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May 22 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Master in Equity

James O. Spence, Master in Equity

Case No. 2022-001128

Grayson J. Dailey, Appellant,

v.

SC Home Holdings, LLC, Lexington
County and Jim Eckstrom in his official
capacity as Treasurer of Lexington
County, and John Doe, Respondents.

**MOTION TO RECONSIDER/REHEARING
OF APPELLANT**

NOW COMES APPELLANT pursuant to SCACR RULE 221, requesting this court reconsider its Order of May 8, 2024 finding the tax sale notice was placed in a “conspicuous place” on the property as required by section 12-51-40(c).

There is no evidence in the record that the notice was visible to the public. The court relies on a subjective test and reasons the notice would have been conspicuous to Mr. Dailey if he took certain actions; Appellate Case No. 2022-001128 reasons, “The county posted the notice to a tree on Dailey's property that could be seen from his driveway and Dailey conceded he would have seen the notice if he used his driveway.”

It appears from a review of the case law, South Carolina has not addressed whether a tax sale notice must be conspicuous to the general public or just conspicuous to the subject taxpayer. Accordingly, this is a novel issue of law. "In a case raising a novel issue of law regarding the interpretation of a statute, the appellate court is free to decide the question with no particular

deference to the lower court." *Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 466, 636 S.E.2d 598, 605 (2006).

As discussed in Appellant's Final Brief, other jurisdictions have held the delinquent tax notice must be conspicuous to the general public for a variety of public policy reasons. *In re Tax Sale of 2003 Upset*, 860 A.2d 1184, 1188-89 (Pa. Cmwlth. Ct. 2004) reasoned, "[t]his is important for third parties whose interest may be affected, such as mortgagors or other lien holders, and it advances the goal of increasing the number of bidders for the property. With more bidders, a higher sale price, presumably, will be realized, which benefits the delinquent taxpayer. *In re Upset Price Tax Sale of Sept. 10, 1990*, 147 Pa. Cmwlth. 52, 606 A.2d 1255, 1258 (1992)."

Similarly at trial Mr. Brett Finley, an employee of Lexington County and their sole witness, testified that the purpose of posting was so notice could be given to the public, and not just to the taxpayer or owner (R. 62 Ins 24-25 & R. 63 Ins 1-4). Moreover, Dailey's neighbor testified that, despite driving by the property anywhere from two to four times a day on average, he never saw any notices posted on the land. (R. 40 Ins. 15-25).

This court should hold that for a notice to be "conspicuous" within the meaning of South Carolina Code § 12-51-40(c), it must be visible to the public and not merely conspicuous to the delinquent taxpayer.

Based on the foregoing, Appellant respectfully requests the novel issue of to whom a notice need be "conspicuous" be decided in his favor and that a notice not conspicuous to the general public be held violative of South Carolina Code § 12-51-40(c).

/S William LaLima

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PROOF OF SERVICE

I certify that I have served the **MOTION TO RECONSIDER/REHEARING OF APPELLANT** on Lexington County, and Jim Eckstrom, in his official capacity as Treasurer of Lexington County, on May 22, 2024 to Lexington County and Jim Eckstrom's attorney of record, Jeffrey M. Anderson at his AIS EMAIL jeffanderson@oldcourthouse.com. AND addressed to their attorney of record, Spencer Andrew Syrett, SC Home Holdings, at his AIS E-MAIL syrettlaw@sc.rr.com.

May 22, 2024

s/ William James LaLima
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