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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Allison Renee Lee, Circuit Court Judge

Appellate Case No. 2023-001425
Civil Action No. 2016-CP-28-00960 & 2016-CP-28-00961

Lydia V. Hall as Personal Representative for the Estate of Bessie M. Doby; Asten Hall a/k/a
Aster Hall; Hubert R. Hall, III; Mary Hall; Dana HallAppellants,

v.

Ronnie Fulmer; Betty Horton Slade; Jill B. Catoe as Kershaw County Treasurer and Tax
Collector, Respondents.

FINAL BRIEF OF APPELLANT

Jennifer Dowd Nichols, SC Bar #75916
Samuel M. Price, Jr. (SC Bar #04566)
NICHOLS & PRICE
PO Box 836
1413 Main Street
Newberry, South Carolina 29108
(803) 276-0796
jennifer@nicholspricelaw.com

July 5, 2024
Newberry, SC

Attorneys for the Appellants

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STATEMENT OF ISSUES ON APPEAL

I. DID THE COURT ERR IN GRANTING THE RESPONDENTS' MOTION FOR SUMMARY JUDGMENT AND DENYING THE APPELLANTS' MOTION FOR SUMMARY JUDGMENT?

STATEMENT OF THE CASE

Appellants Lydia V. Hall as Personal Representative for the Estate of Bessie M. Doby, Asten Hall aka Aster Hall, Hubert R. Hall, III, Mary Hall, and Dana Hall (collectively "Appellants") initiated an action against Respondents Ronnie Fulmer and Jill B. Catoe as Kershaw County Treasurer and Tax Collector ("Treasurer") on November 3, 2016. (C/A No.: 2016-CP-28-00961) (R. pp. 19-34). Plaintiffs also initiated an action against Defendants Betty Horton Slade and the Treasurer on November 3, 2016. (C/A No.: 2016-CP-28-00960 (R. pp. 63-76). In both actions, the Appellants sought to set aside the tax sale for the subject properties of each matter.

Appellant Treasurer filed an Answer and Counterclaim in both cases. (R. pp. 33-44, 77-88). Appellants Fulmer and Slade filed an Answer. (R. pp. 44-47, 92-96). The Appellants filed an Answer to the Respondent Treasurer's Counterclaim. By Order of the Court, dated February 23, 2023 (R. pp. 48-52, 87-91), these related matters were consolidated for resolution pursuant to Rule 42 of the South Carolina Rules of Civil Procedure. (R. pp. 55-57).

The Respondent Treasurer filed a Motion for Summary Judgment and the Appellant filed a Cross Motion for Summary Judgment. (R. pp. 53-54, 97-98). The motions were heard on March 1, 2023. The parties did not dispute the facts of the case, so there were no issues of material facts, and the matter to be decided was that of law. An Order was filed granting the Respondent's Motion for Summary Judgment and denying the Appellants' Motion for Summary

Judgment on July 28, 2023. (R. pp. 4-14). The Court did not address the equitable defenses of the Respondents in the Order.

The Appellant's Notice of Appeal was submitted on August 28, 2023 and served on the Respondents on August 28, 2023.

STATEMENT OF FACTS

This matter involves real properties sold at the November 3, 2014 tax sale by Respondent Treasurer. The subject properties of this matter are as follows:

Property 1

Kershaw County TMS#C257-20-00-141, 324 Railroad Avenue

All that piece, parcel or lot of land, with improvements thereon, lying and being situate in the County of Kershaw, State of South Carolina, with a property address of 324 Railroad Avenue, and Tax Map Number C257-20-00-141. This being a portion of all that piece, parcel or tract of land lying and being situated just North of the City limits of the City of Camden, in the County of Kershaw and State of South Carolina, containing one-fourth (1/4) acre, more or less, and bounded as follows: North by premises now or formerly of Stradford; East by premises now or formerly of the Seaboard Air Line Railroad Company; South by the right of way of the Seaboard Air Line Railroad Company; and West by premises now or formerly of Doby.

Property 2

Kershaw County TMS #C27-20-00-140, 326 Railroad Avenue

All that piece, parcel or lot of land, with improvements thereon, lying and being situate in the County of Kershaw, State of South Carolina, with a property address of 326 Railroad Avenue and Tax Map Number of C257-20-00-140. Said property is more particularly described as all that certain piece, parcel or lot of land, situate, lying and being in the County of Kershaw, State of South Carolina being located just north of the city limits of Camden, S.C and fronting south on the right of way of the Seaboard Airline Railway and is bounded on the north by lot now or formerly owned by Julie Stratford; East by lot now or formerly of Alice Boykin, which was formerly a part of the lot herein conveyed; south by the right of way of the Seaboard Air Line Railway and west by lot now or formerly of Emma Gaskin which was heretofore cut off of the lot herein conveyed.

Property 3

Kershaw county TMS #C257-20-00-139, 328 Railroad Avenue

All that piece, parcel or tract of land lying and being situate just North of the City limits of the City of Camden, County of Kershaw, State of South Carolina, on which is located a building known as the Grand Café and being bounded as follows: North by property now or formerly of Stradford; South by the right of way of the Seaboard Air Line Railroad Company; East by property now or formerly of the Estate of Sam Doby and West by property now or formerly of Mary Doby Smith.

Property 4

Kershaw County TMS#212-00-00-006, 210 Chappy Road

All that piece, parcel or tract of land, situate, lying and being about seven (7) miles north of Camden, County of Kershaw, State of South Carolina, in School District #19, containing Six and one-Fourth (6 ¼) acres, more or less, and being shown and designated as Tract #5 on plat of property of Ida Alexander Estate prepared by S. Tetterton, RLS, dated August 16, 1967, and recorded in the Office of the Register of Deeds for Kershaw County. Said tract is bounded as follows as shown on said plat: North by Tract #4 on said plat; EAST by property now or formerly of J.B. McGuirt; SOUTH by property now or formerly of Catawba Timber Co.; WEST by property now or formerly of Catawba Timber Co.

(Complaints, Exhibits B) (“Properties”)

Ms. Doby resided in Kershaw County until her death on July 8, 2006. At the time of her death, Bessie M. Doby was the owner of record of the subject properties listed above. (R. pp. 268-281). At the time of her death, Ms. Doby was not married and she did not have any children. She was also predeceased by all of her siblings and was survived by her niece and nephew, Lydia V. Hall and Christopher J. Smith, respectively. (R. p. 213, 254, 292). The Last Will and Testament of Ms. Doby was located in the spring of 2016 and was filed with the Kershaw County Probate Court on June 15, 2016 under case 2016-ES-28-226. (R. 241, pp. 283-289). (R. For purposes of this action, Ms. Doby bequeathed the Properties to her great-nephew, Hubert R. Hall, III, and her great-nieces, Mary Hall, Aster Hall a/k/a Asten Hall, Dana Hall and niece,

Lydia Hall. ¹ (R. pp. 283-284). Lydia Hall was appointed as the Personal Representative for Ms. Doby's estate.

On April 22, 2011, and after the death of Ms. Doby, Christopher J. Smith executed a quitclaim deed to his sister, Lydia V. Hall. The quitclaim deed was recorded in the Office of the Register of Deeds for Kershaw County on April 27, 2011 in Deed Book 2792 at page 299 ("Quitclaim Deed") (R. pp. 213-220, pp. 292-299).

The 2013 property taxes for the subject properties went unpaid and the properties were sold at the Kershaw County Tax Sale on November 3, 2014. Defendant Slade was the successful bidder for Property 4, and Ronnie Fulmer was the successful bidder for Properties 1-3. Tax deeds were issued to the successful bidders. (R. pp. 134-141, 157-160, 179-182, 196-200, 300-319.)

STANDARD OF REVIEW

An action to remove a cloud on and quiet title to land is one in equity." Bryan v. Freeman, 253 S.C. 50, 52, 168 S.E.2d 793, 793 (1969). An action to set aside a tax sale lies in equity. Smith v. Barr, 375 S.C. 157, 160, 650 S.E.2d 486, 488 (Ct.App.2007). When actions in equity are tried before a judge alone, the appellate court is free to find the facts according to its own view of the preponderance of the evidence. Id.

ARGUMENT

The Court erred in granting the Respondent's Motion for Summary Judgment and denying the Appellants Motion for Summary Judgment as a matter of law because the Court did not apply the facts of the matter to the statutes governing tax sales.

¹ Mt. Zion Second Baptist Church of Camden, South Carolina was also named as a devisee, but the property bequeathed to the church is not subject to this matter.

In South Carolina, the procedure for collecting delinquent property taxes is governed by statute. Case law regarding tax sales has established that all tax sales in South Carolina must be conducted in strict compliance with the applicable statutes. “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 as mandatory and are to be strictly enforced.” King v. James, 388 S.C. 16, 25, 694 S.E.2d 36, 39 (2010), citing Donohue v. Ward, 298 S.C. 75, 83, 378 S.E.2d 261, 265 (Ct. App. 1989). See also Hawkins v. Bruno Yacht Sales, 242 S.C. 31, 577 S.E.2d 202, (2003), “Failure to give the required notice is a fundamental defect in the tax proceedings which renders the proceedings absolutely void” Rives v. Balsa, 325 S.C. 287, 293, 478 S.E.2d 878, 881 (1996).

The sale of real property for the satisfaction of ad valorem taxes is governed by Sections 12-49-10 through 330 and 12-51-40 through 170, Code of Laws of South Carolina, 1976, as amended. 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). A tax deed, “whether executed to a private person, a corporation, or a forfeited land commission, is prima facie evidence of a good title in the holder, that all proceedings have been regular and that all legal requirements have been complied with.” S.C. Code Ann. §12-51-160, 1976, as amended; Leysath v. Leysath, 209 S.C. 342, 347, 40 S.E.2d 233, 235 (1946). Thus, the burden of proving that the title is defective is on the party attacking the tax sale and/or the deed. Id. at 348.

The below referenced portions of the tax sale statutes are the statutes in which the Appellants allege Kershaw County did not conduct the subject tax sales in strict compliance with the applicable statutes.

(1) **S.C. Code Ann. §12-51-40, 1976, as amended.**

If a taxpayer fails to pay the ad valorem taxes on a piece of real property by March 17 of the year immediately succeeding the year for which the taxes are due, the county treasurer must issue a tax execution directed to the person authorized to collect delinquent taxes. S.C Code Ann. §12-45-180, 1976, as amended. S.C. Code Ann. §12-51-40 directs that the delinquent tax collector shall:

- (a) On April first or as soon after that as practicable, mail a notice of delinquent property taxes, penalties, assessments, and costs to the defaulting taxpayer and to a grantee of record, whose value generated all or part of the tax. The 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 corrected or forwarding address [that the owner of record has filed with the appropriate tax authority and to a known grantee of the delinquent taxpayer of the property on which the delinquency exists.] The notice must specify that if the taxes, penalties, assessments, and costs are not paid, the property must be advertised and sold to satisfy the delinquency.
- (b) If the taxes remain unpaid after thirty days from the date of mailing of the delinquent notice, or as soon thereafter as practicable, take exclusive possession of the property necessary to satisfy the payment of the taxes, assessments, penalties, and costs. In the case of real property, exclusive possession is taken by mailing a notice of delinquent property taxes, assessments, penalties, and costs to the defaulting taxpayer and any grantee of record of the property at the address shown on the tax receipt or to an address which the officer has actual knowledge, by “certified mail, return receipt requested [.]” ...All delinquent notices shall specify that if the taxes, assessments, penalties, and costs are not paid before a subsequent sales date, the property must be duly advertised and sold for delinquent property taxes, assessments, penalties, and costs. The return receipt of the “certified mail” notice is equivalent to “levying by distress.”
- (c) If the “certified mail” notice has been returned, take exclusive physical possession of the property against which the taxes, assessments, penalties, and costs were assessed by posting a notice at one or more conspicuous places on the premises, in the case of real estate, reading: “Seized by person officially charged with the collection of delinquent taxes of (name of political subdivision) to be sold for delinquent taxes”, the posting of the notice is equivalent to levying by distress, seizing, and taking exclusive possession of it, or by taking exclusive possession of personalty...
- (d) The property must be advertised for sale at public auction. The advertisement must be in a newspaper of general circulation within the county or municipality, if applicable,

and must be entitled "Delinquent Tax Sale." It must include the delinquent taxpayer's name and the description of the property, a reference to the county auditor's map-block-parcel number being sufficient for a description of realty. The advertising must be published once a week prior to the legal sales date for three consecutive weeks for the sale of the real property.... All expenses of the levy, seizure, and sale must be added and collected as additional costs, and must include, but not be limited to, the expenses of taking possession of real or personal property, advertising, storage, identifying the boundaries of the property, and mailing certified notices. When the real property is divisible, the tax assessor, county treasurer, and county auditor may ascertain that portion of the property that is sufficient to realize a sum upon sale sufficient to satisfy the payment of the taxes, assessments, penalties, and costs. In those cases, the officer may partition the property and furnish a legal description of it.

- (e) As an alternative, upon approval by the county governing body, a county may use the procedures provided in Chapter 56, Title 12, and Section 12-4-580 as the initial step in the collection of delinquent taxes on real and personal property.
- (f) 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.

(2) **S.C. Code Ann. §12-51-120, 1976**, as amended.

S.C. Code Ann. §12-51-120, 1976, as amended states:

Neither more than forty-five days nor less than twenty days before the end of the redemption period for real estate sold for taxes, the person officially charged with the collection of delinquent taxes shall mail a notice by "certified mail, return receipt requested-restricted delivery" as provided in Section 12-51-40(b) to the defaulting taxpayer and to a grantee, mortgagee, or lessee of the property of record in the appropriate public records of the county. The notice must be mailed to the best address of the owner available to the person officially charged with the collection of delinquent taxes that the real property described on the notice has been sold for taxes and if not redeemed by paying taxes, assessments, penalties, costs, and interest at the applicable rate on the bid price in the total amount of ___ dollars on or before ___ (twelve months from date of sale) (date) _____, a tax title must be delivered to the successful purchaser at the tax sale. Pursuant to this chapter, the return of the certified mail "undelivered" is not grounds for a tax title to be withheld or be found defective and ordered set aside or canceled of record.

Specifically, the Appellants argue that the Respondent Treasurer did not (1) mail the requisite notices to the defaulting taxpayer in accordance with the provisions of §12-51-40(a) and (b), SC Code of Laws, (2) advertise the property in the name of the deceased owner in accordance with §12-51-40(f), SC Code of Laws, and (3) mail the redemption notice to the defaulting taxpayer in accordance with §12-51-120. The Respondents argue that the tax sale was conducted in compliance with the applicable statutes.

The Court held the Respondent Treasurer “acted with due diligence and took the appropriate steps to discover the identity of the true owner of the Properties after Ms. Doby’s death by reviewing the public records.” (R. p.11, lines 23-25). The Court also acknowledged that “[a]lthough there was not a probate proceeding opened for Ms. Doby’s estate, the public record reflected that Ms. Doby died intestate, Plaintiff Lydia Hall was the only remaining intestate heir with an interest in the Properties, and Plaintiff Lydia Hall was the defaulting taxpayer and the grantee of record of the Properties as of April 2011.” (R. p. 11, pp. 25-28).

A. S.C. Code Ann. §12-51-40 (a) and (b)

In this matter, Defendant Kershaw County only mailed the delinquent tax notice and the execution notice to Lydia V. Hall. (R. p. 128, 129, 154, 174). While Lydia V. Hall is a grantee of record as shown by the Quitclaim Deed, she is not the defaulting taxpayer and owner of record of the Properties - Bessie Doby is the defaulting taxpayer and the owner of record of the Properties. All of the titles to the properties show the title was held in the name of Bessie Doby at the time of her death (R. pp. 267-281, 291-299).

First, at all times during the tax sale process for the delinquent 2013 taxes, no estate has been opened for Ms. Doby as was stated in the Quitclaim Deed, and it would have easily been revealed with a search of the Probate Court records for Kershaw County. (R. pp. 291-299).

Second, the time frame to probate a will or open an estate naming the intestate heirs was still in play. S.C. Code Ann. §62-3-108(B) states:

If no informal probate and no formal testacy proceedings are commenced within ten years after the decedent's death, and no proceedings under subsection (A)(2)(b) are commenced within the applicable period of three years, it is incontestable that the decedent left no will and that the decedent's estate passes by intestate succession. These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate. In proceedings commenced under subsection (A)(2)(a) or (A)(2)(b), the date on which a testacy or appointment proceeding is properly commenced is deemed to be the date of the decedent's death for purposes of other limitations provisions of this Code which relate to the date of death.

At the time of the execution and recording of the quitclaim deed from Christopher J. Smith, there were still 5 years left under the statute to file a will or open Ms. Doby's estate to establish the intestate heirs; at the time of the tax sale, there were 3 years left. Further, absent opening Ms. Doby's estate, the transfer of the assets by intestate succession would have been conclusive 10 years after Ms. Doby's death.²

Finally, the quitclaim deed did not convey the fee of the Properties, it only conveyed Mr. Smith's right, title and interest in the Properties, whatever it may have been. In Milton P. Demetre Family Ltd. P'ship v. Beckmann, 413 S.C. 38, 773 S.E.2d 596 (S.C. App. 2014), the Court held

A quitclaim deed is a lawful means of conveying title. Martin v. Ragsdale, 71 S.C. 67, 77, 50 S.E. 671, 674 (1905) (citing former version of S.C. Code Ann. § 27-7-20 (2007) (“[T]his section shall be so construed as not to oblige any person to insert the clause of warranty or to restrain him from inserting any other clause in conveyances, as may be deemed proper and advisable by the purchaser and seller, or to invalidate the forms formerly in use within this State.”)). However, “[a] quitclaim deed does not guarantee the quality of title, but only conveys that which the grantor may lawfully convey.” Citing Mulherin-Howell v. Cobb, 362 S.C. 588, 601, 608 S.E.2d 587, 594 (Ct.App.2005) (acknowledging “a quitclaim deed does not convey the fee, but

² In order to perfect title and clear up any clouds on title, an action to establish heirs would need to be initiated and ruled on.

only the right, title[,] and interest of the grantor”) (citing Martin, 71 S.C. at 77, 50 S.E. at 674).

The Court went on to say, “...yet we are satisfied that the fact that the immediate grantor of the purchaser holds under a quitclaim deed, is a circumstance well calculated to excite inquiry, which, if not pursued properly, will affect the purchaser with notice of every fact which such inquiry, pursued with due diligence, would disclose...” citing Martin, 71 S.C. at 76–77, 50 S.E. at 674. While, the Court in Milton was discussing notice of a grantee/purchaser, the same reasoning should apply to anyone that relies upon a quitclaim deed, and the Respondent Treasurer is no exception. This is even more important given that the Courts have stated that the purpose for the strict compliance with the tax sale statutes is for the protection of the taxpayer and to avoid the taxpayer losing its property without proper notice. As noted above, the Courts have acknowledged that a quitclaim deed is a lawful means of conveying title, but the Courts have also noted that the existence of a quitclaim deed should be warning that more investigating should be done. Just because the quitclaim deed indicates Mr. Smith and Mrs. Hall as the only heirs -at-law of Ms. Doby, it does not make it an incontestable or refutable fact, especially given the absence of probate administration. Given the strict compliance requirement in order to uphold a tax sale, Respondent Treasurer should have searched the county’s probate records to ascertain if an estate had been open for Ms. Doby and in the absence of probate administration, which was clearly noted on the Quitclaim Deed, issue notices of the delinquency and the execution notice in the name of Ms. Doby and in the name of Lydia Hall as required by the tax sale statutes. Given the reasons for the strict compliance requirements, the Respondent Treasurer had a duty to do further investigation.

B. S.C. Code Ann. §12-51-40 (f)

In this matter, the Respondent Treasurer only published the sale of the Properties in the name of Lydia Hall and not in Ms. Doby's name as required by S.C. Code Ann. §12-51-40(f). That particular section states that "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 matter, the lower Court held "Statutory law did not require the Treasurer to advertise and sell the Properties in the name of Ms. Doby." (R. p. 11, lines 28-29).

All of the arguments relating to the delinquent tax notices and execution notices made above apply here as well. The Quitclaim Deed should have put the Respondent Treasurer on notice and excited further inquiry because the Quitclaim Deed contained the specific language that (1) it was a quitclaim deed, (2) that Ms. Doby had died intestate, and (3) and there was no probate administration for Ms. Doby. Couple those stated notices with the fact that "a quitclaim deed does not convey the fee, but only the right, title[,] and interest of the grantor", Milton, citing, Martin, 71 S.C. at 77, 50 S.E. at 674, the Respondent Treasurer had a duty to search to see if a probate case was or had been opened, and in the absence of probate administration, publish the sale of the Properties in the name of the deceased owner of record and not publish in just the name of the grantee of record, as it did. (R. pp. 321-322). Our Courts have ruled that "in interpreting a statute, words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation". Rowe v. Hyatt, 321 S.C. 366, 369, 468 S.E.2d 649, 650 (1996). S.C. Code Ann. §12-51-40(f) is clear: if the true owner of record is unknown because of the death of the owner of record **and** the absence of probate

administration, the property **must** be advertised and sold in the name of the deceased owner of record. (Emphasis added) Here, the Respondent Treasurer did not publish in the name of the deceased owner of record as is required by law. It had every notice provided to it that there may be something more to this situation, and more research would need to be done to make sure it published as was required by law so as to not violate the statutes governing tax sales.

C. **S.C. Code Ann. §12-51-120, 1976**

S.C. Code Ann. §12-51-120 stipulates the requirements for notice regarding the expiration of the one-year redemption period that follows the date of the tax sale. This section of the tax sale statutes directs that a notice of the expiration of the redemption period must be given to the defaulting taxpayer and to a grantee, mortgagee, or lessee of the property of record in the appropriate public records of the county. Again, the Respondent Treasurer did not strictly comply with this statute. The redemption notices were only provided to Lydia Hall, who was a grantee of record. (R. p. 146, 148, 167, 162, 166, 187, 188, 202, 207, 208). The notice was not provided to Ms. Doby, the defaulting taxpayer. The arguments made above regarding the delinquent notice, the execution notice, and the publication of the sale, apply here. The Respondent County put on notice by the words in the deed that (1) the deed was a quitclaim deed, (2) Ms. Doby had died intestate, and (3) her estate had not been administered. (R. p. 293). With the warning signs that come with a quitclaim deed as noted in Milton, the Respondent Treasurer should have sent the notices of the expiration of the redemption period to Ms. Doby, the defaulting taxpayer, **and** to Lydia Hall, a grantee of record. The Respondent Treasurer failed to do so, and in that failure, did not strictly comply with the tax sale statutes.

Because the tax sale statutes were not strictly complied with, the lower Court's ruling in this matter is an error of law.

CONCLUSION

Based upon the reasons stated, the Appellants respectfully request that this Court reverse the ruling of the Circuit Order and:

- (1) Grant Summary Judgment in favor the Appellants, declaring the respondent Treasurer did not strictly comply with the tax sale statutes and that the tax sale is void and the subsequent tax deed is void and should be set aside; and
- (2) Deny the Respondents' Motion for Summary Judgment.

Respectfully submitted,

s/Jennifer Dowd Nichols
Jennifer Dowd Nichols, SC Bar #75916
Samuel M. Price, Jr. (SC Bar #04566)
NICHOLS & PRICE
PO Box 836
1413 Main Street
Newberry, South Carolina 29108
(803) 276-0796
jennifer@nicholspricelaw.com

Attorneys for the Appellants

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CERTIFICATION OF COUNSEL

I, Jennifer Dowd Nichols, hereby certify that the Final Brief of the Appellants complies with Rule 211(b), SCACR.

s/ Jennifer Dowd Nichols
Jennifer Dowd Nichols, SC Bar #75916
Samuel M. Price, Jr., SC Bar #
NICHOLS & PRICE
PO Box 836
1413 Main Street
Newberry, South Carolina 29108
(803) 276-0796
jennifer@nicholspricelaw.com

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Attorneys for the Appellants