

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
Case No. 2024CP3203987

Keisler Hipkins & Associates Insurance
Group, LLC,

Plaintiff,

v.

SC Home Holdings, LLC,

Defendant.

ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS

RECEIVED
Feb 21 2025
SC Court of Appeals

Heard: December 11, 2024 via Webex Virtual Courtroom
Attorney for Plaintiff: H. Freeman Belser
Attorney for Defendant: Mary M. Caskey
Court Reporter: Webex recording

SC Home Holdings, LLC ("SC Home") seeks to dismiss the plaintiff's foreclosure action. This is a Rule 12(b)(6) motion, but both sides argued the facts recited below, and the dates of the respective actions and the actions themselves are not in dispute. The court finds that it must disagree with the plaintiff's argument that a novel issue of law is involved in this case. Further, while the position of the plaintiff is a sympathetic one, the court does not agree that equitable considerations can overcome the dismissal of this case. Upon reading the precedent cited, as well as the statutes, the motion must be granted.

BACKGROUND OF PLEADINGS & RELEVANT DATES

The plaintiff has a judgment against the prior owner of the subject real estate, Grayson Jarrett Dailey (“Dailey”). Plaintiff commenced that prior action on March 22, 2017. On November 5, 2018, while plaintiff’s lawsuit against Dailey was still pending,¹ the Lexington County Tax Collector sold the property for delinquent taxes to SC Home for \$8,000. The court accepts that the property was worth substantially more than that amount, but there is no indication of an ability to sell less than the entire parcel. Plaintiff’s judgment for \$41,907.93 was entered about a month later on December 4, 2018. Following the one-year redemption period, a tax deed was issued to SC Home on April 15, 2020.

About four and one-half years thereafter, the plaintiff commenced this foreclosure action against SC Home by filing a *lis pendens* and Complaint on September 30, 2024. Counsel for SC Home accepted service on October 2, 2024, and filed this motion on October 30, 2024.

The gist of the Complaint is the assertion that plaintiff’s judgment lien attached to the property between the time of the tax sale and when the tax deed was issued. In response, SC Home argues that the judgment lien never attached to the property because the tax sale extinguished Dailey’s interest in the property and Dailey only had a right of redemption at the time the judgment was entered.

¹ The Plaintiff argues that the dates regarding the status of his prior lawsuit are relevant. Those dates include that an Answer was filed on May 3, 2017; that a notice of hearing was sent on September 6, 2018; that a hearing on the merits was held on October 10, 2018, wherein the judge ruled in favor of the Plaintiff and instructed counsel to submit a proposed order; that an affidavit of attorney’s fees was filed on October, 11, 2018; and, that after judgment was entered on December 4, 2018, a writ of execution was sent by counsel to the Sheriff’s office on January 23, 2019, resulting in a *nulla bona* return on March 13, 2019.

DISCUSSION

Pursuant to Rule 12(b)(6), SCRCPP, a complaint may be dismissed for “failure to state facts sufficient to constitute a cause of action.” Generally, a motion to dismiss should be granted when the facts alleged and any inferences deducible therefrom would not entitle the plaintiff to relief on a theory of the case. *See Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). The inquiry normally is determined by reference to the four corners of the Complaint, with all facts recited therein deemed to be true. The court may convert a motion for dismissal as a request for summary judgment if matters outside the Complaint are considered. The plaintiff wants time for additional discovery to determine when SC Home knew or should have known of the existence of the judgment. Respectfully, the court finds that the essential facts to determine the dispute are not contested and dismissal is required.

(1) Does the Judgment Lien Attach to This Property?

Liens for property taxes attach on December 31 for the succeeding year. Title to real estate is subject to outstanding property taxes, and any proper examination of title requires the examiner to check for tax liens.

As for judgment liens, S.C. Code Ann. § 15-35-810 states, “Final judgments... shall constitute a lien upon the real estate of the judgment debtor[,] ... the lien to begin from the time of such entry on the book of abstracts and indices and to continue for a period of ten years from the date of such final judgment or decree” (emphasis added).

The earliest that the judgment could have become a lien on property would have been December 4, 2018, which was after the tax sale occurred.

The attorneys primarily rely on two cases. Plaintiff cites *F.C. Enterprises, Inc. v. Dibble*, 335 S.C. 260, 516 S.E.2d 459 (Ct. App. 1999) to argue that its lien dates back to the filing of the Complaint. The defense maintains that *Dibble* is actually in its favor, and the defendant relies heavily on *Von Elbrecht v. Jacobs*, 286 S.C. 240, 332 S.E.2d 568 (Ct.App. 1985).

In *Dibble*, the facts were that by September 14, 1992, F.C. Enterprises had recorded a 20-year lease on the property and an option to purchase it. The 1992 taxes were unpaid, and Mr. Dibble was the high bidder at a tax sale on October 4, 1993. The Tax Collector notified the property owner of the right to redeem by payment within one year of the sale. No such notice was sent to F.C. Enterprises. After no one redeemed the property, a tax deed was executed to Mr. Dibble on November 17, 1994. F.C. Enterprises exercised its option. The trial court granted partial summary judgment determining that F.C. Enterprises' had title to the property over the claim of Mr. Dibble, the purchaser at the tax sale.

Mr. Dibble argued that the lien for taxes attached on December 31 of 1991 because of the law that provides that taxes constitute liens for the succeeding year. The Court of Appeals agreed with that assertion, but disagreed with Mr. Dibble's argument that his tax deed obtained from a sale in 1993 and deed in 1994 was superior to the lease and option to purchase that were properly filed in 1992. The option to purchase had been exercised, and that title was found to be superior to that granted in the tax sale.

So, in *Dibble*, the interest created by the recording statute overrode the tax deed. But, the facts of *Dibble* are distinguishable from the present case because the judgment lien in this case was not in existence until after the tax sale.

The *Dibble* court cited the *Von Elbrecht* case upon which SC Home currently relies, writing:

In *Von Elbrecht*, the court noted a defaulting tax payer whose property has been sold for taxes . . . holds title after a tax sale, but the title is "defeasible upon failure to redeem" within the statutory twelve month period. 286 S.C. at 244, 332 S.E.2d at 570. Thus, the deed . . . to Von Elbrecht, after the tax sale, merely transferred the right to redeem. However, in the instant case, the delinquent taxpayer did not convey a property interest after a tax sale, but before.

...
Although a lien for delinquent taxes relates back to December thirty-first of the prior year, the taxes do not become delinquent until January 15 of the following year. There was no tax delinquency at the time the parties executed the agreements and no tax sale had yet occurred. *Dibble*, as purchaser at a judicial sale, secured the same rights and title in the property as [prior owner] owned at the time of the sale. Because [the prior owner's] rights in the property were subject to the lease and option with F.C. Enterprises at the time of the tax sale, *Dibble* purchased the property subject to the lease and option.

F.C. Enterprises, Inc. v. Dibble, 335 S.C. 260, 266 (S.C. Ct. App. 1999)

This court is concerned about the terminology used in these opinions stating that a title is defeasible. That issue most supports the plaintiff's argument that there are novel issues of law because of the law that title remains in the name of the defaulting taxpayer during the redemption period.

The case of *Scott v. Brunson*, 351 S.C. 313, 316, 569 S.E. 2d 385, 386 (Ct. App. 2002) explains different types of title to real estate. That court wrote:

A fee simple absolute is an interest with indefinite duration. 28 Am. Jur. 2d Estates § 13 (2000); see Restatement (Third) of Prop.: Donative Transfers § 10.2 (1995). A defeasible fee simple is a fee simple that may

be cut short. 28 Am. Jur. 2d Estates § 403 (2000); see Restatement (Third) § 10.2. A defeasible fee may be (1) a fee simple determinable, (2) a fee simple subject to a condition subsequent, or (3) a fee simple subject to an executory interest. Restatement (First) of Prop. §§ 44, 45, 46 (1936).

A fee simple determinable is a grant that can be cut short when a given term expires. 28 Am. Jur. 2d Estates § 26 (2000). A fee simple subject to a condition subsequent is a grant with a condition attached; for example, to A provided that A appears in ten years. 28 Am. Jur. 2d Estates § 175 (2000).

The problem with finding that there may be a novel issue of law is that all the issues raised by the plaintiff were addressed in *Dibble, Von Elbrecht*, and the statutes applicable to tax sales.² In order for the Court of Appeals to reach the result that it did in *Dibble* and *Von Elbrecht*, it must have considered what “defeasible” title means in this context because it includes that specific terminology in its opinions.

The facts in *Von Elbrecht* are that the owner of a lot failed to pay the property taxes for 1979. The property was sold at a tax sale on November 3, 1980. Three months later, the defaulting property owner sold the lot to Mr. Von Elbrecht, and the deed was recorded. No one redeemed the property, and on December 21, 1981, a tax deed was recorded transferring title to the high bidder. The lower court held that Mr. Von Elbrecht

² The court in *Dibble* stated: “In South Carolina, the sale of property of a defaulting taxpayer is governed strictly by statute. *Von Elbrecht v. Jacobs*, 286 S.C. 240, 332 S.E.2d 568 (Ct.App. 1985). The statutory scheme provides a mechanism for enforcing the collection of taxes. As of the thirty-first of December, all taxes for the ensuing year become a lien upon the property of the taxpayer. [S.C. Code Ann. §§ 12-49-10](#) and [12-49-20](#) (1976). All taxes are due and payable between the thirtieth day of September and the fifteenth day of January after their assessment in each year. [S.C. Code Ann. § 12-45-70](#) (Supp. 1998). “If the taxes, assessments, and penalties are not paid before the seventeenth day of March, the county treasurer shall issue his tax execution to the officer authorized and directed to collect delinquent taxes, assessments, penalties, and costs for their collection as provided in Chapter 51 of this title and they must be collected as required by that chapter.” [S.C. Code Ann. § 12-45-180 \(A\)](#) (Supp. 1998). Upon payment by the successful bidder at the delinquent tax sale, the person officially charged with collection of delinquent taxes shall furnish the purchaser a receipt for the purchase money. [S.C. Code Ann. § 12-51-60](#) (Supp. 1998). The defaulting tax payer, grantee from the owner, or any mortgage or judgment creditor may, within twelve months from the date of the delinquent tax sale, redeem the real estate sold by paying the person officially charged with collection assessments, penalties and costs, together with eight percent interest on the whole amount of the delinquent tax sale bid. [S.C. Code Ann. § 12-51-90](#) (Supp. 1998). If the defaulting taxpayer, any grantee from the owner, or any mortgage or judgment creditor fails to redeem the property within the twelve months, the person officially charged with collection is required to issue a tax deed to the tax sale purchaser or the purchaser's assignee. [S.C. Code Ann. § 12-51-130](#) (Supp. 1998).

was a good faith purchaser for value and found that his title prevailed over the one conveyed in the tax deed. The Court of Appeals reversed stating:

Applying these statutes, the tax lien, under which [the high bidder] claims to have acquired ownership of the lot, attached to the lot by operation of law in December 1978 and remained an encumbrance until the taxes due were paid. The lien, a creature of statute rather than a conveyance evidenced by a written instrument, is not embraced by the Recording Act [citing S.C. Code Ann. § 30-7-10] which relates solely to conveyances.

The Recording Act therefore does not protect a bona fide purchaser against liens or other interests arising out of instruments not entitled to be recorded. G.W. Thompson, Thompson on Real Property Section 4297 (1978). . . . [Elbrecht's] attempted purchase of the lot and the recordation of his deed did not displace the priority of the lien although the lien was not recorded. Under this circumstance, the interest prior in time, i.e., the tax lien, prevails over the later attempted conveyance of the land. Likewise, [the] tax title, which he claims under the valid tax sale, also has priority over that of Elbrecht.

Moreover, a grantor of real property generally can transfer no greater interest than he himself has in the property. *Belue v. Fetner*, 251 S.C. 600, 164 S.E. (2d) 753 (1968); *Crook v. Hartford Fire Insurance Co.*, 175 S.C. 42, 178 S.E. 254 (1935). A defaulting taxpayer whose property has been sold for taxes has title, defeasible upon failure to redeem within twelve months after the tax sale. S.C. Ann. Section 12-49-520 and 12-49-550 (1976). A deed by the taxpayer after the tax sale merely transfers the right to redeem. G.W. Thompson, Thompson on Real Property Section 2766 (1978). As in the case of the defaulting taxpayer, the grantee loses any claim to the property if redemption is not made within the period established by law. S.C. Code Section 12-49-550 (1976). Elbrecht's failure to redeem the property prior to the issuance of the tax deed . . . cut off any rights Elbrecht had in the property.

Having determined that the recording act does not govern relationships arising out of a State tax lien and tax sale, we reverse the judgment of the circuit court and remand the case for entry of judgment consistent with the decision herein.

(emphasis added)

Using the term “defeasible” and then ruling that the failure to redeem was fatal to the claim of a good faith purchaser for value who recorded his deed during the

redemption period must mean that the interest of a party gained through recordation (in this case a judgment lien) is not superior to a tax deed where the tax lien existed before the recorded lien. That is precedent from a higher court on the issues raised in the present case, and this court is bound by that precedent. If anything, a judgment lienholder in this context would seem to have a lesser claim than a good faith purchaser for value. The appellate court has established that a taxpayer only holds a right of redemption after the tax sale, though there is a logical argument to the contrary.

The statutory scheme provides that the owner, grantee from the owner, or other interested persons—including judgment creditors—may redeem the property by paying the taxes and additional costs and expenses of the sale within one year of the tax sale [S.C. Code Ann. § 12-51-90]. If the owner or other interested party fails to redeem the property within twelve months, the tax official is required to issue a tax deed to the tax sale purchaser [S.C. Code Ann. § 12-51-130]. *Von Elbrecht* holds that the right that exists after the tax sale and until the end of this one-year redemption period is only a “right of redemption.” The defaulting taxpayer does not retain any interest in the property unless and until it exercises the right of redemption, so that would be the only interest that could be attached by lien. The right of redemption existed for any judgment creditors, but it was not exercised.

Under S.C Code § 12-61-10, following the redemption period, the tax purchaser may bring a quiet title action. In that quiet title, the court is tasked with adjudicating the rights of any persons who have or claim to have “an interest or lien in or to such property.” S.C Code § 12-61-20 further states that these rights, claims, or liens shall be “forever barred by the judgment and decree of the court” if they are determined to be

“junior or subsequent to the title of the county or any person purchasing at or acquiring title to property through a tax sale.” (emphasis added). In all, this statutory framework directs the court to look to the date of the tax sale as the point of reference for determining priority of claims, not, as plaintiff alleges, the date of the issuance of the tax deed.

(2) Does Equity Provide a Remedy for the Plaintiff?

Plaintiff alleges that equity favors plaintiff’s judgment attaching to the property. However, equitable relief is generally only available when there is “no adequate remedy at law,” and “an adequate legal remedy may be provided by statute”. *Key Corp. Cap., Inc. v. Cnty. of Beaufort*, 373 S.C. 55, 644 S.E.2d 675 (2007). Indeed, a “court’s equitable powers must yield in the face of an unambiguously worded statute.” *Id.*

In this case, the remedies available to judgment creditors are neither inadequate nor ambiguous. Under S.C. Code § 15-35-810, a judgment creditor has a lien on all property owned by the judgment debtor for ten years. Additionally, S.C. Code § 12-51-90(a) grants judgment creditors the right to redeem a property for one year after a tax sale, not indefinitely. There is no basis for the court to invoke equity principles to override the tax deed.

Plaintiff argues that it had no way of knowing a tax sale had occurred, but tax information of a property is publicly available.³ A title search includes checking the tax records to determine whether a property was sold. Further, whether a creditor who subsequently obtains a judgment has notice of a tax sale or not has no bearing on the tax sale itself. A taxing authority has no obligation to give notice to a plaintiff in pending litigation. Public records would have indicated the property’s delinquent tax status, and a

³ Notice was only given to the defaulting taxpayer in *Dibble*, also.

party exercising due diligence would have noticed this and taken steps to verify the sale status with the County.

Finally, the plaintiff is not without remedy as its lien still exists under South Carolina Law and a levy may be made. The plaintiff may pursue supplemental proceedings to collect against Dailey's other assets pursuant to S.C. Code Ann. § 15-39-310.

For the reasons set forth above, plaintiff's motion to dismiss is granted.

AND IT IS SO ORDERED

[Judge's Electronic Signature Page to Follow]



Lexington Common Pleas

Case Caption: Keisler Hipkins & Associates Insurance Group, Llc VS Sc Home Holdings, Llc
Case Number: 2024CP3203987
Type: Order/Dismissal

Circuit Judge (Code #2050)

s/ William P. Keesley