

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

Maite D. Murphy, Master-In-Equity

Case No. 2012-213177

C.S. Carter.....Plaintiff,

v.

D.J. Brown aka Dan Brown aka Dan J. Brown, Eric Brown, Etholia Brown, Enoch Wesley Brown, Jr., Ernest Brown, Jr., Karen Brown, Lisa Brown, Michael Brown, Rena Brown, Michael C. Brown, Sr. aka Michael C. Brown, Clara B. Moses aka Clara Brown Moses, Mable Brown Moses aka Mabel B. Moses, Westbury Ace Hardware, CPM Federal Credit Union, Ford Motor Credit, Sears Roebuck & Company, The St. Paul Campageround Association aka St. Paul Campageround and JOHN DOE, a fictitious name used herein to designate the unknown heirs at law, distributees, devisees, issue, personal representatives, successors and/or assigns of Dorothy Brown and Ernest Brown aka Ernest D. Brown, D.J. Brown aka Dan Brown aka Dan J. Brown, Eric Brown, Etholia Brown, Enoch Wesley Brown, Jr., Ernest Brown, Jr., Karen Brown, Lisa Brown, Michael Brown, Rena Brown, Michael C. Brown, Sr. aka Michael C. Brown, Clara B. Moses aka Clara Brown Moses, Mable Brown Moses aka Mabel B. Moses, all being deceased persons or who may be deceased persons, and MARY ROE, a fictitious name designating all other persons and legal entities unknown who may have or claim any right, title, estate, interest in or lien upon the real estate described herein, including any such as may be infants, minors, prisoners, incompetents, or under any other disability, including the Service Members' Civil Relief Act.....Defendants.

AND

RECEIVED  
AUG 07 2013

SC Court of Appeals

Rena Brown aka Renee Brown aka Renee A. Lawrence, Eric Brown aka Eric W. Brown aka Eric Wesley Brown, Lisa Brown aka Lisa Brown-Hoff, Michael Brown aka Michael E. Brown aka Michael Enoch Brown, Karen Brown aka Karen M. Brown aka Karen Michelle Brown, and Michael C. Brown, Sr. aka Michael C. Brown aka Michael Clay Brown.....Third-Party Plaintiffs,

v.

Dorchester County.....Third-Party Defendant.

---

OF WHOM

---

C.S. Carter and Dorchester County.....Respondents.

v.

Rena Brown aka Renee Brown aka Renee A. Lawrence, Eric Brown aka Eric W. Brown aka Eric Wesley Brown, Lisa Brown aka Lisa Brown-Hoff, Michael Brown aka Michael E. Brown aka Michael Enoch Brown, Karen Brown aka Karen M. Brown aka Karen Michelle Brown, and Michael C. Brown, Sr. aka Michael C. Brown aka Michael Clay Brown.....Appellants.

---

JOINT FINAL BRIEF OF RESPONDENTS  
C.S. CARTER AND DORCHESTER COUNTY

---

John G. Frampton, Esquire  
DORCHESTER COUNTY  
201 Johnston Street  
St. George, SC 29477  
Telephone (843) 832-0097  
Facsimile (843) 832-0137  
Email: jframpton@dorchestercounty.net

James E. Reeves, Esquire  
JAMES E. REEVES, P.A.  
400 North Cedar Street  
Summerville, SC 29483  
Telephone (843) 832-7337  
Facsimile (888) 466-8615  
Email: JimmyReeves@jreeves-law.com

ATTORNEY FOR RESPONDENT  
DORCHESTER COUNTY

ATTORNEY FOR RESPONDENT  
C.S. CARTER

Other Counsel of Record:

Evert Comer, Jr., Esquire  
LAW OFFICE OF EVERT COMER, JR.  
PO Box 386  
Denmark, SC 29042  
(843) 793-3403  
ATTORNEY FOR APPELLANTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii

STATEMENT OF ISSUES ON APPEAL.....iii

STATEMENT OF THE CASE.....1

STATEMENT OF THE FACTS.....2

ARGUMENT.....6

I. THIS COURT SHOULD AFFIRM WHEN IT IS UNDISPUTED AND UN-APPEALED FROM THAT MICHAEL C. BROWN, SR. WAS THE DEFAULTING TAXPAYER AND A GRANTEE OF RECORD AND THAT HE RECEIVED THE REQUIRED NOTICES OF THE TAX SALE.

II. THIS COURT SHOULD AFFIRM WHEN THE APPELLANTS, OTHER THAN MICHAEL C. BROWN, SR., WERE NOT "GRANTEES" OF RECORD, AND EVEN IF THEY COULD BE CONSTRUED AS "GRANTEES", THEIR PURPORTED GRANT WAS NOT "OF RECORD".

III. THIS COURT SHOULD AFFIRM AS IT IS UNDISPUTED THE THIRD PARTY COMPLAINT WAS NOT SERVED UNTIL WELL AFTER THE TWO YEAR STATUTE OF LIMITATIONS HAD EXPIRED.

CONCLUSION.....16

## TABLE OF AUTHORITIES

### CASES

<i>Bailes v. Young</i> , 315 S.C. 166, 432 S.E.2d 482 (1993).....	8
<i>Carter v. Wroten</i> , 187 S.C. 432, 198 S.E. 13 (1938).....	9
<i>Dorchester County Dep't of Social Servs. v. Miller</i> , 324 S.C. 445, 477 S.E.2d 476 (Ct. App. 1996).....	6
<i>King v. James</i> , 388 S.C. 16, 694 S.E.2d 35 (Ct. App. 2010).....	6, 15
<i>Koth v. Pallachucola Club</i> , 79 S.C. 514, 61 S.E. 77 (1908).....	12
<i>Leysath v. Leysath</i> , 209 S.C. 342, 40 S.E.2d 233 (1946).....	15
<i>Muldrow v. Caldwell</i> , 173 S.C. 243, 175 S.E. 501 (1934).....	9
<i>Reeping v. JEBBCO, LLC</i> , Op. No. 032013 (Ct. App. dated March 13, 2012).....	15
<i>Townes Associates</i> , 266 S.C. 81, 221 S.E.2d 773 (1976).....	6
<i>Van Every v. Chinquapin Hollow, Inc.</i> , 265 S.C. 474, 219 S.E.2d 909, (1975).....	6

### STATUTES

S.C. Code § 60-158 (1962).....	9
S.C. Code Ann. § 12-51-40 (1976).....	7
S.C. Code Ann. § 12-51-160 (1976).....	14

### SOUTH CAROLINA APPELLATE COURT RULES

Rule 220(c), SCACR.....	14, 15
-------------------------	--------

## STATEMENTS OF ISSUES ON APPEAL

- I. SHOULD THIS COURT AFFIRM WHEN IT IS UNDISPUTED AND UN-APPEALED FROM THAT MICHAEL C. BROWN, SR. WAS THE DEFAULTING TAXPAYER AND A GRANTEE OF RECORD AND THAT HE RECEIVED THE REQUIRED NOTICES OF THE TAX SALE?
- II. SHOULD THIS COURT AFFIRM WHEN THE APPELLANTS, OTHER THAN MICHAEL C. BROWN, SR., WERE NOT "GRANTEES" OF RECORD, AND EVEN IF THEY COULD BE CONSTRUED AS "GRANTEES", THEIR PURPORTED GRANT WAS NOT "OF RECORD"?
- III. SHOULD THIS COURT AFFIRM AS IT IS UNDISPUTED THE THIRD PARTY COMPLAINT WAS NOT SERVED UNTIL WELL AFTER THE TWO YEAR STATUTE OF LIMITATIONS HAD EXPIRED?

## STATEMENT OF CASE

On June 11, 2010, the Plaintiff/Respondent, C.S. Carter, filed this action seeking to quiet the title to real property he purchased at a tax sale on November 5, 2007. (R. pp. 17-31). The Third-Party Plaintiffs/Appellants, being Rena Brown a/k/a Renee Brown a/k/a Renee A. Lawrence, Eric Brown a/k/a Eric W. Brown aka Eric Wesley Brown, Lisa Brown a/k/a Lisa Brown-Hoff, Michael Brown a/k/a Michael E. Brown a/k/a Michael Enoch Brown, Karen Brown a/k/a Karen M. Brown a/k/a Karen Michelle Brown, and Michael C. Brown, Sr. a/k/a Michael C. Brown a/k/a Michael Clay Brown served their Answer on August 17, 2010 to the Plaintiff's Complaint denying the allegations, counterclaiming and asserting a Third-Party Complaint against Dorchester County, seeking to void the tax deed to Mr. Carter. (R. pp. 32-42).

On September 15, 2010, the Third-Party Defendant/Respondent, Dorchester County, filed its Answer denying that the tax deed should be voided and asserting the Third-Party Complaint was barred by the applicable statute of limitations. (R. pp. 43-46). On June 7, 2011, Mr. Carter filed a Second Amended Reply to the Plaintiff's Counterclaim denying the allegations and asserting the defenses of laches, waiver, the applicable statute of limitations, and the doctrine of unclean hands. (R. pp. 47-52). Further, Mr. Carter counterclaimed against the Third-Party Plaintiffs for unjust enrichment and filed in the alternative a Cross-Claim against Dorchester County in the event that the Court granted the Third-Party Plaintiffs any relief. (R. pp. 49-51). The case came for trial before the Honorable Maite' Murphy, on March 12, 2012, and the Court's Order Confirming the Tax Deed and quieting title in favor of Mr. Carter was filed on May 4, 2012. (R. pp. 3-14). A subsequent Motion for a New Trial or to Amend or

Alter the Judgment dated May 16, 2012 was denied by Judge Murphy on September 4, 2012. (R. pp. 15-16).

### **STATEMENT OF THE FACTS**

The real property, which is the subject of this action, was conveyed to Mr. Carter, by tax deed dated March 16, 2009 and recorded March 24, 2009 in the Dorchester County Register of Deeds Office in Book 6995, page 46, and is described as follows:

All that piece, parcel or tract of land, situate, lying and being in Givhans Township, with the buildings and improvements thereon, in the County of Dorchester, State of South Carolina, measuring and containing approximately twelve and one-half (12 1/2) acres, more or less, and being bounded as follows: On the North by lands of St. Paul's Church and Joe Smith; On the East by lands of St. Paul's Church; On the South by lands of the Estate of Elizabeth Summers; and on the West by lands of St. Paul's Church. This tract of land is more fully shown on a plat made by F. A. Moorer, Surveyor, and dated July 7, 1953, and recorded in the Register of Deeds Office for Dorchester County in Plat Book 11, page 60.

The above-described tract of land is the identical tract of land, LESS, however, approximately Two (2.00) Acres, heretofore conveyed to Michael C. Brown, Sr., conveyed to Ernest Brown by Orié W. Lynch by deed recorded in the Register of Deeds Office for Dorchester County in Book 406, page 10.

This property was surveyed in preparation for this case and is also described as follows:

All that piece, parcel or tract of land, lying and being in Dorchester County, South Carolina, and known and designated as TMS # 047-00-00-052.000 11.88 acres, being both on the south and north sides of St. Paul Road S-18-378 as shown on that certain plat entitled "PLAT SHOWING A BOUNDARY SURVEY OF TMS 047-00-00-052.000 (11.88 ACRES) PROPERTY OF C. S. CARTER LOCATED IN THE ST. PAUL COMMUNITY NEAR HARLEYVILLE DORCHESTER COUNTY, SOUTH CAROLINA", prepared by Thomas L. Westbury, S. C. R. L. S., dated March 18, 2010 and recorded on April 15, 2010 in the Register of Deeds Office for Dorchester County in Plat Book L, page 146; said tract of land having such actual size, shape, dimensions buttings and boundings as shown on said plat, reference to which is hereby made for a more complete description.

Being the same property conveyed to C. S. Carter by deed of the Tax Collector of Dorchester County dated March 16, 2009 and recorded March 24, 2009 in the Register of Deeds office for Dorchester County in Book 6995, Page 46.

TMS#: 047-00-00-052.000

(hereinafter "the Property")

(R. pp. 7-8; R. pp. 152-156; R. pp. 157-158; R. p. 177).

The Property was part of a slightly larger tract of land that was conveyed to an Ernest Brown by Orié W. Lynch in 1963 by a deed recorded in the Dorchester County Register of Deeds Office in Book 132, page 502. (Appellant's Brief p. 3; R. pp. 157-158). Ernest Brown died intestate on December 1, 1976, but his estate was not initially probated. (R. p. 144, lines 12-14). In 1980, four years after his death, certain individuals claiming to be his heirs, divided the property into two separate tracts -- one being listed as containing 12 1/2 acres, which is the subject of this case, and another smaller tract of 2 acres, which adjoins the 12 1/2 acre tract. (R. pp. 166-170; R. pp. 172-176). This division was accomplished through two separate deeds recorded in March and April of 1980, executed by the same grantors, and both listing as the grantee, Michael C. Brown, Sr., one of the Appellants in this case. (R. pp. 166-170; R. pp. 172-176).

The "Whereas" clause of both of these deeds purportedly listed the "sole heirs-at-law" of Ernest Brown, and some, but not all, of these purported sole heirs conveyed their interest to Michael C. Brown, Sr. (R. p. 166; R. p. 172).

These Deeds can be summarized as follows:

**1980 Deeds**

<b>Purported Sole Heirs of Ernest Brown Listed in "Whereas" clause</b>	<b><u>Grantors</u></b>	<b><u>Grantee</u></b>
Wife: Dorothy Brown	Dorothy Brown	
Children:		
D.J. Brown	D.J. Brown	
Ernest Brown, Jr.	Ernest Brown, Jr.	
Clara Brown Moses	Clara Brown Moses	
Mabel Brown Moses	Mabel Brown Moses	
Etholia Brown	Etholia Brown	
Michael Brown		Michael C. Brown, Sr.
Grandchildren:		
Enoch Wesley Brown, Jr.		
Michael Brown		
Lisa Brown		
Karen Brown		

(R. pp. 166-170; R. pp. 172-176).

In 1987, eleven years after his death, his estate was opened, and Clara B. Moses, his daughter, was appointed as the Personal Representative. (R. p. 140, lines 16-18; R. p. 141, lines 4-6). She was also one of the grantors in the two deeds referenced above conveying her interest to Michael C. Brown, Sr. (R. pp. 166-170; R. pp. 172-176). The estate file of Ernest Brown contains a "Devise/Descent of Real Estate and Description" (hereinafter "Devise and Descent Form") that lists various properties owned by Ernest Brown, including the property involved in this case, which is designated as TMS #047-00-00-052. (R. pp. 164-165). However, the listing of the heirs of Ernest Brown, as indicated on the Devise and Descent Form, is different from those purported "sole heirs at law" referenced in the "Whereas" clause of the above referenced deeds. (R. p. 166; R. p. 172; R. p. 164). A comparison of the 1980 deed

and the 1987 Devise and Descent Form is as follows:

**Heirs of Ernest Brown  
Comparison of 1980 Deeds and 1987 Devise and Descent Form**

<u>1980 Deeds</u>	<u>1987 Devise and Descent Form</u>
<b>Sole Heirs of Ernest Brown Listed in "Whereas" clauses</b>	<u>Heirs</u>
Wife: Dorothy Brown	Dorothy B. Brown
Children:	Children:
D.J. Brown	Dan J. Brown
Ernest Brown, Jr.	Ernest Brown, Jr.
Clara Brown Moses	Clara B. Moses
Mabel Brown Moses	Mabel B. Moses
Etholia Brown	Etholia Brown
Michael Brown	Michael C. Brown
Grandchildren:	Grandchildren:
Enoch Wesley Brown, Jr.	
Michael Brown	Michael Brown
Lisa Brown	Lisa Brown
Karen Brown	Karen Brown
	Eric Brown Rena Brown

The record does not indicate that the Devise and Descent Form was ever filed in the Dorchester County Register of Deeds Office.

Beginning in 1988 until the time Mr. Carter purchased the Property at the tax sale, the tax bills were addressed to Michael C. Brown, Sr. (R. p. 86, lines 14-21). Starting in 1993, the bills were sent to 758 St. Paul Road, Dorchester, South Carolina 29437, Mr. Brown's address. (R. p. 85, lines 5-8; R. p. 132, lines 19-20). From 1993 until this tax sale in 2007, the Property had been sold on three other occasions for the nonpayment of taxes, but the Property had always been redeemed. (R. p. 85, line 13 – p. 86, line 12).

Taxes on the Property were not paid for the years 2004, 2005 and 2006, and

consequently, Mr. Carter purchased the Property at a tax sale on November 5, 2007, for \$17,000.00 dollars. (R. p. 81, line 19 – p. 82, line 15). Since that time he has paid all of the taxes on the Property, and the Appellants have not contacted Mr. Carter or offered to assist with the taxes. (R. p. 125, lines 3-12). Further, Michael C. Brown, Sr. testified that the other Appellants have never paid any of the taxes on the Property, and that as of the time of the trial he did not even know where the other Appellants were and had not known where they were for over twenty years. (R. p. 135, line 11 – p. 137, line 8). The Appellants, with the exception of Michael C. Brown, Sr., did not appear at the trial of the case. (R. p. 7; R. p. 136, lines 2-3).

### **ARGUMENT**

An action to set aside a tax deed, or to quiet title to property is one in equity. See *King v. James*, 388 S.C. 16, 24, 694 S.E.2d 35, 39 (Ct. App. 2010) and *Van Every v. Chinquapin Hollow, Inc.*, 265 S.C. 474, 477, 219 S.E.2d 909, 910 (1975). When such an action is tried by a judge alone, without a reference, the appellate court may find facts in accordance with its own view of the preponderance of the evidence. *Townes Associates*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). However, the appellate court is not required to disregard the trial court's findings or ignore the fact that the trial judge is in the better position to assess the credibility of witnesses. See *Dorchester County Dep't of Social Servs. v. Miller*, 324 S.C. 445, 451, 477 S.E.2d 476, 480 (Ct. App. 1996). Further, the Appellants still bear the burden of convincing this Court that the trial judge committed error in her findings. *Id.*

**I. THIS COURT SHOULD AFFIRM WHEN IT IS UNDISPUTED AND UN-APPEALED FROM THAT MICHAEL C. BROWN, SR. WAS THE DEFAULTING TAXPAYER AND A GRANTEE OF RECORD AND THAT HE RECEIVED THE REQUIRED NOTICES OF THE TAX SALE.**

In this case, this Court should affirm the lower court's ruling, as the trial court correctly found that the statutorily required notices had been received by Michael C. Brown, Sr. – the "defaulting taxpayer" and "grantee of record". S.C. Code Ann. § 12-51-40 (1976) provides, in part, that the "defaulting taxpayer" and "grantee of record" are entitled to various notices of the tax sale process. In this case, it is undisputed that Michael C. Brown, Sr. was the "defaulting taxpayer" and a "grantee of record". (R. p. 84, line 22 – p. 86, line 21). Further, it is undisputed that he received all of the proper notices. Under questioning by his own attorney, Mr. Brown testified as follows:

BY MR. COMER

Q: Mr. Brown, you stated earlier your address was –

A: 758 St. Paul Road, Dorchester, South Carolina 29437.

Q: Okay. You recall receiving notices from the Delinquent Tax Office about non-payment of taxes; you do recall that don't you?

A: Yes.

Q: Do you recall receiving information from the Delinquent Tax Office about the property going up for sale?

A: No, I didn't receive that.

Q: It was delivered to your address, though, wasn't it – as far as you know?

A: As far as I know.

Q: Okay. And all the other notices were delivered to your address, far as you know?

A: Far as I know.

(R. p. 132, line 19 – R. p. 133, line 8).

Thus, Michael C. Brown, Sr. admitted under questioning by his own attorney that he received the proper notices. Further, the Appellants are not arguing in this appeal that Michael C. Brown, Sr. was not the "defaulting taxpayer" and a "grantee of record" or that he did not receive the required notices. An appellate court should affirm a ruling by the trial court if the offended party does not challenge that ruling. See *Bailes v. Young*, 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993). Accordingly, this Court should affirm the finding of the trial court that Michael C. Brown, Sr., was the "defaulting taxpayer" and a "grantee of record", and that he was properly notified of the tax sale process. (R. p. 8, paragraph 3 – p. 9, paragraphs 4 and 5).

**II. THIS COURT SHOULD AFFIRM WHEN THE APPELLANTS, OTHER THAN MICHAEL C. BROWN, SR., WERE NOT "GRANTEES" OF RECORD, AND EVEN IF THEY COULD BE CONSTRUED AS "GRANTEES", THEIR PURPORTED GRANT WAS NOT "OF RECORD".**

Instead, the Appellants argue that the tax deed should still be set aside because the other Appellants, besides Michael C. Brown, Sr., were also "grantees of record", entitled to the various required notices. They base their claim of being "grantees of record" on their names being listed on a Devise and Descent Form in Ernest Brown's probate file. However, as the trial court correctly found a Devise and Descent Form does not make any of the listed individuals "grantees" of record, as a Devise and Descent Form is not a "grant" of anything. (R. p. 10, paragraph 5). In 1976, the year of

the death of Ernest Brown, and in February of 1987, when his estate was opened, title to real property vested immediately upon the death of an intestate in the heirs of the intestate. See *Carter v. Wroten*, 187 S.C. 432, 198 S.E. 13 (1938) and *Muldrow v. Caldwell*, 173 S.C. 243, 175 S.E. 501 (1934). Accordingly, immediately upon the death of Ernest Brown, his heirs, whomever they may be, became the owners of the Property as a matter of law -- not because of any supposed "grant" from a Devise and Descent Form. Thus, a Devise and Descent Form is not a "grant" of any real property, and any names listed on it are not "grantees" of record. Therefore, Dorchester County had no duty to provide any notice to the individuals listed on the Devise and Descent Form.

Further, even if the listing of these names on the Devise and Decent Form somehow made these individuals "grantees," the document was not "of record" as required by the then applicable statute. In February of 1987, when the estate of Ernest Brown was opened, S.C. Code § 60-158 (1962) allowed a Devise and Descent Form to be filed with the Register of Deeds Office, but only if "in the judgment of the probate judge" the heirs at law were "definite and certain." This statute provided in part:

**§ 60-158. Indexing of passage of title by will or inheritance.** – Whenever any will, properly proven, shall be filed in the office of any probate court of any county of this State or any estate be properly filed for administration under the supervision of any probate court of this state and such will shall devise real property to a named individual, or in any case under the administration of the probate court when the heirs at law ***are in the judgment of the probate judge, definite and certain***, the probate judge before discharging the administration of the estate or the administrator c. t. a. of the estate or the executor or executrix under the will or under court order, shall tender to the clerk of court or office of register of mesne conveyances in counties having such office, in writing, a statement showing the name of the deceased owner as grantor and the name of the devisee, heir at law or heirs at law as grantee or grantees and the clerk or register shall index them ***as if the transfer of property had been made by deed.***

(emphasis added).

In this case, there is no record in the Register of Deeds Office indicating that any of these supposed heirs of Ernest Brown are "grantees" of the Property. If this had happened, the Register of Deeds would have been required to index the names of these "definite and certain" heirs "as if the transfer of property had been made by deed." In that case, the County would have been provided with additional "definite and certain" grantees of record that it could have notified of the tax sale process.

However, it is not surprising that the Devise and Descent Form was not filed in the Register of Deeds Office, as the determination of the heirs of Ernest Brown was anything but "definite and certain." The comparison chart provided in the Statement of Facts clearly shows the inconsistencies between the information listed in the 1980 deeds and the 1987 Devise and Descent Form. Equally illuminating is the testimony of Michael C. Brown, Sr., one of the Appellants, and a son of Ernest Brown. He testified that he did not even know "Enoch Wesley Brown, Jr.", one of the purported sole heirs listed on the 1980 deeds. (R. p. 138, line 13 – p. 139, line 23). Further, Clara Brown Moses, the sister of Michael C. Brown, Sr., who was both one of the grantors on the 1980 deeds and who also served as the Personal Representative, testified that the listing of the sole heirs on the 1980 deeds was an error. (R. p. 142, lines 15-25). Even with Clara Brown Moses attempting to help her brother testify, the confusion as to the heirs of Ernest Brown continued at trial. (R. p. 134, lines 11-20; p. 138, line 13 – p. 139, line 2). Thus, the lack of a filing of the Devise and Descent Form back in 1987, which required a determination by the Probate Court of "definite and certain," is certainly understandable. However, this lack of filing also prevented any purported transfer

caused by the Devise and Descent Form from being viewed as if it "had been made by deed." Accordingly, even if the Devise and Descent Form somehow made the listed individuals grantees, they were not grantees "of record."

This case demonstrates the wisdom of the statute in requiring notification to the "defaulting taxpayer" and a "grantee of record", but not notification to all who may claim to have an ownership interest. In 2007, Dorchester County was faced with a situation in which the taxes for the property in this case had undisputedly not been paid for the prior three years. (R. p. 81, line 19 – p. 82, line 15). Going back to 1988, or for close to twenty years, the tax bills for the Property had been addressed to Michael C. Brown, Sr., and since 1993 had been sent to 758 St. Paul Road, Dorchester, South Carolina 29437. (R. p. 86, lines 14-21; R. p. 85, lines 5-8; R. p. 132, lines 19-20). No other address was ever provided to the County to send the tax bills or other notices. (R. p. 84, line 22 – p. 85, line 4). The last deed in the chain of title for the Property recorded at the Register of Deeds Office was from 1980, twenty-seven years earlier, and clearly showed that Michael C. Brown, Sr. was a "grantee of record". (R. pp. 166-170). This same 1980 deed referenced the purported heirs of Ernest Brown, who died in 1976. However, there was also a Devise and Descent Form from seven years later in 1987, but not recorded in the Register of Deeds Office, that provided a different list of purported heirs, even though one of the grantors on the 1980 deed was Clara Brown Moses, who was also the Personal Representative of the Estate of Ernest Brown. Clearly, the County was faced with the unanswered question as to who were the heirs of Ernest Brown.

Importantly however, the County is not required to determine the heirs of anyone in order to sell a property at a tax sale. While the facts in the case of *Koth v. Pallachucola Club*, 79 S.C. 514, 61 S.E. 77 (1908) are different than this case, the underlying principle that guided the South Carolina Supreme Court in *Koth* should guide the outcome of this case as well. In *Koth*, the Court was faced with the issue of whether a tax deed was valid when the property was sold as belonging to the heirs of a deceased delinquent taxpayer when her estate had not been administered, as opposed to individually naming the heirs of the deceased. The Court found the tax deed valid and stated:

It would be unreasonable to require tax officers to unravel complicated inheritances and state on the tax list the Christian and family names of all the heirs of persons deceased. To construe the provisions of the statute on the subject mandatory to that degree would unreasonably embarrass the state in the collection of its revenue.

79 S.C. at 517-518; 61 S.E. at 78.

As in *Koth*, the family history of Ernest Brown was very much in need of unraveling. In this case, the estate of Ernest Brown had been administered in 1987, eleven years after his death, but there was no judicial determination of his heirs. Further, the listing of the heirs on the Devise and Descent Form differed from the "Whereas" clause from the 1980 deeds, executed just four years after his death, even though the one of the grantors on those deeds also served as the Personal Representative. In addition, the Devise and Descent Form was not recorded in the Register of Deeds Office, indicating the Probate Court did not believe the heirs of Ernest Brown were "definite and certain." Contrary to Appellants' argument, even though the Estate of Ernest Brown was administered, the County was faced with much uncertainty

as to the identity of his heirs. Appellants argue the County should be forced to send notices to every possible heir of Ernest Brown. To do so, would require the County to file a Quiet Title action or a Petition to Determine Heirs so that it would know whether the heirs are as listed on the 1980 deeds, the 1987 Devise and Descent Form, or if there were other individuals not listed on either. Such a process would simply be unworkable as the expenses to determine ownership would far outweigh the return of unpaid taxes.

Instead, the statute requires the County to notify the "defaulting taxpayer" and a "grantee of record", which is what the County did. Again, it is undisputed and un-appealed from that Michael C. Brown, Sr. was the "defaulting taxpayer" and a "grantee of record" and that he received the required notices. The County is not required to do anything further. It is not the job of the Delinquent Tax Collector, who is not an attorney, to determine the heirs of an individual, or to conduct genealogy research, or to determine the "owners" of property, or to be an expert in the fields of probate and real estate law. (R. p. 102, lines 3-14; R. p. 105, lines 13-16; R. p. 107, lines 21 – p. 108, line 21). The County is required to comply with the statutes, which as the trial court correctly found, it did. The Appellants are quick to point out case law which requires "strict compliance" by the County with the tax sale statutes. However, "strict compliance" does not require the County to perform tasks over and above those listed in the statute before it can recoup three years of back taxes that are undisputedly owed.

In summation, it is undisputed and un-appealed from, that Michael C. Brown, Sr. was the "defaulting taxpayer" and a "grantee of record" and that he received the statutorily required notices. Further, the remaining Appellants were not "grantees of

record" entitled to any notices, as the listing of their names on a Devise and Descent Form is not a "grant" of anything. Even if a Devise and Descent Form is construed as a "grant", this Devise and Descent Form was not "of record" because it was never recorded in the Register of Deeds Office. Accordingly, the trial court was correct in confirming the tax deed into Mr. Carter, and this Court should affirm.

**III. THIS COURT SHOULD AFFIRM AS IT IS UNDISPUTED THE THIRD PARTY COMPLAINT WAS NOT SERVED UNTIL WELL AFTER THE TWO YEAR STATUTE OF LIMITATIONS HAD EXPIRED.**

In addition, the trial court should be affirmed as the statute of limitations barred the Third Party Complaint. Rule 220(c), SCACR provides that this Court may affirm the trial court upon any grounds appearing in the record. S.C. Code Ann. § 12-51-160 (1976) states:

**§ 12-51-160. Deed as evidence of good title; statute of limitations. –** In all cases of tax sale the deed of conveyance, 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 been complied with. An action for the recovery of land sold pursuant to this chapter or for the recovery of the possession must not be maintained unless brought within two years from the date of sale as provided in Section 12-51-90(c).

In this case, both Mr. Carter and the County pled the applicable statute of limitations and argued it to the trial court. (R. p. 150, lines 6-13). Further, it is undisputed the County sold the Property to Mr. Carter at a tax sale on November 5, 2007, and the Third Party Complaint was not served until August 17, 2010 – clearly outside the two year period. Thus, even though the trial court did not base her ruling on the statute of limitations, this Court should affirm based on the authority granted by Rule 220(c),

SCACR.

Appellants assert the statute of limitations is not applicable because they allege that the County failed to strictly comply with the tax sale statutes, citing *King v. James*, 388 S.C. 16, 694 S.E.2d 35 (Ct. App. 2010). (Appellant's Brief, p. 8). However, the courts of this State have not held that every irregularity in the tax sale process prevents the operation of the statute of limitations. In fact, in *Leysath v. Leysath*, 209 S.C. 342, 40 S.E.2d 233 (1946), the South Carolina Supreme Court stated "We do not undertake to lay down a general rule defining those defects in tax proceedings which should be considered as mere irregularities, to which the statute [of limitations] would apply, and those which should be deemed jurisdictional, so as to render the statute [of limitations] inapplicable." *Id.* at 351, 40 S.E.2d at 237 (quoted in *Reeping v. JEBBCO, LLC*, Op. No. 032013 (Ct. App. dated March 13, 2012)). Thus, every deviation from the tax sale statutes does not automatically eradicate the statute of limitations.

In this case, it is undisputed and un-appealed from, that Michael C. Brown, Sr. was the "defaulting taxpayer" and a "grantee of record". Further, it is undisputed and un-appealed from, that he received the proper notices regarding the tax sale of the Property. Finally, it is undisputed and un-appealed from, that the tax sale for the Property occurred on November 5, 2007, more than two years prior to the service of the Third-Party Complaint. Thus, it is clear that the statute of limitations bars any claim by Michael C. Brown, Sr. Moreover, as described above, the determination of the heirs of Ernest Brown was unclear. The confusion as to the complete identity of those heirs, which clearly was not caused by Mr. Carter or the County, should not be allowed to defeat the application of the statute of limitations. The County complied with the tax

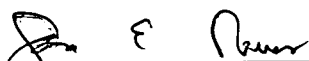
sale statutes by notifying Michael C. Brown, Sr., the "defaulting taxpayer" and a "grantee of record". More than two years passed from the time of the tax sale to the service of the Third-Party Complaint. Accordingly, the Third-Party Complaint should be barred, and this Court should affirm.

**CONCLUSION**

For the reasons stated, the Respondents respectfully request this Court affirm the Order of the trial court.

**[SIGNATURE PAGE TO FOLLOW.]**

**JAMES E. REEVES, P.A.**

BY:  \_\_\_\_\_

JAMES E. REEVES  
400 North Cedar Street  
Summerville, SC 29483  
Telephone (843) 832-7337  
Facsimile (843) 832-7340  
Email: JimmyReeves@jreeves-law.com

**ATTORNEY FOR RESPONDENT  
C.S. CARTER**

Dated: August 5, 2013  
Summerville, South Carolina

BY:  \_\_\_\_\_

JOHN G. FRAMPTON  
201 Johnston Street  
St. George, SC 29477  
Telephone (843) 832-0097  
Facsimile (843) 832-0137  
Email: jframpton@dorchestercounty.net

**ATTORNEY FOR RESPONDENT  
DORCHESTER COUNTY**

Dated: 8/05, 2013  
Summerville, South Carolina

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

Maite D. Murphy, Master-In-Equity

---

Case No. 2012-213177

---

C.S. Carter.....Plaintiff,

v.

D.J. Brown aka Dan Brown aka Dan J. Brown, Eric Brown, Etholia Brown, Enoch Wesley Brown, Jr., Ernest Brown, Jr., Karen Brown, Lisa Brown, Michael Brown, Rena Brown, Michael C. Brown, Sr. aka Michael C. Brown, Clara B. Moses aka Clara Brown Moses, Mable Brown Moses aka Mabel B. Moses, Westbury Ace Hardware, CPM Federal Credit Union, Ford Motor Credit, Sears Roebuck & Company, The St. Paul Campground Association aka St. Paul Campground and JOHN DOE, a fictitious name used herein to designate the unknown heirs at law, distributees, devisees, issue, personal representatives, successors and/or assigns of Dorothy Brown and Ernest Brown aka Ernest D. Brown, D.J. Brown aka Dan Brown aka Dan J. Brown, Eric Brown, Etholia Brown, Enoch Wesley Brown, Jr., Ernest Brown, Jr., Karen Brown, Lisa Brown, Michael Brown, Rena Brown, Michael C. Brown, Sr. aka Michael C. Brown, Clara B. Moses aka Clara Brown Moses, Mable Brown Moses aka Mabel B. Moses, all being deceased persons or who may be deceased persons, and MARY ROE, a fictitious name designating all other persons and legal entities unknown who may have or claim any right, title, estate, interest in or lien upon the real estate described herein, including any such as may be infants, minors, prisoners, incompetents, or under any other disability, including the Service Members' Civil Relief Act.....Defendants.

---

AND

---

Rena Brown aka Renee Brown aka Renee A. Lawrence, Eric Brown aka Eric W. Brown aka Eric Wesley Brown, Lisa Brown aka Lisa Brown-Hoff, Michael Brown aka Michael E. Brown aka Michael Enoch Brown, Karen Brown aka Karen M. Brown aka Karen Michelle Brown, and Michael C. Brown, Sr. aka Michael C. Brown aka Michael Clay Brown.....Third-Party Plaintiffs,

v.

Dorchester County.....Third-Party Defendant.

OF WHOM

C.S. Carter and Dorchester County.....Respondents.

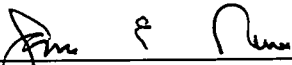
v.

Rena Brown aka Renee Brown aka Renee A. Lawrence, Eric Brown aka Eric W. Brown aka Eric Wesley Brown, Lisa Brown aka Lisa Brown-Hoff, Michael Brown aka Michael E. Brown aka Michael Enoch Brown, Karen Brown aka Karen M. Brown aka Karen Michelle Brown, and Michael C. Brown, Sr. aka Michael C. Brown aka Michael-Glax Brown.....Appellants.

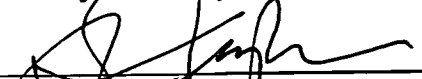
CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

August 5, 2013

  
James E. Reeves, Esquire  
James E. Reeves, P.A.  
400 North Cedar Street  
Summerville, SC 29483  
Telephone (843) 832-7337  
Facsimile (843) 832-7340  
Email: JimmyReeves@jreeves-law.com  
**Attorney for Respondent, C.S. Carter**

August 5, 2013

  
John G. Frampton, Esquire  
201 Johnston Street  
St. George, SC 29477  
Telephone (843) 832-0097  
Facsimile (843) 832-0137  
Email: jgf@chellisandframpton.com  
**Attorney for Respondent, Dorchester County**

**JAMES E. REEVES, P.A.**  
ATTORNEY AT LAW

400 NORTH CEDAR STREET  
SUMMERVILLE, SC 29483  
TELEPHONE: (843) 832-7337  
FACSIMILE: (888) 466-8615  
WWW.JREEVES-LAW.COM

JAMES E. REEVES  
JimmyReeves@jreeves-law.com

August 6, 2013

**VIA UPS OVERNIGHT**

The Honorable Jenny Abbott Kitchings, Clerk of Court  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, SC 29201

Re: C.S. Carter v. D.J. Brown  
Appellate Case No.: 2012-213177  
Our File No.: 1680-022

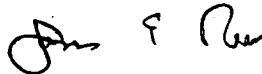
Dear Ms. Kitchings:

Enclosed please find originals and copies for filing of the following:

1. Original unbound Joint Final Brief of Respondents, C.S. Carter and Dorchester County;
2. 15 bound copies of the Joint Final Brief of Respondents, C.S. Carter and Dorchester County;
3. Proof of Service on Evert Comer, Jr. and John G. Frampton; and
4. Certificate of Compliance.

As always, if you have any questions or concerns, or if I can provide any additional information or assistance, please do not hesitate to contact me.

Sincerely,



James E. Reeves

JER/jw

Enclosures

cc: Evert Comer, Jr., Esquire (via Regular Mail)  
Attorney for the Appellants

John G. Frampton, Esquire (via Hand Delivery)  
Attorney for Dorchester County

**RECEIVED**

AUG 07 2013

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

Maite D. Murphy, Master-In-Equity

---

Case No. 2012-213177

---

C.S. Carter.....Plaintiff,

v.

D.J. Brown aka Dan Brown aka Dan J. Brown, Eric Brown, Etholia Brown, Enoch Wesley Brown, Jr., Ernest Brown, Jr., Karen Brown, Lisa Brown, Michael Brown, Rena Brown, Michael C. Brown, Sr. aka Michael C. Brown, Clara B. Moses aka Clara Brown Moses, Mable Brown Moses aka Mabel B. Moses, Westbury Ace Hardware, CPM Federal Credit Union, Ford Motor Credit, Sears Roebuck & Company, The St. Paul Campground Association aka St. Paul Campground and JOHN DOE, a fictitious name used herein to designate the unknown heirs at law, distributees, devisees, issue, personal representatives, successors and/or assigns of Dorothy Brown and Ernest Brown aka Ernest D. Brown, D.J. Brown aka Dan Brown aka Dan J. Brown, Eric Brown, Etholia Brown, Enoch Wesley Brown, Jr., Ernest Brown, Jr., Kāren Brown, Lisa Brown, Michael Brown, Rena Brown, Michael C. Brown, Sr. aka Michael C. Brown, Clara B. Moses aka Clara Brown Moses, Mable Brown Moses aka Mabel B. Moses, all being deceased persons or who may be deceased persons, and MARY ROE, a fictitious name designating all other persons and legal entities unknown who may have or claim any right, title, estate, interest in or lien upon the real estate described herein, including any such as may be infants, minors, prisoners, incompetents, or under any other disability, including the Service Members' Civil Relief Act.....Defendants.

---

AND

---

Rena Brown aka Renee Brown aka Renee A. Lawrence, Eric Brown aka Eric W. Brown aka Eric Wesley Brown, Lisa Brown aka Lisa Brown-Hoff, Michael Brown aka Michael E. Brown aka Michael Enoch Brown, Karen Brown aka Karen M. Brown aka Karen Michelle Brown, and Michael C. Brown, Sr. aka Michael C. Brown aka Michael Clay Brown.....Third-Party Plaintiffs,

v.

Dorchester County.....Third-Party Defendant.

OF WHOM

C.S. Carter and Dorchester County.....Respondents.

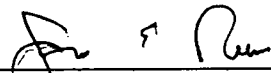
v.

Rena Brown aka Renee Brown aka Renee A. Lawrence, Eric Brown aka Eric W. Brown aka Eric Wesley Brown, Lisa Brown aka Lisa Brown-Hoff, Michael Brown aka Michael E. Brown aka Michael Enoch Brown, Karen Brown aka Karen M. Brown aka Karen Michelle Brown, and Michael C. Brown, Sr. aka Michael C. Brown aka Michael Clay Brown.....Appellants.

PROOF OF SERVICE

I certify that I have served the Joint Final Brief of Respondents C.S. Carter and Dorchester County on the Appellants by depositing a copy of it in the United States Mail, postage prepaid, on August 6, 2013, addressed to their attorney of record, Evert Comer, Jr., Esquire, PO Box 386, Denmark, South Carolina 29042 and on the Joint Respondent, Dorchester County, by personally delivering a copy of it to its attorney, John G. Frampton, Esquire, at my office at 400 North Cedar Street, Summerville, South Carolina 29483.

August 6, 2013



James E. Reeves, Esquire  
James E. Reeves, P.A.  
400 North Cedar Street  
Summerville, SC 29483  
Telephone (843) 832-7337  
Facsimile (843) 832-7340  
Email: JimmyReeves@jreeves-law.com

**Attorney for Respondent, C.S. Carter**