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JAN 15 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY 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.

RESPONDENT'S RETURN TO
APPELLANTS' PETITION FOR REHEARING

I. By whose fault was Mary Ravenel not made a party?

The plaintiffs-appellants, Mrs. Ravenel's children, claim that the defendant-respondent Equivest should have attempted to stop the trial and move for the addition of the plaintiffs' mother as a party when its counsel learned at trial that she had deeded the property to them in fraud of creditors.

Unlike the appellants, the respondent first learned at trial of the fraudulent transfer. By contrast, the appellants knew before they filed this action that their mother had not delivered a deed to the property. They knew nothing of the deed until they filed this action. With all the indicia of an undelivered — and hence ineffective — deed, they elected to proceed with this action to void the tax sale without their mother's participation as a party. It was not the respondent but the appellants who had an ace up their sleeves. In case they lost, they could always contend, as they have now, that the deed was ineffective and that their mother was the real party in interest.

Be that as it may, this is an action in which the plaintiffs sought to void the tax

sale, thus quieting title in themselves.¹ It was not incumbent upon the defendant to try to remedy the plaintiffs' deliberate failure to join a party as co-plaintiff who showed every sign of having been the actual owner of the property at the time of the tax sale.

II. Was the deed effective?

As the Court held, delivery of the deed is essential to the validity of a conveyance. Manual delivery is not essential. It is a question of the grantor's intent. The law on this subject was aptly summarized by the Court in *Donnan v. Mariner*, 339 S.C. 621, 627, 529 S.E.2d 754, 757 (Ct. App. 2000) (citations omitted):

A deed is not legally effective until it has been delivered. While there is no prescribed method for an effective delivery of a deed, manual transfer of the instrument into the hand of the grantee is neither required to effectuate a valid delivery, nor dispositive of the issue. The term delivery in this regard refers to "not so much a manual act but the intention of the maker . . . existing at the time of the transaction . . . and not subject to later change of mind." "Delivery of a deed includes, not only an act by which the grantor evinces a purpose to part with the control of the instrument, but a concurring intent thereby to vest the title in the grantee." "The controlling question of delivery in all cases is one of intention."

The cases cited on page 6 of the rehearing petition and attributed to the Supreme Court in the case of *Godfrey v. Godfrey*, 182 S.C. 117, 188 S.E. 653 (1936), are not found in the Supreme Court's opinion but in the reported order of the circuit court. The circuit court's description of the holdings in the cited cases is not attributable to the Supreme Court.

The basic question is one of intent, and here the entire evidence is conclusive that Mrs. Ravenel did not intend to convey actual ownership of her house to her children, nor did she intend to convey ownership of any of the other four properties conveyed to them on paper. The testimony — all of it coming from the appellants' own witnesses — proved that the appellants were unaware of the undelivered deed.

¹ In substance this is an action to invalidate a tax sale, but in form it is a quiet-title action. Title could never be quieted in the plaintiffs because they have never owned the property.

The deed was executed and recorded, not to convey title but to mislead creditors immediately before bankruptcy. Mrs. Ravenel testified that the property was hers. She continued to live in the house and to treat the property as her own. It was she who attempted to pay the delinquent taxes but failed. The appellants did not appeal the factual finding of the circuit court that the deed was never delivered to them, and this finding is the law of the case.

The appellants at first say that “the failure to deliver the deed did not divest Mrs. Ravenel of any interest in the property.” (Petition at 4.) Later they take the opposite position, saying that “there was a delivery of a deed under South Carolina law and title was vested in the Appellants.” (Petition at 6.) These inconsistent contentions provide no basis for a rehearing.

III. Remaining contentions.

The “due process” and “due diligence” contentions found at pages 6–8 of the petition repeat the issues not reached when the Court found that the appellants were not the owners of the property at the time of the tax sale. The merits of those contentions are not reached where the appellants cannot possibly quiet title to the property in themselves, having never owned it.

The Court’s dismissal of the appeal says nothing about Mrs. Ravenel’s rights in this matter. To the extent that her rights have been prejudiced by the passage of time, the fault is hers, beginning with her effort to mislead her creditors and ending with her decision not to challenge the tax sale in her own right as owner of the property, which she has always claimed to be.

CONCLUSION

There is no basis upon which to rehear the case.

Respectfully submitted,

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Attorneys for Respondent.

January 13, 2014.

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CERTIFICATE OF SERVICE

I certify that I served a copy of respondent's return to the appellants' petition for rehearing upon appellants' attorneys by first class mail, postage prepaid, addressed to them at their respective addresses of record, namely:

Barry I. Baker, Esq.
Attorney at Law
One Carriage Lane, Bldg. H
Charleston, SC 29407

Benjamin Goldberg, Esq.
Attorney at Law
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on January 14, 2014.


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February 14, 2013

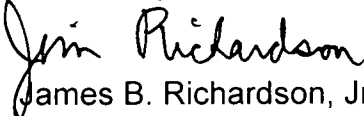
Honorable Jenny A. Kitchings
Clerk of the S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Ravenel v. Equivest Financial, LLC
2012-212772

Dear Ms. Kitchings:

Enclosed for filing is respondent's return to appellants' petition for rehearing.

Thanking you, I remain

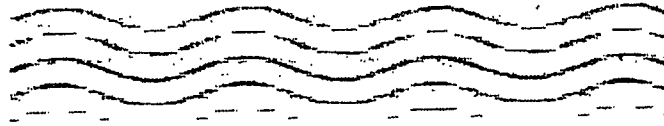
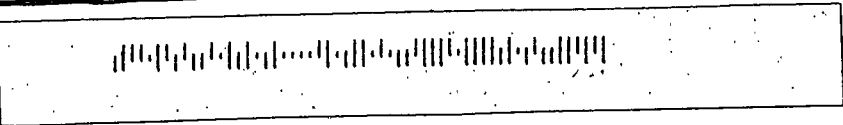
Yours very truly,

James B. Richardson, Jr.

cc: Barry L. Baker, Esq.
Benjamin Goldberg, Esq.
S. R. Anderson, Esq.

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James B. Richardson, Jr.
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 Columbia, South Carolina 29201

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