

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2020-CP-32-02231

Grayson J. Dailey,)
Plaintiff,)

ORDER

vs.)

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

RECEIVED

AUG 11 2022

SC Court of Appeals

SUMMARY

The parties tried this non-jury quiet tax title case April 14, 2022. This case presents four issues. One: Did County properly post the property? Two: Did County properly advertise the sale? Three: Is Purchaser barred from keeping property purchased from original tax sale purchaser by doctrine of unjust enrichment? Four: If sale voided, what is proper remedy?

Plaintiff and Defendants presented various witnesses and evidence. For the reasons stated below, the court rules the tax sale was conducted pursuant to the strict compliance requirements of the tax sale statute and the tax sale is confirmed.

ISSUES

1. Did County properly post the property?
2. Did County properly advertise the property for sale?
3. Was Defendant SC Home Holdings, LLC unjustly enriched by purchasing this property?
4. If tax sale is voided, what is appropriate remedy?

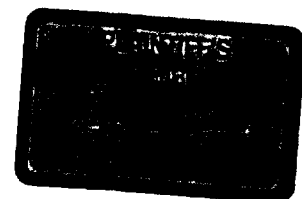
THE COURT FINDS THE FOLLOWING UNDISPUTED FACTS:

1. This property is in Lexington County and is described as 2 acres; more or less as shown, on a plat recorded in Plat book 145-G at page 260 in the ROD for Lexington County and is listed as tax map number 004200-02-038.
2. Case referred to Equity Court by Order filed August 24, 2021.
3. The Parties filed a stipulation of facts that contain all relevant dates and acts. These facts are incorporated into this Order by reference. (See Defendant's Exhibit B)
4. All trial exhibits were admitted without objection.
5. Court finds County properly mailed all statutory notices to Plaintiff. (Stipulation of Facts Defendant's Exhibit A, Tr. p. 54, L.16-23)
6. Court finds County posted notice on Plaintiff's property and near the driveway of the Plaintiffs driveway that the plaintiff testified that he did not use. (Tr. p.46, L. 4-25, p. 47.L.1-25, p. 48., L. 1-15; p.49 L. 12-25; p.50, L. 1-25; p.51, L.1-25; p. 51, L. 1-15. Tr. p. 35, L.18-20)
7. Court finds there was road construction on or near the property and that Plaintiff was away for extended times for family emergencies during the time the tax sale mailing and process occurred. (Tr. p. 17, L. 18-25, p. 18, L. 1-2)
8. Court finds Plaintiff's witness moved his mailbox off the road to a location closer to his home pursuant to postal carrier request. (Tr. p. 17, L. 10-17)
9. Court finds Plaintiff witness statement credible that in the past mail had been misplaced in various mailboxes. (Tr. p. 17, L. 18-25, p. 18, L. 1-2)
10. Court finds no evidence that Plaintiff's mail was misplaced in witness's or other person's mailbox(s).
11. Court finds no credible testimony or evidence that either Plaintiff or his witness never received any mail.
12. Court finds no postal carrier witness appeared to confirm, explain or deny any alleged mail delivery issues.
13. Court finds undisputed fact Plaintiff was at all relevant times, a knowledgeable businessperson who owned properties in Lexington County and understood that he had to pay taxes on property. (Tr. p. 29, L. 13-16)
14. Court finds Plaintiff's practice was to pay his tax bill when he received a notice or bill. (Tr. p. 40, L. 17-23)

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15. Court finds Plaintiff learned of delinquent tax bills on both mobile home and land prior to expiration of redemption period and that he then contacted County of Lexington to discuss. (Tr. p. 60, L. 6-25, Tr. p. 61, L. 1-5)
16. The Plaintiff testified that he had other properties in Lexington County and that he was familiar with the tax billing process and knew that he should receive a tax bill for both the mobile home and real property. (Tr. p.44, L. 2-20).
17. Further, Plaintiff testified that he never inquired about a tax bill after the purchase of the property in March 2017 and that Plaintiff went two years and 8 months without inquiring about the property taxes. (Tr. p. 43, L. 17-25, Tr. p. 44, L1-20)
18. The Court finds Plaintiff misunderstood the proper redemption date and failed to timely redeem the property(s) as required by law. (Tr. p. 33, L. 24-25; Tr. p. 34, L. 1-12).
19. The Court did not rely upon nor consider the findings in Paragraphs 15 -18 to determine if County strictly complied with statutory construction. Plaintiff correctly notes that actual notice by defaulting taxpayer does not excuse strict compliance with statute.
20. Court finds FNADR, LLC was original tax sale purchaser that paid \$8,000.00 but thereafter assigned its bid to SC Home Holdings, LLC and the tax deed was recorded on April 15, 2020 in Record Book 20866 at Page 2992.
21. Defendant SC Home Holdings, LLC was assigned the subject property together with other properties from the original tax sale purchaser in a package of other properties for FNADZ, LLC. (Tr. p. 63, L. 1-25, Tr. p. 64, p. 64, L. 1)

DISPUTED FACTS/POSTING

22. The parties dispute whether the property was properly posted.
23. Visualizing the subject and surrounding property is essential to analysis of conspicuous sign posting.
24. Plaintiff's property is a two (2) acre tract bounded on the east by Park Road shown on Plat Book 145-G at Page 260 and further identified as identified as 855 Park Road, Lexington, S.C. (TMS #4200-02-038.)
25. Plaintiff's witness (Branham) is located adjacent/south to Plaintiff's property and identified as 847 Park Road, Lexington, S.C.

RECENT GIS IM

DELINQUENT TAX SALE NOTICE

STREET
ACCESS AND
DRIVEWAY

DAILEY'S TRAILER

855

Park Rd

PLAINTIFFS
EXHIBIT

26. Plaintiff's exhibit E (A 4-14) is a clear depiction of the property. The Red dot located on the driveway road from Park Road shows a long driveway coming off Park Road and going back to the home.

27. Plaintiff nor his neighbor witness used the posted driveway because they both used neighbor's driveway to the South side of Plaintiff's property. The neighbor's driveway clearly is located on the neighbor's property as it runs down the neighbor's property until it curves north in the general direction of where Plaintiff's trailer is located.

28..Plaintiff argues property was not properly posted since the noticed was not posted near the neighbor's property that Plaintiff used to access his property in a conspicuous place since he used his neighbor's driveway to access his property. (p. 31, L2-14.)

29. SC. Code Section 12-51-40 (c) provides as follows:

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. In the case of personal property, the person officially charged with the collection of delinquent taxes is not required to move the personal property from where situated at the time of seizure and further, the personal property may not be moved after seized by anyone under penalty of conversion unless delinquent taxes, assessments, penalties, and costs have been paid. Mobile homes are considered to be personal property for the purposes of this section unless the owner has de-titled the mobile home according to Section 56-19-510.

30. The certified mail notice of the tax sale to the Plaintiff was returned "unclaimed" so that posting of the property was required. (Stipulation of Facts #7).

31. The statute does not require posting on the nearest public road.

32. Statute requires posting at one or more conspicuous places on the premises. The evidence was that the posting was made on a tree near the driveway to the subject property and on the premises of the property that was sold for taxes. (Tr. p. 46, L. 1-23, Tr. p. 50, L. 11-25, Tr. p. 51, L. 1-16; Plaintiff's Exhibit E)

33. There is no evidence that the roadwork affected the posting of the notice on the property.

34. The notice could not have been posted on the neighbor's driveway--located on the opposite side of the lot from the street driveway-- as that would not have been on the premises of the tax sale property as required by the statute.

35. There was no evidence presented that the county had knowledge of the Plaintiff's use of the neighbor's driveway. (Tr. p. 50, L. 20-23)

36. In addition, the mobile home on the subject property was also sold for taxes and the notice for the mobile home was posted on the mobile home as testified and as shown by Defendant Exhibit A. The Plaintiff testified that he never saw the notice posted on the mobile home. (Tr. p. 37, L13-19, p51, L.22-25, p. 52, L1-17) which was contradicted by the testimony of the deputy delinquent tax collector, Brett Finley. (Tr. p. 51, L. 22-25, Tr. p. 52, L.1-17) The testimony from Mr. Finley was that the Plaintiff called and complained about the notice posted on his mobile home. (Tr. p. 51, L. 23-25, Tr. p. 52, L. 1-17)

37. Plaintiff admitted on cross-examination that had he driven down his driveway off the public road he would have seen the posted sign (Tr. P. 35 and 36):

Q. Mr. Dailey, the driveway that you don't use, was the posting near that driveway of the property?

A. Yes, sir. According to this, yes, yes, sir.

Q. Okay.

A---what the time frame was.

Q. Okay.

A. It- yeah. If I'd have driven into the driveway, I would have seen it; but I don't know during the time frame 'cause I was spending a lot of time in Hartsville back and forth to my parents.

Q. But that's—but the driveway that you didn't use was your actual driveway, not someone else's driveway. That was—

A. Yes, sir.

Q---your driveway.

A. Yes.

38. This court finds that the posting of the tax sale notice was posted in a conspicuous place on the premise near the driveway of the tax sale property which should have given Plaintiff notice of the tax sale of the subject property had he used his own driveway and not his neighbor's driveway.

DISPUTED FACTS/ADVERTISING

39. The parties dispute whether advertisement was proper. Plaintiff claims the advertisement was defective since the Plaintiff's name was not listed alphabetically in the tax sale notice. (Tr. p. 10, L. 4-22)

40. Defendants argue advertising was proper because only the defaulting taxpayer's name had to be posted in the newspaper according to SC Code Section 12-51- 40 (d) and that pursuant to SC Code section 12-37-610, the defaulting taxpayer was Regena Y. Quattlebaum since she was the owner at the beginning of the tax year. Nevertheless, the defendant, County included both the beginning of the tax year owner and the Plaintiff as a purchaser during the tax year in the newspaper advertisement notice. (Stipulation of facts #9).

SC Code 12-51-40 (d) provides as follows:

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 before the legal sales date for three consecutive weeks for the sale of real property, and two consecutive weeks for the sale of personal 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.

SC Code Section 12-37-610 provides as follows:

LINE	DATE	TIME	FROM	TO	AMOUNT	CHECK	DESCRIPTION
1	0000-01-01	2016/2017					
2	0000-01-01	2016/2017					
3	0000-01-01	2016/2017					
4	0000-01-01	2016/2017					
5	0000-01-01	2016/2017					
6	0000-01-01	2016/2017					
7	0000-01-01	2016/2017					
8	0000-01-01	2016/2017					
9	0000-01-01	2016/2017					
10	0000-01-01	2016/2017					
11	0000-01-01	2016/2017					
12	0000-01-01	2016/2017					
13	0000-01-01	2016/2017					
14	0000-01-01	2016/2017					
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16	0000-01-01	2016/2017					
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57	0000-01-01	2016/2017		</			

[illegible][illegible]

SECTION 12-37-610. Persons liable for taxes and assessments on real property. Each person is liable to pay taxes and assessments on the real property that, as of December thirty-first of the year preceding the tax year, he owns in fee, for life, or as trustee, as recorded in the public records for deeds of the county in which the property is located, or on the real property that, as of December thirty-first of the year preceding the tax year, he has care of as guardian, executor, or committee or may have the care of as guardian, executor, trustee, or committee.

41. The evidence is that both the 12-37-610 delinquent taxpayer and the Plaintiff's names were listed in the newspaper advertisement, together with a street address column, a Tax Map number Column, and an amount due column.. The court finds that the statutory advertisement notice requirement was met and exceeded by also listing the Plaintiff in the newspaper advertisement.

DISPUTED FACTS/ UNJUST ENRICHMENT

42. Plaintiff argues price paid by Plaintiff results in unjust enrichment because the subject property was purchased by the Plaintiff for \$68,000 and it was sold at the tax sale for \$8,000. (Tr. p. 71, L. 15-25)

43. A claim for unjust enrichment requires three elements: (1) Plaintiff conferred a benefit to defendant (2) defendant knowingly and voluntarily accepted the benefit and (3) it was unjust for defendant to retain that benefit without paying its value.^[1] See *Williams Carpet Contractors, Inc. v. Shelly*, 734 S.E. 2d 177 (S.C. Ct. App. 2012).

44. This court finds that Plaintiff has not met any of the elements for unjust enrichment. The Plaintiff has not cited any case that has held that a tax sale should be overturned because of the law of unjust enrichment.

45. Tax sales are a government function fundamentally different from other public sales (such as a foreclosure sale) between two private parties.

CONCLUSIONS OF LAW

1. An action to set aside a tax sale lies in an action in equity. *King v James*, 694 S.E.2d 35, 39 (Ct. App. 2010)

2. "A tax execution is not issued against the property; it is issued against the defaulting tax[payer]." *Rives v. Balsa*, 325 S.C. 287, 293, 478 S.E.2d, 878, 881 (Ct. App. 1996). "Due process of law requires some sort of notice to a landowner before he is deprived of his property." *Id.* ". Tax sales must be conducted in strict compliance with statutory requirements." *In re Ryan Inv. Co.*, 335 S.C. 392, 395, 517 S.E.2d 692, 693 (1999). "[A]ll requirements of the law leading up to tax sales [that] 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." *Forfeited Land Comm'n of Bamberg County v. Beard*, 424 S.C.137, 145, 817 S.E.2d 801, 804 (Ct. App. 2018) (alterations in original) (quoting *Donohue v. Ward*, 298 S.C. 75, 83, 378 S.E.2d 261, 265 (Ct. App. 1989)). "Failure to give the required notice [of a tax sale] is a fundamental defect in the tax proceedings which renders the proceedings absolutely void." *Rives*, 325 S.C. at 293, 478 S.E.2d at 881. *Scott v McAlister et al.*, Ct.App. Opinion No. 5897 Filed March 9, 2022.
3. In addition to the code sections already referenced (12-51-40 b & c), Section 12-51-40 requires the following additional pretax sale requirements:

SECTION 12-51-40. Default on payment of taxes; levy of execution by distress and sale; notice of delinquent taxes; seizure of property; advertisement of sale.

After the county treasurer issues his execution against a defaulting taxpayer in his jurisdiction, as provided in Section 12-45-180, signed by him or his agent in his official capacity, directed to the officer authorized to collect delinquent taxes, assessments, penalties, and costs, requiring him to levy the execution by distress and sale of the defaulting taxpayer's estate, real or personal, or both, or property transferred by the defaulting taxpayer, the value of which generated all or part of the tax, to satisfy the taxes, assessments, penalties, and costs, the officer to which the execution is directed 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 of the property, 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 of which the officer authorized to collect delinquent taxes, penalties, and costs has actual knowledge. 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 of which the officer has actual knowledge, by "certified mail, return receipt requested-restricted delivery" pursuant to the United States Postal Service "Domestic Mail Manual Section S912". If the addressee is an entity instead of an individual, the notice must be mailed to its last known post office address by certified mail, return receipt requested, as described in Section S912. In the case of personal property, exclusive possession is taken by mailing the notice of delinquent property taxes, assessments, penalties, and costs to the person at the address shown on the tax receipt or to an address of which the officer has actual knowledge. 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".

4. The Plaintiff has only challenged the requirements of sections 12-51-40 (c) & (d) have not been met as has been set forth.
5. The County proved strict compliance with posting because the posting was in a conspicuous place near the driveway for the subject property.
6. The County proved strict compliance with advertising because the delinquent taxpayer as determined by SC Code Section 12-37-610 was listed in the newspaper advertisement, which is all that the 12-51-40 (d) requires. However, in addition, the defendant county gave additional notice to the Plaintiff who was also listed in the newspaper advertisement.
7. Plaintiff's argument that the advertising was defective because skimming the notice might not reveal all the information is not persuasive.
8. Plaintiff has no cause of action for unjust enrichment since Plaintiff fails to meet the elements of unjust enrichment as set forth herein.

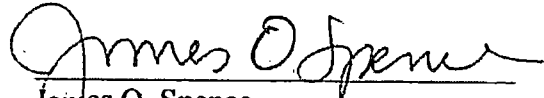
Based upon all the above findings and conclusions,

IT IS ORDERED THAT:

1. The tax sale challenge by Plaintiff is denied and the tax sale is hereby confirmed for Defendant SC Home Holdings, LLC.

IT IS SO ORDERED.

Date: July 12, 2022


James O. Spence
Master in Equity for Lexington County

Common Pleas

CASE HISTORY FOR CASE 2020CP3202231

Grayson J Dailey VS Sc Home Holdings Llc , defendant, et al

FILED DATE: 6/25/2020

CASE TYPE: CP/Real Prop/Other 499

STATUS: Referred To Master

ASSIGNED JUDGE: Clerk Of Court C P, G S, And Family Court

CASE PARTIES:

Plaintiff Dailey, Grayson J
855 Park Rd., Lexington, SC 29072

Defendant Sc Home Holdings Llc
131 Morninghill Dr., Columbia, SC 29210-7561

Plaintiff Attorney LaLima, William James
1635 Sunset Blvd., West Columbia, SC 29169

Defendant Doe, John

Defendant Jim Eckstrom Lexington County Treasurer
212 South Lake Drive Suite 201, Lexington, SC 29072

Defendant Lexington County

Defendant Attorney Anderson, Jeffrey M.
PO Box 489, Lexington, SC 290710489

Defendant Attorney Catoe, Dennis Wayne
200 Outlet Pointe Blvd., Columbia, SC 29210

Mediator - Primary Pauley, Michael Stephen
PO Box 2189, 711 East Main Street, Suite E, Lexington, SC 290712189

Alternate Mediator McGee, Thomas Wm. III
1320 Main Street, 17Th Floor, Columbia, SC 29201

CASE HISTORY FOR CASE 2020CP3202231

Dailey, Grayson J
855 Park Rd.

Lexington, SC 29072

Age: Unknown
DL#:

DOB: Unknown
SSN: 000-00-0000

Print Date: 04/15/2022
Print Time: 3:03:51PM
Requested By: C32GFAIRCL

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CASE HISTORY FOR CASE 2020CP3202231

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
Action: Summons & Complaint				
Civil Filing Fee County 44%/100%	\$44.00	\$0.00	\$44.00	99
Civil Filing Fee State 56%	56.00	0.00	56.00	99
SCJD Filing Fee Proviso \$50 / \$25	50.00	0.00	50.00	99
Action: Order/Order Cover Sheet \$25.00				
Motion/Order Filing Fee \$25	25.00	0.00	25.00	99
Action: Order/Order Cover Sheet \$25.00				
Motion/Order Filing Fee \$25	25.00	0.00	25.00	99
Total:	\$200.00	\$0.00	\$200.00	

DATE	TIME	EVENT DESCRIPTION
7/25/2020	1:04 PM	Filing recorded: Summons & Complaint
7/25/2020	2:57 PM	Received payment of \$150 from William James LaLima for Grayson J Dailey. Printed receipt #247288.
7/4/2020	2:40 PM	Filing recorded: Service/Affidavit Of Service on Jim Eckstrom Lexington Count
7/4/2020	2:40 PM	Filing recorded: Service/Affidavit Of Service on Lexington County
7/4/2020	2:40 PM	Filing recorded: Service/Affidavit Of Service on Sc Home Holdings Llc
7/4/2020	2:46 PM	Filing recorded: NEF(08-04-2020 02:40:24 PM) Service/Affidavit Of Service
7/13/2020	1:01 PM	Filing recorded: Service/Acceptance Of Service on Grayson J Dailey
7/13/2020	1:04 PM	Filing recorded: NEF(08-13-2020 01:01:56 PM) Service/Acceptance Of Servic...
7/21/2021	1:04 PM	ADR/Alternative Dispute Resolution (Workflow)
7/21/2021	9:56 AM	Filing recorded: NEF(01-21-2021 09:56:41 AM) ADR/Notice of ADR
7/21/2021	12:00 AM	EFILEAUTO recorded the following Case Note: ADR/Notice of ADR
7/21/2021	9:56 AM	ADR/Notice of ADR
7/23/2021	11:21 AM	Received payment of \$25 from William James LaLima for Grayson J Dailey. Printed receipt #260343.
7/23/2021	11:06 AM	Filing recorded: Order/Order Cover Sheet \$25.00
7/23/2021	11:21 AM	Filing recorded: NEF(08-23-2021 11:06:53 AM) Proposed Order/Referred to M...
7/24/2021	8:27 AM	Order/Referred to Master or Special Referee
7/24/2021	8:28 AM	Filing recorded: NEF(08-24-2021 08:27:35 AM) Order/Referred to Master or ...
7/24/2021	12:00 AM	EFILEAUTO recorded the following Case Note: Order/Referred to Master or Special Referee
7/24/2021	12:00 AM	EFILEAUTO recorded the following Case Note: Master In Equity referral request generated for 32003 - Master in Equity
7/23/2021	12:00 AM	C32LSHEALY recorded the following Case Note: Case accepted by Master in Equity Court Agency 32003: Master in Equity
2/17/2021	12:00 AM	C32KWOODLI recorded the following Case Note: Payment Waived - Waiver Code "WR"
2/17/2021	12:00 AM	C32KWOODLI recorded the following Case Note: Master/Order/Other
2/17/2021	3:05 PM	Filing recorded: Order/Order Cover Sheet \$25.00
2/17/2021	3:30 PM	Filing recorded: NEF(12-17-2021 03:05:57 PM) Proposed Master/Order/Other
2/17/2021	4:01 PM	Master/Order/Other
2/17/2021	4:01 PM	Filing recorded: NEF(12-17-2021 04:01:45 PM) Master/Order/Other
2/17/2021	3:23 PM	Received Non-Monetary payment of \$25 from William James LaLima for Grayson J Dailey. Printed receipt #264163.
7/15/2022	9:18 AM	Master/Order/Other
7/15/2022	9:18 AM	Filing recorded: NEF(04-15-2022 09:18:10 AM) Master/Order/Other
7/15/2022	12:00 AM	C32MHUGGIN recorded the following Case Note: Master/Order/Other

Print Date: 04/15/2022
 Print Time: 3:03:51PM
 Requested By: C32GFAIRCL

CaseHistory.rpt V6.1

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