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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Mikell R. Scarborough, Master-in-Equity

Trial Court Case No. 2010-CP-10-8732

Lashanda Ravenel and Henry Lee Ravenel, II..... Appellants,

v.

Equivest Financial, LLC .....Respondent.

APPELLANTS' PETITION FOR REHEARING

Appellants hereby submit this Petition for Rehearing pursuant to SCACR 221. Appellants respectfully request a rehearing based upon the Court's Decision and Opinion of December 23, 2013 which affirmed the decision of the Master-in-Equity validating the tax sale conducted by the Delinquent Tax Collector ("DTC") of Charleston County held on November 3, 2008.

Based upon the contents of the Court's Decision, Appellants believe the Court may have overlooked or misapprehended the law and the facts of this case as set forth in the record which may have caused the Court to reach its decision. Each of these is discussed more fully below.

A. The Court misapprehended the effect of its ruling regarding title to the property.

This Honorable Court found that the Appellants, Lashanda Ravenel and Henry Lee Ravenel, II did not have title to the property, subject to the tax sale and this action, for the deed from their mother, Mary Brooks Ravenel, to them, although recorded, was never delivered.

Title to real property must be vested at all times in someone or some entity.

The only conclusion which can be drawn based on the finding of this Court is title to the property remained in the name of Appellants' mother. Therefore, the tax sale could not and did not vest title to the property in Respondent's predecessor-in-title (hereinafter "Respondent") for Mrs. Ravenel was not a party to this action and could not have been divested of title.

The deed from the DTC does not contain any warranty of title. The DTC may sell at the tax sale and convey only that interest in a property that is in the name the defaulting taxpayer. The DTC conveyed to the Respondent all right, title and interest in the subject property of Appellants, which, according to this Court, was nothing. The ruling of the Court makes it clear that the tax sale is void.

The Respondent had knowledge during the trial of the purported non-delivery of the deed and the purported improper party thereto. Had it raised these issues at the time of the trial, as it was required to do, the pleadings could have been amended at that time to name the real party in interest and Mrs. Ravenel made a party, which would have promoted judicial economy and finality.

B. The Honorable Court misconstrued Rule 220(c) SCACR in its affirmance of the decision of the Master-in-Equity

Rule 220(c), Affirmance on Any Ground Appearing in Record, is very succinct and states: "[T]he appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."

This Court bases its opinion on its finding that there was such a ground in the Record on Appeal, failure to deliver the deed.

Actually there was no ruling, order, decision or judgment by the lower court which made such a ruling.

Instead, the lower court's ruling found on page 29 of the ROA is as follows:

> . . . Any interest held by the Plaintiffs or the Cross-Defendants is voided, ended, and terminated.
>
> 2. Title to the below described real property is quieted in Equivest Financial, LLC to the exclusion of the Plaintiffs or Cross-Defendants.

The fact that the deed was not delivered appears many times in the Record on Appeal with regard to Mrs. Ravenel's purported fraud on creditors.

The issue of the failure to deliver the deed which did not vest title in the property to Appellants appears for the first time in Respondent's Brief at page two.

A rule or statute is subject to interpretation by the Supreme Court to determine the intent thereof.

There was considerable disharmony among the South Carolina courts as to the exact meaning of Rule 220(c).

A case was decided on January 17, 2000 by the Supreme Court of South Carolina, *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000). In *I'On*, the Supreme Court held:

> The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment. An appellate court may not rely on Rule 220(c), SCACR, when the reason does not appear in the record, or when the court believes it would be unwise or unjust to do so in a particular case. It is within the appellate court's discretion whether to address any additional sustaining grounds.

The Court in *I'On* further found that

> . . . an appellate court is less likely to rely on such a ground when the respondent has failed to present it to the lower court. In such cases, the appellate court likely would perceive it as being unfair or unwise to resolve a case on a ground never mentioned by the respondent prior to appeal. Stated another way, the respondent may raise an additional sustaining ground that was not even presented to the lower court, but the appellate court is likely to ignore it.
>
> . . . the failure to present an additional sustaining ground to the lower court reduces the likelihood an appellate court will rely on it to affirm a judgment.

Finally, the Supreme Court in *I'On* noted it is important that issues be properly framed which "prevents a party from keeping an ace card up his sleeve - intentionally or by chance . . ." "A party may not neglect or ignore vices in the trial, then expect to assert those vices on appeal in case of disappointment at trial." *I'On, supra.*

The Respondent has failed to comply with the provisions of *I'On* and therefore, this Court's ruling is erroneous; for the failure to deliver the deed did not divest Mrs. Ravenel of any interest in her property.

The Respondent made no allegation or assertion in its Answer and Counterclaim claiming Henry and Lashanda were not proper parties nor did it assert that the non-delivery of the deed failed to divest Mrs. Ravenel of title to her property. These issues were not argued at the trial before the Master-in-Equity nor did Respondent request the lower court to dismiss the action as it was required to do, nor was there a ruling, order, decision or judgment by the lower court.

Appellants respectfully submit that to allow the present Order to stand would be improper, unfair, unwise and unjust.

It would be permitting the Respondent's "keeping an ace card up its sleeve," which the courts in South Carolina have historically looked upon with disfavor.

The Court, in its opinion, cited *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012), which is inapposite for the reason that the position taken by Respondent is not properly before the Court as above set forth.

As an additional reason for disaffirming the ruling of the lower court, Appellant would submit the following.

This Honorable Court cited *Donnan v. Mariner*, 339 S.C. 621, 626, 529 S.E.2d 754, 757 (Ct. App. 2000) for the doctrine in South Carolina that "[a] deed is not legally effective until it has been delivered." In the *Donnan* case, the Court of Appeals relied heavily on the case of *Godfrey v. Godfrey*, 182 S.C. 117, 188 S.E. 653 (S.C. Supreme Court 1936).

It is undisputed in this case that the deed from Mary Ravenel to her children was recorded on November 6, 2007 in Book H643 at page 159 in the RMC Office for Charleston County, South Carolina (ROA pg. 207).

In *Godfrey*, the South Carolina Supreme Court states:

> "Delivery of a deed to a proper officer to record, is such a delivery as consummates the deed." *Ingram v. Porter*, 4 McCord, 198.
>
> "When grantor delivered to the scrivener deeds in which his children were grantees, held, that there was a valid delivery." *Watson v. Cox*, 117 S.C. 24, 108 S.E. 168, 170.
>
> "A deed of conveyance, signed, sealed and recorded, will be considered as delivered, there being nothing to the contrary, except the absence of the conveyee at the time." *McDaniel v. Anderson*, 19 S.C. 211.
>
> "Where the grantor parts from a deed at its execution, that is a delivery of it; so if he retains the custody of it, but delivers it to a justice to take the proof of its execution, and afterwards to the proper offices for the recording of deeds, where it is recorded, this will be sufficient evidence of the delivery, to pass the interests conveyed to the grantees, though the grantor became repossessed of the original deed, and it is found among his papers after his death." *Dawson v. Dawson*, Rice, Eq. 243.

Appellants respectfully submit there was a delivery of a deed under South Carolina law and title was vested in the Appellants.

The finding of the Court in affirming the lower court presents an anomaly and is plainly contradictory on its face because the title cannot be solely vested in Appellants nor solely vested in Mrs. Ravenel. Such ruling would be repugnant to the rule and destructive of its obvious intent.

C. Due Process

Before a state may take property and sell it for unpaid taxes, the due process clause of the 14th Amendment requires the state to provide the owner with reasonable notice.

> Vital to our assessment of the sufficiency of the evidence are the provisions of our state and federal *Due Process Clauses*, which provide that no person shall be deprived of life,

> liberty, or property without due process of law. *U.S. Const. amend. XIV, § 1; S.C. Const. art. 1, § 3.* "The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review." *Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 171, 656 S.E.2d 346 350 (2008).* [Emphasis added.]
>
> . . . a claim of denial of due process must be analyzed with a two-party inquiry: (1) whether the interest involved can be defined as "liberty" or "property" within the meaning of the *Due Process Clause*; and if so (2) what process is due in the circumstances. [Emphasis added.] *State v. Binnar*, 400 S.C. 156, 733 S.E.2d 890 (2012).

The right of due process was reinforced in an opinion issued by the United States Supreme Court in *Jones v. Flowers*, 547 U.S. 220, 126 S. Ct. 1708 (2006). The *Jones* case was cited by the Supreme Court of South Carolina in the case of *State v. Binnar, supra.*

The opinion of this Honorable Court has resulted in property being taken without due process.

D. Due Diligence

This Honorable Court erred when it affirmed the lower court, for the DTC failed to provide due diligence.

It is admitted that certified mail receipts were returned to the DTC without the signature of Appellants.

In this event, the DTC is required to use due diligence to determine the best address pursuant to the laws of the state of South Carolina. *Good v. Kennedy*, 291 S.C. 204, 352 S.E.2d 708 (Ct. App. 1987), *Benton v. Logan*, 323 S.C. 338, 474 S.E.2d 446 (Ct. App. 1996) and the law of the Supreme Court of the United States in *Jones v. Flowers*.

The DTC admits there were documents of record long prior to the termination of the tax procedure which provided the correct addresses for Appellants.

The DTC acknowledged she had a procedure in place for due diligence as required by law to find the best address of the Appellants.

She admits that had she properly followed her procedure, the correct addresses for the Appellants would have been discovered and she could have nullified the sale, which she did not do.

Nonetheless, the lower court ruled as affirmed by this Honorable Court, the DTC followed the law because "a tax collector's actual knowledge is that of her own records, not the records of other officials or non-governmental sources." (Respondent's Brief, p. 6.)

To countenance such a position would lead to an incongruous principle not intended by the legislature which destroys safeguards for delinquent taxpayers. Despite the fact that the DTC's file is devoid of recorded deeds, automobile tax statements or other recorded documents which gave the correct address of the Appellants as a result of the failure of the DTC's staff to use due diligence to find such records, the tax sale would nonetheless be impervious to attack.

Respectfully submitted,

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Attorneys for Appellants

January 3, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2010-CP-10-8732

Lashanda Ravenel and Henry Lee Ravenel, II..... Appellants,

v.

Equivest Financial, LLC .....Respondent.

PROOF OF SERVICE

I certify that I have served the **Appellants' Petition for Rehearing** on Equivest Financial, LLC by sending a copy of it, postage prepaid, via certified mail, return receipt requested, on January 3, 2014, addressed to its attorneys of record, S.R. Anderson, Esquire, Law Office of Steven R. Anderson, Post Office Box 12188, Columbia, SC 29211 and James B. Richardson, Jr., Esquire, Law Office of James B. Richardson, Jr., 1229 Lincoln Street, Columbia, SC 29201.

January 3, 2014

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January 3, 2014

Via Federal Express
The Honorable Jenny A. Kitchings
Clerk of Court, South Carolina Court of Appeals
1205 Pendleton Street
Columbia, South Carolina 29201

Re: Lashanda Ravenel and Henry Lee Ravenel, II, Appellants v.
Equivest Financial, LLC, Respondent
Appellate Case No. 2012-212772
C/A No. 2010-CP-10-8732

Dear Ms. Kitchings:

Enclosed please find six (6) copies of Appellants' Petition for Rehearing in the above-entitled matter. Also enclosed is a check in the amount of $25.00 to cover the costs of filing and Proof of Service indicating service of the Appellants' Petition for Rehearing on opposing counsel.

If you have any questions or concerns, please do not hesitate to contact me.

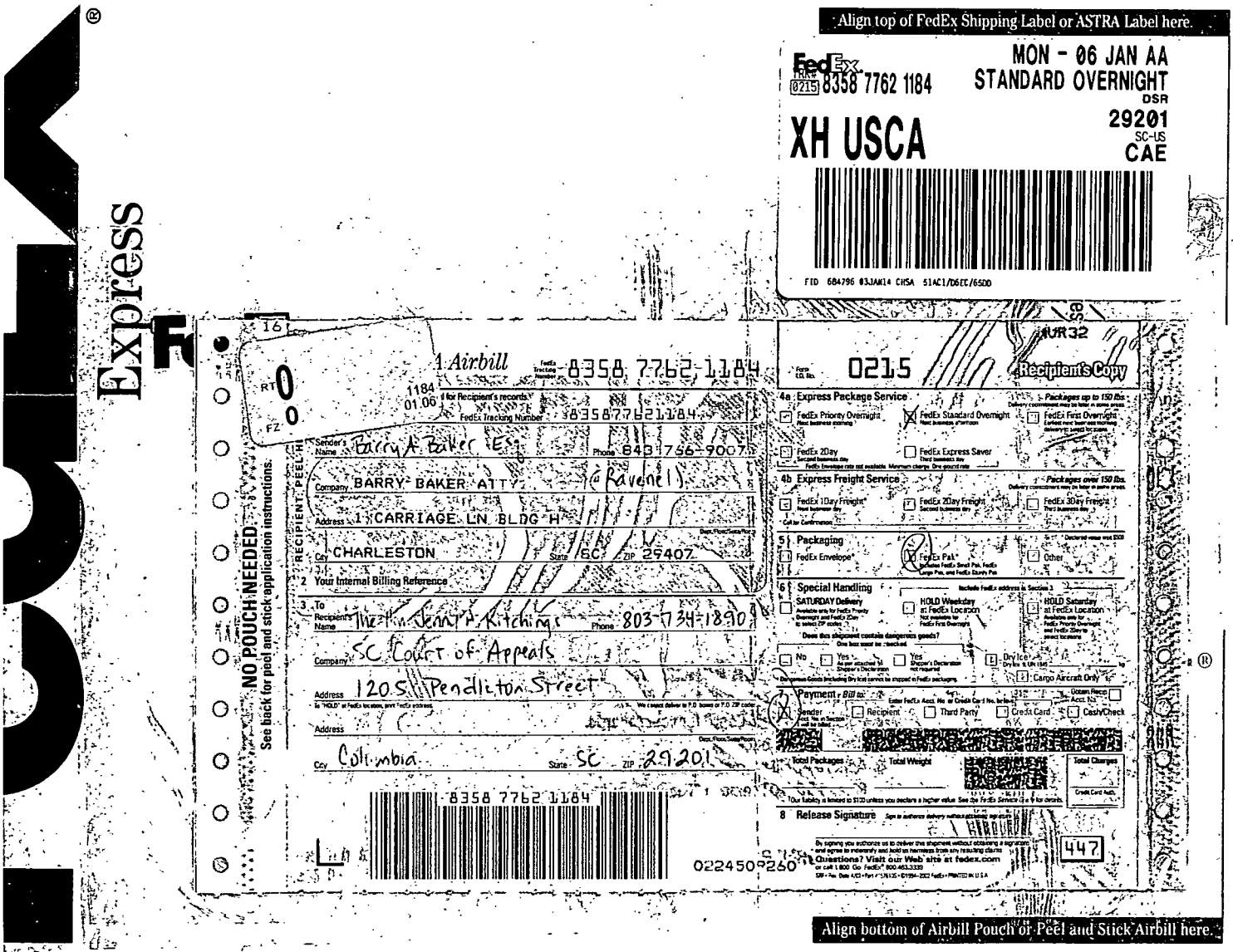
With thanks and kind regards, I am

Sincerely,

Benjamin Goldberg
Enclosures

cc: S.R. Anderson, Esquire (w/enclosures) *(via certified mail, RRR)*
James B. Richardson, Jr., Esquire (w/enclosures) *(via certified mail, RRR)*
Barry I. Baker, Esquire (w/enclosures)

BG/gm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Sender's Name Barry A Baker Esq Phone 843 756-9007

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