p. 086). Additionally, the property had seemingly remained unoccupied with no structures, presenting no reason to believe that any other person had claimed an interest in the Lot. (R. p. 053). Mr. Rosemond's belief is supported by Appellant's testimony, where Appellant admits that he did not maintain the grounds of Lot 13, the Lot was empty/ vacant, and he rarely visited the Lot. (R. p. 053).

Mr. Rosemond did not receive any notice of the delinquent tax owed on Lot 13 as required by law. Therefore, the Master-In-Equity correctly ordered the tax sale of the property to be set aside.

STANDARD OF REVIEW

The court of appeals scope of review for a case heard by a Master-in-Equity permits the court of appeals to determine facts in accordance with the court's own view of the preponderance of the evidence. Smith v. Barr, 375 S.C. 157, 160, 650 S.E.2d 486, 488 (Ct. App. 2007); see Folk

v. Thomas, 344 S.C. 77, 80, 543 S.E.2d 556, 557 (2001) (An action to set aside a tax deed rests in equity. Thus, an appellate court may take its own view of the preponderance of the evidence.).

However, the Court of Appeals should not disregard the master's factual findings "we are mindful that this scope of review does not require us to disregard the Master's factual findings because the Master saw and heard witnesses and was in a better position to judge their credibility and demeanor". Smith v. Barr, 650 S.E.2d 486, 375 S.C. 157 (S.C. App. 2007).

An issue neither ruled on by master nor raised by Rule 59(e) motion is not preserved for appellate review. Blake v. Cannon, 312 S.C. 135, 439 S.E.2d 302, 305 (S.C. App. 1993) ("The master did not rule on whether Cannon was estopped or barred by laches, nor did the Blakes raise it in their motion under Rule 59(e), SCRCPC. Accordingly, this issue is not preserved for appellate review"). To preserve an issue for appellate review, an issue must have been raised too and ruled upon by the lower court. Aiken v. World Fin. Corp. of S.C., 373 S.C. 144, 148, 644 S.E.2d 705, 708 (2007).

ARGUMENT

I. THE MASTER-IN-EQUITY CORRECTLY DECLARED MR. ROSEMOND THE TRUE AND RIGHTFUL OWNER OF THE PROPERTY AT ISSUE, LOT 13.

The Lower Court was correct in declaring Mr. Rosemond the true and rightful owner because South Carolina law requires that Mr. Rosemond, who was a grantee of record of the property, receive notice of the delinquent tax for said property. S.C. Code Section 12-51-40 (a). Mr. Rosmond did not receive notice of the delinquent tax for Lot 13, nor did he receive notice of the redemption period as required by S.C. Code Section 12-51-40 (a) and Section 12-51-120. Therefore, the lower court did not err when it ordered the tax sale of Lot 13, to be set aside. Thereby, the lower court did not err in declaring Nathan T. Rosemond the true and rightful owner

of lot 13.

Furthermore, South Carolina has set a firm precedent that statutory legal requirements for tax sales must be strictly enforced. 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).

A. Mr. Rosemond Did Not Receive Notice Of The Delinquent Tax Or Of The Redemption period For Lot 13 As Required By Law S.C. Code Section 12-51-40 (A) And Section 12-51-120.

Prior to the tax sale of the property in 1996, Mr. Rosemond did not receive notice of delinquent taxes as required by South Carolina Law. (R. p. 082). Failure to provide notice prevents title to the property from being transferred to the successful bidder. Good v. Kennedy, 291 S.C. 204 (Ct. App. 1986). If the taxing agency does not comply with all statutory notice requirements, the tax sale is void. Manji v. Blackwell, 323 S.C. 91 (Ct. App. (Ct. App. 1996).

S.C. Code Section 12-51-40(a) requires the notice of the Delinquent Tax be sent to "the defaulting taxpayer and to a grantee of record of the property". Furthermore, it states "[t]he notice must be mailed to the best address available, which is either the address shown on the deed conveying the property to him, the property address, or other corrective or forwarding address". In Dribble v. Bryant, 274 S.C. 481 (S.C. 1980), the court clarifies that the sole act of tacking a notice of sale in the name of the prior owner to the property when the owner does not live there fails to give reasonable notice to the current owners in interest, as required by due process and statute. Here, Mr. Rosemond was the Grantee of record of the property, which is evidenced by the recorded deed. (R. p. 121). Therefore, because Mr. Rosemond was a grantee of record of the property, the above referenced statute applies to Mr. Rosemond. Furthermore, both parties have stipulated in the lower court hearing that Mr. Rosemond did not correctly receive notice of

delinquent tax, as required by statute. (R. p. 089).

Additionally, South Carolina Code Section 12-51-120 requires that prior to the end of the redemption period, the delinquent tax collector must give written notice to the defaulting taxpayer and to a grantee, mortgagee or lessee of the property of record. Mr. Rosemond did not receive notice of the redemption period for delinquent tax as required by South Carolina Law. (R. pp. 082, 089). Again, these required notices were not given to Mr. Rosemond, which again has been stipulated by both parties. (R. p. 082). Thus, the tax sale must be declared void.

The right to notice of the tax sale is jurisdictional. As previously stated, failure to give any notice in the manner proscribed prevents title to the property from being transferred to the successful bidder. Good v. Kennedy, 291 S.C. 204 (Ct. App. 1986). Again, these required notices outlined in the S.C. Code were not given to Mr. Rosemond and thus the tax sale must be declared void.

B. Statutorily Based Tax Sale Requirements Must Be Strictly Enforced.

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). A statutorily based tax sale requires strict adherence to the tax sale requirements. See Aldridge v. Rutledge, 269 S.C. 475, 238 S.E.2d 165 (1977) (holding that tax sale may not be upheld without strict compliance with statutory requirements; failure to provide notice to true owner is not excused, regardless of actual notice); see also South Carolina Fed. Sav. Bank v. Atlantic Land Title Co., 314 S.C. 292, 442 S.E.2d 630 (Ct.App.1994) ("Statutory requirements protecting against tax sale forfeiture of real property are strictly construed, and statutory notice requirements may not be circumvented simply by establishing actual notice of a tax sale."); Donohue v. Ward, 298 S.C. 75, 378 S.E.2d 261

(Ct.App.1989) (failure to give twenty day notice fatal to sale and delivery of tax deed despite a lack of prejudice to true owner); Rose v. Bradwell, 295 S.C. 147, 367 S.E.2d 443 (Ct.App.1988) (holding tax sale void because tax collector, in tax sale advertisement which purported to identify property to be sold, referenced an incorrect tax map number; Court required strict compliance with the statutory requirement that the advertisement specify the property to be sold).

Caselaw explains the reason South Carolina courts must adhere to strictly enforcing tax sales statutes. The court in Osborne et al. v. Vallentine, 196 S.C. 90, 12 S.E.2d 856 (1941), explained that tax sale statute's requirement of notice to the landowner is constructive rather than actual, due to this reason, the court requires strict compliance with these statutes. "The sound view is that all requirements of the law leading up to tax sales which are intended for the protection of the taxpayer against surprise, or the sacrifice of his property are to be regarded mandatory, and are to be strictly enforced." Aldridge, 269 S.C. at 478, 238 S.E.2d at 166 (quoting Osborne et al. v. Vallentine, 196 S.C. 90, 12 S.E.2d 856 (1941)). The court in Good v. Kennedy, 291 S.C. 204, 352 S.E.2d 708 (Ct.App.1987), stated that "[W]hile statutory provisions which are intended merely for the convenience of taxing officers in the conduct of sales need not be strictly complied with, ... the law is otherwise as to provisions intended for the protection of the taxpayer." Furthermore, the court went on to state "[W]here a statute requires as a condition precedent to foreclosing a taxpayer's rights in property sold for taxes that he be given notice of his right to redeem, such a requirement is 'generally regarded as jurisdictional, and therefore, the owner's right of redemption cannot be cut off unless the required notice is given.'" Good, 291 S.C. at 207, 352 S.E.2d at 711. Here, the court must strictly enforce the statutory tax sale requirements and deem the tax sale void.

C. The Appellant's Argument That Mr. Rosemond Was Not The Defaulting Taxpayer Fails Under S.C. Code Section 12-51-40(A) and Section 12-51-120.

The Appellant erroneously argues that the previous owners, the Gideons, were the defaulting

taxpayers and therefore notice to Mr. Rosemond was not required because he was not the defaulting taxpayer. "If a statute's language is plain, unambiguous, and conveys a clear meaning, the rules of statutory interpretation are not needed, and the court has no right to impose another meaning." Key Corporate v. County of Beaufort, 644 S.E.2d 675, 373 S.C. 55 (S.C. 2007). S.C. Code Section 12-51-40(a) requires the notice of the Delinquent Tax be sent to "the defaulting taxpayer *and* to a grantee of record of the property". Here, the statute requires notice of the delinquent tax to be sent to both the defaulting taxpayer and the grantee of record of the property.

Appellant argues that the case at bar differs from Dibble v. Bryant, in which the court held the tax deed invalid due to insufficient notice prior to the tax sale. Appellant argues the defaulting taxpayer in Dibble was never provided the required notice AND the current owner was not provided required notice.

Here, appellant states that even though Mr. Rosemond did not receive notice, the defaulting taxpayers, the Gideons, did receive the required notice. This argument is unconvincing. Dibble does not state that either the defaulting taxpayer or the grantee of record may be provided notice. Furthermore, as previously stated, the plain language of the statute clearly states that notice must be given to the defaulting taxpayer and the grantee of record of the property. There is no law that states that notice to either the defaulting taxpayer or the grantee of record is enough to meet the statutory obligations.

Here, Mr. Rosemond was granted the property by the Gideons in 1995, in which the deed was recorded. Therefore, Mr. Rosemond was the Grantee of record of the property. Therefore, Mr. Rosemond, under the plain meaning of the statute, is offered the same statutory requirements of notice as a defaulting taxpayer.

II. ACTUAL KNOWLEDGE OF TAX SALE IS NOT A DEFENSE TO THE FAILURE TO PROVIDE NOTICE OF DELINQUENT TAX OR FAILURE TO PROVIDE NOTICE OF THE REDEMPTION PERIOD.

Appellant argues that Mr. Rosemond had actual knowledge of the delinquent tax and for this reason the Master-In-Equity's order should be overruled. However, this argument fails for several reasons. Firstly, Mr. Rosemond did not have actual knowledge of the delinquent tax on the property. Secondly, and most importantly, even if Mr. Rosemond had actual knowledge of the delinquent tax, failure to provide notice to the true owner is not excused regardless of actual notice. Aldrige v. Rutledge, 269 S.C. 475 (S.C. 1977). Therefore, even if Mr. Rosemond had actual notice, the tax office's failure to provide notice as prescribed by the statute renders the tax sale void.

Appellant cites Taylor v. Mill, 310 S.C. 526 (1992) as supporting caselaw. The court in Taylor held that tax liens are public records, and a party must use due diligence to discover taxes on the property which he/she owns. However, Taylor in this case failed to either notify Lexington County that he was the grantee of the delinquent taxpayer, Goldberg, or to record his deed. Lexington county therefore had no obligation to notify them of the county sale. Essentially, the court in Taylor stated that because Taylor did not record or otherwise notify the county he owned the property, he was not entitled to notice and should have therefore done his due diligence in discovering taxes on his unrecorded property. Here, Mr. Rosemond recorded his deed in Spartanburg County and therefore was entitled to notice. (R. p. 121).

Appellate cites Arceneaux v. Arrington, 284 S.C. 500 (Ct. App. 1985) as case law, which held that a party who receives title to property is charged with knowledge of the contents of the recorded deed. Therefore, Appellant argues that Mr. Rosemond is deemed to have knowledge of the two lots having two separate tax notices as per the ruling in Arceneaux. Again, this argument is unconvincing because in Arceneaux the issue was whether a restrictive covenant on real property

could be enforced. The case does not raise the issue of notice requirements regarding delinquent taxes.

Additionally, as previously stated, even if Mr. Rosemond is charged with knowledge of the delinquent tax, Appellant's argument still fails because Mr. Rosemond did not receive notice as per the statutory requirements. Failure to provide notice to the true owner is not excused regardless of actual notice. Aldridge v. Rutledge, 269 S.C. 475 (S.C. 1977).

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, supra. All requirements of the law leading up to the tax sales, which are intended for the protection of the taxpayer against surprise or the sacrifice of his property, are to be regarded as mandatory, and are to be strictly enforced. Aldridge v. Rutledge, 269 S.C. 475 (S.C. 1977). Without strict compliance with the statutory requirements, a tax sale may not be upheld. Aldridge, supra.

Due process requires some sort of notice to a property owner before property is sold for delinquent taxes. If the taxing agency does not comply with all statutory notice requirements, the tax sale is void. Manji v. Blackwell, 323 S.C. 91 (Ct. App. 1996). Even if the property owner has actual knowledge of the overdue taxes, the tax sale is void unless the required statutory notices are given. Donohue v. Ward, 298 S.C. 75 (Ct. App. 1989). The statute specifically states that notice of delinquent tax must be given to the delinquent taxpayer and the Grantee of record of property. None of the notices were given to Mr. Rosemond, the Grantee of record, and thus the tax sale must be declared void.

III. THE APPELLANT'S DEFENSE OF LACHES FAILS.

As previously stated, the right to notice of tax sale is jurisdiction. Good v. Kennedy, *supra*. The Court in Donohue v. Ward, 298 S.C. 75 (Ct. App. 1989), held that the statute of limitations

does not apply to jurisdictional defects.

The Appellant in its initial complaint argued that Mr. Rosemond's claim to the property is barred by the South Carolina Code section 15-3-340, which outlines a statute of limitation. However, as stated above, the statute of limitations does not apply here. Therefore, the Appellant has attempted to argue that Mr. Rosemond does not have claim to the property due to the doctrine of Laches.

Laches is an equitable doctrine which arises upon the failure to assert a known right. Emery v. Smith, 361 S.C. 207, 215, 603 S.E.2d 598, 602 (Ct. App. 2004). The equitable doctrine of laches is equivalent to the legal doctrine of waiver, which is the "voluntary and intentional relinquishment or abandonment of a known right," Parker v. Parker, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994).

As previously stated, since the Tax sale of Lot 13, Mr. Rosemond had no reason to believe his ownership of the property was disputed by any person. Since 1995 Mr. Rosemond has rented Lot 12 and Lot 13 to the same tenant, the tenant rents the house located on Lot 12 and uses Lot 13 for entry and exit. (R. pp. 086-087). Furthermore, Mr. Rosemond's tenants have solely maintained Lot 13 since 1995. (R. p. 087). Additionally, the property had seemingly remained unoccupied with no structures, presenting no reason to believe that any other person had claimed an interest in the Lot. (R. p. 053). Mr. Rosemond's belief is supported by Appellant's testimony, where Appellant admits that he did not maintain the grounds of Lot 13, the Lot was empty/ vacant, and he rarely visited the Lot. (R. p. 053). Furthermore, Mr. Rosemond had no knowledge that any deed for Lot 13 had been issued, until the Appellant alleged that Mr. Rosemond's wall was encroaching on Lot 13. The Appellant claimed the Appellant was the owner of Lot 13 and when Mr. Rosemond asserted his right to the property, the appellate initiated this lawsuit.

Appellant argues that Mr. Rosemond's delay in asserting his right to the property has caused injury/prejudice to Appellant. Specifically, Appellant argues Mr. Rosemond's lack of due diligence in discovering the delinquent taxes on Lot 13 created prejudice to others. Again, Appellant cites Taylor v. Mill, 310 S.C. 526 (1992) as supporting caselaw. However, as previously stated, Appellant's argument fails because Taylor in this case failed to either notify Lexington County that he was the grantee of the delinquent taxpayer Goldberg, or he failed to record his deed. Here, Mr. Rosemond recorded his deed in Spartanburg County and therefore was entitled to notice under the statute. Mr. Rosemond, by recording his deed, met his due diligence as he should have been provided with notice upon his recording of the deed.

Appellant's claim of Laches fails because Mr. Rosemond was not aware that any other person disputed his ownership. Additionally, he continued to rent the property to his tenants who maintained the grounds, clearly indicating Mr. Rosemond's intention not to abandon the property.

IV. THE APPELLANTS ARGUMENT THAT THE APPELLANT IS A BONA-FIDE PURCHASER FAILS.

A. Appellant Failed In The Lower Court To Preserve The Bona-Fide Purchaser For Value Issue For Appeal.

Appellant raises the defense that the appellant is a bona-fide purchaser for value for the first time on appeal. An issue neither ruled on by master nor raised by Rule 59(e) motion is not preserved for appellate review. Blake v. Cannon, 312 S.C. 135, 439 S.E.2d 302, 305 (S.C. App. 1993) ("The master did not rule on whether Cannon was estopped or barred by laches, nor did the Blakes raise it in their motion under Rule 59(e), SCRPC. Accordingly, this issue is not preserved for appellate review"). To preserve an issue for appellate review, an issue must have been raised too and ruled upon by the lower court. Aiken v. World Fin. Corp. of S.C., 373 S.C. 144, 148, 644 S.E.2d 705, 708 (2007). Additionally, in State v. Policao, 402 S.C. 547, 556, 741 S.E.2d 774, 778

(Ct. App. 2013), the court stated an appellate court will not review arguments raised for the first time on appeal. Appellant did not raise the defense that the Appellant was a bona-fide purchaser for value at the lower court level, nor in form of the Master-In-Equity. Therefore, Appellant did not preserve the argument for appeal.

B. Appellant Has Failed To Meet Its Burden On Appeal To Demonstrate Reversible Error By The Master-In-Equity.

Moreover, Appellant has failed to present the necessary statutory and legal authority to support Appellants claims of a bona-fide purchaser. Thus, Appellant has failed to adequately assert that the Appellant is a bona-fide purchaser for value. See McCall v. IKON, 380 S.C. 649, 659-60, 670 S.E.2d 695, 701 (Ct. App. 2008) (noting an appealed order comes to the appellate court with a presumption of correctness and the burden is on appellant to demonstrate reversible error). Here, the Appellant has failed to meet its burden to demonstrate reversible error.

C. Appellant is not a Bona-fide Purchaser for Value.

The appellant is not a bona-fide purchase for value because the Appellant had constructive notice of Mr. Rosemond's ownership of the property.

[a] purchaser may assert a plea in equity of a bona fide purchaser for value, without notice of defect in his title, by showing (1) he has actually paid in full the purchase money (giving security for the payment is not sufficient, nor is past indebtedness a sufficient consideration); (2) he purchased and acquired the legal title, or the best right to it; and (3) he purchased bona fide, i.e., in good faith and with integrity of dealing, without notice of a lien or defect. The bona fide purchaser must show all three conditions 'actual payment, acquiring of legal title, and bona fide purchase' occurred before he had notice of a title defect or other adverse claim, lien, or interest in the property.

Spence v. Spence (S.C. Apr 10, 2006). "There are two basic forms of notice by which a purchaser may be charged with knowledge of the rights of another in real property: actual notice and constructive/inquiry notice." Id. Constructive notice is a legal inference which substitutes for actual notice. "It is notice imputed to a person whose knowledge of facts is sufficient to put him

on inquiry; if these facts were pursued with due diligence, they would lead to other undisclosed facts. Therefore, this person is presumed to have actual knowledge of the undisclosed facts.” Id.

Constructive or inquiry notice in the context of a real estate transaction often is grounded in an examination of the public record because it is the proper recording of documents asserting an interest or claim in real property which gives constructive notice to the world. Id. “The recording of a document alerts all future grantees of the rights of the recorder because the law assumes the grantee will search the index and discover the interest or claim.” Spence v. Spence (S.C. Apr 10, 2006).

Here, the Appellant was not without notice. As previously stated, Mr. Rosemond recorded his deed with Spartanburg County. Therefore, the Appellant was on notice of Mr. Rosemond’s interest in the property. Furthermore, the tax sale is a public record, and the appellant should have exercised due diligence by reviewing the tax sale records to see if the judicial sale was conducted correctly. If the Appellant had reviewed the tax collector file, the appellant would have seen that the tax sale was void.

D. The Bona-fide Purchaser for Value defense does not apply to Tax sales which are determined to be void for failure to provide notice of delinquent tax and the redemption period.

Even if the court considers the Appellant a bona-fide-purchaser for value, the appellant’s interest in the property as an alleged bona-fide purchaser of value is subject to Mr. Rosemond’s right to notice and redemption. Therefore, even if the Appellant is considered a bona-fide purchaser for value, the court has the discretion to declare the tax sale void. The court of appeals has held that “the determination of whether a judicial sale should be set aside is a matter left to the sound discretion of the trial court.” Wells Fargo Bank, Na v. Turner, 662 S.E.2d 424, 378 S.C. 147 (S.C. App. 2008). The right to notice of tax sale is jurisdictional, and failure to give notice in the manner

described prevents title to the property from being transferred to the successful bidder. Good v. Kennedy, supra.

The Master-In-Equity had the discretion to set aside the tax sale despite the alleged existence of a bona-fide Purchaser for value. While it is within the court of appeals power to reverse the lower court's decision if the court deems there was an abuse of discretion, the declaratory judgement granting Mr. Rosemond the true and rightful owner of Lot 13 was not an abuse of discretion. "An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions." Belle Hall Plantation Homeowner's Ass'n, Inc. v. Murray, 799 S.E.2d 310, 419 S.C. 605 (S.C. App. 2017).

In the case at bar, the Master-In-Equity's final order was supported by facts. Both Parties stipulated in earlier proceedings on the record that Mr. Rosemond never received notice of the impending tax sale, nor the end of the redemption period as required by statute. (R. p. 049). The court did not err in its interpretation of the law as caselaw indicates that the clear intention of the statute is to protect the taxpayer against surprises or the sacrifice of his property and all requirements of the law leading up to the tax sales are to be regarded as mandatory and are strictly enforced. Alridge v. Rutledge, 269 S.C. 475 (S.C. 1977).

Here, the statutory requirements of notice render the tax sale void and as previously highlighted, case law gives the court the discretion to set aside the tax sale and declare subsequent deeds void. Furthermore, it has been well established within this brief that case law further advises the court that in administering its discretion it should strictly comply with any statutory notice requirements. Therefore, the appellant's interest in the property as an alleged bona-fide purchaser of value cannot outweigh Mr. Rosemond's right to notice and redemption.

CONCLUSION

It has been stipulated by both parties that Mr. Rosemond, a Grantee of record of the property, did not receive notice of the delinquent tax owed on Lot 13 or receive notice of the redemption period, a clear violation of the South Carolina Statutory Law. Failure to give any notice in the manner proscribed by the statute prevents title to the property from being transferred to the successful bidder. This notion was made clear in Good v. Kennedy, supra. Furthermore, case law is very clear that there must be strict compliance with the Statutory Notice requirements. Alridge v. Rutledge, supra. Appellate argues the facts of the case warrant this court to forgo the “strict compliance” rule because the facts in this case raise a question of equity.

However, case law indicates the very purpose of the “strict compliance” rule is to protect taxpayers from surprise and losing their property without due process. For this court to deter from enforcing the notice requirements required by law would be in its very essence unfair and inequitable to Mr. Rosemond.

[Signature on following page.]

Respectfully submitted,

King Law Offices, PC

By:

A handwritten signature in black ink, appearing to be 'Rustin B. Duncan', written over a horizontal line. The signature is stylized and somewhat scribbled.

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Dated: May 13, 2024

Certificate of Counsel

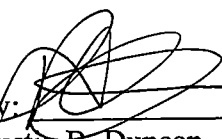
This is to certify that the Respondent's Final Brief complies with the South Carolina Appellate Court Rule 211(b).

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MAY 20 2024

SC Court of Appeals

By: 
Rustin B. Duncan

Attorney For Respondent Nathan Rosemond

Date: May 13, 2024