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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Mikell R. Scarborough, Master-in-Equity

Opinion No. 2013-UP-495 (S.C. Ct. App. Filed Dec. 23, 2013)

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.

Appellate Case No. 2012-212772

AMENDED PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATION OF COUNSEL

Counsel for petitioners certify that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on January 24, 2014 and received by Petitioners' counsel on January 27, 2014.

QUESTIONS PRESENTED

- I. The lower court's ruling that title to the disputed property vested in Appellants, as admitted and conceded by Respondent, required no appeal by Appellants for it was favorable to Appellants, became the law of the case as Respondent filed no appeal and Respondent is bound by its admissions, concessions and failure to appeal.
- II. Additional litigation has been initiated which would be contrary to judicial economy, in addition to which, such litigation does not warrant consideration.

STATEMENT OF THE CASE

On November 6, 2007, Mrs. Mary Brooks Ravenel ("Mrs. Ravenel"), executed a deed to her children, Henry Ravenel, II and Lashanda Ravenel, the Appellants, whereby she conveyed to them five parcels of land for \$5.00 and love and affection. Included in the five parcels was the Ravenel home. (Appendix pp. 202-210, Ex. 24.)

It is acknowledged the taxes were not paid by Appellants for 2007 and a tax procedure was commenced against Appellants. Appellants received no statutory notice of the sale. Only the home, the property in dispute, was sold at a tax sale on November 3, 2008 to Respondent's predecessor-in-interest for the sum of \$130,000.00. (Appendix p. 198, Ex. 23.)

Mrs. Ravenel was not a party to the tax proceeding nor to this action to void the sale.

Upon expiration of the redemption period, the Delinquent Tax Collector ("DTC") delivered a deed to Respondent's predecessor conveying title to the property in dispute

dated July 23, 2010 and recorded in Book 0137 at page 821 on August 11, 2010. (Appendix pp. 198-201, Ex. 23.)

On September 13, 2010, the property was conveyed to Respondent by its predecessor-in-interest by deed which was recorded in the Charleston County RMC Office on October 4, 2010 in Book 0147 at page 241. (Appendix pp. 228-230, Ex. 41.)

On October 20, 2010, this action was initiated by Appellants on the grounds that the DTC did not strictly comply with the mandates of the tax statutes, the DTC did not use due diligence to find a better address for Appellants and there was no due process. (Appendix pp. 38-53.)

In the Complaint, Appellants alleged:

SECOND: The Plaintiffs obtained title to five (5) parcels of land by deed dated November 6, 2007, and recorded in the RMC Office of Charleston County in Book H-643, Page 159, on the same date. (Appendix p. 38.)

Respondent, in its Answer, admitted Paragraph Second. (Appendix p. 56.)

Respondent alleged no affirmative defenses. It filed a counterclaim in which it stated the tax sale was conducted in accordance with all appropriate statutes and:

14. The tax sale involving the property as described in Plaintiffs' Complaint was conducted in accordance with all appropriate statutes.

17. That the tax sale is valid and title to the subject real property should be confirmed in the Defendant to the exclusion of all other parties. (Appendix p. 58.)

Respondent's Answer was never withdrawn, altered or stricken.

Respondent also cross-claimed against a number of judgment creditors and against the DTC. The DTC was thereafter discharged by the Court.

The lower court found the DTC had complied with the requirements of the statutory tax procedure. (Appendix pp. 23-31.)

The lower court ruled:

1. The title to the subject real property is quieted in the Cross-Plaintiff Equivest Financial, LLC to the complete exclusion of the Plaintiffs and the Defendants named in the Cross-Complaint. Any interest held by the Plaintiffs or the Cross-Defendants in the subject real property 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. (Appendix p. 30.)

The deed from Mrs. Ravenel to her children, the Appellants, had been recorded. (Appendix p. 24.)

The lower court found the deed had not been delivered (Appendix p. 28), but made no ruling thereabout.

Respondent did not appeal the Order of the lower court.

The issue of failure to deliver was not raised until Respondent's final brief.

The Court of Appeals affirmed the lower court's ruling primarily based on the failure to deliver the deed.

The Court of Appeals' decision is dated December 23, 2013.

ARGUMENTS

I. The lower court's ruling that title to the disputed property vested in Appellants, as admitted and conceded by Respondent, required no appeal by Appellants for it was favorable to Appellants, became the law of the case as Respondent filed no appeal and Respondent is bound by its admissions, concessions and failure to appeal.

A. The ruling by the lower court that title vested in Appellants was favorable to the Appellants and therefore no appeal was required. *Southern Ry. Co., et al. v.*

Carroll, et al., 86 S.C. 56, 67 S.E. 4 (1910). “The defendant could not appeal from this ruling . . . , because the judgment was in his favor.”

B. Respondent is barred from raising the issue of failure to deliver the deed on the following grounds:

i. Respondent admitted in its pleadings that title to the property passed to Appellants and Respondent is therefore barred from raising a contrary issue, i.e., failure of delivery, as its Answer was not withdrawn, altered or stricken. “We consider the pleadings in this case in light of the general rule, that the parties to an action are judicially concluded and bound by such unless withdrawn, altered or stricken by amendment or otherwise.” *Elrod v. All*, 243 S.C. 425, 134 S.E.2d 410 (1964).

ii. Respondent conceded that title to the disputed property vested in Appellants. Having done so, it cannot raise this issue on appeal. “[I]ssue conceded in trial court cannot be argued on appeal.” *Ex parte McMillan v. Morin*, 319 S.C. 331, 461 S.E.2d 43 (1995).

iii. Respondent’s failure to challenge the ruling of the lower court that Appellants had title to the property in dispute is the law of the case, right or wrong. *First Union National Bank of South Carolina v. Soden*, 333 S.C. 554, 511 S.E.2d 372 (1998).

II. Additional litigation has been initiated which would be contrary to judicial economy, in addition to which, such litigation does not warrant consideration.

A. It appears that additional litigation has now occurred. Equivest Financial, LLC (“Equivest”) has moved before the Master-in-Equity of Charleston County to issue a Writ of Assistance to remove “the said Plaintiffs or Cross-Defendants, together with any and all persons whosoever claiming there under . . . ” This would include Mrs. Ravenel and her son, the Appellant, Henry Ravenel, II. Lashanda Ravenel no longer lives on the

property. Such a writ should not be granted for the Master-in-Equity no longer has jurisdiction since the matter is on appeal, the Master-in-Equity's Order did not reserve jurisdiction as alleged by Equivest in its Petition for Rule to Show Cause and a final order was issued.

The case of *Wachovia Bank v. Player*, 334 S.C. 200, 512 S.E.2d 129 (Ct. App. 1999) confirms that the Master has no jurisdiction.

The *Wachovia Bank* case was a mortgage foreclosure in which a default judgment was entered against the mortgagor who thereafter moved pursuant to Rule 60(b)(4) SCRPC claiming the order was void.

In *Wachovia Bank*, the order of reference provided that the master was authorized to:¹

Take the testimony arising under the pleadings and to make a final judgment in the case. An appeal from the final judgment entered to be made directly to the Supreme Court; provided further that the Master-in-Equity is hereby authorized to conduct the public sale at any specified time, instead of only the first Monday in the month. (Citations omitted.)

The Master ruled that he "will retain jurisdiction to do all necessary acts incident to this foreclosure, including, but not limited to, the issuance of a Writ of Assistance . . .".

Despite the addition of the language as to the ability to issue a Writ of Assistance, the Court of Appeals stated the Order of Reference "in this case authorized the Master to enter a final judgment, it did not authorize the Master to conduct hearings and issue orders after final judgment was entered."

¹ The Order of Reference in this case states: "

Once the Master ordered foreclosure, he had exercised the full extent of the power he possessed, i.e., he had entered a final judgment. (Reversed on other grounds.)

B. Equivest has also filed a new lawsuit against Mrs. Ravenel seeking a ruling by the Court vesting title in Equivest to the disputed property to the exclusion of Mrs. Ravenel despite the fact that the Court of Appeals ruled that title is now vested in Mrs. Ravenel and the appeal is pending, which bars Equivest from proceeding.

CONCLUSION

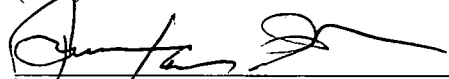
For the reasons stated, Petitioner requests the Court to grant the petition for a writ of certiorari.

February 25, 2014

Respectfully submitted,



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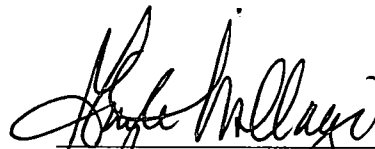
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PROOF OF SERVICE

I certify that I have served an **Amended 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 February 25, 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.

February 25, 2014



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