THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2012-CP-10-7919

Hallenbeck Sisters, LLC, ... Appellant,

v.

Ronald D. Hall and Mary M. Scarborough,
Solely in Their Capacities as Acting
Delinquent Tax Collector and Delinquent Tax
Collector, Respectively for Charleston County, SC, ... Respondents.

FINAL BRIEF OF RESPONDENTS

Joseph Dawson, III, County Attorney
Bernard E. Ferrara, Jr., Deputy County Attorney
Austin A. Bruner, Assistant County Attorney
Bradley A. Mitchell, Assistant County Attorney
Johanna S. Gardner, Assistant County Attorney
CHARLESTON COUNTY ATTORNEY'S OFFICE
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-4010

Attorneys for Respondents

RECEIVED
JAN 09 2014
SC Court of Appeals

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 2

STATEMENT OF THE FACTS 4

STANDARD OF REVIEW 6

ARGUMENTS 7

I. CHARLESTON COUNTY IS IMMUNE FROM LIABILITY BECAUSE APPELLANT RETAINS THE TITLE TO THE PROPERTY AND THE BIDDER HAS BEEN REFUNDED THE PURCHASE PRICE PLUS INTEREST ACCORDING TO STATUTE 7

A. The County is Not Liable for a Loss Resulting From the Assessment or Collection of Taxes or Enforcement of Tax Laws in Accordance with the Exception Found in § 15-78-60(11) 8

B. The County is Not Liable for a Loss Resulting From the Assessment or Collection of Taxes or Enforcement of Tax Laws in Accordance with the Exception Found in § 15-78-60(4) 12

C. The County is Not Liable for a Loss Resulting From the Assessment or Collection of Taxes or Enforcement of Tax Laws in Accordance with the Exception Found in § 15-78-60(3) 12

II. CHARLESTON COUNTY STRICTLY COMPLIED WITH THE STATUTORY REQUIREMENTS TO EFFECTUATE THE SALE OF THE PROPERTY FOR FAILURE TO PAY AD VALOREM PROPERTY TAXES 13

A. The Execution Notice and Official Notice of Levy are Valid on their Face 14

B. The Final Notice of Property Redemption Did Not Contain a Material Defect 17

CONCLUSION 19

TABLE OF AUTHORITIES

CASES **PAGE**

Adkins v. Varn, 312 S.C. 188, 439 S.E.2d 822 (1993) 8

ATC South, Inc. v. Charleston County, 380 S.C. 191, 669, S.E.2d 337 (2008) 15

Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69, (1999) 15

H & K Specialists v. Brannen, 340 S.C. 585,532, S.E.2d 617, 619 (2000). 8, 9, 10

Hawkins & Gryphon, Inc. v. Bruno Yacht Sales, 342 S.C. 352,
536 S.E.2d 698 (Ct. App. 2000) 6, 16, 17

Key Corporate Capital, Inc. v. County of Beaufort, 360 S.C. 513,
602 S.E.2d 104 (Ct. App. 2004) 6

Manji v. Blackwell, 323 S.C. 91, 473 S.E.2d 837 (Ct. App. 1996) 19

Richland County v. Carolina Chloride, Inc., 382 S.C. 634,
677 S.E.2d 892 (2008) 8

SPD Investment Company, LLC, a South Carolina Limited Liability Company v.
The County of Charleston, a body politic, and TransAm Financial Group
d/b/a Advantage 99 TD, Unpublished Opinion No. 2004-UP-039 . . . . . 10, 11

Steinke v. S.C. Dep't. of Labor, Licensing, and Regulation, 336 S.C. 373,
520 S.E.2d 142 (1999) 8

Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81,
221 S.E.2d 773 (1976) 6

STATUTES

S.C. Code Ann. § 12-51-40 . . . . . 12, 13, 14, 17

S.C. Code Ann. § 12-51-100 . . . . . 7, 9, 10

S.C. Code Ann. § 12-51-120 . . . . . 17, 18

S.C. Code Ann. § 15-78-60 . . . . . 7, 8, 9, 11, 12, 13

STATEMENT OF ISSUES ON APPEAL

I. DID THE CIRCUIT COURT ERR WHEN IT HELD THAT CHARLESTON COUNTY IS IMMUNE FROM LIABILITY BECAUSE APPELLANT RETAINS THE TITLE TO THE PROPERTY AND THE BIDDER HAS BEEN REFUNDED THE PURCHASE PRICE PLUS INTEREST ACCORDING TO STATUTE?

II. DID THE CIRCUIT COURT ERR WHEN IT FOUND THAT CHARLESTON COUNTY STRICTLY COMPLIED WITH THE STATUTORY REQUIREMENTS TO EFFECTUATE THE SALE OF THE PROPERTY FOR FAILURE TO PAY AD VALOREM PROPERTY TAXES?

STATEMENT OF THE CASE

On December 5, 2012, Appellant Hallenbeck Sisters, LLC ("Appellant" or "Hallenbeck") filed a complaint, as well as a motion for immediate temporary restraining order and notice of motion and motion for a temporary injunction, in the Charleston County Court of Common Pleas against Ronald D. Hall and Mary M. Scarborough, Solely in Their Capacities as Acting Delinquent Tax Collector and Delinquent Tax Collector, Respectively for Charleston County ("Charleston County" or the "County"). These pleadings and motions sought to set aside the County's 2011 tax sale as to certain real property for failure to pay 2010 ad valorem property taxes and to restrain the County from refunding a portion of $40,684.55 that Appellant paid to the County to redeem the property.

A hearing on Appellant's motion was held on December 13, 2012, before the Honorable Deadra L. Jefferson in the Charleston County Ninth Judicial Circuit Court. The Court issued a Form 4 Order, filed on December 17, 2012, directing the County to return the tax sale bid payment of $460,000 to the successful third-party bidder, and to retain $13,561.35 to be applied to the 2010 delinquent taxes and to hold the remaining $27,123.30 until a hearing on the merits of the matter and for both parties to submit Memoranda of Law to the trial judge for consideration. (R. at 2.)

Charleston County filed its answer on January 25, 2013. (R. at 27.) The hearing on the merits of the case was held on February 11, 2013, before the Honorable R. Markley Dennis, Jr. The Court denied Appellant's request to overturn the tax sale. (R. at 5.) Thereafter, Appellant filed a motion to amend findings or make additional findings

or in the alternative motion to alter or amend judgment. (R. at 41.) Upon the Court's instruction, the County submitted a proposed order granting defendants' motion for summary judgment. The Court issued the order dated May 7, 2013 and filed May 13, 2013. (R. at 8.)

Appellant filed and served its notice of appeal on June 3, 2013.

STATEMENT OF FACTS

This action involves the 2011 tax sale of real property known as the College Laundromat, located at 226 Calhoun Street, Charleston, South Carolina, previously owned by Aiquyen Thi Tiet ("Tiet"), for nonpayment of 2010 taxes. The property is identified as tax map parcel number 460-16-03-099.

Charleston County, through its delinquent tax collector, was in charge of noticing, advertising, and performing the sale of the real property. The County mailed an Execution Notice for the property to Tiet, c/o College Laundromat, 226 Calhoun Street, Charleston, SC 29401-1314, dated August 19, 2011. (R. at 67.) The County mailed an Official Notice of Levy for the property to Tiet at the same address by certified mail, return receipt requested-restricted delivery, dated October 7, 2011. (R. at 69.) Thereafter, the County advertised and sold the property in the name of Tiet, as the defaulting taxpayer on December 5, 2011.

On November 30, 2011, five days before the tax sale, Tiet conveyed the property to Hallenbeck Sisters, LLC by virtue of the document of conveyance titled Title to Real Estate from Aiquyen Thi Tiet to Hallenbeck Sisters, LLC. The deed was recorded on December 12, 2011, in Book 0222, Page 164 in the Office of the Register of Mesne Conveyance for Charleston County, South Carolina. Although the closing of the sale and conveyance of the property from Tiet to Hallenbeck occurred before the tax sale, no payment of the 2010 delinquent taxes was paid to the County at the time of the closing and conveyance of property to Appellant.

At the 2011 tax sale, the County sold the property for 2010 delinquent taxes.

RASC II, LLC ("RASC") was the successful bidder at the tax sale paying the full amount of the bid of $460,000 to the County for the property. The sale of the property to RASC initiated the one-year redemption period beginning December 6, 2011.

At that time, the 2011 tax bill had been mailed to Appellant which was due and payable no later than January 15, 2012, without penalty. On February 3, 2012, Appellant paid the 2011 taxes owed in the amount of $13,421.85 which amount was accepted by the County and applied to the 2011 delinquent taxes owed for the property.

Charleston County mailed a Final Notice of Property Redemption for the property to Appellant at 419 The PKWY # 140, Greer, SC 2965-4522 by certified mail, return receipt requested-restricted delivery, which Appellant received on November 7, 2012. (R. at 18.) The Notice states that the property was sold for taxes and may be redeemed by paying the taxes, assessments, penalties, costs, and interest in the amount of $56,267.18, which included the 2011 taxes that were already paid by Appellant. Appellant redeemed the property on December 4, 2012, paying $40,684.55 to the County, which represents the delinquent 2010 taxes, assessments, penalties, and costs of $13,561.35 and interest of $27,123.20.

STANDARD OF REVIEW

On appeal, the applicable standard of review is specific to each of the legal or equitable actions contained in the single lawsuit. Key Corporate Capital, Inc. v. County of Beaufort, 360 S.C. 513, 516, 602 S.E.2d 104, 106 (Ct. App. 2004), overruled on other grounds by Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 644 S.E.2d 675 (S.C. 2007) (citations omitted). An action to set aside a tax sale lies in equity. Hawkins & Gryphon, Inc. v. Bruno Yacht Sales, 342 S.C. 352, 359, 536 S.E.2d 698, 701 (Ct. App. 2000) (citations omitted). In an action at equity, the appellate court can find facts in accordance with its view of the preponderance, or the greater weight, of the evidence. Key Corporate, 373 S.C. 55, 644 S.E.2d 675 (S.C. 2007) (citations omitted). "'In an action at law, tried without a jury, the appellate court standard of review extends only to the correction of errors of law.'" Id. Furthermore, "in an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings. Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (S.C. 1976).

ARGUMENTS

I. CHARLESTON COUNTY IS IMMUNE FROM LIABILITY BECAUSE APPELLANT RETAINS THE TITLE TO THE PROPERTY AND THE BIDDER HAS BEEN REFUNDED THE PURCHASE PRICE PLUS INTEREST ACCORDING TO STATUTE.

Appellant mistakenly believes that the County would have no immunity under the South Carolina Tort Claims Act if this Court overturns the tax sale. Appellant claims that if this Court overturns the tax sale then it would be entitled to a refund of the statutory interest it paid to RASC pursuant to S.C. Code Ann. § 12-51-100, to redeem the property; and therefore, the statutory interest it paid to RASC would be a ministerial act not subject to immunity. This assertion is not a correct application of the law. As a political subdivision of the State of South Carolina, Charleston County is immune from liability for any and all losses allegedly resulting from actions taken in the assessment or collection of taxes and the other governmental functions in accordance with the South Carolina Tort Claims Act. South Carolina Code Ann. § 15-78-60 provides:

> The governmental entity is not liable for a loss resulting from:
>
> (3) execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process;
>
> . . .
>
> (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;
>
> . . . .
>
> (11) assessment or collection of taxes or special assessments or enforcement of tax laws; . . . .

Id. at § 15-78-60(3), (4), (11). Exceptions to waiver of immunity.

When Appellant was conveyed title to the property, the 2010 delinquent taxes were not paid. To date Appellant retains title; therefore, Appellant has not suffered damages in that regard. Upon Appellant redeeming the property, the County refunded the purchase price plus interest to the bidder according to statute. Any damage suffered by Appellant was due to Appellant's failure to satisfy the 2010 delinquent taxes when it became the owner of the property, which resulted in a tax sale by the County. "The exceptions listed in § 15-78-60 should be liberally construed to limit liability." Richland County v. Carolina Chloride, Inc., 382 S.C. 634, 650, 677 S.E.2d 892, 900 (2008) quoting Steinke v. S.C. Dep't. of Labor, Licensing, and Regulation, 336 S.C. 373, 393, 520 S.E.2d 142, 152 (1999). "The provisions of Section 15-78-60(4) are clear and unambiguous on their face, and are not subject to judicial interpretation." Adkins v. Varn, 312 S.C. 188, 192, 439 S.E.2d 822, 824 (1993). As such, the County is immune from liability under the South Carolina Tort Claims Act.

A. The County is Not Liable for a Loss Resulting From the Assessment or Collection of Taxes or Enforcement of Tax Laws in Accordance with the Exception Found in § 15-78-60(11).

The County is not liable for a loss resulting from the assessment or collection of taxes or enforcement of tax laws pursuant to S.C. Code Ann. § 15-78-60(11). Appellant believes H&K Specialists v. Brannen stands for the proposition that if this Court sets aside the tax sale then Appellant would be entitled to a refund presumably from the County and the County would have no immunity defense. This is a misapplication of H&K Specialists v. Brannen and South Carolina law. See H&K Specialists v. Brannen, 340 S.C. 585, 587, 532, S.E.2d 617, 619 (2000). In H&K, Beaufort County failed to

refund H&K the purchase price when the tax sale was set aside, which the Court stated was a "ministerial act separate and distinct from assessing, collecting or enforcing tax laws against a taxpayer." H&K Specialists v. Brannen, 340 S.C. 585, 587, 532, S.E.2d 617, 619 (2000). Beaufort County asserted S.C. Code Ann. § 15-78-60(11) as a defense. The Court of Appeals rejected the immunity defense of Beaufort County stating "the loss would have to be the result of the county's 'assessment or collection of taxes or .... enforcement of tax laws,'" not for Beaufort County's refunding money to the wrong party.

In this case, Charleston County held a tax sale on December 5, 2011, to enforce the payment and collection of delinquent property taxes. The County sold the property at the tax sale to RASC, the successful bidder at the tax sale. RASC paid the full amount of the bid of $460,000 to Charleston County for the property on the date of the tax sale. Five days before the tax sale, the delinquent taxpayer conveyed the property to Appellant by deed dated November 30, 2011, and recorded December 12, 2011. Appellant redeemed the property on December 4, 2012, by paying the 2010 delinquent taxes of $13,561.35 plus interest on the bid amount of $27,123.20 pursuant to S.C. Code Ann. § 12-51-100. S.C. Code Ann. § 12-51-100 provides that:

> Upon the real estate being redeemed, the person officially charged with the collection of delinquent taxes shall cancel the sale in the tax sale book and note thereon the amount paid, by whom and when. The successful purchaser, at the delinquent tax sale, shall promptly be notified by mail to return the tax sale receipt to the person officially charged with the collection of delinquent taxes in order to be expeditiously refunded the purchase price plus the interest provided in Section 12-51-90.

S.C. Code Ann. § 12-51-100. Cancel of sale upon redemption; notice to purchaser; refund of purchase price.

Once the redemption was accomplished by Appellant, the terms of S.C. Code Ann. § 12-51-100 were triggered, and RASC was entitled to the twelve percent interest on its bid. Because Appellant redeemed the property, the County refunded RASC its purchase price of $460,000 plus the interest of $27,123.20 according to the statute. Unlike Beaufort County in H&K, Charleston County has immunity because Appellant's loss is the result of the County's assessment or collection of taxes and enforcement of tax laws. In H&K, Beaufort County refunded the purchase price plus statutory interest to the defaulting taxpayer, not to H&K, the successful tax sale bidder. Since the property was redeemed, RASC was entitled per statute to interest; and therefore, it was the correct party to receive the statutory payment. Charleston County simply followed the tax sale procedure when Appellant redeemed the property and forwarded the purchase price plus statutory interest to the successful bidder.

Furthermore, in an unpublished opinion the South Carolina Court of Appeals in SPD Investment Company, LLC, a South Carolina Limited Liability Company v. The County of Charleston, a body politic, and TransAm Financial Group d/b/a Advantage 99 TD; considered the County's immunity defense pursuant to S.C. Code Ann. § 15-78-60(11) where the taxpayer SPD claimed damages for interest fees it incurred from borrowing money to redeem property it lost at a tax sale. Although the SPD Court found a defect in the tax sale, the SPD Court concluded that the County was enforcing the tax laws against SPD when it failed to timely pay its ad valorem property taxes. The SPD

Court stated that the purpose of the Tort Claims Act is "to shield the County from liability when taxpayers lose property as a result of a faulty tax sale." SPD Investment Company, LLC, a South Carolina Limited Liability Company v. The County of Charleston, a body politic, and TransAm Financial Group d/b/a Advantage 99 TD, Unpublished Opinion No. 2004-UP-039. Therefore, the County has immunity from the loss and/or damages claimed by Appellant.[1]

The SPD case is distinguishable from H&K Specialists v. Brannen and the misguided analogy offered by Appellant in this case. In H&K, the Court of Appeals found that S.C. Code Ann. § 15-78-60(11) was inapplicable, because the successful bidder's money was refunded to the wrong party, which has nothing to do with the collection of taxes. Here, Appellant is more like Brannen (the defaulting taxpayer) rather than H&K Specialists (the bidder) who did not receive a refund of its bid at the tax sale. The H&K Court found that, "[m]oreover, the discernible purpose behind the immunity provision contained in subsection (11) is to afford a governing entity protection from suit by persons like the Brannens who lose property because of a faulty tax sale, not to shield the entity from liability for refunding money to the wrong party." H&K Specialists v. Brannen, 340 S.C. 585, 587, 532, S.E.2d 617, 619 (2000). SPD, Brannen, and the

[1] The Tort Claims Act defines "loss" to include "any other element of actual damage recoverable in actions for negligence." See S.C. Code Ann. § 15-78-30(g). In this case, Appellant's loss, if any, was caused by its own failure to pay the delinquent taxes at the sale of the property from the defaulting taxpayer to Appellant. Payment by Appellant of the interest provided in Section 12-51-90 when it redeemed the property from tax sale is the result of the County's assessment or collection of taxes or enforcement of tax laws pursuant to S.C. Code Ann. § 15-78-60(11), as well as, the enforcement or compliance with any law pursuant to § 15-78-60(4). It is not because of a ministerial act as discussed in H&K.

Appellant all claim losses resulting from alleged errors with the tax sale, which the government is immune from damages. Appellant's loss, if any, was caused by its own failure to pay the 2010 delinquent taxes when Tiet, the defaulting taxpayer, sold the property to Appellant. Payment by Appellant of the amount to redeem the property from a tax sale is the result of the County's assessment or collection of taxes or enforcement of tax laws. It is not because of a ministerial act or any other act not covered under the Tort Claims Act.

B. The County is Not Liable for a Loss Resulting From the Assessment or Collection of Taxes or Enforcement of Tax Laws in Accordance with the Exception Found in § 15-78-60(4).

Charleston County further claims immunity under exception (4) that any alleged damage claimed by Appellant arises as a result of the County's enforcement or compliance with the adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid. Clearly the County was enforcing the statutory procedure for the collection of taxes found in S.C. Code Ann. § 12-51-40 et seq. And the enforcement or compliance of that law specifically grants the County governmental immunity pursuant to the exception.

C. The County is Not Liable for a Loss Resulting From the Assessment or Collection of Taxes or Enforcement of Tax Laws in Accordance with the Exception Found in § 15-78-60(3).

Charleston County further claims immunity under exception (3) that any alleged damage claimed by Appellant arises as a result of the County's execution, enforcement, or lawful implementation of any process. The County was executing and enforcing the process and procedure for the collection of property taxes. And the County's execution,

enforcement, or lawful implementation of that process specifically grants the County governmental immunity.

Appellant does not contend that the County failed to mail the notices of delinquent property taxes, assessments, penalties, and costs to the defaulting taxpayer. Instead, it alleges the content of the notices are insufficient. This is based on Appellant's construction of Section 12-51-40(b) and its interpretation of the content in the notices. Appellant does not allege the failure of lawful implementation of that process required under Section 15-78-60(3).

II. CHARLESTON COUNTY STRICTLY COMPLIED WITH THE STATUTORY REQUIREMENTS TO EFFECTUATE THE SALE OF THE PROPERTY FOR FAILURE TO PAY AD VALOREM PROPERTY TAXES.

Appellant argues the tax sale is invalid because the County failed to strictly comply with the statutory notice requirements leading up to the tax sale. "'Tax sales must be conducted in strict compliance with statutory requirements.' Ryan Inv. Co. v. Richland County, 335 S.C. 392, 395, 517 S.E.2d 692, 693 (1999) (citing Dibble, 274 S.C. at 483, 265 S.E.2d at 675). '[A]ll requirements of the law leading [40] up to tax sales which are intended for the protection of the taxpayer against surprise or the sacrifice of his property are to be regarded [as] mandatory and are to be strictly enforced.' Donohue v. Ward, 298 S.C. 75, 83, 378 S.E.2d 261, 265 (Ct. App. 1989) (citing Osborne v. Vallentine, 196 S.C. 90, 94, 12 S.E.2d 856, 858 (1941)). 'Even actual notice is insufficient to uphold a tax sale absent strict compliance with statutory requirements.' Ryan Inv. Co. v. Richland County, 335 S.C. at 395, 517 S.E.2d at 693. 'Failure to give the required notice [of a tax sale] is a fundamental defect in the tax sale

proceedings which renders the proceedings absolutely void.' Rives v. Bulsa, 325 S.C. 287, 293, 478 S.E.2d 878, 881 (Ct. App. 1996).'" King v. James, 388 S.C. 16, 25, 694 S.E.2d 35, 40 (Ct. App. 2010). The County claims it strictly complied with the statute; therefore, Appellant's relief should be denied.

South Carolina Code Ann. § 12-51-40(b) provides:

> (b) If the taxes remain unpaid after thirty days from the date of mailing of the delinquent notice, or as soon thereafter as practicable, take exclusive possession of the property necessary to satisfy the payment of the taxes, assessments, penalties, and costs. In the case of real property, exclusive possession is taken by mailing a notice of delinquent property taxes, assessments, penalties, and costs to the defaulting taxpayer and any grantee of record of the property at the address shown on the tax receipt or to an address of which the officer has actual knowledge, by "certified mail, return receipt requested-restricted delivery" pursuant to the United States Postal Service "Domestic Mail Manual Section S912". If the addressee is an entity instead of an individual, the notice must be mailed to its last known post office address by certified mail, return receipt requested, as described in Section S912. In the case of personal property, exclusive possession is taken by mailing the notice of delinquent property taxes, assessments, penalties, and costs to the person at the address shown on the tax receipt or to an address of which the officer has actual knowledge. **All delinquent notices shall specify that if the taxes, assessments, penalties, and costs are not paid before a subsequent sales date, the property must be duly advertised and sold for delinquent property taxes, assessments, penalties, and costs**. The return receipt of the "certified mail" notice is equivalent to "levying by distress".

S.C. Code Ann. § 12-51-40(b). Default on payment of taxes; levy of execution by distress and sale; notice of delinquent taxes; seizure of property; advertisement of sale. (Emphasis added).

A. The Execution Notice and Official Notice of Levy are Valid on their Face.

Appellant alleges the Execution Notice and Official Notice of Levy mailed by Charleston County to the defaulting taxpayer create an artificial deadline for payment

before the sales date, contrary to the actual wording of the statute requiring that the notices specify that past dues taxes must be paid "before a subsequent sales date." Appellant was not the owner of the property when the Execution Notice and Official Notice of Levy were mailed by the County to the initial defaulting taxpayer. Therefore, Appellant lacks standing to challenge any alleged deficiency with these notices.[2]

---

[2] Appellant does not have standing to bring an action contesting the insufficiency of notices to the defaulting taxpayer; therefore, it is not entitled to have this Court set aside the tax sale. "Standing may be acquired: (1) by statute; (2) through the rubric of 'constitutional standing;' or (3) under the 'public importance' exception." ATC South, Inc. v. Charleston County, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008). Appellant has no constitutional standing because it cannot satisfy the three-part test to establish constitutional standing. The test is stated in ATC as follows:

> First, the plaintiff must have suffered an "injury in fact"- an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or hypothetical,' " Second, there must be a causal connection between the injury and the conduct complained of-the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result {of} the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

ATC, 380 S.C. 340.

Appellant cannot satisfy the second requirement because there is no connection between its injury and the conduct complained of by the County. The injury is not traceable to the challenged actions of the County – the alleged insufficient notices. Instead, the injury of Appellant is traceable to its own actions. At the closing of the sale and conveyance of the property from the defaulting taxpayer to Appellant on November 30, 2011, the parties did not account for, nor make, the payment of the 2010 delinquent taxes on the property.

Finally, Appellant cannot assert standing under the public importance doctrine. "The key to the public importance analysis is whether a resolution is needed for future guidance. It is this concept of 'future guidance' that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance." Id. at 341, citing Baird v. Charleston County, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999) ("[A] court may confer standing upon a party when an issue is of such public importance as to require its resolution for future guidance").

"For a court to relax general standing rules, the matter of importance must, in the context of the case, be inextricably connected to the public need for court resolution for future guidance." Id. at 341. If this Court finds that the Appellant's situation is a matter of importance, it is not so connected to the public need for this Court to resolve for future guidance. If Appellant has standing to challenge the notices mailed to the defaulting taxpayer, this Court would allow standing to all parties, i.e., the defaulting taxpayer, mortgagor, a grantee from the owner, a mortgagee, a judgment creditor, or lessee of the property, to challenge any notice mailed to any of the parties in a tax sale case. It allows a party with unclean hands to challenge the notices sent to another party in instances when the other party does not challenge the notices. Appellant's efforts to cloak its challenge to the tax sale notices fail as a matter of

Notwithstanding Appellant's lack of standing, the Execution Notice states in part:

> ALL REAL ESTATE TAXES MUST BE PAID ON OR BEFORE 5:00 P.M. ON DECEMBER 2, 2011 IN ORDER TO AVOID HAVING THE PROPERTY SOLD AT TAX SALE.

The Official Notice of Levy states in part:

> ALL REAL PROPERTY TAXES MUST BE PAID ON OR BEFORE 5:00 P.M. 12/02/2011 TO AVOID TAX SALE ON 12/05/2011 RETURN RECEIPT OF THIS NOTICE SHALL BE DEEMED EQUIVALENT TO "LEVINYING BY DISTRESS".

In Hawkins v. Bruno Yacht Sales, Inc., the South Carolina Supreme Court agreed with the South Carolina Court of Appeals that the levy notice mailed by Beaufort County to Hawkins included an artificial deadline for payment. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 38, 577 S.E.2d 202, 206 (2003). Hawkins failed to pay taxes and penalties on a 52-foot sailboat. In August 1995, Beaufort County sent two notices of delinquent taxes to Hawkins. The first notice contained the following statement:

> IF NOT PAID ON OR BEFORE 31 AUGUST THIS PROPERTY WILL BE DULY ADVERTISED AND SOLD FOR DELINQUENT TAXES AS DESCRIBED ABOVE ON THE FIRST MONDAY IN OCTOBER THIS YEAR. RETURN OF THIS "CERTIFIED RECEIPT" SHALL BE DEEMED EQUIVALENT TO "LEVYING BY DISTRESS."

The second notice contained the following statement:

> ALL TAX PAYMENTS MUST BE RECEIVED BY SEPTEMBER 15, 1995 TO AVOID YOUR NAME AND PROPERTY BEING ADVERTISED IN THE BEAUFORT GAZETTE AND THE ISLAND PACKET.

In Hawkins, Beaufort County had two dates to pay the taxes that were well before the sales date, August 31 and September 15. The Court in Hawkins said "[b]ecause

---

public importance.

the sales date in this instance was October 2, the Court of Appeals found that the August 31 and September 15 deadlines were artificial, and gave the impression that Hawkins had to pay the taxes weeks before the date of sale. We agree with the Court of Appeals' holding on this issue." Id.

The Hawkins case is distinguishable from the case before this Court. Charleston County does not have two dates to pay the taxes that are before the sales date. Instead, Charleston County has only one date to pay the taxes before the sales date. The County's notices state December 2 is the last date, which is the actual date, the last business day, to pay the taxes before the tax sale on Monday, December 5. The County is not in business on Saturday or Sunday to accept payment of taxes on delinquent properties. The County's notices clearly specify that if the taxes, assessments, penalties, and costs are not paid before a subsequent sales date, the property will be sold at tax sale. Therefore, the Execution Notice and Official Notice of Levy mailed to the defaulting taxpayer are valid on their face and comply with the statute.

B. The Final Notice of Property Redemption Did Not Contain a Material Defect.

Appellant also alleges the Final Notice of Property Redemption contained a material defect and did not strictly comply with statutory requirements. However, the notice did, in fact, comply with statutory requirements.

Section 12-51-120 provides:

> Neither more than forty-five days nor less than twenty days before the end of the redemption period for real estate sold for taxes, the person officially charged with the collection of delinquent taxes shall mail a notice by "certified mail return receipt requested-restricted delivery" as provided in Section 12-51-40(b) to the defaulting taxpayer and to a grantee, mortgagee, or lessee of the property of record in the appropriate public records of the county. The notice must be mailed to the best address of the owner available to the person officially charged with the collection of delinquent taxes that the real property described on the notice has been sold for taxes and if not redeemed by paying taxes, assessments, penalties, costs, and interest at the applicable rate on the bid price in the total amount of ___ dollars on or before ___ (twelve months from date of sale) (date) _____, a tax title must be delivered to the successful purchaser at the tax sale.

Section 12-51-120. Notice of approaching end of redemption period.

The Final Notice of Property Redemption contained each of the elements contained in the statute. Specifically, it listed the redemption amount of $40,684.55 and 2011 tax amount of $15,582.63 totaling $56,267.18. The redemption amount included the unpaid 2010 taxes of $13,561.35 plus interest on the bid amount of $27,123.20. It is undisputed that Appellant had previously paid the 2011 tax amount of $13,421.85. However, the County applies payment of taxes first to the year upon which the tax sale was based. Thus, the County applied Appellant's payment of $13,421.85 (2011 taxes) to the outstanding 2010 tax amount of $13,561.35. Appellant's payment was not sufficient to pay the 2010 taxes. The fact that Appellant previously paid the 2011 taxes does not alleviate its duty to pay the remaining amount of unpaid 2010 taxes. Appellant is not alleviated of its duty to redeem the property by "paying taxes, assessments, penalties, costs, interest and 2011 Taxes" as stated on the Final Notice.

Case law provides that "'where a statute requires as a condition precedent to

foreclosing a taxpayer's right in property sold for taxes that he be given notice of his right to redeem, such a requirement is 'generally regarded as jurisdictional, and therefore, the owner's right of redemption cannot be cut off unless the required notice is given.'" Manji v. Blackwell, 323 S.C. 91, 94, 473 S.E.2d 837, 838 (Ct. App. 1996) (citations omitted). Here, after Appellant paid 2011 taxes instead of 2010 taxes, the County provided notice to Appellant of its right to redeem the property. The County claims it strictly complied with the law and should not be responsible for Appellant choosing to pay the wrong amount of taxes and the inequity that has resulted to Appellant from its actions. Appellant neglected to pay the 2010 taxes. If Appellant had paid the 2010 taxes, assessment, penalties and costs that were due when it made partial payment on February 3, 2012, no notice of redemption would have been sent to Appellant on November 2, 2012. The fact that Appellant previously paid a portion of the 2010 taxes does not change the requirement that the 2011 taxes must be paid prior to Appellant rightfully redeeming the property. Appellant cannot now try to gain some benefit by virtue of the County including the 2011 tax assessment as required on the notice when it decided to redeem the property two days before the expiration of the redemption period on December 6, 2012.

CONCLUSION

This Court should deny the relief sought by Appellant. This Court should grant Charleston County immunity from liability for any and all of Appellant's losses resulting from actions taken in the assessment or collection of delinquent taxes.

This Court should affirm the lower court's finding that that the notices mailed to

the defaulting taxpayer are valid.

Respectfully submitted,

RONALD D. HALL AND MARY M. SCARBOROUGH, SOLELY IN THEIR CAPACITIES AS ACTING DELINQUENT TAX COLLECTOR, RESPECTIVELY FOR CHARLESTON COUNTY, SC

JOSEPH DAWSON, III, County Attorney
BERNARD E. FERRARA, JR., Deputy County Attorney
AUSTIN A. BRUNER, Assistant County Attorney
BRADLEY A. MITCHELL, Assistant County Attorney
JOHANNA S. GARDNER, Assistant County Attorney
CHARLESTON COUNTY ATTORNEY'S OFFICE
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-4010

ATTORNEYS FOR RESPONDENTS

Charleston, South Carolina
January 8, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2012-CP-10-7919

Hallenbeck Sisters, LLC, ... Appellant,

v.

Ronald D. Hall and Mary M. Scarborough,
Solely in Their Capacities as Acting
Delinquent Tax Collector, Respectively for
Charleston County, SC, ... Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Respondents complies with Rule 211(b), SCACR.

Joseph Dawson, III, County Attorney
Bernard E. Ferrara, Jr., Deputy County Attorney
Austin A. Bruner, Assistant County Attorney
Bradley A. Mitchell, Assistant County Attorney
CHARLESTON COUNTY ATTORNEY'S OFFICE
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-4010
Attorneys for Respondents

Charleston, South Carolina
January 8, 2014

RECEIVED
JAN 09 2014
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2012-CP-10-7919

Hallenbeck Sisters, LLC, ... Appellant,

v.

Ronald D. Hall and Mary M. Scarborough,
Solely in Their Capacities as Acting
Delinquent Tax Collector, Respectively for
Charleston County, SC, ... Respondents.

PROOF OF SERVICE

I certify that I have served the **Final Brief of Respondents** on all counsel of record by depositing a copy of the same in the United States Mail, postage prepaid, on January 8, 2014, addressed as follows:

Howard R. Kinard, Esquire
JOHNSON, SMITH, HIBBARD & WILDMAN LAW FIRM, L.L.P.
Post Office Drawer 5587
Spartanburg, South Carolina 29304-5587
Attorney for Respondent

Jacinta M. DeJesus, Legal Assistant
CHARLESTON COUNTY ATTORNEY'S OFFICE

RECEIVED
JAN 09 2014
SC Court of Appeals