

This case arises from a Jasper County (“County”) tax sale (“Tax Sale”) which occurred on November 6, 2017. The original Plaintiff in the action, Kenya Pinckney, owned a 10 acre tract of land, TMS #021-00-02-039 (the “Property”), since 2006. The Property was subsequently sold to various other parties and finally to Plaintiffs, Thomas F. Ventimiglia and Vicki E. Ventimiglia (“Ventimiglia” or “Ventimiglias”) On February 26, 2021.

Mr. Pinckney filed a suit to overturn the tax sale based on several causes of action including failure to provide required notice pursuant to S.C. Code Ann. §12-51-40(a), violation of the Servicemembers Civil Relief Act (“SCRA”) and excessive levy. Thomas F. Ventimiglia, Vicki E. Ventimiglia and Jasper County were named in the initial suit.

Subsequently, the Ventimiglia’s settled with Pinckney. The settlement included a partition of the Property wherein Pinckney retained 5 acres and Ventimiglia retained 5 acres. Additionally, Pinckney assigned his claims against Jasper County to Ventimiglia. Ventimiglia was substituted as Plaintiff on March 24, 2023 and Pinckney was dismissed from the action.

The Ventimiglias filed the Motion for Summary Judgment to determine the validity of the tax sale and determination of payment of the tax surplus held by Jasper County. Jasper County filed the Affidavit of Rhonda Mitchell and a certified copy of the County tax file. Mr. DuBose filed a memo in opposition to the motion.

STANDARD FOR GRANTING MOTION FOR SUMMARY JUDGMENT

Under Rule 56 SCRPC, Summary Judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Cafe’ Associates, Limited v. Gengross*, 305 S.C. 6, 406 S.E.2d 162 (S.C. 1991). Rule 56 SCRPC states Summary Judgment is appropriate:

[I]f the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

In determining whether any material issues of fact exist, the evidence and all inferences that can be drawn from the evidence must be viewed in the light most favorable to the non-moving party, or the party resisting the motion. *Redwend Limited Partnership v. Edwards*, 354 S.C. 58, 581 S.E.2d 496 (S.C. App. 2003). The purpose of Summary Judgment is to expedite the disposition of cases that do not require the services of a fact-finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (S.C. 2003). “For purposes of Summary Judgment, an issue is “material” if the facts alleged are such as to constitute a legal defense or are of such a nature as to affect the result of the action.” *P.G. Industries, Inc. v. Orangeburg Paint & Decorating Center, Inc.*, 297 S.C. 176, 375 S.E.2d 331 (S.C. App. 1988). Once the moving party has met its burden of demonstrating that no genuine issue of material fact exists, a party defeats summary judgment by affirmatively demonstrating the presence of a genuine issue of material fact. Rule 56(e) SCRPC states a party may not rest upon the mere allegations or denials of his pleadings. *Hoard ex rel. Hoard v. Roper Hospital, Inc.*, 387 S.C. 539, 694 S.E.2d 1 (S.C. 2010). See also, *Kitchen Planners v. Friedman*, Op. No. 28173 (S.C. Sup. Ct. filed Aug. 23, 2023).

HAVING TAKEN testimony from the parties, and having reviewed the pleadings and other documentation provided, I find and conclude as follows:

FINDINGS OF FACT AND CONCLUSION OF LAW

1. On March 8, 2006 Pinckney purchase a 16 acre tract of land of which a 10 acre portion is the subject of this litigation (the “Property”). TMS # 021-00-02-039.
2. For tax year 2016, the *ad valorem* taxes of \$24.99 went unpaid.
3. As evidenced by the Jasper County tax file, the County cannot provide proof of mailing of the first statutorily required delinquent tax notice pursuant to S.C. Code Ann. §12-51-40 (a).
4. Kenya Pinckney has been an active duty member of the armed services since October 4, 1994.

5. Jasper County seized the Property and sold it in a Tax Sale auction on November 6, 2017.
6. After the 12-month redemption period expired, the County issued a Tax Deed on July 17, 2019 to Third-Party Defendant, Robert Terry.
7. The Property was sold to Robert Terry for \$10,000.00.
8. On September 4, 2020 the Property was sold by Robert Terry by Warranty Deed to Christopher DuBose.
9. On February 26, 2021 the Property was sold by Christopher DuBose by Warranty Deed to Thomas F. Ventimiglia and Vicki E. Ventimiglia.
10. On May 20, 2022 Pinckney and Ventimiglia settled their dispute with Ventimiglia conveying approximately 5 of the 10 acres to Pinckney and paying Pinckney \$45,000.00 in consideration of retaining 5 acres.
11. Ventimiglia asserted the market value of the 10 acre parcel prior to the division was in excess of \$100,000.00. No party objected to the stated value or provided evidence to the contrary.
12. Pinckney assigned his claims against Jasper County to Ventimiglia.
13. Ventimiglia was substituted as Plaintiff on March 24, 2023 and Pinckney was dismissed from the action.
14. Jasper County remains in possession of a tax surplus in the amount of \$9,676.66.
15. The Jasper County tax sale is void for failure to strictly comply with S.C. Code Ann. §12-51-40(a) which requires the County to send a “notice of delinquent property taxes, penalties, assessments and costs” to the taxpayer prior to seizing and selling the taxpayer’s real property. The County was unable to prove the first notice of delinquent tax was sent. Strict compliance with the statutory notice requirements is required or the sale is void. See *Manji v. Blackwell*, 323 S.C. 91, 473 S.E.2d 837 (1996).
16. Plaintiff entered into evidence a Certified Memorandum for Record issued by the Department of the Army on May 8, 2023 (“Memorandum”). The Memorandum certified

- Kenya Pinckney has been on Active Duty status from October 4, 1994 to present. The Memorandum being executed and certified by Jeffrey S. Teleford, CPI, LG commanding.
17. Defendant DuBose objected to the Plaintiff's submission of the Memorandum arguing it did not comply with the requirements of SCRCP Rule 56(e).
 18. Defendant DuBose provided no evidence, pleadings or testimony disputing Mr. Pinckney's military status.
 19. The Memorandum did comport with Rule 56(e) in that it was made on personal knowledge, set for facts admissible into evidence and showed the affiant was competent to testify about the matters stated in the Memorandum.
 20. As Mr. Pinckney has been an active duty service member serving in the Army since October 4, 1994. At all times relevant to the matters herein, Mr. Pinckney was and is a full time active duty Servicemember as defined by Section 511 of the Servicemembers Civil Relief Act and §101(a)(5) of title 10 of the United States Code. As such, the SCRA affords protections against losing real property as the result of a Tax Sale as set forth and codified in United States Code 50 U.S. § 3901, et seq. Section 3936(b) which provides that "A period of military service may not be included in computing any period provided by law for the redemption of real property sold or forfeited to enforce an obligation, tax or assessment." 50 U.S.C. §561 provides "When property [] is sold or forfeited to enforce the collection of a tax or assessment, a servicemember shall have the right to redeem or commence an action to redeem the servicemember's property during the period of military service...".
 21. Mr. Pinckney was further afforded protection under 50 U.S. § 526 as the period of a servicemember's military service may not be included in computing any period limited by law, regulation or the bringing of any action in a court, or agency of a State.

22. As there is no question of fact as to Mr. Pinckney's service status during the period from 2016 to 2019, the 12 month redemption period was required to be tolled and no tax sale should have occurred nor should a subsequent tax deed have been issued.
23. While evidence and arguments were presented in the hearing as to the matter of excessive levy, no ruling was made as the protections under the SCRA rendered the matter moot.
24. As a result of the Tax Sale, the County remains in possession of a tax sale surplus of \$9,676.66. South Carolina Code of Laws Ann. §12-51-130 provides that any remaining tax sale overage "belongs to the owner of record immediately before the end of the redemption period to be claimed or assigned according to law." Pursuant to the Settlement Agreement Release and Waiver executed on May 20, 2022, Mr. Pinckney assigned any claims he may have had as Plaintiff against Jasper County to Ventimiglia. Therefore, Ventimiglia is entitled to the entirety of the surplus.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

- a. I hereby GRANT Plaintiffs' Motion for Summary Judgment;
- b. The Jasper County November 6, 2017 tax sale of the Property is void due to failure to provide notice and violation of the SCRA; and
- c. Jasper County shall disburse the tax sale overage of \$9,676.66 to Ventimiglia within 15 days of this Order.

The Honorable Krist F. Curtis



Jasper Common Pleas

Case Caption: Kenya Pinckney VS Jasper County , defendant, et al

Case Number: 2021CP2700121

Type: Order/Other

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762