THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master-In-Equity

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SC Court of Appeals

Appellate Case No. 2013-001508

Wells Fargo Bank, N.A. as Trustee
for Option One Mortgage Loan
Trust 2000-D, Asset Backed
Certificate, Series 2000-D,

Appellant,

v.

Mooring Secured Liquidity; Randy S.
Rutherford; Tara P. Rutherford;
Spartanburg County Tax Collector;
Sherman Acquisitions LP,

Respondents.

INITIAL BRIEF OF APPELLANT

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TABLE OF AUTHORITIES

Statutes:

Cases:

Other:

QUESTIONS PRESENTED

1. Whether the tax sale should be set aside because it was held during the pendency of the homeowner's bankruptcy action.

2. Whether the trial court erred in holding that laches barred Appellant's action to overturn the tax sale because the other parties were prejudiced by unreasonable delay.

3. Whether the trial court erred in holding that Appellant was barred from relief because it acted with unclean hands.

STATEMENT OF THE CASE

This is an appeal from an order of the Spartanburg County Master-in-Equity that denied Appellant's cause of action to set aside a tax sale. The facts in this case are largely undisputed. Appellant filed a foreclosure action against Randy S. Rutherford and Tara P. Rutherford ("Rutherfords") on January 4, 2007, in the Spartanburg County Court of Common Pleas in Civil Action No. 2007-CP-42-0039. The foreclosure action sought to foreclose on real property known as 327 Palmetto Circle, Greer, SC 29651 (the "Property"). On February 27, 2007, a Judgment of Foreclosure and Sale was entered in that case. *See* Plaintiff's Trial Exhibit 3.

On March 29, 2007, the Rutherfords filed for Chapter 13 Bankruptcy in the United States Bankruptcy Court, District of South Carolina, in Case No. 2007-01612-hb. *See* Plaintiff's Exhibit 4. On May 9, 2008, the Bankruptcy Court issued an order granting Appellant (via its servicer) relief from the automatic stay provision of 11 U.S.C. § 362. *See* Plaintiff's Trial Exhibit 12. On April 7, 2010, a Supplemental Order Post Judgment was entered in the foreclosure action. *See* Plaintiff's Trial Exhibit 11. The Rutherfords' bankruptcy action was dismissed on January 26, 2010. *See* Plaintiff's Trial Exhibit 9.

Meanwhile, on March 17, 2008, the Spartanburg County Treasurer issued an execution commanding Respondent Spartanburg County Tax Collector ("Tax Collector") to levy by distress and then sell the Property for unpaid county taxes for tax year 2007. *See* Plaintiff's Trial Exhibit 8. On November 3, 2008, the Tax Collector sold the Property at tax sale to Respondent Mooring Secured Liquidity ("Mooring") for $30,000. The trial court found that the overage from the proceeds of the tax sale had been distributed by the Tax Collector to the Rutherfords,

however no evidence was presented to support this finding. *See* Order at 6. In its findings of fact, the court never determined the exact amount of the overage.[1]

On January 15, 2010, the Tax Collector executed a Tax Deed for the Property to Mooring. *See* Plaintiff's Trial Exhibit 10. Both the tax sale and the issuance of the tax deed occurred during the pendency of the Rutherford's bankruptcy case. The Tax Collector did not apply for and did not obtain relief from the automatic stay. Transcript 14, line 16-18; Transcript 22, lines 10-12.

Appellant filed a Complaint to Set Aside Tax Sale on November 1, 2010. *See* Complaint. Mooring filed a counterclaim for quiet title.[2] *See* Mooring Answer. A final hearing was held on February 12, 2013. By Order entered March 6, 2013, the trial court upheld the validity of the tax sale and quieted title in favor of Mooring. *See* Order at 8. Appellant filed a timely Motion to Alter or Amend the Judgment, which the trial court denied by Order dated June 11, 2013. *See* Order on 59(e) at 5.

[1] The final redemption notification sent by the Tax Collector to the Rutherfords stated that the amount required to redeem the property by November 4, 2009, was $4,371.14, which would put the surplus at approximately $25,000.

[2] Sherman Acquisitions, LP was named by Mooring in its counterclaim for Quiet Title. However, Sherman did not make an appearance in Appellant's action and its interest has no bearing on the tax sale.

ARGUMENT

I. THE TAX SALE IS VOID BECAUSE IT WAS HELD DURING THE PENDENCY OF THE HOMEOWNERS' BANKRUPTCY ACTION.

When the Rutherfords filed for bankruptcy on March 29, 2007, the Property became part of their bankruptcy estate and was subject to the automatic stay provisions of 11 U.S.C. §362(a). The automatic stay was not lifted until the Rutherfords' bankruptcy was dismissed on January 26, 2010. While the automatic stay was in place and without seeking relief from the automatic stay, the Tax Collector executed the tax lien on the Property by seizure and sale on November 3, 2008. Because the Tax Collector seized and sold the Property in violation of the automatic stay, the tax sale is void *ab initio* and the trial court's ruling upholding the sale must be overturned.

A. The Tax Collector Sold the Property During the Pendency of the Automatic Stay.

The Property became part of the bankruptcy estate on March 29, 2007, when the Rutherfords filed a Voluntary Petition for Chapter 13 bankruptcy.[3] The bankruptcy petition filed by the Rutherfords "operate[d] as a stay, applicable to all entities, of...

- "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate,"
- "any act to create, perfect, or enforce any lien against property of the estate,"
- "any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case," and
- "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title."

[3] "All of a debtor's property becomes part of the bankruptcy estate upon the filing of a bankruptcy petition," including "all legal or equitable interests of the debtor as of the petition date, wherever located and by whomever held." *U.S. v. Gold (In re Avis)*, 178 F.3d 718, 720 (4th Cir. 1999) (*citing* 11 U.S.C. § 541(a)(1)).

11 U.S.C. § 362(a)(3)-(6). The definition of entity includes "governmental units." 11 U.S.C. § 101(15). The term "governmental unit" includes a "department, agency, or instrumentality of...a State." 11 U.S.C. § 101(27). In South Carolina, a county is an instrumentality of the State. S.C. Code Ann. § 4-1-10 (Supp. 2013). Therefore, as an officer of the county, the Tax Collector falls under the definition of "entities" to which the automatic stay applies. The Tax Collector could have moved for relief from the automatic stay pursuant to 11 U.S.C § 362(d), but failed to do so. The automatic stay was in place from March 29, 2007, until January 29, 2010. The tax sale occurred on November 3, 2008; therefore, there is no dispute that the tax sale occurred during the time period that the automatic stay was in effect.

The Bankruptcy Code does provide for exemptions from the automatic stay. Of particular note, an exemption is provided for "the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the date of the filing of the petition." 11 U.S.C. § 362(b)(18) (emphasis added). In South Carolina, an inchoate tax lien attaches to all real and personal property on December 31st for taxes to be paid during the ensuing year. S.C. Code Ann. § 12-49-20 (Supp. 2013). In this case, the 2007 property taxes were due on December 31, 2007, after the filing of the bankruptcy petition. Therefore, under § 362(b)(18), the creation of the lien is exempted. However, the language in § 362(b)(18) only exempts the creation or perfection of a lien; there is no corresponding exemption for the execution of a lien.[4]

Execution of a South Carolina tax lien does not occur until the property is seized and sold as provided in Title 12. *See generally* S.C. Code Ann. §§12-49-10, *et seq.*, and 12-51-10, *et seq.*

[4] Note the difference in the language between the exemptions listed in § 362(b)(18) ("creation or perfection of a statutory lien") versus the prohibited acts listed in § 362(a)(4) ("create, perfect, or enforce any lien"). The power to enforce a lien is prohibited, without any exemption.

Therefore, while the Bankruptcy Code exempted the creation of the tax lien from the automatic stay, the execution of the tax lien by seizure and sale was not exempt. In fact, the selling of real property for delinquent taxes during the pendency of the automatic stay is clearly prohibited by 11 U.S.C. § 362(a)(3)-(6). As shown above, the Tax Collector sold the property in violation of the automatic stay.

B. Because the Tax Collector Sold the Property in Violation of the Automatic Stay, the Sale is Void *Ab Initio*.

In South Carolina, actions taken in violation of the automatic stay are void *ab initio*. *See Weatherford v. TIMMARK Carey Holdings, Inc. (In re Weatherford),* 413 B.R. 273 (Bankr. D.S.C. 2009) ("[I]n this District, courts have consistently held that actions taken in violation of the automatic stay are void *ab initio* and thus not legally effective"); *Felder v. Am. Gen. Fin. (In re Felder)*, C/A No. 97-05465-B, Adv. Pro. No. 98-80146, 2000 Bankr. LEXIS 1257, 2000 WL 33710885 (Bankr. D.S.C. July 7, 2000) ("actions by creditors to collect a debt from the debtor, which are taken after the filing of a bankruptcy petition, are void *ab initio* and of no legal effect"); *Anderson v. S.C. Nat'l Bank (In re McWhorter)*, 37 B.R. 742, 745 (Bankr. D.S.C. 1984) ("[a]ctions taken in violation of the automatic stay are void and without effect").[5] Therefore, the law in South Carolina is clear that a tax sale held during the period of the automatic stay is void *ab initio*, and not merely voidable, because the Bankruptcy Code prohibits the execution of tax liens by seizure and sale during the pendency of the automatic stay.

As shown above, the Property was part of the Rutherfords' bankruptcy estate and was subject to the automatic stay when the Tax Collector executed the tax lien on the Property by seizure and sale on November 3, 2008. Because the Tax Collector seized and sold the Property

[5] There is a split among other jurisdictions on whether acts taken in violation of the automatic stay are void or merely voidable.

in violation of the automatic stay, the tax sale is void *ab initio* and the trial court's ruling upholding the sale must be overturned.

II. THE TRIAL COURT'S FINDING OF FACT THAT THE EQUITABLE DOCTRINE OF LACHES APPLIED SHOULD BE OVERTURNED BECAUSE LACHES IS NO DEFENSE TO A VOID TAX SALE AND BECAUSE THE FINDING OF LACHES IS NOT SUPPORTED BY THE EVIDENCE.

The trial court found that Appellant is barred by the doctrine of laches from overturning the tax sale, stating that "[Appellant's] own actions or lack thereof, unclean hands, and failure to diligently monitor the facts and circumstances surrounding the Subject Property give rise to the situation that requires equity, rather than Bankruptcy Law, to govern." Order at 5. However an appellate court is not bound by the conclusions of law of the trial court. *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 564, 658 S.E.2d 80, 90 (2008). Additionally, "[i]n an action in equity the appellate court may resolve questions of fact in accordance with its own view of the preponderance of the evidence." *Fesmire v. Digh*, 385 S.C. 296, 683 S.E.2d 803 (Ct. App. 2009), *citing Wilder Corp. v. Wilke*, 324 S.C. 570, 577, 479 S.E.2d 510, 513 (Ct. App. 1996). An action to set aside a tax deed is in equity. *Folk v. Thomas,* 344 S.C. 77, 543 S.E.2d 556 (2001). Therefore, this Court should overturn both the findings of fact and the conclusions of law made by the trial court as being unsupported by the evidence presented at the trial because (a) laches is not a defense to a void tax sale, and (b) there has been no showing of prejudice due to an unreasonable delay.

A. Laches is No Defense to a Tax Sale That is Void *Ab Initio.*

Because the tax sale is void *ab initio*, the trial court should not have ruled on Respondents' affirmative defenses of laches or unclean hands. Even if these affirmative defenses

had merit, which they do not, there can be no affirmative defense to actions taken in violation of the automatic stay that are void and without effect. "It is well known that equity follows the law;"[6] here, however, the trial court's order effectively places equity above the law. "When providing an equitable remedy, the court may not ignore statutes, rules, and other precedent." *Id.* "[T]he court's equitable powers must yield in the face of an unambiguously worded statute." *Id.* As argued above, there is no question that in the District of South Carolina, tax sales held during the pendency of the automatic stay are void *ab initio*. Notably, no party challenged the fact that the tax sale was held in violation of the automatic stay, nor did any party present any evidence that would support its validity.

In a recently decided case, the Court of Appeals held that a tax sale was void because the county did not strictly comply with the statutory notice requirements. *Reeping v. Jebbco, LLC*, 402 S.C. 195, 740 S.E.2d 504 (Ct. App. 2013).[7] Recognizing that there can be no affirmative defense to actions that are void and without effect, the Court, interpreting prior case law,[8] did not preclude the property owner's claim based on the affirmative defense that the statute of limitations had run. *Id.* at 202, 740 S.E.2d at 507. Applying the same reasoning from *Reeping* to

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[6] *Regions Bank v. Wingard Props., Inc.*, 394 S.C. 241, 715 S.E.2d 348 (Ct. App. 2011)

[7] "We conclude the Delinquent Tax Office failed to use the best address to provide notice to the Reepings in violation of the statutory notice requirements rendering the tax sale void." *Reeping* at 200, 740 S.E.2d at 506.

[8] "It appears to be the general rule that a short statute of limitation of the kind under consideration does not apply where, by reason of some jurisdictional defect, the tax deed is absolutely void upon its face" *Leysath v. Leysath*, 209 S.C. 342, 349, 40 S.E.2d 233, 236-37 (1946); "The next question presented is whether failure to give the required notice constitutes more than a mere irregularity the effect of which invalidates the tax proceeding and prevents the running of the limitations statute. ... We therefore hold that failure to give the required notice is a fundamental defect in the tax proceedings which renders the proceedings absolutely void." *Donohue v. Ward*, 298 S.C. 75, 83, 378 S.E.2d 261, 265 (Ct. App. 1989).

the case at bar, the affirmative defense of laches cannot bar Appellant's claim to overturn the void tax sale, which was filed within the applicable statute of limitations.[9]

B. Respondents Failed to Meet the Burden of Proof to Show Laches

The trial court held that the doctrine of laches barred Appellant from recovery because other parties in the action changed their position in reliance on Appellant's inaction. The South Carolina Supreme Court has held that a "party seeking to establish laches must show: (1) a delay, (2) that was unreasonable under the circumstances, and (3) prejudice." *Robinson v. Estate of Harris*, 388 S.C. 616, 698 S.E.2d 214 (2010). The Supreme Court has also held that there is a heightened burden of proof on one asserting the defense of laches in a lawsuit filed within the period of the applicable statute of limitations:

> In order to constitute laches, there must be shown, not merely neglect for a time to enforce a legal or equitable right, where such neglect is for a period short of that which is a bar under the statute of limitations, but it must further be made to appear that such delay was accompanied either by a failure to perform some legal duty, whereby prejudice has resulted to the person pleading such neglect, or that such delay was accompanied by some act on the part of the person so negligent, which operated to mislead the person pleading such neglect, to his prejudice to such an extent that it would be unjust and inequitable thereafter to permit such negligent party to enforce such right.

Brown v. Butler, 347 S.C. 259, 267, 554 S.E.2d 431, 435 (Ct. App. 2001), *quoting Edwards v. Johnson*, 90 S.C. 90, 103-104, 72 S.E. 638, 644 (1911).

Given that Appellant filed its claim within the statutory period, Respondents were required to meet a heightened burden of proof, which they failed to do. First, Appellant concedes that there was a delay in filing its action to vacate the tax sale. However, there was no proof of unreasonable delay. On October 9, 2009, Appellant obtained notice of the tax sale when it received the notice of the right of redemption. The complaint to overturn the tax sale was filed

[9] The statute of limitations for recovery of land sold under a tax sale is two years from the date of the sale. S.C. Code Ann. § 12-51-160 (Supp. 2013).

in November 2010. Given the two-year statute of limitations, Respondents failed to prove that thirteen months is an unreasonable amount of time in which to bring a lawsuit.[10] Respondents offered no proof that this thirteen-month delay was accompanied either by a failure to perform some legal duty or any grossly negligent act, as required by precedent, and therefore failed to prove laches out of the gate. *See Brown*, 347 S.C. at 267, 554 S.E.2d at 435.

Second, although the court made a finding of fact that "the Defendants have each established that [Appellant] delayed pursuing its rights and that the delay would result in prejudice to the Defendants,"[11] the record is devoid of any evidence of prejudice due to Appellant's delay in challenging the tax sale, as shown by the following:

1. No Prejudice to the Tax Collector

At trial, the Tax Collector argued that it would be prejudiced if the tax sale were overturned, because it paid out the overage to the Rutherfords[12] and therefore would not have the monies available to refund the purchase price to Mooring, the tax sale purchaser. Order at 22. The trial court made a finding of fact that the Tax Collector distributed this overage to the Rutherfords. Order at 6. However, this Court should reverse that finding of fact and its finding that the Appellant's delay caused prejudice because: (a) the Tax Collector failed to present any evidence that the overage was paid to anyone, much less the Rutherfords; and (b) it would be inequitable to allow the Tax Collector to claim prejudice where its violation of the Bankruptcy Code caused the tax sale to be void *ab initio*.

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[10] In another tax sale case, a property owner discovered in September 2005 that she had lost her property at a tax sale. However, she waited until April 2006 (seven months) to file a complaint challenging the tax sale. The Court of Appeals held that this was not an unreasonable delay. *King v. James*, 388 S.C. 16, 694 S.E.2d 35 (Ct. App. 2010).

[11] Order at 8.

[12] S.C. Code Ann. § 12-51-130 (Supp. 2013) states that "if the tax sale of an item produced more cash than the full amount due in taxes, assessments, penalties, and costs, the overage belongs to the owner of record immediately before the end of the redemption period to be claimed or assigned according to law."

First, the finding of fact that the overage was paid out is unsupported by the evidence and should be overturned. There was no evidence introduced at the trial that established either the amount of the overage or to whom it was paid. The only evidence in the record is two letters from the Tax Collector to the Rutherfords dated April 2, 2010, and April 14, 2010, advising them of their potential rights to make the claim. *See* Plaintiff's Trial Exhibit 7. There was no evidence that the Rutherfords applied for the overage or that the overage was ever paid out. With no evidence of distribution of the overage, there can be no finding of prejudice to the Tax Collector.

However, even if this Court upholds the finding of fact that the overage was distributed, it would be inequitable to allow the Tax Collector to claim prejudice where its violation of the Bankruptcy Code caused the tax sale to be void *ab initio*. In *King*, the Court of Appeals rejected an argument, which is identical to the Tax Collector's in the case at bar, that the tax collector would be prejudiced if the tax sale were overturned, because the overage escheated to the County's general fund and was therefore unavailable to be refunded to the tax sale purchaser. 388 S.C. 16, 694 S.E.2d 35. The court held that it would be inequitable to allow the county tax collector to claim prejudice due to an inability to refund the tax sale purchase price "in a case where it was the County's admitted failure to strictly comply with statutory requirements that led to an invalid tax sale." *Id.* at 30, 694 S.E.2d at 41.

Similarly, in this case, the tax sale is void because the Tax Collector violated the automatic stay and failed to seek relief therefrom. Just as in *King*, it would be inequitable in this matter to allow the Tax Collector to claim prejudice in this case because of its own failure to adhere to the automatic stay. Therefore, even if the overage has been disbursed, the Tax Collector cannot now claim prejudice of its own making.

2. No Prejudice to the Rutherfords

The Rutherfords have no claim of prejudice and made no such claim at trial. Additionally, it is clear that the Rutherfords have no right to retain the overage, regardless of whether it was distributed to them. Under the terms of their mortgage, the Rutherfords assigned their rights to the overage from the tax sale to Appellant. *See* Mortgage at 4. There is no prejudice in requiring the Rutherfords to return money to which they were not entitled in the first instance.

3. No Prejudice to Mooring

Lastly, there is no evidence that Mooring will suffer any prejudicial effect if the tax sale is reversed. In *King,* the Court of Appeals held that, in order to show prejudice, a purchaser at a tax sale had to demonstrate that he or she entered into an obligation regarding the property or changed his or her position based on the delay in challenging the tax suit. 388 S.C. at 29, 694, S.E.2d at 42. There is no evidence in the record that Mooring has entered into any obligation, changed its position, or that it has actually suffered any damages at all due to Appellant's alleged delay in bringing suit to vacate the tax sale.

Additionally, Mooring failed to plead the defense of laches in its Answer. *See* Answer of Mooring. "The failure to plead an affirmative defense is deemed a waiver of the right to assert it." *Branche Builders, Inc. v. Coggins*, 386 S.C. 43, 48, 686 S.E.2d 200, 202 n.4 (Ct. App. 2009). Therefore, even if Mooring demonstrated prejudice in the record, which it did not, the defense of laches has been waived and is unavailable to Mooring.

For the foregoing reasons, this Court should overturn both the findings of fact and the conclusions of law made by the trial court in applying the equitable doctrine of laches as being

unsupported by the evidence presented at the trial because (a) laches is not a defense to a tax sale that is void *ab initio*, and (b) there is no evidence in the record to support a finding of laches.

III. THE TRIAL COURT'S FINDING THAT APPELLANT ACTED WITH UNCLEAN HANDS IS NOT SUPPORTED BY THE EVIDENCE.

Because the tax sale is void *ab initio*, the trial court should not have ruled on Defendants' affirmative defense of unclean hands. Furthermore, because neither Mooring nor the Tax Collector pleaded the defense of unclean hands, the defense is waived and it is unavailable to them.[13] *See* Answer of Mooring; Answer of Tax Collector.

The trial court held that "where multiple other parties change their position in reliance on the inaction of another, such as here, equity will step in [to] prevent the party who has not acted diligently, and with unclean hands from creating or imposing an inequitable situation upon those who have acted diligently at all times." Order at 5. Unclean hands is an equitable defense that requires a showing that (1) the plaintiff acted unfairly, (2) in a matter that is the subject of the litigation, (3) to the prejudice of the Defendant. *Parker v. Shecut*, 340 S.C. 460, 531 S.E.2d 546 (Ct. App. 2000).[14]

A finding of unclean hands is wholly unsupported by the evidence in the case. The fact that Appellant pursued an optional, post-sale, legal right within the statutory period does not and cannot support a finding of unclean hands. There is no evidence in the record that Appellant's actions (or inactions) were undertaken unfairly, improperly or in bad faith to any other party.

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[13] *Branche Builders*, 386 S.C. at 48, 686 S.E.2d at 202 n. 4.

[14] Unclean hands "precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." *Aaron v. Mahl*, 381 S.C. 585, 594, 674 S.E.2d 482, 487 (2009). "It is a self-imposed ordinance that closes the door of the court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief." *Straight v. Gross*, 383 S.C. 180, 206-07, 678 S.E.2d 443, 457-58 (Ct. App. 2009). "The clean hands maxim bars relief to those guilty of improper conduct in the matter as to which they seek relief. It is invoked to protect the integrity of the court." 30A C.J.S. Equity §109.

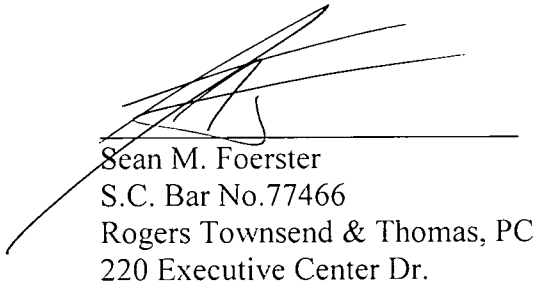
Furthermore, as demonstrated *supra* pp. 14 to 16, there is no evidence in the record of prejudice to the Respondents caused by Appellant's actions (or inactions). The mere passage of time should not bar Appellant for relief in this matter, especially without any evidence of unfair behavior or improper conduct.

This Court should overturn the trial court's finding of unclean hands, because: (a) the tax sale is void *ab initio*; (b) neither Mooring nor the Tax Collector pleaded the defense of unclean hands and therefore waived it; and (c) the trial court's ruling that Appellant had unclean hands is unsupported by the evidence.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests the Court to reverse the judgment of the trial court and to set aside the tax sale.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have served the Initial Brief of Appellant on August 28, 2013, by depositing a copy of each in the United States Mail, postage prepaid, addressed to the each of following parties of record:

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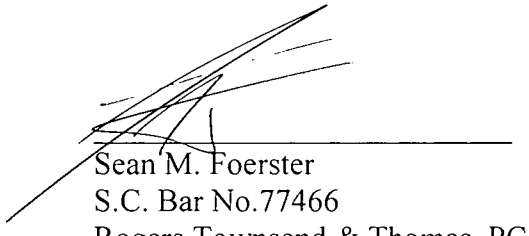

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DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. Trial Court Order of March 6, 2013;
2. Trial Court Order of June 11, 2013;
3. Complaint;
4. Answer of Mooring Secured Liquidity;
5. Answer of Randy S. Rutherford and Tara P. Rutherford;
6. Answer of Spartanburg County Tax Collector;
7. Reply to Counterclaim of Randy S. Rutherford and Tara P. Rutherford;
8. Reply to Counterclaim of Mooring Secured Liquidity;

9. Plaintiff's Exhibits 1, 3, 4, 5, 6, 7, 8, 9, 10, 12;

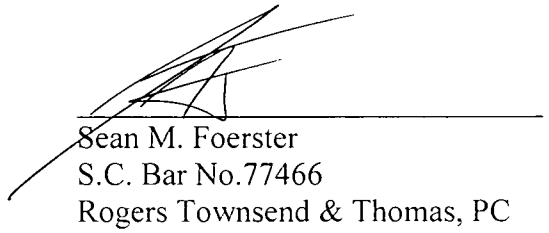
10. Transcript of Proceedings pp. 6-33;

11. Plaintiff's Motion for Summary Judgment;

12. Plaintiff's Memorandum of Law in Support of Setting Aside Tax Sale;

13. Plaintiff's Motion to Alter or Amend.

I certify that this designation contains no matter which is irrelevant to this appeal.



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In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master-In-Equity

Appellate Case No. 2013-001508

Wells Fargo Bank, N.A. as Trustee
for Option One Mortgage Loan
Trust 2000-D, Asset Backed
Certificate, Series 2000-D, Appellant,

v.

Mooring Secured Liquidity; Randy S.
Rutherford; Tara P. Rutherford;
Spartanburg County Tax Collector;
Sherman Acquisitions LP, Respondents.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have served the Designation of Matter to be Included in the Record on Appeal on August 28, 2013, by depositing a copy of each in the United States Mail, postage prepaid, addressed to the each of following parties of record:

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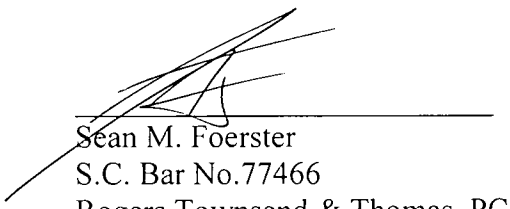

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