

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY
COURT OF COMMON PLEAS

Mikell R. Scarborough, Master-in-Equity

Case No. 2010-CP-10-8732

On Petition for a Writ of Certiorari
to the South Carolina Court of Appeals
Opinion No. 2013-UP-495

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MAR 28 2014

S.C. Supreme Court

Lashanda Ravenel and Henry Lee Ravenel, II, Petitioners,

v.

Equivest Financial, LLC, Respondent.

RESPONDENT'S RETURN TO
PETITION FOR A WRIT OF CERTIORARI

Respondent, Equivest Financial, LLC, makes the following return to petitioners' petition for a writ of certiorari:

1. Respondent's assignor purchased the subject real estate at a delinquent tax sale in 2008.
2. At the time of the tax sale, record title to the property was in the name of the petitioners as grantees in a deed from their mother, Mary Ravenel. Mrs. Ravenel executed and recorded the deed immediately before filing for bankruptcy but did not deliver the deed.
3. The petitioners brought this action to void a tax sale. The circuit court entered judgment in favor of the respondent. The Court of Appeals dismissed the petitioners' appeal on the ground that Mrs. Ravenel's deed to them was ineffective for lack of delivery, Mrs. Ravenel having had no intention to divest herself of title, as she

testified at trial. Mrs. Ravenel's testimony gave respondent its first knowledge that her deed to her children was ineffective.

4. In their certiorari petition, Mrs. Ravenel's children state that the circuit court ruled that title to the subject property "vested in Appellants", *i.e.*, in the children. On the contrary, the circuit court found that the deed into the children, being undelivered, was ineffective, although the circuit court chose to base its judgment against the children on other grounds. In the motion accompanying their certiorari petition, the children state that the Court of Appeals found that Mrs. Ravenel is presently the owner of the property. The Court of Appeals made no finding concerning who owns the property today, but only found that the deed to petitioners was ineffective so that the children had no standing to challenge the tax sale, and affirmed on that basis.

5. The petitioners base their petition upon the fact that they alleged in their complaint that they owned the subject property and the respondent admitted the allegation. The respondent did so in reliance upon the fact that their mother's deed to them had been recorded — the usual insignia of an effective conveyance. (The delinquent tax collector did so as well.) Not until the trial of the case did petitioners' mother testify that the deed was in fraud of creditors and had not been delivered. The petitioners in effect contend that respondent's failure to move to amend its answer at that point so as to deny the petitioners' ownership precludes the Court of Appeals from affirming the judgment upon this ground.

6. The petitioners cannot take advantage of the fact that their allegation of ownership misled the respondent, and was disproved at trial by their own witness. When the circuit court found as a fact that the deed into them was ineffective, the petitioners could and should have appealed that factual finding if they disagreed with it. They did not. The Court of Appeals acted within the rules when it chose to affirm

on this ground of record. See: *l'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000). If respondent's failure to amend its answer when Mrs. Ravenel testified as she did was error, it was harmless. The answer could be amended at any time, even after judgment. Rule 15(b), SCRCivP.

7. If Mrs. Ravenel wishes to contend that she remains the owner of the property, circuit court is the correct forum for that claim, and not certiorari to the Supreme Court in the name of her children.

Respectfully submitted,

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March 25, 2014.

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CERTIFICATE OF SERVICE

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

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on March 26, 2014.


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