THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Mikell R. Scarborough, Master-in-Equity

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

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

v.

Equivest Financial, LLC.....Respondent.

v.

Mary M. Scarborough, Delinquent Tax Collector for Charleston County; AAA Plumbing, LLC; Pep Boys, Manny, Moe and Jack; Monogram Credit Card Bank of Georgia; Discover Bank; SC Federal Credit Union; Alabama Credit Corp., d/b/a Preferred Teachers Association.....Cross-Defendants.

Supreme Court Case No. 2014-000320

PETITIONERS' REPLY TO RESPONDENT'S RETURN TO PETITION FOR A WRIT OF CERTIORARI

Petitioners for their Reply to Respondent's Return allege:

Respondent makes certain assertions to confirm their position that the deed from Mrs. Ravenel to her children was ineffective for failure to deliver and the title did not pass to the children but nonetheless vested in Respondent by reason of the deed to Respondent's predecessor by the Delinquent Tax Collector after the tax sale.

These assertions are without legal foundation as hereafter set forth.

ASSERTION I.

The Court of Appeals made no finding concerning who owns the property today but only found that the deed to Petitioners was ineffective for non-delivery. (Reply p. 2.)

If title did not pass from Mrs. Ravenel to her children as ruled by the Appellate Court, no citation of authority is necessary that the title must be somewhere at all times. Therefore, title must remain in Mrs. Ravenel. "It is a rule asserted from early times that no grant can exist without a grantee. This is, of course, axiomatic, for the title cannot pass from the grantor unless it passes to some one; . . ." *Allgood v. Allgood*, 134 S.C. 233, 132 S.E. 48 (1926).

There has been no other conveyance out of Mrs. Ravenel and she is living today.

Mrs. Ravenel was not a party to the instant action and the Court had no jurisdiction to disseize Mrs. Ravenel of her title. *Green Tree Servicing, LLC v. Adams*, 375 S.C. 583, 654 S.E.2d 100 (Ct. App. 2007).

Respondent has now filed a separate action in the Court of Common Pleas for Charleston County against Mrs. Ravenel seeking to quiet title to the disputed property which Respondent claims was sold to its predecessor at the tax sale. (New Action.)

Such an action is at least an acknowledgment that Mrs. Ravenel has a "claim of title." Otherwise a new action is patently a breach of the South Carolina Frivolous Proceedings Sanctions Act or an abuse of process.

ASSERTION II.

Respondent asserts that Mrs. Ravenel did not intend to convey her property to her children based on the affirmative defenses that the conveyance was in the fraud of her creditors and she came into Court with unclean hands even though not a party. (New Action.)

Respondent, in its Counterclaim to the instant action, raised no affirmative defenses.

While the lower court made findings of fact and conclusions of law as to fraud on creditors and unclean hands, the ruling by the lower court simply states the Delinquent Tax Collector properly followed the statutes and case law for tax sales and title passed from the Petitioners to Respondent's predecessor to the exclusion of the Petitioners and all other cross-defendants.

There was no ruling by the lower court as to fraud on creditors and unclean hands and Respondent did not file a Rule 59(e) SCRCP Motion to Alter or Amend. The ruling of the lower court became the law of the case.

Respondent, therefore, cannot rely on the affirmative defenses of fraud on creditors and unclean hands.

Robert Harmon and Bore, Inc. v. Jenkins, 282 S.C. 189, 318 S.E.2d 371 (Ct. App. 1984), "[i]n this instance, Judge Nicholson held that part performance could not remove the parol contract from the statute. His ruling became the law of the case; and since Harmon chose not to appeal it, he is bound thereby."

Petitioners could transfer no greater interest than they had themselves, which was none according to the Court of Appeals. *Von Elbrecht v. Jacobs*, 286 S.C. 240, 332 S.E.2d 568 (Ct. App. 1985).

ASSERTION III.

Respondent asserts that Mrs. Ravenel was in privity with her children, was represented by them in the instant case and she is thereby collaterally stopped *[sic.]* from making any claim to the disputed property. (New Action.)

In order for there to be collateral estoppel, Mrs. Ravenel's interest must have been represented at the trial.

The Petitioners did not and could not represent Mrs. Ravenel for it is admitted they knew nothing of the deed until just prior to trial and did not learn of its non-delivery until the trial, which is when Respondent gained such knowledge.

At the time of the trial, Petitioners were in no position to properly represent the interests of their mother.

> Nonmutual collateral estoppel may be asserted unless the party precluded lacked a full and fair opportunity to litigate the issue in the first action or other circumstances justify affording him the opportunity to relitigate the issue.

South Carolina Property and Casualty Ins. Guaranty Assoc. v. Wal-Mart Stores, Inc., 304 S.C. 210, 403 S.E.2d 625 (1991).

Respondent states "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." (Return, p. 3.)

Mrs. Ravenel was not a party.

This rule is one of civil procedure and not a rule of the Appellate Court and it is therefore inapposite.

ASSERTION IV.

In its new action, Respondent asserts the "owner of the subject property was obliged to redeem the property from tax sale within twelve months from the date of the delinquent tax sale." And, "[m]ore than twenty-four months having passed since the tax sale, the tax deed is incontestable on procedural or other grounds."

While the recitation of the statutes is correct, the conclusion is incorrect.

> This Court has held that "[t]ax sales must be conducted in strict compliance with statutory requirements." Further, the fact that the defaulting taxpayer has actual notice of the impending tax sale "is *insufficient* to uphold a tax sale absent strict compliance with statutory requirements." Finally, failure to give the required notice of a tax sale is a fundamental defect in the tax sale proceedings that renders the proceedings absolutely void.

Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 577 S.E.2d 202 (2003). (Citations omitted.)

There is little, if any, evidence that the DTC followed the tax statues or case law, thus rendering "the proceedings absolutely void."

CONCLUSION

For the reasons stated above and those previously set forth in Petitioner's Petition for a Writ of Certiorari, the Court should grant a Writ of Certiorari.

Respectfully submitted,

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April 3, 2014

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PROOF OF SERVICE

I certify that I have served **Petitioners' Reply to Respondent's Return to Petition for a Writ of Certiorari**, on Equivest Financial, LLC by sending a copy of it, postage prepaid, via the United States Postal Service, on April 3, 2014, addressed to its attorneys of record, S.R. Anderson, Esquire, Law Office of Steven R. Anderson, 2008 Marion Street, Suite J, Columbia, SC 29201 and James B. Richardson, Jr., Esquire, Law Office of James B. Richardson, Jr., 1229 Lincoln Street, Columbia, SC 29201.

April 3, 2014

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