

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 ESSIE B. BRYAN,)
)
 Plaintiff,)
)
 v.)
)
 CHARLESTON COUNTY AND)
 C.A. ROBERDS,)
)
 Defendants,)
)
 C.A. ROBERDS,)
)
 Third Party Plaintiff,)
)
 v.)
)
 ERNEST KINLOCH d/b/a)
 ERNIE'S RESTAURANT,)
)
 Third Party Defendant,)
)

IN THE COURT OF COMMON PLEAS
 CASE #: 2012-CP-10-5112

**ORDER GRANTING SUMMARY
 JUDGMENT**

FILED
 2013 SEP 11 PM 12:54
 JULIE J ARMSTRONG
 CLERK OF COURT
 BY _____

This is an action to set aside a tax deed for property known as #64 Spring Street, Charleston, South Carolina. Roberds is the holder of title under the tax deed. Roberds has counterclaimed against the Plaintiff to quiet title. The third party action is an action by Roberds to collect rent from the occupant of the property.

This matter came before me on August 19, 2013, on separate Motions for Summary Judgment filed by Defendants Charleston County and Roberds. Both Motions for Summary Judgment were grounded upon identical requests for admissions served upon the Plaintiff by the County of Charleston on September 28, 2012, and by the Defendant Roberds on October 8, 2012.

As of the date of hearing, no response to either set of Requests for Admissions had been served.

RECEIVED
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 SC Court of Appeals

Additionally, supporting Roberds' motion was an Affidavit of Counsel attaching documents obtained by a freedom of information act request to the Charleston County Delinquent Tax Collector, showing that the Plaintiff demanded and received the overage resulting from the tax sale less than thirty (30) days prior to the filing of this action to upset the same. In response to the motion, Plaintiff served upon counsel for Roberds on August 16, 2013, five (5) affidavits which were made a part of the record in this matter.

By their motions, Defendants Charleston County and Roberds each move that the Court deem the requests admitted pursuant to Rule 36(a) S.C.R.C.P. for failure to file a denial or objection within the allowed thirty (30) days. Plaintiff argued that the Court should not grant summary judgment on a mere discovery issue. Although not specifically couched in this form, I consider the Plaintiff's position to be the equivalent of a motion to extend the time for response, however, for the reasons hereinafter stated, and to the extent that I have discretion to grant relief, such relief is denied.

An initial consideration is that the requests to admit were served on September 28, 2012, and October 8, 2012, respectively. This was not contested, thus, as of the date of hearing, over ten (10) months had elapsed since the date of service of each Request.

I also rely on substantial proof demonstrated by the Requests for Admissions relative to the three (3) specific objections to the tax sale process raised in the Complaint:

- a) that the Delinquent Tax Collector failed to send the required copy of the tax execution to the Plaintiff by certified mail, return receipt requested;
- b) that the Delinquent Tax Collector failed to post the proper notice on 1 or more conspicuous places on the property;
- c) that the Delinquent Tax Collector failed to send final notice by certified mail, return receipt requested, to Plaintiff, before the right of redemption passed.

Not only were these issues deemed admitted in favor of the Defendants (Request #s 2, 5, 11,

12 and 19) the documents attached to the Defendant County's request provide conclusive evidence that the Charleston County Delinquent Tax Collector satisfied each of these statutory requirements.

The affidavits filed by the Plaintiff in opposition to the motions deny that the property was posted and state that Ms. Bryan did not sign for any certified mail from Charleston County concerning 64 Spring Street. These affidavits do not create a genuine issue of fact or law requiring a trial on the merits in the face of the failure to respond to Request for Admissions on these very same issues and the documentary evidence in the record that indicates conclusively that the property was posted, and that the required registered mailings were sent by the Delinquent Tax Collector. The Court notes that applicable statutes do not require proof of actual receipt of the certified mail by the tax payer, only that the official Notice of Levy and the Final Notice of Property Redemption be mailed in compliance with Section 12-51-40 (b) and Section 12-51-120, respectively, which the Requests for Admissions and associated documentation prove.

The Court also notes that under Section 12-51-40 (c) posting is only required if the certified mailing of the official Notice of Levy is returned. According to counsel, the Delinquent Tax Collector's practice is to post properties regardless of whether the certified mail notice has been return unsigned. In this case, the certified mail notice was returned with a signature so that posting may have not been statutorily required under Section 12-51-40 (c), however, the failure to deny the relevant request to admit and the copy of the photograph of the posting which is in the record prove that, whether required or not, posting was accomplished.

For the above reasons, it is

ORDERED that the Request for Admissions served by Defendants County of Charleston and Roberds on September 28, 2012, and October 8, 2012, respectively are deemed admitted, it is further

ORDERED that summary judgment is granted in favor of the Defendant County of

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* Scott v. Conoverville Housing, 353 SC 639,
579 SE2d 151 (SC App 2003)

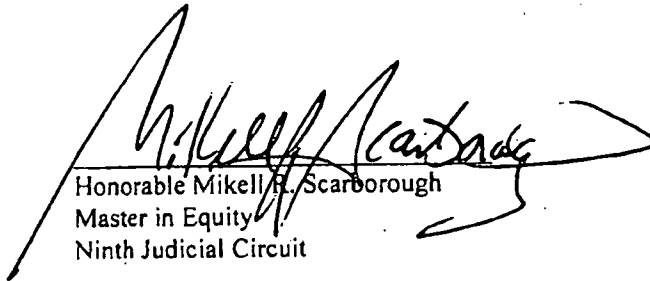
Charleston, it is further

ORDERED that Defendant Roberds is granted summary judgment on his counterclaim to quiet title and that title to the property known as #64 Spring Street, Charleston, South Carolina, and more particularly described on Exhibit "A" hereto is hereby confirmed in the Defendant C.A. Roberds under the tax deed dated March 20, 2012, and recorded March 22, 2012, in the RMC Office for Charleston County in Book 0240, Page 726 and all interest of the Plaintiff, her heirs, successors and assigns or anyone claiming under her was extinguished by the tax sale and subsequent tax deed hereinabove referred to, it is further

ORDERED that the issues raised by the Third Party Complaint remain for trial or disposition by appropriate dispositive motion, if warranted, it is further

ORDERED that a copy of this Order be recorded in the Office of the RMC for Charleston County.

AND IT IS SO ORDERED!


Honorable Mikell R. Scarborough
Master in Equity
Ninth Judicial Circuit

At Charleston, South Carolina
This 16 day of Sept, 2013.

Exhibit "A"

ALL that lot of land, with the buildings and improvements thereon, situate in the City of Charleston, State of South Carolina, on the North side of Spring Street, known under the present numbering as No. 64 (formerly 22), and being the second lot of land to the East of Coming Street, with a two-story building thereon. MEASURING AND CONTAINING in front on Spring Street thirty-three (33) feet six (6) inches, by one hundred and ninety-four (194) feet in depth, the said dimensions more or less.

BEING the same property conveyed to Ernest Kinloch, Jr. (as Ernest Kinloch, Jr.) by deed of Nu-Homes Builders, Inc. dated August 9, 1979, and recorded in Book A-120, Page 182, RMC Office for Charleston County, and conveyed to Essie B. Bryan and recorded on March 25, 1999, at D323/370.

PID Number: 460-08-02-036

Grantee Address: C.A. Roberds
577 Whimbrel Road
Kiawah Island, SC 29455