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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
JAN 09 2014
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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.

RECORD ON APPEAL

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FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF CHARLESTON
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

7919
 CASE NO. 2012-CP-10-7932

Hallenbeck Sisters, LLC

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

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litant
---------------------	--

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

FILED
 2012 DEC 17 AM 9:54
 JULIE J. ARMSTRONG
 CLERK OF COURT

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter came before the Court on December 13, 2012 on Plaintiff's Petition for a Temporary Restraining Order. This matter will be set for a motion hearing on the merits on February 11, 2013. In the interim, the County will remit the tax sale amount of \$460,000 to the successful bidder. An amount of Thirteen Thousand Five Hundred Sixty-One dollars and Thirty-Five cents (\$13,561.35) will be dispersed to the County for the delinquent taxes. Any disbursement of interest in the amount of Twenty-Seven Thousand One Hundred Twenty-Three Dollars and Thirty cents (\$27,123.30) will be held in abeyance by the Charleston County Tax Office until the merits hearing on February 11, 2013.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
--	--	--

		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

AL Jefferen
 Circuit Court Judge

2128
 Judge Code

12/13/12
 Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20__ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20__ to attorneys of record or to parties (when appearing pro se) as follows:

 ATTORNEY(S) FOR THE PLAINTIFF(S)

 ATTORNEY(S) FOR THE DEFENDANT(S)

 CLERK OF COURT

Court Reporter: Anne Meyer

Order Denying Appellant's Petition to Set Aside Tax Sale Filed March 15, 2013

STATE OF SOUTH CAROLINA
 COUNTY OF CHARLESTON
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-10-7919

Hallenbeck Sisters LLC
 PLAINTIFF(S)

Ronald D. Hall
 DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 40(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE REASON):** Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Plaintiff's Petition to set aside the tax sale was denied.

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

R. Kelly Deery
 Circuit Court Judge

2060
 Judge Code

3/04/12
 Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

Order Granting Defendants' Motion for Summary Judgment, Filed May 13, 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Hallenbeck Sisters, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 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,)
)
 Defendant(s).)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT
 CASE NO. 2012-CP-10-7919

**ORDER GRANTING DEFENDANTS'
 MOTION FOR SUMMARY JUDGMENT**

FILED
 2013 MAY 13 AM 9:59
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY [Signature]

This matter is before the Court on Plaintiff's Notice of Motion and Motion to Amend Findings or make Additional Findings or in the Alternative Motion to Alter or Amend Judgment (Rule 52(b), SCRCPP) (Rule 59(e), SCRCPP) filed March 27, 2013. The matter was before the Court on Plaintiff's complaint to set aside a tax sale and Defendants' motion for summary judgment.

PROCEDURAL BACKGROUND

The Court heard argument on the complaint and motion on March 4, 2013. Plaintiff was represented by Howard R. Kinard, Esquire and Steven M. Querin, Esquire. Defendants were represented by Bernard E. Ferrara, Jr., Esquire. After considering the pleadings, the motion and parties' respective memoranda, and arguments of counsel, the Court entered a Form 4 Judgment in a Civil Case filed on March 15, 2013, denying the Plaintiff's petition to set aside the tax sale.

Based on the same aforementioned papers, the Court denies the Plaintiff's petition to set aside the tax sale and grants the Defendants' motion for summary judgment. The Court finds and

RW 07/11

concludes as follows:

FINDINGS OF FACT

The material facts are not in dispute; the parties stipulated to them. The summons and complaint to set aside a tax sale and seek injunctive relief were filed on December 5, 2012. Service was made on the Defendants, through its Delinquent Tax Department ("Charleston County"), collectively on January 29, 2013, as evidenced by the executed certificate of service. Charleston County filed an answer on January 24, 2013. The Plaintiff's request for injunctive relief was denied by the Court in a previous hearing on that matter. The Plaintiff was notified of the time, date and place of the hearing on the petition and motion in this matter.

Plaintiff sought to set aside a 2011 tax sale based upon insufficient notices mailed by the Charleston County Delinquent Tax Collector to the defaulting taxpayer, Aiquyen Thi Tiet ("Tiet"), who is not a party to this case. The Plaintiff alleged that the Execution Notice and Official Notice of Levy created an artificial deadline for payment before the tax sale date, in contravention to statutory requirements that the notices provide that past due taxes must be paid before a subsequent sales date.

The subject property is identified as tax map parcel number 460-16-03-099 and is known as the College Laundromat located at 226 Calhoun Street, Charleston, South Carolina. Charleston County mailed an Execution Notice for the subject property to Tiet, c/o College Laundromat, 226 Calhoun Street, Charleston, SC 29401-1314, dated August 19, 2011. Charleston 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.

Tiet conveyed the property to Plaintiff Hallenbeck Sisters, LLC by virtue of the document of conveyance titled Title to Real Estate from Aiquyen Thi Tiet to Hallenbeck Sisters, LLC, dated

Rmpt/2

November 30, 2011, and recorded December 12, 2011 in Book 0222, Page 164 in the Office of the Register of Mesne Conveyance for Charleston County, South Carolina.

Charleston County sold the property at the December 5, 2011 tax sale for the purpose of enforcing the payment and collection of delinquent 2010 property taxes. RASC II, LLC was the successful bidder and paid the full amount of the bid of \$460,000 to the County for the property on the date of the tax sale.

Plaintiff paid the 2011 taxes owed in the amount of \$13,421.85 on February 3, 2012. Charleston County mailed a Final Notice of Property Redemption for the property to the Plaintiff at 419 The PKWY #140, Greet, SC 2965-4522 by certified mail, return receipt requested-restricted delivery, which was received by the Plaintiff on November 7, 2012. 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.

Plaintiff redeemed the property on December 4, 2012, by paying \$40,684.55 to Charleston County, which represents the delinquent 2010 taxes, assessments, penalties, and costs of \$13,561.35 and interest of \$27,123.20.

CONCLUSIONS OF LAW

The Court concludes as follows:

A. The notices mailed to the defaulting taxpayer are valid on their face as the County's notices state December 2 is the last date, which is the actual date and last business day, to pay the taxes before the tax sale on Monday, December 5. In the *Hawkins v. Bruno Yacht Sales* case, Beaufort County had two dates to pay the taxes (August 31 and September 15) that were before the last business day before the tax sales date. The Court in *Hawkins* said "[b]ecause the sales date in

RMD/T/3

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." *Hawkins v. Bruno Yacht Sales, Inc.* 353 S.C. 31, 38, 577 S.E.2d 202, 206 (2003).

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 last business day before the tax 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 and comply with the statute.

B. In the alternative, even if the Court found the notices are defective, as an additional ground for granting summary judgment, Charleston County has immunity and not liable for damages for Plaintiff's redemption of the property. Charleston County is immune for any and all losses resulting from actions taken in the assessment or collection of taxes or enforcement of tax laws, including attorney's fees and costs of the action. *See* § 15-78-60(4) and (11). "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

2/17/14

interpretation.” *Adkins v. Varn*, 312 S.C. 188, 192, 439 S.E.2d 822, 824 (1993).

In an unpublished opinion in the case *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*, the Court of Appeals considered Charleston County’s assertion of section 15-78-60(11) as a defense to SPD’s action against the County for interest fees incurred by borrowing money to redeem the property it lost at a tax sale. The Court agreed that the County was enforcing the tax laws against SPD which was the purpose of the South Carolina Tort Claims Act. The 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.

In this case, the Plaintiff’s loss, if any, was caused by its own failure to pay the delinquent taxes at the sale of the property to it from Tiet. Payment by the Plaintiff of the amount to redeem the property from tax sale is the result of the County’s assessment or collection of taxes or enforcement of tax laws.

C. Further, as an additional ground, the Plaintiff lacks standing to complain of the sufficiency of the notices mailed to the defaulting taxpayer because the Plaintiff does not have standing by statute, “constitutional standing,” or fall under a “public importance” exception. “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). Nothing in the Alternate Procedure for Collection of Property Taxes, S.C. Code Ann. § 12-51-40 *et seq.*, provides the Plaintiff to assert statutory standing. Second,

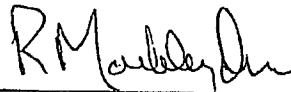
RMOT/15

the Plaintiff cannot satisfy the three-part test to establish constitutional standing. It 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.").

Based on the Findings of Fact and Conclusions of Law,

IT IS ORDERED that the Defendants' motion for summary judgment is granted and the 2011 tax sale involving the subject property is confirmed.

AND IT IS SO ORDERED.



R. Markley Dennis, Jr.
Judge for Charleston County, Ninth Judicial Circuit

Charleston, South Carolina
May 4, 2013

RMD/T/le

Complaint, Filed December 5, 2012

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Hallenbeck Sisters, LLC)
)
 Plaintiff,)
)
 vs.)
)
 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;)
)
 Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO.: 2012-CP-10-7919

COMPLAINT
 (Action to Set Aside Tax Sale)
 (Injunctive Relief)

BY

JULIE J. ARMSTRONG
 CLERK OF COURT

2012 DEC -5 PM 2:47

FILED

The Plaintiff would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. The Plaintiff, Hallenbeck Sisters, LLC, is a limited liability corporation organized and existing under and by virtue of the laws of the State of South Carolina, and is doing business in Charleston County, South Carolina.
2. Upon information and belief, the Defendant Ronald D. Hall, in his capacity as Acting Delinquent Tax Collector for Charleston County, SC and Mary M. Scarborough, in her capacity as Delinquent Tax Collector for Charleston County, SC, are made parties to this action because, upon information and belief, said Defendants were in charge of the noticing, the advertising, and the sale of the real property, which is more particularly described hereinbelow, at the Charleston County 2011 Delinquent Tax Sale. Said Defendants are referred to herein collectively as the "Defendants".
3. This lawsuit arises from the tax sale of real property located in Charleston County, South Carolina, and the most substantial part of the acts or omissions giving rise to the causes of action occurred in Charleston County, South Carolina.

4. This Court has jurisdiction over the parties and subject matter of this action, and the venue is proper before this Court.

FACTS

5. By virtue of that certain deed dated November 30, 2011 and recorded December 12, 2011 in the Charleston County RMC in Book 0222 at Page 164, the Plaintiff is the true owner of certain real property, and the improvements thereon, said property being more fully described in the deed as follows:

All that certain piece, parcel or lot of land, with all improvements thereon, situate, lying and being at the northeast corner of Calhoun and Smith Streets, in the City of Charleston, State of South Carolina, as shown on a plat made by The John McCrady Company dated May 12, 1949 and recorded in Plat Book U-50 at Page 35 in the RMC Office for Charleston County. Said property is more recently shown on a plat entitled "Closing Survey, 226 Calhoun Street, City of Charleston", prepared by Forsberg Engineering and Surveying, Inc. dated March 20, 2002. For a more complete and particular description, reference is hereby made to the aforesaid plats.

Subject to any and all restrictions, covenants, conditions, easements, rights of way and all other matters affecting the subject property of record in the RMC Office for Charleston County.

This being the same property conveyed to Hallenbeck Sisters, LLC by deed of Aiquyen Thi Tiet dated November 30, 2011 and recorded December 12, 2011 in Deed Book 0222 at Page 164 in the RMC Office for Charleston County.

TMS: 460-16-03-099
Property Address: 226 Calhoun St, Charleston, SC 29401
(hereinafter referred to as the "Property")

6. Prior to the tax sale which is the subject of this action, the owner of the Property was Aiquyen Thi Tiet.

7. That, upon information and belief, the Defendants, on December 5, 2011, did cause the Property to be sold at public sale for non-payment of 2010 taxes.

8. That upon information and belief, a third party placed a successful bid at the December 5, 2011 Charleston County Tax Sale for the purchase of the Property. Upon further information and belief, said purchaser paid to the Charleston County Delinquent Tax Office the bid amount on the day of the sale, in accordance with laws governing the sale of real property for delinquent property taxes.

9. The Property was advertised and sold in the name of Aiquyen Thi Tiet, as the defaulting taxpayer.

FOR A FIRST CAUSE OF ACTION
(Set Aside Tax Sale Based on Insufficient Notices)

10. Each of the allegations in the above-numbered paragraphs are repeated and incorporated herein as if stated verbatim.

11. On or about August 19, 2011, the Defendant mailed an Execution Notice to Aiquyen Thi Tiet, as the defaulting taxpayer, which stated that if the amount of property taxes was not paid, the property would be sold at public action beginning December 5, 2011. Additionally, the Execution Notice stated:

"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."

A copy of the Execution Notice is attached hereto as "**Exhibit A**" and incorporated herein by reference.

12. On or about October 7, 2011, the Defendant Charleston County Delinquent Tax Collector mailed an "Official Notice of Levy" to Aiquyen Thi Tiet, as the defaulting taxpayer, which stated:

"All real property taxes must be paid on or before 5:00 P.M. 12/02/11 to avoid tax sale on 12/05/11 return receipt of this notice shall be deemed equivalent to levying by distress."

A copy of the Official Notice of Levy is attached hereto as "**Exhibit B**" and incorporated herein by reference.

13. Pursuant to S.C. Code Section 12-51-40(b), "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". (Emphasis Added)

14. The Property was sold on December 5, 2011.

15. Accordingly, the Defendant failed to strictly comply with the statutes regarding the sale of real property at tax sales by providing delinquent notices that provided that the delinquent taxes must be paid on or before a date prior to December 2, 2011, which is not the subsequent sales date.

16. The notices provided by the Defendant created an artificial deadline for payment before the sales date, thereby contradicting the statutory requirement that any delinquent notice shall provide that the past due taxes must be paid before a subsequent sales date.

17. Additionally, on or about November 7, 2012, the Plaintiff received a "Final Notice of Property Redemption" wherein said notice stated that the Plaintiff could redeem the Property by paying taxes, assessments, penalties, costs, interest and 2011 taxes for total amount of \$56,267.18 or a tax title would be delivered to the successful purchaser. A copy of the Final Notice of Property Redemption is attached hereto as "Exhibit C" and incorporated herein by reference.

18. Whereas, the Plaintiff had previously paid the 2011 taxes in the amount of \$13,421.85 February 3, 2012. Accordingly, the Defendant failed to strictly comply with the statutes regarding the sale of real property at tax sales by providing a delinquent notice that contained a material defect in that the notice required the Plaintiff to pay more than what was actually owned in order to redeem the Property.

19. The Plaintiff, as the current owner of the Property, stands willing and able to tender payment for 2010 taxes due and owing prior to the sale of the Property on December 5, 2011.

20. Based upon the the Plaintiff is therefore entitled to a order of the Court that (1) the December 5, 2011 Charleston County Delinquent Tax Sale of the Property be set aside, (2) the December 5, 2011 Charleston County Delinquent Tax Sale of the Property is void and of no effect, (3) the Charleston County Delinquent Tax Department be required to accept Plaintiff's tender of payment for the delinquent 2010 taxes, and (4) the tax records be modified to reflect that the Property has been fully redeemed.

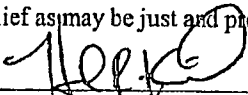
FOR A SECOND CAUSE OF ACTION
(Injunctive Relief)

21. Each of the allegations in the above-numbered paragraphs are repeated and incorporated herein as if stated verbatim.

22. Based upon the Defendant's failure to strictly comply with the statutes regarding the sale of real property for delinquent taxes as recounted herein, the Defendant should be enjoined from distributing any funds to any third parties held by the Defendants and regarding the Property until a final judicial resolution of the allegations contained herein may be had.

WHEREFORE, having fully set forth its complaint, the Plaintiff prays for the following:

1. An order declaring that the December 5, 2011 tax sale of the Property was invalid and the same be voided as to the Property for failure to comply with the material provisions of the South Carolina Code of Laws; and
2. An order requiring the Charleston County Delinquent Tax Office to accept the Plaintiff's tender of payment of the delinquent taxes;
3. An order requiring that the tax records be modified to reflect that the Property has been fully redeemed;
4. A temporary injunction enjoining the Defendants and their agents acting on their behalf from transferring and/or disposing of any funds to any third parties held by the Defendants and regarding the Property until a final judicial resolution of allegations contained herein.
5. An award of attorney's fees and costs of this action; and
6. For such other and further relief as may be just and proper.



Howard R. Kinard (SC Bar No. 74912)
Steven M. Querin (SC Bar No. 11560)
Johnson, Smith, Hibbard & Wildman Law Firm
Post Office Drawer 5587
Spartanburg, South Carolina 29304-5587
Telephone: (864) 582-8121
Facsimile: (864) 585-5328
Attorneys for Plaintiff

December 4, 2012
Spartanburg, South Carolina

EXHIBIT A
Execution Notice



CHARLESTON COUNTY
DELINQUENT TAX
 4045 BRIDGE VIEW DRIVE • N CHARLESTON SC 29405-7484
 460-16-03-099

RETURN SERVICE REQUESTED

AUGUST 19, 2011

EXECUTION NOTICE

THESE TAXES ARE PAST DUE! PAY NOW TO AVOID
 ADVERTISEMENT AND SALE OF PROPERTY

TAX YEAR	RECEIPT #	AMOUNT DUE
2010	2010-154249	13,426.35
LEVY COST		95.00
AMOUNT DUE		\$ 13,521.35

3143 1 AT 0.365 *****AUTO**3-DIGIT 294
 11111111111111111111111111111111 003143
 TIET AIQUYEN THI
 C/O COLLEGE LAUNDROMAT 3143 R
 226 CALHOUN ST 20
 CHARLESTON SC 29401-1314

PROPERTY DESCRIPTION

PARCEL ID: 460-16-03-099
 226 CALHOUN ST
 226 CALHOUN & SMITH

UNIFIED TAXES ARE DUE ON THE FOLLOWING
 DESCRIBED REAL PROP

PLEASE NOTE: ONLY CASH, MONEY ORDERS, OR CERTIFIED CHECKS WILL BE ACCEPTED FOR PAYMENT OF DELINQUENT REAL PROPERTY TAXES.

IF YOU DO NOT PAY THE AMOUNT DUE, THE FOLLOWING ACTIONS WILL BE TAKEN:

1. AN "OFFICIAL NOTICE OF LEVY" WILL BE MAILED TO YOU.
2. YOUR PROPERTY WILL BE ADVERTISED IN THE "CHARLESTON POST & COURIER".
3. A SIGN MAY BE PLACED ON YOUR PROPERTY ANNOUNCING THAT THE PROPERTY IS TO BE SOLD FOR NON-PAYMENT OF TAXES.
4. YOUR PROPERTY WILL BE SOLD AT PUBLIC AUCTION BEGINNING ON DECEMBER 05, 2011.

ALL REAL ESTATE TAXES MUST BE PAID ON OR BEFORE 5:00 P.M. ON DECEMBER 02, 2011 IN ORDER TO AVOID HAVING THE PROPERTY SOLD AT TAX SALE.

IF YOU ARE IN BANKRUPTCY, PLEASE CONTACT THIS OFFICE IMMEDIATELY.

AFTER OCTOBER 28, 2011 AN ADDITIONAL \$40 LEVY FEE WILL BE DUE
 IF YOU HAVE ANY QUESTION REGARDING THIS BILL, PLEASE CALL 843-202-6576



CHARLESTON COUNTY
DELINQUENT TAX
 4045 BRIDGE VIEW DRIVE • N CHARLESTON SC 29405-7484
 460-16-03-099

Receipt Number(s) 2010-154249
 Parcel ID 460-16-03-099
 LEGAL DESCRIPTION: 226 CALHOUN ST
 226 CALHOUN & SMITH -035

AFTER OCTOBER 28, 2011 AN ADDITIONAL \$40 LEVY FEE WILL BE DUE

PAY THIS AMOUNT \$ 13,521.35

TIET AIQUYEN THI
 C/O COLLEGE LAUNDROMAT
 226 CALHOUN ST
 CHARLESTON SC 29401-1314

MAKE PAYMENT TO:
 CHARLESTON COUNTY TREASURER
 PO BOX 878
 CHARLESTON SC 29402-0878 R

EXHIBIT B
Official Notice of Levy

MARY M. SCARBOROUGH
Delinquent Tax Collector



DELINQUENT TAX COLLECTOR
4045 BRIDGE VIEW DR., 1ST FLOOR
NORTH CHARLESTON, SC 29405

October 7, 2011



4601603099

OFFICIAL NOTICE OF LEVY



Current Owner: TIET AIQUYEN THI

Current Total taxes, penalties and costs Due: \$13,521.35

Amount Due After: 10/28/2011 \$13,561.35

TIET AIQUYEN THI

PARCEL ID: 4601603099

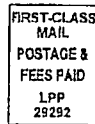
FAILURE TO PAY YOUR TAXES WILL RESULT IN YOUR PROPERTY BEING ADVERTISED IN THE "CHARLESTON POST & COURIER".

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 "LEVYING BY DISTRESS".

PLEASE RETURN THIS NOTICE
WITH MONEY ORDER OR CASHIERS CHECK TO THE BELOW ADDRESS

Physical Address: Charleston County Treasurer - DT 4045 Bridge View Dr., 1st Floor North Charleston, SC 29405	Mail payment to: Charleston County Treasurer - DT PO Box 878 Charleston SC 29402-0878	Business Hours: 8:30 AM to 5:00 PM Monday - Friday Delinquent Tax Phone Number (843) 202-6570
---	---	---

UNITED STATE POSTAL SERVICE



CHARLESTON COUNTY DELINQUENT TAX COLLECTOR
4045 BRIDGE VIEW DR B110
NORTH CHARLESTON SC 29405-7464



EXHIBIT C
Final Notice of Property Redemption

Department of Revenue Collections
Public Service Building
4045 Bridge View Drive
North Charleston, SC 29405-7464
Telephone (843) 202-6080
Fax (843) 202-6066

4601603099



November 07, 2012

Bankruptcy Division
Business License Division
Delinquent Tax Division
Hospitality/Accommodations Division
Legal Processing Division
Solid Waste Disposal Fee Division
Storm Water Management Division

VIA CERTIFIED MAIL
4601603099 -- 2011TS Final Notice
226 CALHOUN ST CHARLESTON

FINAL NOTICE OF PROPERTY REDEMPTION

RE: HALLENBECK SISTERS LLC
TAX ADDRESS: 226 CALHOUN ST CHARLESTON

NOTICE is hereby given that the real property described on this notice has been sold for taxes by the Delinquent Tax Collector for Charleston County. If not redeemed by paying taxes, assessments, penalties, costs, interest and 2011 Taxes for the total amounts listed below on or before 5:00 pm, Thursday, December 6, 2012, a tax title will be delivered to the successful purchaser. Certified Check, Money Order, or Cash Payments can be mailed to Charleston County Treasurer, P. O. Box 878, Charleston, S. C. 29402-0878 or paid at the Charleston County Treasurer's Office, first floor located at 4045 Bridgeview Drive, North Charleston, SC 29405.

LIENHOLDERS/JUDGEMENT/CREDITORS

Records filed with the Register of Mesne Conveyance or the Clerk of Court for the County of Charleston, State of South Carolina, indicates that you may have a Judgment/Lien/Mortgage against the above-named person. Notice is hereby given to you as the holder of this Judgment/Lien/Mortgage that the real property described in this notice has been sold by the Delinquent Tax Collector for Charleston County. Please send a Certified Check, Money Order, or Cash Payment for the amount listed below to the Charleston County Treasurer, P. O. Box 878, Charleston, S. C. 29402-0878 or pay at the Charleston County Treasurer's Office, first floor, 4045 Bridgeview Drive, North Charleston, SC 29405. In order to protect your interest in the aforementioned property, you must pay the redemption amount and the 2011 tax amount on or before 5:00 pm, Thursday, December 6, 2012 or a tax title will be delivered to the successful purchaser.

<u>Tax Map Number</u>	<u>Redemption Amount</u>	<u>2011 Tax Amount</u>	<u>Due By</u>
4601603099	\$40,684.55	\$15,582.63	December 6, 2012

If you have any questions about this IMPORTANT matter, please contact our office directly at (843) 202-6570.

ONLY CASH, MONEY ORDERS OR CERTIFIED FUNDS WILL BE ACCEPTED
THIS IS YOUR FINAL NOTICE OF PROPERTY SOLD!


Ronald D. Hall
Acting Delinquent Tax Collector

Answer, Filed January 25, 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Hallenbeck Sisters, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 Ronald D. Hall and Mary M.)
 Scarborough, Soley in Their)
 Capacities as Acting Delinquent Tax)
 Collector and Delinquent Tax)
 Collector, Respectively for)
 Charleston County, SC;)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT
 CASE NO. 2012-CP-10-7919

ANSWER

BY  _____

JULIE J. ARMSTRONG
 CLERK OF COURT

2013 JAN 25 AM 11:50

FILED

The Defendants Ronald D. Hall and Mary M. Scarborough, Soley in Their Capacities as Acting Delinquent Tax Collector and Delinquent Tax Collector, Respectively for Charleston County, SC ("Charleston County"), answering the Complaint of the Plaintiff Hallenbeck Sisters, LLC, allege and state as follows:

AS TO PARTIES AND JURISDICTION

1. Charleston County denies each and every allegation of the Complaint that is not specifically admitted and demands strict proof thereof.
2. Charleston County is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1; therefore, it denies the same and demands strict proof thereof.
3. Charleston County admits the allegations contained in Paragraph 2.
4. Charleston County is without knowledge or information sufficient to form a belief as to

the truth of the allegations contained in Paragraph 3; therefore, it denies the same and demands strict proof thereof.

5. Charleston County admits the allegations contained in Paragraph 4.

AS TO THE FACTS

6. The allegations contained in Paragraph 5 constitute conclusions of law, requiring no answer. To the extent a response is required, Charleston County refers to the records of the Office of the Register of Mesne Conveyance for Charleston County, South Carolina.

7. Charleston County admits upon information and belief the allegations contained in Paragraph 6.

8. Charleston County admits the allegations contained in Paragraphs 7, 8 and 9.

AS TO THE FIRST CAUSE OF ACTION

9. Charleston County responds to the allegations contained in Paragraph 10 by restating the foregoing paragraphs of this Answer as fully and completely as if repeated verbatim herein.

10. Charleston County admits the allegations contained in Paragraphs 11 and 12 and refers to the Execution Notice and Official Notice of Levy, respectively.

11. The allegations contained in Paragraph 13 constitute conclusions of law, requiring no answer. To the extent a response is required, Charleston County refers to S.C. Code Ann. § 12-51-40(b).

12. Charleston County admits the allegations contained in Paragraph 14

13. Charleston County denies the allegations contained in Paragraphs 15 and 16 and demands strict proof thereof.

14. Charleston County admits the allegations contained in Paragraph 17 and refers to the

Final Notice of Property Redemption.

15. Charleston County denies the allegations contained in Paragraph 18 and demands strict proof thereof.

16. Charleston County is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19; therefore, it denies the same.

17. Charleston County denies the allegations contained in Paragraph 20 and demands strict proof thereof.

AS TO THE SECNOD CAUSE OF ACTION

18. Charleston County responds to the allegations contained in Paragraph 21 by restating the foregoing paragraphs of this Answer as fully and completely as if repeated verbatim herein.

19. Charleston County denies the allegations contained in Paragraph 22 and affirmatively alleges that this Honorable Court adjudicated the second cause of action on December 13, 2012 and issued its Form 4 Order filed December 17, 2012.

BY WAY OF FURTHER ANSWER
AND AS AN AFFIRMATIVE DEFENSE

20. The Plaintiff fails to state facts sufficient to constitute a cause of action for which relief can be granted, and its Complaint should be dismissed in accordance with Rule 12(b)(6), S.C.R.C.P.

BY WAY OF FURTHER ANSWER
AND AS AN AFFIRMATIVE DEFENSE

21. Charleston County is a political subdivision of the State of South Carolina, a governmental entity, and as such 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, S.C. Code Ann. § 15-78-10 et seq.

BY WAY OF FURTHER ANSWER
AND AS AN AFFIRMATIVE DEFENSE

22. The Plaintiff's claims are barred by the doctrine of laches.

BY WAY OF FURTHER ANSWER
AND AS AN AFFIRMATIVE DEFENSE

23. The Plaintiff's claims are barred by his failure to mitigate its damages.

BY WAY OF FURTHER ANSWER
AND AS AN AFFIRMATIVE DEFENSE

24. The Plaintiff's claims are barred, in whole or in part, by the doctrines of collateral estoppel, equitable estoppel and judicial estoppel.

BY WAY OF FURTHER ANSWER
AND AS AN AFFIRMATIVE DEFENSE

25. The Plaintiff's claims are barred by the doctrines of waiver, acquiescence, and mootness.

BY WAY OF FURTHER ANSWER
AND AS AN AFFIRMATIVE DEFENSE

26. The Plaintiff's claims are barred by the doctrine of unclean hands.

BY WAY OF FURTHER ANSWER
AND AS AN AFFIRMATIVE DEFENSE

27. The Plaintiff's claims are barred, in whole or in part, by its own negligence.

BY WAY OF FURTHER ANSWER
AND AS AN AFFIRMATIVE DEFENSE

28. The Plaintiff's damages, if any, have or may have been caused, in whole or in part, by the acts or omissions of Plaintiff and other parties over whom Charleston County had no control and for whose acts it is not responsible.

BY WAY OF FURTHER ANSWER
AND AS AN AFFIRMATIVE DEFENSE

29. The Plaintiff lacks standing to complain of the allegations contained in the Complaint.

BY WAY OF FURTHER ANSWER
AND AS AN AFFIRMATIVE DEFENSE

30. The Plaintiff's claims are barred by the statute of limitations.

BY WAY OF FURTHER ANSWER
AND AS AN AFFIRMATIVE DEFENSE

31. The Plaintiff's request for relief should be denied because the tax deed is incontestable on procedural or other grounds pursuant to S.C. Code Ann. § 12-51-90.

BY WAY OF FURTHER ANSWER
AND AS AN AFFIRMATIVE DEFENSE

32. The Plaintiff fails to satisfy the requirements for an award of attorney's fees and costs of the action pursuant to S.C. Code Ann. § 15-77-300; therefore, its request should be denied.

WHEREFORE, the Defendants Ronald D. Hall and Mary M. Scarborough, Soley in Their Capacities as Acting Delinquent Tax Collector and Delinquent Tax Collector, Respectively for Charleston County, SC, having fully answered the Complaint of the Plaintiff Hallenbeck Sisters, LLC, pray that the same be dismissed together with costs and disbursements of this action, and for such other and further relief as this Honorable Court deems just and proper.

**RONALD D. HALL AND MARY M. SCARBOROUGH,
SOLEY IN THEIR CAPACITIES AS ACTING
DELINQUENT TAX COLLECTOR AND
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 DEFENDANTS

Charleston, South Carolina
January 24, 2013

Plaintiff's Motion for Immediate Temporary Restraining Order and Notice of Motion and
Motion for a Temporary Injunction, Filed December 5, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Hallenbeck Sisters, LLC)
)
Plaintiff,)

C.A. No.: 2012-CP-10-7919
(Non-Jury)

vs.)

Ronald D. Hall and Mary M. Scarborough,)
Solely in Their Capacities as Acting)
Delinquent Tax Collector and Delinquent)
Tax Collector, Respectively, for Charleston)
County, South Carolina;)
)
Defendants.)

**MOTION FOR IMMEDIATE
TEMPORARY RESTRAINING
ORDER AND NOTICE OF
MOTION AND MOTION FOR
A TEMPORARY INJUNCTION**

2012 DEC -5 PM 2:46
J. ARNSTROM
CLERK OF COURT

FILED

TO: THE ABOVE-NAMED DEFENDANTS:

The Plaintiff, by and through its undersigned attorney, moves for an immediate temporary restraining order, without requiring the giving of notice of said motion to the Defendants or their attorney(s), restraining and enjoining the Defendants, their respective employees, agents, affiliates and all those in active concert or participation with the Defendants or them, from transferring and/or disposing of certain funds in the possession of the Charleston County Delinquent Tax Office in the amount of \$40,634.55, and paid to the Charleston County Delinquent Tax Office for the redemption of certain real property sold at the 2011 Charleston County Tax Sale, namely property known as Charleston County Parcel ID 460-16-03-099, pending a hearing and determination of the Plaintiff's Motion for a Temporary Injunction.

The Plaintiff further moves this Court for an Order setting a date for the hearing on the Plaintiff's Motion for a Temporary Injunction in accordance with Rule 65 of the South Carolina Rules of Civil Procedure.

Unless this motion is granted, it is anticipated that the Defendants will distribute the redemption amount to the high bidder from the 2011 Charleston County Tax Sale. To allow such a distribution would cause the Plaintiff to suffer immediate and irreparable loss, damage, or injury. The Plaintiff has reason to believe that the distribution would occur before the Defendants or their attorney(s) can be heard in opposition to this motion for a temporary restraining order, and before a hearing can be had on the Plaintiff's Motion for Temporary Injunction, as more fully appears in the Complaint filed in this action, and the certificate of the undersigned, attached to this motion.

You are further notified that the undersigned, as attorney for the Plaintiff herein, will move this Court at such time as the matter may be scheduled and heard, for a Temporary Injunction, pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, restraining and enjoining the Defendants, their respective employees, agents, affiliates and all those in active concert or participation with the Defendants or them, from transferring and/or disposing of certain funds in the possession of the Defendants in the amount of \$40,634.55, and representing the amount paid to the Defendants for the redemption of certain real property sold at the 2011 Charleston County Tax Sale

This motion is based on the following allegations:

1. By virtue of that certain deed dated November 30, 2011 and recorded December 12, 2011 in the Charleston County RMC in Book 0222 at Page 164, the Plaintiff is the true owner of certain real property commonly known as 226 Calhoun Street, Charleston, South Carolina (the "Property").
2. Upon information and belief, the Defendants, as the Acting Charleston County Delinquent Tax Collector and Charleston County Delinquent Tax Collector, on December 5, 2011,

did cause the Property to be sold at public sale for non-payment of 2010 taxes.

3. Upon information and belief, a third party bidder placed a successful bid at the December 5, 2011 Charleston County Tax Sale for the purchase of the Property. Upon further information and belief, said third-party purchaser paid to the Charleston County Delinquent Tax Collector the bid amount on the day of the sale, in accordance with laws governing the sale of real property for delinquent property taxes.

4. On December 4, 2012, the Plaintiff paid to the Charleston County Delinquent Tax Collector \$40,634.55, the amount required to redeem the Property and prevent a tax deed from being issued by the Defendants to the third-party bidder. A copy of the paid receipt is attached hereto as Exhibit "A" and incorporated herein by reference.

5. The Plaintiff has recently filed its Complaint seeking to set aside the December 5, 2011 tax sale of the Property based upon Defendants' failure to comply with the material provisions of the South Carolina Code of Laws governing the sale of real property for collection of taxes.

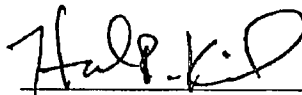
6. In the event the Plaintiff is successful in its challenge of the tax sale, the Plaintiff would be entitled to a refund of the redemption amount paid less the any taxes and penalties owed at the time of the sale on December 5, 2011. However, in the event this temporary restraining order is not granted, the Defendants would be free to distribute the redemption funds paid by the Plaintiff to the tax sale purchaser, pursuant to S.C. Code §12-51-90 and §12-51-100.

7. The Plaintiff would further assert that it is entitled to the temporary restraining order and temporary injunction in that the Plaintiff will suffer irreparable harm if the injunction is not granted based upon the allegations set forth in the Complaint and in this Motion.

8. The Plaintiff would further assert that it will likely succeed on the merits of the litigation and that there is no adequate remedy at law to protect the Plaintiff. The temporary restraining order and temporary injunction are needed to preserve the status quo to avoid possible irreparable injury to the Plaintiff pending the litigation of the claims asserted in this action.

Based on the foregoing and the common and statutory laws of the State of South Carolina, the pleadings filed herein, affidavits, and legal memoranda that may be hereinafter filed with the Court, the Plaintiff respectfully asserts that it is entitled to an immediate temporary restraining order and temporary injunction as set forth herein.

The Motion for a Temporary Injunction will be brought on for hearing at a time and place of which you will be later notified.



Howard R. Kinard (SC Bar No. 74912)
Steven M. Querin (SC Bar No. 11560)
JOHNSON, SMITH, HIBBARD AND WILDMAN
LAW FIRM, L.L.P.
220 North Church Street, Suite 4 (29306)
P.O. Drawer 5587
Spartanburg, SC 29304
Telephone: (864) 582-8121
Facsimile: (864) 585-5328
Attorney for Plaintiff

Spartanburg, South Carolina
December 4, 2012

EXHIBIT "A"

Department of Revenue Collections
Public Service Building
4045 Bridge View Drive
North Charleston, SC 29405-7464
Telephone (843)202-6080
Fax (843)202-6066



Bankruptcy Division
Business License Division
Delinquent Tax Division
Hospitality/Accommodations Division
Legal Processing Division
Solid Waste Disposal Fee Division
Stormwater Management Division

December 4, 2012

To Whom It May Concern:

The Delinquent Tax Office is in receipt of check numbered 29014 in an amount of \$40,684.55 for taxes, penalties and interest on parcel 460-16-03-099. This pays the 2010 tax redemption due on all this property redeems it from our December 5, 2011 tax sale. This payment has taken the property off our tax sale list and is no longer in jeopardy of being conveyed. Please do not hesitate to contact our office with any additional questions or concerns.

Sincerely,

Kim Childs
Customer Service Representative – Delinquent Tax Division
Charleston County Revenue Collections
4045 Bridge View Drive, Suite B110
North Charleston SC 29405
Phone (843)202-6570 Fax(843)202-6066

www.charlestoncounty.org

Plaintiff's Motion to Amend Findings or Make Additional Findings or in the Alternative Motion
to Alter or Amend Judgment, Filed March 27, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Hallenbeck Sisters, LLC)
)
Plaintiff,)

C.A. No.: 2012-CP-10-7919

vs.)

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;)

Defendants.)

**NOTICE OF MOTION AND
PLAINTIFF'S MOTION TO AMEND
FINDINGS OR MAKE ADDITIONAL
FINDINGS OR IN THE
ALTERNATIVE MOTION TO
ALTER OR
AMEND JUDGMENT
(Rule 52(b), SCRCPP)
(Rule 59(e)SCRCPP)**

2013 MAR 27 PM 2:51
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

COMES NOW the above-named Plaintiff, Hallenbeck Sisters, LLC, by and through its undersigned counsel, who, pursuant to Rule 52(b) and Rule 59(e) of the South Carolina Rules of Civil Procedure, files this Motion to (1) respectfully request that the Court amend its Form 4 Order dated March 4, 2013 and filed on March 15, 2013 (the "Order") to set forth specific findings, or in the alternative, (2) alter or amend the Order, as set forth below. The Order (attached hereto as Exhibit "A") was received by the Applicant's counsel on March 20, 2013.

The Plaintiff respectfully asserts that the Order is inconsistent with the requirements set forth in Rule 52 of the South Carolina Rules of Civil Procedure, as set forth below:

Rule 52(a) SCRCPP provides: "In all actions tried upon the facts without a jury or with an advisory jury, the Court shall find facts specially and state separately its conclusions

of law thereon, and judgment shall be entered pursuant to Rule 58.” See Rule 52(a) SCRPC. The Order only states “Plaintiff’s Petition to set aside the tax sale was denied.”

The Order fails to set forth facts specially or to state conclusions of law based upon those facts. As such, Plaintiff is unable to determine the basis for the Court’s ruling and to adequately assess if all the relevant facts were considered. Based on the foregoing, the Plaintiff respectfully requests that the Order be amended to set forth the necessary findings of facts and conclusions of law in accordance with Rule 52(a).

Additionally, and pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, the Plaintiff respectfully asserts that the Order should be altered or amended in such a way as to find in favor of the Plaintiff on its Petition to set aside the 2011 Charleston County Tax Sale as to certain real property, pursuant to Rule 59(e).

The Plaintiff contends that Defendants failed to strictly comply with the statutes regarding the sale of real property at tax sales by providing delinquent notices that provided that the delinquent taxes must be paid on or before a date prior to December 2, 2011, which was not the subsequent sales date. The actual tax sale date was December 5, 2011. Pursuant to case law, the statute does not provide that the County set a date, other than the sales dates, after which the taxpayer can no longer pay his delinquent taxes before the County can begin advertising.” Hawkins at 38, 577 S.E.2d at 206.

Additionally, the Plaintiff had previously paid the 2011 taxes in the amount of \$13,421.85 on February 3, 2012. Therefore, the actual amount due from the Plaintiff in order to redeem the property was \$40,684.55, not \$56,267.18, as provided in a redemption notice received by the Plaintiff. Accordingly, the Defendants failed to strictly comply with the statutes regarding the sale of real property at tax sales by providing a

delinquent notice that contained a material defect in that the notice required the Plaintiff to pay more than what was actually owned in order to redeem the Property.

Therefore, Plaintiff was and is entitled to an Order declaring that the December 5, 2011 tax sale of the Property was invalid and the same be voided for failure to comply with the material provisions of the South Carolina Code of Laws.

Based upon the facts stipulated to by the parties, and the arguments presented in Plaintiff's Memorandum of Law, the Court erred in denying Plaintiff's Petition to set aside the tax sale, and the Order should be altered and/or amended to grant the Plaintiff the relief sought in the Petition.

Based on the foregoing, the pleadings and the arguments previously presented, and further and additional information to be considered by the Court, the Plaintiff respectfully asserts that the Order should be reconsidered, altered or amended as set forth herein.

Respectfully submitted,



Doug Smith (S.C. Bar No. 16701)
Howard R. Kinard (S.C. Bar No. 74912)
Johnson, Smith, Hibbard & Wildman
Law Firm, LLP
P.O. Box 5587
Spartanburg, SC 29304
Telephone: (864) 582-8121
Facsimile: (864) 585-5328

Attorneys for Plaintiff

March 25, 2013

Plaintiff's Memorandum in Support of Voiding Tax Sale, Dated February 1, 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Hallenbeck Sisters, LLC)
)
 Plaintiff,)
)
 vs.)
)
 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;)
)
 Defendant(s).)
)

IN THE COURT OF COMMON PLEAS

**PLAINTIFF'S MEMORANDUM IN
 SUPPORT OF VOIDING TAX SALE**

CASE NO.: 2012-CP-10-7919

The Plaintiff, Hallenbeck Sisters, LLC, by and through its undersigned counsel, hereby submits this Memorandum in Support of its Complaint to void the 2011 Charleston County Tax Sale.

STIPULATED FACTS

1. The Defendants 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, ("Charleston County"), were in charge of the noticing, the advertising, and the sale of the real property, which is more particularly described herein, at the Charleston County 2011 delinquent tax sale.

2. Charleston County mailed an Execution Notice for the property identified as tax map parcel identification number 460-16-03-099, (the "Property"), to Aiquyen Thi Tiet, c/o College Laundromat, 226 Calhoun Street, Charleston, SC 29401-1314, dated August 19, 2011, a copy of which is attached hereto as **Exhibit "A."**

3. Charleston County mailed an Official Notice of Levy for the Property to Aiquyen Thi Tiet, 226 Calhoun Street, Charleston, SC 29401-1314, by certified mail, return receipt requested restricted-delivery, dated October 7, 2011, a copy of which is attached hereto as **Exhibit "B."**

4. Charleston County advertised and sold the Property in the name of Aiquyen Thi Tiet, as the defaulting taxpayer.

5. Plaintiff is the owner of the Property by virtue of the document of conveyance titled Title to Real Estate from Aiquyen Thi Tiet to Hallenbeck Sisters, LLC dated November 30, 2011, and recorded December 12, 2011, in Book 0222, Page 164 in the Office of the Register of Mesne Conveyance for Charleston County, South Carolina, the Property being more fully described as follows:

All that certain piece, parcel or lot of land, with all improvements thereon, situate, lying and being at the northeast corner of Calhoun and Smith Streets, in the City of Charleston, State of South Carolina, as shown on a plat made by The John McCrady Company dated May 12, 1949 and recorded in Plat Book U-50 at Page 35 in the RMC Office for Charleston County. Said property is more recently shown on a plat entitled "Closing Survey, 226 Calhoun Street, City of Charleston", prepared by Forsberg Engineering and Surveying, Inc. dated March 20, 2002. For a more complete and particular description, reference is hereby made to the aforesaid plats.

This being the same property conveyed to Hallenbeck Sisters, LLC by deed of Aiquyen Thi Tiet dated November 30, 2011 and recorded December 12, 2011 in Deed Book 0222 at Page 164 in the RMC Office for Charleston County.

TMS: 460-16-03-099

Property Address: 226 Calhoun St, Charleston, SC 29401

6. The closing of the sale and conveyance of the Property from Aiquyen Thi Tiet to Hallenbeck Sisters, LLC occurred on November 30, 2011, and the parties did not account for the payment of the 2010 delinquent taxes on the Property.

7. Charleston County held a tax sale on December 5, 2011, for the purpose of enforcing the payment and collection of delinquent property taxes.

8. Charleston County sold the Property at the 2011 delinquent tax sale for non-payment of 2010 taxes.

9. RASC II, LLC was the successful bidder at the 2011 delinquent tax sale of the Property.

10. RASC II, LLC paid the full amount of the bid of \$460,000 to Charleston County for the Property on the date of the tax sale.

11. The Plaintiff paid the 2011 taxes owed in the amount of \$13,421.85 on February 3, 2012, which amount was accepted by Charleston County and applied to the outstanding taxes owed for the Property.

12. Charleston County mailed a Final Notice of Property Redemption for the Property to Hallenbeck Sisters, LLC, 419 The PKWY # 140, Greer, SC 2965-4522 by certified mail, return receipt requested-restricted delivery, which was received on November 7, 2012, a copy of which is attached hereto as **Exhibit "C."**

13. The Final Notice of Property Redemption 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.

14. The Plaintiff redeemed the Property on December 4, 2012, by paying \$40,684.55 to Charleston County, which represents the delinquent 2010 taxes, assessments, penalties, and costs of \$13,561.35 and interest of \$27,123.20.

ARGUMENT

I. **The Tax Sale Should be Voided because the Execution Notice and the Official Notice of Levy Created An Artificial Deadline, and Therefore Did Not Strictly Comply with the Statutory Requirements.**

South Carolina courts have consistently and repeatedly held that tax sales must be conducted in strict compliance with statutory requirements. (See Dibble v. Bryant, 274 S.C. 481, 265 S.E.2d 673 (1980); Aldridge v. Rutledge, 269 S.C. 475, 238 S.E.2d 165 (1977); F.C.Enters., Inc. v. Dibble, 335 S.C. 260, 263, 516 S.E.2d 459, 461 (Ct.App.1999). If the taxing agency does not comply with all the statutory notice requirements, the tax sale is void. (Manji v. Blackwell, 323 S.C. 91, 473 S.E. 2d 837 (Ct. App. 1989). Statutory requirements protecting against tax sale forfeiture of real property are strictly construed, and statutory notice requirements may not be circumvented simply by establishing actual notice of a tax sale. South Carolina Fed. Sav. Bank v. Atlantic Land Title Co., 314 S.C. 292, 442 S.E.2d 630 (Ct.App.1994).

Pursuant to S.C. Code of Laws § 12-51-40(b), 1976, as amended, "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". (emphasis added).

Prior to the 2011 Charleston County tax sale, the Defendants mailed on August 19, 2011 an "Execution Notice" to Aiquyen Thi Tiet, as the defaulting taxpayer and the owner of the Property at the time. That notice stated that if the amount of property taxes was not paid, the property would be sold at public action beginning December 5, 2011. Additionally, the Execution Notice stated:

"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."

Additionally, an "Official Notice of Levy" dated October 7, 2011, was sent by the Defendants to the owner, and stated 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 "levying by distress."

The South Carolina Supreme Court has held that a notice which states that payment must be made before the sales date creates an artificial deadline and does not comply with the statute. (See *Hawkins v. Bruno Yacht Sales, Inc.*, 353 S.C. 31, 577 S.E.2d 202 (2003).

The *Hawkins* case involved the tax sale of a boat by the Beaufort County Treasurer for past due taxes owed on the boat. Although the *Hawkins* case involved the tax sale of personal property, the sale of real and personal property for past due taxes is controlled by the same statutes and the *Hawkins* opinion was decided in accordance with § 12-51-40(b).

In *Hawkins*, the first notice sent to the owner of the boat stated that if the taxes were not paid on or before August 31, the property would be sold on the first Monday in October. The second notice stated that the property was subject to sale at the October 2, 1995 tax sale, and that all tax payment must be received by September 15, 1995. The County Treasurer subsequently advertised and sold the boat to a third-party bidder at a tax sale. *Hawkins*, as the owner brought an action to have the tax sale of the boat

set aside for various deficiencies in the tax sale procedure, including defects in the notices sent to him as the owner.

The Court agreed with the Court of Appeal's holding that the "two notices created artificial deadlines for payment before the sales date, and thereby contradicted the statutory language requiring that the notice inform the delinquent taxpayer that the must be paid before a subsequent sales date." *Hawkins* at 37, 577 S.E.2d at 206. Because the sales date was actually October 2, 1995, the notices providing that payment had to be made either by August 31 or September 15 gave the impression that the taxes had to be paid at some point before the actual sales date. It should be noted that the Court in *Hawkins* made no distinctions as to the time span between a stated deadline and the actual sales date. Based on the analysis set forth in *Hawkins*, the Plaintiff asserts that if a deadline is included in a tax sale notice which is not the sales date, the notice is defective, regardless of the proximity of the stated deadline to the actual sale.

The Court in *Hawkins* continued: "The statute does not provide that the County set a date, other than the sales dates, after which the taxpayer can no longer pay his delinquent taxes before the County can begin advertising." *Hawkins* at 38, 577 S.E.2d at 206.

The Defendants failed to strictly comply with the statutes regarding the sale of real property at tax sales by providing delinquent notices that provided that the delinquent taxes must paid on or before a date prior to December 2, 2011, which was not the subsequent sales date. The actual tax sale date was December 5, 2011. While the Plaintiff notes that the time span between the stated deadline and the actual sales date is only three days, our courts have made no distinction or given greater weight to a notice that provides for a shorter time span longer period versus a shorter period between the date stated and the actual sales date. December 2, 2011 was an article deadline that was inconsistent with § 12-51-40(b). The opinion stated in *Hawkins* is clear and not open to a different interpretation based upon the particular facts of a case. This matter is in no way distinguishable from the *Hawkins* case. The notices issued by the Defendant were defective by creating an artificial deadline, and the resulting sale tax is consequently void.

II. The Tax Sale Should Be Voided Because the Final Notice of Property Redemption Contained a Material Defect and Therefore Did Not Strictly Comply with the Statutory Requirements.

S.C. Code of Laws § 12-51-120, 1976, as amended states:

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

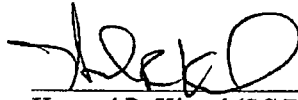
Neither more than forty-five days nor less than twenty days before the end of the redemption period for real estate sold for taxes, the person officially charged with the collection of delinquent taxes shall mail a notice by "certified mail, return receipt requested-restricted delivery" as provided in 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.* Pursuant to this chapter, the return of the certified mail "undelivered" is not grounds for a tax title to be withheld or be found defective and ordered set aside or canceled of record. (emphasis added).

On or about November 7, 2012, the Plaintiff received a "Final Notice of Property Redemption" wherein said notice stated that the Plaintiff could redeem the Property by paying taxes, assessments, penalties, costs, interest and 2011 taxes for total amount of \$56,267.18 or a tax title would be delivered to the successful purchaser. A copy of the Final Notice of Property Redemption is attached hereto as "Exhibit C" and incorporated herein by reference.

The Plaintiff had previously paid the 2011 taxes in the amount of \$13,421.85 February 3, 2012. Therefore, the actual amount due from the Plaintiff in order to redeem the Property was \$40,684.55, not \$56,267.18, as provided in the notice. Accordingly, the Defendants failed to strictly comply with the statutes regarding the sale of real property at tax sales by providing a delinquent notice that contained a material defect in that the notice required the Plaintiff to pay more than what was actually owned in order to redeem the Property.

III. Conclusion

Based on the foregoing, the Plaintiff is entitled to an Order declaring that the December 5, 2011 tax sale of the Property was invalid and the same be voided as to the Property for failure to comply with the material provisions of the South Carolina Code of Laws. Additionally, the Charleston County Delinquent Tax Office should be ordered to refund to the Plaintiff \$27,123.20, which is the Plaintiff's redemption payment of \$40,684.55 less the 2010 taxes and penalties owed in the amount of \$13,561.35.



Howard R. Kinard (SC Bar No. 74912)
Steven M. Querin (SC Bar No. 11560)
Johnson, Smith, Hibbard & Wildman Law Firm
Post Office Drawer 5587
Spartanburg, South Carolina 29304-5587
Telephone: (864) 582-8121
Facsimile: (864) 585-5328
Attorneys for Plaintiff

February , 2013
Spartanburg, South Carolina

EXHIBIT A
Execution Notice



CHARLESTON COUNTY
DELINQUENT TAX
 4046 BRIDGE VIEW DRIVE • N. CHARLESTON SC 29405-7484
 460-16-03-099

CHARLESTON COUNTY
 SOUTH CAROLINA
 RETURN SERVICE REQUESTED

AUGUST 19, 2011

EXECUTION NOTICE

**THESE TAXES ARE PAST DUE! PAY NOW TO AVOID
 ADVERTISEMENT AND SALE OF PROPERTY**

3143 1 AT 0.365 *****AUTO**3-DIGIT 294
 003143
 TIET AIQUYEN THI
 C/O COLLEGE LAUNDROMAT
 226 CALHOUN ST
 CHARLESTON SC 29401-1314

TAX YEAR	RECEIPT #	AMOUNT DUE
2010	2010-154249	13,426.35
LEVY COST		95.00
AMOUNT DUE		\$ 13,521.35

PROPERTY DESCRIPTION

PARCEL ID: 460-16-03-099
 226 CALHOUN ST
 226 CALHOUN & SMITH

**UNIFIED TAXES ARE DUE ON THE FOLLOWING
 DESCRIBED REAL PROP**

PLEASE NOTE: ONLY CASH, MONEY ORDERS, OR CERTIFIED CHECKS WILL BE ACCEPTED FOR PAYMENT OF DELINQUENT REAL PROPERTY TAXES.

IF YOU DO NOT PAY THE AMOUNT DUE, THE FOLLOWING ACTIONS WILL BE TAKEN:

1. AN "OFFICIAL NOTICE OF LEVY" WILL BE MAILED TO YOU.
2. YOUR PROPERTY WILL BE ADVERTISED IN THE "CHARLESTON POST & COURIER".
3. A SIGN MAY BE PLACED ON YOUR PROPERTY ANNOUNCING THAT THE PROPERTY IS TO BE SOLD FOR NON-PAYMENT OF TAXES.
4. YOUR PROPERTY WILL BE SOLD AT PUBLIC AUCTION BEGINNING ON DECEMBER 05, 2011.

ALL REAL ESTATE TAXES MUST BE PAID ON OR BEFORE 5:00 P.M. ON DECEMBER 02, 2011 IN ORDER TO AVOID HAVING THE PROPERTY SOLD AT TAX SALE.

IF YOU ARE IN BANKRUPTCY, PLEASE CONTACT THIS OFFICE IMMEDIATELY.

**AFTER OCTOBER 28, 2011 AN ADDITIONAL \$40 LEVY FEE WILL BE DUE
 IF YOU HAVE ANY QUESTION REGARDING THIS BILL, PLEASE CALL 843-202-6576**



CHARLESTON COUNTY
DELINQUENT TAX
 4046 BRIDGE VIEW DRIVE • N. CHARLESTON SC 29405-7484
 2010-154249

Receipt Number(s) 2010-154249

Parcel ID 460-16-03-099

LEGAL DESCRIPTION: 226 CALHOUN ST
 226 CALHOUN & SMITH

-035

AFTER OCTOBER 28, 2011 AN ADDITIONAL \$40 LEVY FEE WILL BE DUE

PAY THIS AMOUNT: \$ 13,521.35

MAKE PAYMENT TO:

TIET AIQUYEN THI
 C/O COLLEGE LAUNDROMAT
 226 CALHOUN ST
 CHARLESTON SC 29401-1314

CHARLESTON COUNTY TREASURER
 PO BOX 878
 CHARLESTON SC 29402-0878

R

EXHIBIT B
Official Notice of Levy

MARY M. SCARBOROUGH
Delinquent Tax Collector

October 7, 2011

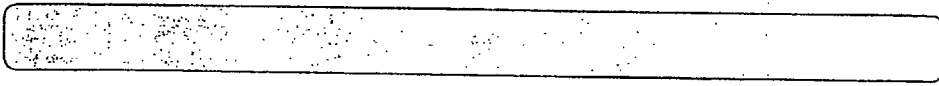


4601603099



DELINQUENT TAX COLLECTOR
4045 BRIDGE VIEW DR., 1ST FLOOR
NORTH CHARLESTON, SC 29405

OFFICIAL NOTICE OF LEVY



Current Owner: TIET AIQUYEN THI

Current Total taxes, penalties and costs Due: \$13,521.35

Amount Due After: 10/28/2011 \$13,561.35

TIET AIQUYEN THI

PARCEL ID: 4601603099

FAILURE TO PAY YOUR TAXES WILL RESULT IN YOUR PROPERTY BEING ADVERTISED IN THE "CHARLESTON POST & COURIER".

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 "LEVYING BY DISTRESS".

PLEASE RETURN THIS NOTICE
WITH MONEY ORDER OR CASHIERS CHECK TO THE BELOW ADDRESS

<u>Physical Address:</u>	<u>Mail payment to:</u>	<u>Business Hours:</u>
Charleston County Treasurer - DT 4045 Bridge View Dr., 1st Floor North Charleston, SC 29405	Charleston County Treasurer - DT PO Box 878 Charleston SC 29402-0878	8:30 AM to 5:00 PM Monday - Friday Delinquent Tax Phone Number: (843) 202-6570

UNITED STATE POSTAL SERVICE



FIRST-CLASS
MAIL
POSTAGE &
FEES PAID
LPP
29292

CHARLESTON COUNTY DELINQUENT TAX COLLECTOR
4045 BRIDGE VIEW DR B110
NORTH CHARLESTON SC 29405-7464



EXHIBIT C
Final Notice of Property Redemption

Department of Revenue Collections
Public Service Building
4045 Bridge View Drive
North Charleston, SC 29405-7464
Telephone (843) 202-6080
Fax (843) 202-6066



Bankruptcy Division
Business License Division
Delinquent Tax Division
Hospitality/Accommodations Division
Legal Processing Division
Solid Waste Disposal Fee Division
Storm Water Management Division

4601603099

November 07, 2012

VIA CERTIFIED MAIL
4601603099 - 2011TS Final Notice
226 CALHOUN ST CHARLESTON

FINAL NOTICE OF PROPERTY REDEMPTION

RE: HALLENBECK SISTERS LLC
TAX ADDRESS: 226 CALHOUN ST CHARLESTON

NOTICE is hereby given that the real property described on this notice has been sold for taxes by the Delinquent Tax Collector for Charleston County. If not redeemed by paying taxes, assessments, penalties, costs, interest and 2011 Taxes for the total amounts listed below on or before 5:00 pm, **Thursday, December 6, 2012**, a tax title will be delivered to the successful purchaser. Certified Check, Money Order, or Cash Payments can be mailed to Charleston County Treasurer, P. O. Box 878, Charleston, S. C. 29402-0878 or paid at the Charleston County Treasurer's Office, first floor located at 4045 Bridgeview Drive, North Charleston, SC 29405.

LIENHOLDERS/JUDGEMENT/CREDITORS

Records filed with the Register of Mesne Conveyance or the Clerk of Court for the County of Charleston, State of South Carolina, indicates that you may have a Judgment/Lien/Mortgage against the above-named person. Notice is hereby given to you as the holder of this Judgment/Lien/Mortgage that the real property described in this notice has been sold by the Delinquent Tax Collector for Charleston County. Please send a Certified Check, Money Order, or Cash Payment for the amount listed below to the Charleston County Treasurer, P. O. Box 878, Charleston, S. C. 29402-0878 or pay at the Charleston County Treasurer's Office, first floor, 4045 Bridgeview Drive, North Charleston, SC 29405. In order to protect your interest in the aforementioned property, you must pay the redemption amount and the 2011 tax amount on or before 5:00 pm, **Thursday, December 6, 2012** or a tax title will be delivered to the successful purchaser.

<u>Tax Map Number</u>	<u>Redemption Amount</u>	<u>2011 Tax Amount</u>	<u>Due By</u>
4601603099	\$40,684.55	\$15,582.63	December 6, 2012

If you have any questions about this IMPORTANT matter, please contact our office directly at (843) 202-6570.

ONLY CASH, MONEY ORDERS OR CERTIFIED FUNDS WILL BE ACCEPTED
THIS IS YOUR FINAL NOTICE OF PROPERTY SOLD!

Ronald D. Hall
Acting Delinquent Tax Collector

Transcript of Hearing from February 11, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

COURT OF COMMON PLEAS

Hallenbeck Sister, LLC,)

PLAINTIFFS,)

v.)

Ronald D. Hall, et al.,)

DEFENDANTS.)
_____)

TRANSCRIPT OF HEARING
C/A #:2012-CP-10-07919

Charleston County Courthouse
February 11, 2013

BEFORE:

HONORABLE R. MARKLEY DENNIS, JR.; PRESIDING JUDGE.

APPEARANCES:

Howard R. Kinard, Esquire
Bernard E. Ferrara, Jr., Esquire

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

INDEX

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Certificate of Service	7

Exhibits

(No Exhibits were marked during this Motion)

1 The Court: First of all, all the memos have been
2 submitted, we have them. They are incorporated for
3 purposes of review. Your positions are set forth in
4 those memos if you want to rely on those positions. So,
5 it's not necessary to argue those verbatim but please
6 feel free to stress any points you wish for my
7 consideration. The Plaintiff is seeking to restrain the
8 County. Is that what you want to do first. I mean the
9 deed. It is your position that it is null and void
10 because it didn't strictly comply with the statute.

11 Mr. Kinard: That's correct, Your Honor. It's a
12 little different in this scenario because ...

13 The Court: Well, explain the difference for me.

14 Mr. Kinard: Sure. My client, the Plaintiff, has
15 redeemed the property so no tax deed was ever issued so
16 ...

17 The Court: I understand that.

18 Mr. Kinard: Okay.

19 The Court: So, what is it that you want to do?

20 Mr. Kinard: Your Honor, we would like to make an
21 argument that the original tax sale was invalid and
22 therefore ...

23 The Court: Let me ask you a silly question.

24 Mr. Kinard: Yes, sir.

25 The Court: You redeemed the property so there's no

1 tax deed.

2 Mr. Kinard: That's correct.

3 The Court: There's not an argument that the taxes
4 weren't delinquent, is it?

5 Mr. Kinard: I believe ...

6 The Court: No, I'm asking you a question. Not what
7 you believe. Is there any argument that the taxes were
8 not delinquent?

9 Mr. Kinard: No, there's not.

10 The Court: Then what is the issue. You owed the
11 taxes. What I don't understand and I did property, I did
12 title work, believe it or not when I first started
13 practicing law and this was clearly on the record,
14 clearly known and closed before the tax sale. I can't
15 tell you how many times I ran down to Mike Brown, who was
16 a delinquent tax collector and brought him a check before
17 the closing to stop a sale. That's what happens.
18 Somebody missed.

19 Mr. Kinard: That's right.

20 The Court: And whoever closed the loan, was it you?

21 Mr. Kinard: No, I didn't close the loan.

22 The Court: I didn't think so. Well, whoever closed
23 the loan has a little problem there, I think. So, I
24 don't know what your position is.

25 Mr. Kinard: Okay. Your Honor, we, the client,

1 Hallenbeck Sisters, bought the property before the actual
2 tax sale.

3 The Court: I understand that. But there is no
4 question the taxes were owed and no question the county
5 has every right to proceed as it did.

6 Mr. Kinard: Sure, but I think it has a obligation to
7 conduct a tax sale in accordance with the statutes.

8 The Court: So your position is it ought to be void
9 and then what happens?

10 Mr. Kinard: Void from the beginning and we would pay
11 the taxes that were due before it was sold at the tax
12 sale.

13 The Court: If it's already been paid, then
14 eliminated. There's no sale. Correct?

15 Mr. Kinard: Well, arguably yes, Your Honor.

16 The Court: Arguably? I mean, are you all claiming
17 you all want the right to deed the property?

18 Mr. Ferrera: No, Your Honor, we're claiming the
19 right that the tax sale was valid.

20 The Court: And it's been redeemed and ...

21 Mr. Ferrera: And the Hallenbeck Sisters are paying
22 those interest to the bidder.

23 The Court: The interest accrued because of the
24 delinquent taxes. No question about that.

25 Mr. Kinard: Yes, sir. Because it was sold at the

1 tax sale and there was a large sum, Two Hundred ...

2 The Court: That interest would have continued
3 whether there would have been a sale or not.

4 Mr. Kinard: Well, that's right, Your Honor, but if
5 we could move back to where the sale was faulty to begin
6 with ...

7 The Court: The interest is still accruing. The sale
8 is faulty but the interest is still accruing. What's the
9 issue?

10 Mr. Kinard: Well, Your Honor, the issue is ...

11 The Court: Thank you. Let's just shorten this.

12 Mr. Kinard: Okay.

13 The Court: Your Motion is denied. You can take that
14 - if Columbia wants to change it they can and I don't
15 have any problem with it. I understand your position.
16 In fact, it's ... we're off the record now.

17 (End of hearing)

18

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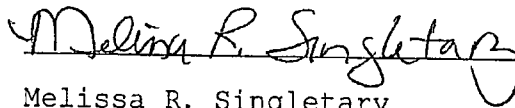
25

CERTIFICATE

This is to certify that the transcript in the matter of Hallenbeck Sisters, LLC vs. Ronald D. Hall, et al., consisting of Six (6) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 13th day of September, 2013.



Melissa R. Singletary
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: 3-5-2014

Execution Notice of Levy, Dated August 19, 2011



CHARLESTON COUNTY
DELINQUENT TAX
 4045 BRIDGE VIEW DRIVE • N. CHARLESTON SC 29405-7484
 460-16-03-099

CHARLESTON COUNTY
 SOUTH CAROLINA

RETURN SERVICE REQUESTED

AUGUST 19, 2011

EXECUTION NOTICE

THESE TAXES ARE PAST DUE! PAY NOW TO AVOID
 ADVERTISEMENT AND SALE OF PROPERTY

TAX YEAR	RECEIPT #	AMOUNT DUE
2010	2010-154249	13,426.35
LEVY COST		95.00
AMOUNT DUE		\$ 13,521.35

3143 1 AT 0.365 *****AUTO**3-DIGIT 294
 003143
 TIET AIQUYEN THI
 C/O COLLEGE LAUNDROMAT 3143 R
 226 CALHOUN ST 20
 CHARLESTON SC 29401-1314

PROPERTY DESCRIPTION

PARCEL ID: 460-16-03-099
 226 CALHOUN ST
 226 CALHOUN & SMITH

UNIFIED TAXES ARE DUE ON THE FOLLOWING
 DESCRIBED REAL PROP

PLEASE NOTE: ONLY CASH, MONEY ORDERS, OR CERTIFIED CHECKS WILL BE ACCEPTED
 FOR PAYMENT OF DELINQUENT REAL PROPERTY TAXES.

IF YOU DO NOT PAY THE AMOUNT DUE, THE FOLLOWING ACTIONS WILL BE TAKEN:

1. AN "OFFICIAL NOTICE OF LEVY" WILL BE MAILED TO YOU.
2. YOUR PROPERTY WILL BE ADVERTISED IN THE "CHARLESTON POST & COURIER".
3. A SIGN MAY BE PLACED ON YOUR PROPERTY ANNOUNCING THAT THE PROPERTY IS TO BE SOLD FOR NON-PAYMENT OF TAXES.
4. YOUR PROPERTY WILL BE SOLD AT PUBLIC AUCTION BEGINNING ON DECEMBER 05, 2011.

ALL REAL ESTATE TAXES MUST BE PAID ON OR BEFORE 5:00 P.M. ON DECEMBER 02, 2011 IN ORDER TO AVOID
 HAVING THE PROPERTY SOLD AT TAX SALE.

IF YOU ARE IN BANKRUPTCY, PLEASE CONTACT THIS OFFICE IMMEDIATELY.

AFTER OCTOBER 28, 2011 AN ADDITIONAL \$40 LEVY FEE WILL BE DUE
 IF YOU HAVE ANY QUESTION REGARDING THIS BILL, PLEASE CALL 843-202-6576



CHARLESTON COUNTY
DELINQUENT TAX
 4045 BRIDGE VIEW DRIVE • N CHARLESTON SC 29405-7484
 2010-154249

Receipt Number(s) 2010-154249

Parcel ID 460-16-03-099
 LEGAL DESCRIPTION: 226 CALHOUN ST
 226 CALHOUN & SMITH

-035

AFTER OCTOBER 28, 2011 AN ADDITIONAL \$40 LEVY FEE WILL BE DUE

PAY THIS AMOUNT \$ 13,521.35

TIET AIQUYEN THI
 C/O COLLEGE LAUNDROMAT
 226 CALHOUN ST
 CHARLESTON SC 29401-1314

MAKE PAYMENT TO:

CHARLESTON COUNTY TREASURER
 PO BOX 878
 CHARLESTON SC 29402-0878 R

Official Notice of Levy, Dated October 7, 2011

MARY M. SCARBOROUGH
Delinquent Tax Collector



DELINQUENT TAX COLLECTOR
4045 BRIDGE VIEW DR., 1ST FLOOR
NORTH CHARLESTON, SC 29405

October 7, 2011

4601603099

OFFICIAL NOTICE OF LEVY

[Empty rectangular box]

Current Owner : TIET AIQUYEN THI

Current Total taxes, penalties and costs Due: \$13,521.35

Amount Due After: 10/28/2011 \$13,561.35

TIET AIQUYEN THI

PARCEL ID: 4601603099

FAILURE TO PAY YOUR TAXES WILL RESULT IN YOUR PROPERTY BEING ADVERTISED IN THE "CHARLESTON POST & COURIER".
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 "LEVYING BY DISTRESS".

PLEASE RETURN THIS NOTICE
WITH MONEY ORDER OR CASHIERS CHECK TO THE BELOW ADDRESS

<u>Physical Address:</u> Charleston County Treasurer - DT 4045 Bridge View Dr., 1st Floor North Charleston, SC 29405	<u>Mail payment to:</u> Charleston County Treasurer - DT PO Box 878 Charleston SC 29402-0878	<u>Business Hours:</u> 8:30 AM to 5:00 PM Monday - Friday <u>Delinquent Tax Phone</u> Number: (843) 202-6570
---	---	---

UNITED STATE POSTAL SERVICE



FIRST-CLASS
MAIL
POSTAGE &
FEES PAID
LPP
29292

CHARLESTON COUNTY DELINQUENT TAX COLLECTOR
4045 BRIDGE VIEW DR B110
NORTH CHARLESTON SC 29405-7464



Final Notice of Property Redemption, Dated November 7, 2012

Department of Revenue Collections
Public Service Building
4045 Bridge View Drive
North Charleston, SC 29405-7464
Telephone (843) 202-6080
Fax (843) 202-6066



Bankruptcy Division
Business License Division
Delinquent Tax Division
Hospitality/Accommodations Division
Legal Processing Division
Solid Waste Disposal Fee Division
Storm Water Management Division

4601603099

November 07, 2012

VIA CERTIFIED MAIL
4601603099 -- 2011TS Final Notice
226 CALHOUN ST CHARLESTON

FINAL NOTICE OF PROPERTY REDEMPTION

RE: HALLENBECK SISTERS LLC
TAX ADDRESS: 226 CALHOUN ST CHARLESTON

NOTICE is hereby given that the real property described on this notice has been sold for taxes by the Delinquent Tax Collector for Charleston County. If not redeemed by paying taxes, assessments, penalties, costs, interest and 2011 Taxes for the total amounts listed below on or before 5:00 pm, **Thursday, December 6, 2012**, a tax title will be delivered to the successful purchaser. Certified Check, Money Order, or Cash Payments can be mailed to Charleston County Treasurer, P. O. Box 878, Charleston, S. C. 29402-0878 or paid at the Charleston County Treasurer's Office, first floor located at 4045 Bridgeview Drive, North Charleston, SC 29405.

LIENHOLDERS/JUDGEMENT/CREDITORS

Records filed with the Register of Mesne Conveyance or the Clerk of Court for the County of Charleston, State of South Carolina, indicates that you may have a Judgment/Lien/Mortgage against the above-named person. Notice is hereby given to you as the holder of this Judgment/Lien/Mortgage that the real property described in this notice has been sold by the Delinquent Tax Collector for Charleston County. Please send a Certified Check, Money Order, or Cash Payment for the amount listed below to the Charleston County Treasurer, P. O. Box 878, Charleston, S. C. 29402-0878 or pay at the Charleston County Treasurer's Office, first floor, 4045 Bridgeview Drive, North Charleston, SC 29405. In order to protect your interest in the aforementioned property, you must pay the redemption amount and the 2011 tax amount on or before 5:00 pm, **Thursday, December 6, 2012** or a tax title will be delivered to the successful purchaser.

<u>Tax Map Number</u>	<u>Redemption Amount</u>	<u>2011 Tax Amount</u>	<u>Due By</u>
4601603099	\$40,684.55	\$15,582.63	December 6, 2012

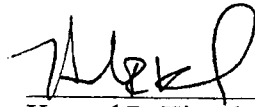
If you have any questions about this IMPORTANT matter, please contact our office directly at (843) 202-6570.

ONLY CASH, MONEY ORDERS OR CERTIFIED FUNDS WILL BE ACCEPTED
THIS IS YOUR FINAL NOTICE OF PROPERTY SOLD!

Ronald D. Hall
Acting Delinquent Tax Collector

Certificate of Counsel

The undersigned hereby certifies that the Record of Appeal contains all material proposed to be included by any of the parties and not any other material.



Howard R. Kinard (SC Bar No. 74912)
Steven M. Querin (SC Bar No. 11560)
Johnson, Smith, Hibbard & Wildman Law Firm
Post Office Drawer 5587
Spartanburg, South Carolina 29304-5587
Telephone: (864) 582-8121
Facsimile: (864) 585-5328
Attorneys for Appellant

December 18, 2013

RECEIVED

JAN 09 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED

DEC 23 2013

R. Markley Dennis, Jr., Circuit Court Judge

SC Court of Appeals

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,

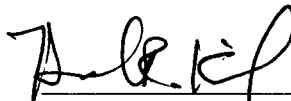
.....Respondent.

PROOF OF SERVICE

The undersigned certifies that a copy of the Record on Appeal has been served upon counsel of record by depositing a copy of the same in Federal Express Overnight Delivery on the 19th day December, 2013, to the address below:

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December 19, 2013



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