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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Master-in-Equity

The Honorable Mikell R. Scarborough

Common Pleas Case No.: 2023-CP-10-00192
Appellate Case No.: 2025-001402

Katie Lynn Mallace and Micah James Mallace, Respondents,

v.

Southeastern Capital Corporation; Krista Brown-Penney, Co-Trustee, EM Family Trust; and John Doe and Mary Roe, representing all unknown persons having or claiming to have any right, title, or interest in or to, or lien upon, the real estate described as a portion of Third Street shown on a plat recorded in the Office of the RMC for Charleston County in Plat Book D at Page 180, Charleston County, South Carolina, TMS# 999-00-00-366 formerly known as TMS# 514-09-00-047, their heirs and assigns, and all other persons, firms, or corporations entitled to the claim under, by or through the above-named Defendant(s), and all other persons or entities unknown claiming any right, title, interest, estate in, or lien upon, the real estate described as a portion of Third Street shown on a plat recorded in the Office of the RMC for Charleston County in Plat Book D at Page 180, Charleston County, South Carolina, TMS# 999-00-00-366 formerly known as TMS# 514-09-00-047, Defendants, of which EM Family Trust, David M. Bolach, and Terri Davis are the Appellants.

APPELLANT'S INITIAL BRIEF

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December 10, 2025

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STATEMENT OF THE CASE

This appeal arises out of a quiet title action involving an unopened portion of Third Street located in the historic Scanlonville community of Mount Pleasant, South Carolina. Respondents filed this action on January 12, 2023, seeking to confirm title based on a 2002 tax sale and alleged adverse possession. (R. at __). Appellants timely answered, denying Respondents' claims, asserting affirmative defenses including the invalidity of the tax sale, lack of constitutionally required notice, inaccurate and conflicting property descriptions, and the absence of adverse possession. (R. at __). Appellants further asserted a preserved implied easement of necessity over the property to access Lot 114. (R. at __).

The case proceeded to a bench trial before the Master-in-Equity, the Honorable Mikell R. Scarborough, on March 25 and March 27, 2025. (R. at __). The Master issued a Final Order on April 23, 2025, confirming the tax sale, finding that Respondents and their predecessors acquired title via adverse possession, dismissing all adverse claims, extinguishing Appellants' easement rights, and concluding that Appellants did not challenge the tax sale at trial. (R. at __). Appellants timely filed a Motion to Reconsider pursuant to Rule 59(e), SCRCPP, and asserted that the Order contained the errors of law and omitted to rule upon the implied easement of Defendants. (R. at __). The Master denied that motion via Form 4 on May 8, 2025, stating that the easement issue "was never argued during the pendency of the case". (R. at __). Appellants filed a timely Notice of Appeal on May 28, 2025, and now seek reversal of the Final Order confirming tax title and extinguishing their vested property rights. (R. at __).

STATEMENT OF THE FACTS

This case concerns real property located in the neighborhood of Scanlonville in Mount

Pleasant that was a roadway and provided access to marsh front lots. In 1988, a portion of the roadway was conveyed to Southeastern Capital Corporation. The County, after waiting thirteen years, decided to levy upon this roadway and generated a \$2.20 tax bill. The County failed to notify the true owner, and the tax sale was completed in 2004 for tax years 2001 and 2002.

The chain of title was introduced via deeds at trial and testimony of the Charleston County assessor established the true owner of the subject parcel. (R. at __) The 1.15-acre property at issue passed by deed from the Estate of Charles E. Rausch to Dorothy Rausch Ayers and the parent deeds described as “All those portions of streets, roads, and avenues which were never used as streets. . .” On August 12, 1988, Dorothy Rausch Ayers and Charles Rausch Ayers sold their interest in the Unopened portion of Third Street between Seventh and Ninth Street to Southeastern Capital Corporation as recorded in Book D177 at page 159 in the Charleston County ROD Office. (R. at __). Importantly, Dorothy Rausch Ayers and Charles Rausch Ayers retained their interest in Third Street between Fifth and Seventh Avenue until they conveyed, on August 3, 2021, their interest into the EM Family Trust via estate deed. (R. at __)

In 2002, Charleston County instituted a tax sale for the 2001 taxes and named Southeastern Capital Corporation as the delinquent taxpayer. (R. at __); however, the true owner of the property at that time of the sale was Dorothy Rausch Ayers. (R. at __) The Charleston County assessor, Richard Beasley, testified that at the time of the assessed tax and sale of the subject parcel, Dorothy Ayers owned the property. (R. at __). In trial, it is undisputed that the County never provided notice to Ayers or any successor in interest. (R. at __). The County improperly identified Southeastern Capital Corporation as the true owner (R. at __). The property was advertised in the tax sale as “a portion of Third Street on a plat recorded in the Office of the RMC for Charleston County in Plat Book D at Page 180; said parcel measuring at

containing one and fifteen-hundredths (1.15) of an acre, more or less”. (R. at ___).

The County sent all notices solely to Southeastern Capital Corporation, although that entity had conveyed away its interest in the unopened street section years earlier. (R. at ___). The 2002 tax sale was completed without notice to any person holding a current legally cognizable interest in the property in 2004 via a tax deed. (R. at ___). The pertinent portion the legal description of the parcel being sold was described as “a portion of Third Street on a plat recorded in the Office of the RMC for Charleston County in Plat Book D at Page 180; said parcel measuring and containing one and fifteen-hundredths (1.15) of an acre, more or less.”

On March 31, 2004, Jerome N. Grant purchased the property via tax sale for Five Thousand (\$5,000.00) dollars (R. at ___). Thereafter, Mrs. Grant conveyed Mr. Grant’s interest via deed of distribution on February 28, 2020, to herself. (R. at ___) Thereafter, on April 16, 2020, Mrs. Grant conveyed her interest to Edward S. Lee (R. at ___)

On July 29, 2021, Leslie Adams Ayers, personal representative of the estate of Charles Rausch Ayers conveyed it’s retained interest in the remaining portion of Third Street between Fifth and Seventh Avenue, as recorded at Book 1044 at Page 202 and Page 203 in the Charleston County ROD Office, to the EM Family Trust. (R. at ___).

On September 8, 2021, Edward S. Lee conveyed his interest to Rex Guignard LLC and Rex Guignard LLC conveyed “a portion of Third Street on a plat recording in the office of R.O.D. for Charleston County in Plat Book D at Page 180, said parcel measuring and containing one and fifteen-hundredths (1.15) of an acre, more or less.” (R. at ___). Thereafter, on November 21, 2021, Rex Guignard LLC conveyed his interest to Katie Lynn Mallace and Micah James Mallace. (R. at ___)

Appellant EM Family Trust also owns an adjacent Lot known as Lot 114 that provides

legal access to the property via the unopened portion of Third Street between Fifth and Seventh. (R. at __). Importantly, the legal description for Lot 114 references the legal access as Third Street on Plat Book D at page 180 as recorded in the Charleston County R.M.C. Office. (R. at __).

Title records, deeds, and testimony admitted during trial established that the unopened streets in this area were once part of a large tract of family-owned property by Ayers Family Trust. (R. at __). In 1996, County mapping personnel noted a “mapping error” affecting the parcel, acknowledging that the tax parcel lines did not reflect actual ownership or physical land features. (R. at __). The County continued to rely on outdated mapping assumptions, including the erroneous belief that Southeastern Capital Corporation retained ownership of streets long after its interests were conveyed. (R. at __). The Ayers Family continuously owned the 1.15 acres tract of land, that is the subject of this tax sale, since the 1950’s, with a brief interruption of ownership interest by the Citizens and Southern National Bank, as liquidating Trustee, and sold its interest in the land to EM Family Trust by deed in order to provide legal access to the property. (R. at __).

Respondents, at trial, claimed title based on a tax deed obtained years later and did nothing more than place play equipment and landscaping on the property without notice to EM Family Trust. (R. at __). Respondents testified that nearly all the tract is marshland and unusable. (R. at __) At no time did Respondents or their predecessors in title fence, enclose, develop, or exercise dominion over the full 1.15 acres described in the tax deed. (R. at __).

At trial the testimony established that Appellant’s Lot 114 is physically landlocked by the subject parcel. (R. at __). The only practical access to Lot 114 is via Third Street as shown on the recorded Plat D-180. (R. at __). Respondents’ own legal description incorporates the plat, which

depicts the street as a dedicated access corridor for abutting property owners. (R. at __). Appellants introduced evidence of their intent to utilize this platted street access, including an application for a dock permit identifying the access route across Third Street. (R. at __). Despite these facts, the Master extinguished all access rights and made no findings regarding the necessity or preservation of an easement for Appellants' property. (R. at __).

Finally, evidence at trial showed that the public historically accessed the disputed marsh area for recreational and community purposes. (R. at __). Respondents themselves acknowledged that their use was confined to a small section of upland. (R. at __). Appellants and witnesses testified that the public and adjoining owners continued to traverse and use portions of the property as open space after the tax sale. (R. at __). No evidence was introduced to support exclusive possession of the entire tract for the full statutory period required for adverse possession. (R. at __).

STANDARD OF REVIEW

In an appeal from an action in equity, this Court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence. *Doe v. Clark*, 318 S.C. 274, 457 S.E.2d 336 (1995). However, this broad scope of review does not require an appellate court to disregard the findings below or ignore the fact that the trial judge is in the better position to assess the credibility of the witnesses. *Dorchester County Dep't of Soc. Servs. v. Miller*, 324 S.C. 445, 477 S.E.2d 476 (Ct. App. 1996).

SUMMARY OF ARGUMENT

This tax sale case turns on five dispositive errors: (1) the delinquent tax collector failed to notify the defaulting tax payer/true owner thereby rendering the tax sale void *ab initio*; (2) the

two year statute of limitations under S.C. Code Ann. § 12-51-160 does not apply when notice of delinquent tax is defective; (3) a tax sale that inadequately describes property cannot support a tax deed for want of jurisdiction;(4) Respondents failed to meet all of the required elements to establish a claim for adverse possession; and 5) the Master's extinguishment of a platted easement without findings requires reversal.

ARGUMENT

I. THE TAX SALE CONCERNING TMS # 514-09-00-047 WAS VOID AB INITIO FOR FAILURE TO COMPLY WITH STATUTORY REQUIREMENTS.

Strict compliance with statutory tax sale procedures is mandatory. *See Dickson v. Burckmyer*, 67 S.C. 526, 46 S.E. 343 (1903); *Dibble v. Bryant*, 274 S.C. 481, 265 S.E.2d 673 (1980). Failure to provide proper notice to the true property owner renders the sale void. *See Aldridge v. Rutledge*, 269 S.C. 475, 238 S.E.2d 165 (1977); *Donohue v. Ward*, 298 S.C. 75, 378 S.E.2d 261 (Ct. App. 1989); *Rives v. Balsa*, 325 S.C. 287, 478 S.E.2d 878 (Ct. App. 1996). Without strict compliance with the statutory requirements, a tax sale cannot be upheld. *Donohue*, 298 S.C. at 75.

In this case, the true owner at the time of the December 2, 2002, tax sale of TMS #514-09-00-047 was Dorothy R. Ayers, as established by the deeds in Plaintiff's Exhibit 1 and the property record card admitted at trial. (R. at ___) Mr. Beasley further testified that Dorothy Ayers was the true owner of the 1.15-acre parcel that was sold at the tax sale. (R. at ___) It was further undisputed that Ms. Ayers never received notice of the tax sale as per the testimony of the Charleston County delinquent tax collector, Mr. Trakas. (R. at ___). In fact, the only entity notified of the tax sale was Southeastern Capital Corporation. (R. at ___)

Respondents' witness, Mr. Trakas, testified that in 2001, the Collector's Office initiated a

tax sale against Southeastern Capital Corporation, identifying it as the delinquent taxpayer for TMS #047. However, pursuant to S.C. Code Ann. § 12-51-40(b), the notice was ineffective because it was not provided to the true owner, Ms. Ayers. Mr. Trakas offered no testimony that notice was ever sent to Ms. Ayers. (R. at __) He further confirmed that all four statutory notices were sent only to Southeastern Capital Corporation. (R. at __)

Importantly, Southeastern Capital Corporation had previously sold all its interest in the unopened portion of Third Street between Seventh and Ninth Avenue to Harbour Watch Associates on March 23, 1990, as was recorded in deed book U191 at page 758 in the Charleston County R.M.C. Office. (R.at __). Therefore, as Southeastern Capital Corporation was no longer the owner at the time of the tax delinquency nor at the time of tax sale, notice to them was insufficient as a matter of law. Failure to give the required notices to the defaulting taxpayer is a fundamental defect which “renders the proceedings absolutely void.” *Donahue at 83*.

Additionally, a review of the property record card for TMS #514-09-00-047, before the tax sale occurred, would have revealed that it referenced Plat Book BT-93, which also included part of TMS #514-09-00-017. (R.at __) Plat Book BT-93, in evidence, shows that the unopened portion of Third Street had become part of the Harbour Watch neighborhood and Southeastern Capital Corporation conveyed its interest in the portion of Third Avenue to Harbour Watch. (R.at __)

Furthermore, at trial, Mr. Beasley testified that the property record card for TMS #514-09-00-047 included a notation that should have put the County on direct notice that the parcel was previously mapped incorrectly to include TMS #514-09-00-101. (R. at __) Based on this evidence, Charleston County was on notice in 2002 that Southeastern Capital Corporation was not the true owner of TMS #514-09-00-047 at the time of the sale and at the time of the tax deed

grant.

As the County only sent notices to Southeastern Capital Corporation, the tax sale lacked the constitutionally required notice and cannot be confirmed. Therefore, the sale was void, as the true owner was never notified.

II. THE COURT ERRED IN FINDING APPELLANTS' CHALLENGE WAS TIME-BARRED BECAUSE THE TAX ASSESSOR'S DEED WAS VOID *AB INITIO*.

Under S.C. Code Ann. § 12-51-160, the two-year statute of limitations does not apply when notice is defective. *See King v. James*, 388 S.C. 16, 694 S.E.2d 35 (Ct. App. 2010); *Dibble*, S.E.2d at 673; *Reeping v. Jebbco*, 402 S.C. 195, 740 S.E.2d 504 (Ct. App. 2013).

Under *Leysath*, S.C. Code Ann. § 15-3-350 does not apply where a tax deed is “absolutely void upon its face,” or where the sale suffers from “jurisdictional or fundamental defects” that invalidate the proceedings. *See Leysath v. Leysath*, 209 S.C. 342, 40 S.E.2d 233 (1946); *Donohue*, 378 S.E.2d at 261. A defect is considered jurisdictional when it involves “essential prerequisites to the title or deed.” *Dunham v. Davis*, 229 S.C. 29, 36, 91 S.E.2d 716 (1956) (quoting 51 Am. Jur., Taxation, p. 935, § 1075). The purpose of S.C. Code Ann. § 12-51-160 is to create a window for the prior owner to challenge the sale—but *only after* proper notice has been given. *Corbin v. Carlin*, 366 S.C. 187, 194, 620 S.E.2d 745, 749 (Ct. App. 2005). Thus, the failure to give notice to the correct party constitutes both a jurisdictional and procedural defect. *See generally King, Dibble, Reeping*.

In this case, the Assessor failed to provide proper notice to the true owner, Dorothy R. Ayers, due to an error on the 1989 property record card, which reflected only a partial transfer of “that portion of 3rd Street between Seventh and Ninth.” (R. at __) This error created a duplicate TMS #074 parcel and led to an unpaid tax bill. When the Collector’s Office attempted to

foreclose on this duplicate parcel, it issued notice solely to Southeastern Capital Corporation—a party that had already conveyed any interest it may have held. Since Southeastern no longer had any legal interest in the property, notice to them was both procedurally and jurisdictionally defective.

Therefore, the Court erred in concluding that Appellants’ challenge to the tax sale was barred.

III. THE COURT ERRED IN CONFIRMING THE TAX SALE, WHERE THE LEGAL DESCRIPTION WAS INADEQUATE, IN THE NOTICES AND DEED.

The appellate courts of this state have repeatedly stressed that all conditions governing tax sales are mandatory and strictly enforced. *Tanner v. Florence County Treasurer*, 336 S.C. 552, 563, 521 S.E.2d 153, 159 (1999); *Rives*, S.E.2d at 878. Tax sales, therefore, "must be conducted in strict compliance with statutory requirements." *In re Ryan Inv. Co., Inc.*, 335 S.C. 392, 395, 517 S.E.2d 692, 693 (1999); *see also, Manji v. Blackwell*, 323 S.C. 91, 93, 473 S.E.2d 837, 838 (1996) ("A statutorily based tax sale requires strict compliance to the tax sale requirements."). "This Court will set aside tax sales where the requisite statutory conditions of S.C. Code Ann. § 12-51-40 have not been complied with by public officials." *Tanner*, 521 S.E.2d at 159.

The legal description of the property was not particularized enough to meet strict compliance with the tax sale statute S.C. Code Ann. § 12-51-40(d). This subsection reads, in part:

[The advertisement] shall 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.

Here, the trial testimony and trial exhibits established that the tax map number described

the property as containing 1.15 acres of Third Street on Plat Book at D-180. This legal description was inadequate as it was confusing because the tax map identified more than 1.15 acres on 3rd Street. The recorded plat for Scanlonville depicts Third Street as being more acreage than 1.15 acres as the Street started at 3rd Avenue and continued until 9th Avenue. A review of the plat book D at Page 180 reveals the distance on 3rd Street was approximately 1600 feet, more or less, between 5th Avenue and 9th Avenue. The right-of-way on 3rd Street was 50 feet wide and as a result, the acreage was much greater than 1.15 acres. To determine the linear footage of a 1.15-acre parcel, as was described in the tax sale description, that is 50 feet in width as established by the trial plats, the acreage must first be converted to square feet. One acre contains 43,560 square feet. Accordingly, 1.15 acres equals $1.15 \times 43,560$, or 50,094 square feet. To find the corresponding length of the parcel, the total square footage is divided by the width. Dividing 50,094 square feet by a width of 50 feet results in a parcel length of approximately 1,001.88 feet. However, 3rd Street between Fifth and Ninth Avenue is approximately 1,600 feet long not including each intersection.

Here, the trial testimony established that the purchaser and assessor were unsure of what portion of 3rd Street was being sold at the tax sale. Because the tax map portion of Third Street ran from Fifth to Ninth Street, and contained over 2.00 acres, the description of 1.15 acres is unclear as to which portion of Third Street is being sold.

Furthermore, to confuse matters further, prior the tax sale Southeastern Capital Corporation conveyed its interest in the 1.15 acres to Harbour Watch and was taxed as a new parcel. (R. at ___) Thus, given the above deficiencies in the legal description, S.C. Code Ann. § 12-51-40(d) was not complied with and tax sale must be vacated.

The tax sale description must also be legally accurate so as to protect the defaulting

taxpayer from unfair surprise, sacrifice, and forfeiture. Description, in South Carolina tax sale statutes, is not defined; however, the cardinal rule of statutory construction is to ascertain and effectuate legislative intent. *See Joint Legislative Comm. v. Huff*, 320 S.C. 241, 464 S.E.2d 324 (1995); *Glover by Cauthen v. Suitt Constr. Co.*, 318 S.C. 465, 458 SE.2d 535 (1995). Our Court of Appeals has further stated the tax sale statutes overriding objective is to protect the defaulting taxpayer from unfair surprise, sacrifice and forfeiture. *See, e.g., Folk v. Thomas*, 336 S.C. 466, 470, 520 S.E.2d 327, 330 (Ct. App. 1999) (construing § 12-51-40(d) "to protect against forfeiture"); *Manji*, S.E.2d at 838 ("The sound view is that all requirements of the law leading up to tax sales which 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.") (quoting *Osborne v. Vallentine*, 196 S.C. 90, 94, 12 S.E.2d 856, 858 (1941)).

In attempting to determine such intent, when confronted with an undefined statutory term we must give the word its usual and customary meaning. *See Adoptive Parents v. Biological Parents*, 315 S.C. 535, 446 S.E.2d 404 (1994); *see also Ray Bell Constr. Co., Inc. v. Sch. Dist. of Greenville County*, 331 S.C. 19, 26, 501 S.E.2d 725, 729 (1998) ("Where the terms of the statute are clear, the court must apply those terms according to their literal meaning."). A "description" is defined as "[a] delineation or account of a particular subject by the recital of its characteristic accidents and qualities." *Black's Law Dictionary* 445 (6th ed. 1990).

Here, the County's "description" of the parcel being sold and described as "a portion of Third Street. . . measuring and containing one and fifteen-hundredths (1.15) of an acre more or less" does not meet the definition usually prescribed, and therefore is contrary to the clear direction of the statute. This reading also comports with the statute's overriding objective to protect the defaulting taxpayer from unfair surprise and forfeiture. As stated *supra*, the

description of the tax map parcel property and subsequent legal description in the deed were inadequate, the sale must be vacated for want of jurisdiction. Moreover, the trial testimony established that lawful owner was unaware of the tax bill or sale (R. at __) Thus, the sale must be invalidated. To hold otherwise would result in a forfeiture to Dorothy Ayers, the lawful owner at the time of sale, and the EM Family Trust as innocent subsequent purchaser.

IV. THE COURT ERRED BY FAILING TO ADDRESS APPELLANTS' IMPLIED EASEMENT CLAIM.

The Master held that EM Family Trust failed to present any evidence of an implied easement. (R.at __). There was ample evidence of EM Family Trust's easement in 3rd Street to access Lot 114. Evidence at trial can be presented not only through testimony but also exhibits. South Carolina Rules of Evidence, Rule 104. Plaintiff's Trial Exhibit 1, Defendant's Trial Exhibit 11, and the trial transcript testimony all establish Appellants claim of ingress and egress easement. (R. at __) It is undisputed that EM Family Trust owned Lot 114 (R. at __) The deeds from the Estate of Charles Ayers and Dorothy Ayers to the EM Family Trust for the unopened portion of Third Street provided the sole access from 5th Avenue down 3rd Street to Lot 114. (R. at __) Moreover, the Remley's Point Plat from 1899 and the deed into EM Family Trust were also entered as evidence at trial. (R. at __). In addition, the filed pleadings established the affirmative defense of easement was asserted in EM Family Trust's answer and as such the Respondent was on notice of the easement assertion by EM Family Trust. (R. at __). Thus, there was admissible evidence before the Master-in-Equity to address the easement asserted by EM Family Trust. Furthermore, the Master should have ruled on the easement issue that was before the Court in the original order and the motion to reconsider.

The Supreme Court has held that when property is conveyed with reference to a plat, that plat becomes part of the deed, part of the chain of title, and gives constructive notice of [an]

appurtenant easement. *See Carolina Land Co., Inc. v. Bland*, 265 S.C. 98, 105, 217 S.E.2d 16, 19 (1975). As such, an easement that is referenced in a plat is dedicated to the use and owners of the lot and their successors in title. *Id.* In *Carolina Land Co., Inc. v. Bland*, the Court explained that "[g]enerally, where a deed which describes land as bounded by a way indicates that the way extends beyond the land conveyed, or there has been some other indication of the extent of the way, the grantee acquires a right to the way, not merely in front of his property, but also to the full extent of the way as indicated" *Id.* at 20.

Here, Appellants properly asserted an easement based on a recorded plat showing access to Lot 114 via Third Street on the Plat recorded at Book D-180 in Charleston County. (R. at __) It is clear that a tax sale does not extinguish easements without notice and opportunity to redeem. *See Joubert v. S.C. State Highway Dep't*, 161 S.C. 112, 159 S.E. 620 (1931). In this case, the tax sale, even if confirmed, cannot extinguish access rights per a recorded plat without findings to substantiate abandonment nor EM Family Trusts waiver of right to redeem. Moreover, the access easement, across closed Third Street to Lot 114, at a minimum, is an implied easement even if the grant in its deed was invalid. It would be inequitable to rule that all use by EM Family Trust's access rights is barred, even if the tax sale were confirmed.

Based upon the above, the Order extinguishing all of EM Family Trust's legal access to Lot 114 was improper and without legal authority. Therefore, the Order must be vacated.

V. **THE COURT ERRED IN GRANTING ADVERSE POSSESSION TO RESPONDENTS BECAUSE THEY LACKED CONTINUOUS USE FOR TEN YEARS ON THE TAX SALE PROPERTY FOR TMS #514-09-00-047.**

The Master's Order failed to find and the evidence at trial failed to establish that the Respondents met all of the required elements to establish a claim for adverse possession. A Plaintiff seeking adverse possession must establish: 1) hostile, 2) open, 3) continuous use for ten

years, 4) exclusive, 5) actual, and 6) notorious claim of ownership on a real estate parcel, in South Carolina, to be successful on its claim. *See Butler v. Lindsey*, 293 S.C. 466, 361 S.E.2d 621 (1987). Adverse possession requires exclusive use for ten years by a hostile owner for the entire property being claimed. *See Ware Shoals Mfg. Co. v. Jones*, 78 S.C. 211, 58 S.E. 811 (1907). Tacking by non-familial members who are successive occupants of a property is not allowed in South Carolina. *See Getsinger v. Midlands Orthopaedic*, 327 S.C. 424, 489 S.E.2d 223 (1997).

Here, Respondents failed to establish continuous use for ten (10) years on the tax mapped parcel 514-09-00-047 that was the subject of the tax sale. The unequivocal trial testimony of Mr. Grant established that the public used the property, as a public throughfare for many years prior to the tax sale and even after he purchased the property in 2004. (R. at __) Moreover, the unequivocal testimony of Mr. Mallace at trial, was that he did not continuously, for ten (10) years, occupy the entire tax parcel that is the subject of this action (R. at __) Additionally, the trial testimony of Mr. Mallace merely established that he only wanted to obtain title to a small portion of high ground of tax mapped parcel 514-09-00-047. (R.at __) Specifically, a review of the trial exhibits and trial transcript record simply established that the Mallace's claimed a small portion of the tax parcel at issue in this case. The record is devoid of hostile ownership for ten years for the entirety of the 1.15 acres that was the subject of the tax sale. (R. at __) The evidence at trial was insufficient to establish that the Respondents met all elements necessary to succeed on their adverse possession claim.

Based upon the above, the Court should not have held that the Respondents sustained their claim of adverse possession of the tax parcel at issue. As such, this finding and Order must be vacated.

CONCLUSION

For the foregoing reasons, this Court should reverse the Final Order confirming the tax sale of title tax mapped parcel 514-09-00-047 and extinguishing Appellants' vested easement property rights as the Master erred. Accordingly, Appellants respectfully request that this Court vacate the confirmation of the tax deed, restore title and easement rights as set forth herein, and remand for further proceedings consistent with this Court's opinion.

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December 10, 2025

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Master-in-Equity

The Honorable Mikell R. Scarborough

Common Pleas Case No.: 2023-CP-10-00192
Appellate Case No.: 2025-001402

Katie Lynn Mallace and Micah James Mallace, Respondents,

v.

Southeastern Capital Corporation; Krista Brown-Penney, Co-Trustee, EM Family Trust; and John Doe and Mary Roe, representing all unknown persons having or claiming to have any right, title, or interest in or to, or lien upon, the real estate described as a portion of Third Street shown on a plat recorded in the Office of the RMC for Charleston County in Plat Book D at Page 180, Charleston County, South Carolina, TMS# 999-00-00-366 formerly known as TMS# 514-09-00-047, their heirs and assigns, and all other persons, firms, or corporations entitled to the claim under, by or through the above-named Defendant(s), and all other persons or entities unknown claiming any right, title, interest, estate in, or lien upon, the real estate described as a portion of Third Street shown on a plat recorded in the Office of the RMC for Charleston County in Plat Book D at Page 180, Charleston County, South Carolina, TMS# 999-00-00-366 formerly known as TMS# 514-09-00-047, Defendants, of which EM Family Trust, David M. Bolach, and Terri Davis are the Appellants.

CERTIFICATE OF COUNSEL

The undersigned certified that this brief complies with Rule 211(b), SCACR.

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