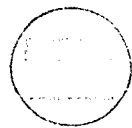


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DEC 31 2013
Richard W. Kirven
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON) IN THE COURT OF COMMON PLEAS

TLR-V, LLC)

Plaintiffs,)

vs.)

Donald Fred Payton and AnMed Health,)
formerly known as Anderson Area Medical)
Center, Inc.,)

Defendants.)

CASE NO.: 2011-CP-04-03131

ORDER AND JUDGMENT
QUIETING TITLE

RECEIVED

AUG 07 2014

SC Court of Appeals

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BACKGROUND

This matter came before this Court for hearing, pursuant to notice, on September 26, 2013. This is an action to quiet title pursuant to Sections 15-67-10 through 15-67-100, Code of Laws of South Carolina, 1976, as amended. This action, pursuant to an Order Of Reference dated May 8, 2012, is before this Court for final judgment.

Present for the Plaintiff was its attorney, Gregory G. Williams. Present for Defendant AnMed Health, formerly known as Anderson Area Medical Center, Inc. (hereinafter "AnMed") was its attorney, Steven C. Kirven. Defendant AnMed timely filed its Answer. Although notice was provided to Defendant Donald Fred Payton, he did not appear at this hearing, nor was Defendant Payton represented by counsel.

According to an Affidavit filed with the Clerk of Court in this case, and the Clerk's Entry of Default, Defendant Donald Fred Payton is in default. Defendant Donald Fred Payton has not filed pleadings, objections, or motions, nor otherwise communicated with the Court in any manner whatsoever.

The Plaintiff and Defendant AnMed, through counsel, entered into a Stipulation of Facts, agreeing and establishing that the subject tax sale was conducted in compliance with controlling statutes. The Court incorporates the Stipulation of Facts, in full, as part of this Order, as follows:

1. The real property which is the subject of this action ["Property"] is described as follows:

All that certain piece, parcel or lot of land lying and being in Varennes Township, Anderson County, South Carolina, and in School District Number 5, this lot is shown as Lot Number Two (2) on a plat by James A. Winter, RLS, dated February, 1949, which plat is duly recorded in the Office of the Clerk of Court for Anderson County in Plat Book 23 at Page 116.

The above described property is the same conveyed to US Bank-CUST/SASS MUNI V DTR by Deed of the Treasurer of Anderson County dated November 30, 2010, and recorded in the Office of the Register of Deeds for Anderson County on February 24, 2011, in Book 09938 at Page 201. Thereafter, the property was transferred to TLR-V, LLC, by Quit-Claim Deed dated March 15, 2011, and recorded in the Office of the Register of Deeds for Anderson County on May 13, 2011, in Book 10024 at Page 90.

TMS#: 151-01-02-010

Property Address: 2322 S. McDuffie Street, Anderson, South Carolina;

2. All Defendants have been properly served with the Summons and Complaint in this matter;
3. This Court has jurisdiction of the parties and subject matter herein;
4. The Defendant, Donald Fred Payton ["Payton"], is in default;
5. By Deed dated August 18, 1993, recorded August 19, 1993, in the Office of the Register of Deeds for Anderson County, South Carolina, in Book 1685, at Page 168, Donald Fred Payton acquired title to the property;
6. AnMed Health obtained the following judgment against Donald Fred Payton all of which are of record in the Office of the Clerk of Court for Anderson County, South Carolina:

(a) Judgment No. 2004-00585 in the amount of Three Thousand Six Hundred Eighteen and 48/100 (\$3,618.48) Dollars issued by Transcript of Judgment in Magistrate's Court on January 28, 2004, entered as Judgment in the Office of the Clerk of Court for Anderson County on February 10, 2004;

(b) Judgment No. 2004-03371 in the amount of One Thousand Nine Hundred Eighty-seven and 50/100 (\$1,987.50) Dollars issued by Transcript of Judgment in Magistrate's Court on September 28, 2004, entered as Judgment in the Office of the Clerk of Court for Anderson County on October 22, 2004;

(c) Judgment No. 2006-03761 in the amount of Thirty-three Thousand Two Hundred Forty-eight and 53/100 (\$33,248.53) Dollars issued by Order for Judgment in the Court of Common Pleas on April 25, 2007, entered as Judgment in the Office of the Clerk of Court for Anderson County on April 30, 2007;

(d) Judgment No. 2009-03378 in the amount of Three Thousand Four Hundred Twenty-nine and No/100 (\$3,429.00) Dollars issued by Transcript of Judgment in Magistrate's Court on December 14, 2006, entered as Judgment in the Office of the Clerk of Court for Anderson County on August 28, 2009;

(e) Judgment No. 2011-01497 in the amount of Six Thousand Eight Hundred Eighty-nine and No/100 (\$6,889.00) Dollars issued by Transcript of Judgment in Magistrate's Court on March 10, 2010, entered as Judgment in the Office of the Clerk of Court for Anderson County on May 3, 2011;

7. Payton failed to pay his 2008 Anderson County ad valorem property taxes on the property by the due date for that year's taxes which was January 15, 2009;

8. As a result of the tax delinquency for the year 2008, the property was sold by Anderson County at its Tax Sale held on November 2, 2009, at which time the high bidder was US Bank-CUST/SASS MUNI V DTR for the sum of Five Thousand and No/100 (\$5,000.00) Dollars.

9. Anderson County issued a Tax Deed to US Bank-CUST/SASS MUNI V DTR dated November 30, 2010, recorded February 24, 2011, in the Office of the Register of Deeds for Anderson County, South Carolina, in Book 9938, at Page 201;

10. US Bank-CUST/SASS MUNI V DTR issued a Quit Claim Deed to TLR-V, LLC ["TLR-V"], the Plaintiff herein, dated March 15, 2011, recorded May

13, 2011, in the Office of Register of Deeds for Anderson County, South Carolina, in Book 10024, at Page 90, for a stated consideration of Five and No/100 (\$5.00) Dollars;

11. TLR-V commenced this action designated as a "Suit to Quiet Title" by filing its Lis Pendens in the Office of the Clerk of Court for Anderson County, South Carolina, which is designated as Lis Pendens 2011LP0400892 and at the same time filing its Summons and Complaint herein and subsequently serving the same on the Defendants;

12. No notice of the delinquent taxes, the Tax Sale, or issuance of the Tax Deed was given to AnMed Health by Anderson County;

13. The subject Tax Sale and issuance of the subsequent Tax Deed by Anderson County was in compliance with applicable statutory provisions which do not require notice to judgment creditors such as AnMed Health.

At the hearing, Plaintiff's counsel argued generally that the validity of the Sale should be confirmed and title quieted for the Plaintiff, in that the Sale complied with controlling law. Defendant AnMed's position, while acknowledging compliance with controlling law, is that it is fundamentally unfair that AnMed's judgment liens be extinguished as to the subject real property without notice and an opportunity to pay the real property taxes pre-sale or redeem the property post-sale. AnMed does not question that the Tax Sale complied with controlling statutes, nor the present ownership of the subject property by the Plaintiff; rather, it is AnMed's position that the Plaintiff owns the property *subject to* AnMed's liens.

Without objection, Plaintiff's counsel entered a copy of the Tax Collector's file into evidence, as well as a copy of the quit claim deed conveying the property from the tax sale purchaser to the Plaintiff herein.

FINDINGS OF FACT

Based upon the Court's examination of the pleadings and other documents of record, and relying on the Stipulation of Facts, the Court makes the following findings of fact:

1. The Summons and Complaint were filed on October 19, 2011.
2. The Summons and Complaint were properly served on Defendant Donald Fred Payton on or about February 23, 2012, and, pursuant to the Affidavit of Default as to Donald Fred Payton, Donald Fred Payton is in default.
3. The Summons and Complaint were properly served on Defendant AnMed, through counsel on or about December 7, 2011.
4. Defendant AnMed timely filed its Answer, on or about January 5, 2012.
5. The Clerk of Court's Entry of Default as to Defendant Donald Fred Payton was signed on April 18, 2012, and filed on April 19, 2012.
6. Plaintiff's counsel and Defendant AnMed's counsel, proposed a Consent Order of Reference to Master-In-Equity on May 8, 2012, and the Order Of Reference was signed by the Clerk of Court and filed on May 8, 2012.
7. The real estate which is the subject of this action is located in Anderson County, South Carolina, and is within the jurisdiction of this Court. The subject property is generally known as 2322 S. McDuffie Street, Anderson, South Carolina. The owner of record of this property immediately prior to the tax sale described herein below was Donald Fred Payton.
8. By way of a Anderson County, South Carolina, delinquent property tax sale which took place on about November 2, 2009, ownership of the property passed from Donald Fred Payton to the

successful bidder at the Tax Sale, US Bank-Cust/Sass Muni V DTR. This transfer was memorialized by an Anderson County Tax Deed executed on or about November 30, 2010, and recorded in Deed Book 9938 at Page 201 by the Anderson County Register of Deeds on February 24, 2011.

9. Ownership of the property passed from US Bank-Cust/Sass Muni V DTR to the Plaintiff herein, TLR-V, LLC, by way of a Quit Claim Deed dated March 15, 2011, and recorded on May 13, 2011, by the Anderson County Register of Deeds in Book 10024, Page 90.

10. Defendant Donald Fred Payton was appropriately made a party to this action because of his ownership interest in the subject property prior to the tax sale.

11. Defendant AnMed was appropriately made a party to this action because of multiple judgments in its favor on record with the Anderson County Clerk of Court, including the following:

- (a) Judgment No. 2004-00585 in the amount of Three Thousand Six Hundred Eighteen and 48/100 (\$3,618.48) Dollars issued by Transcript of Judgment in Magistrate's Court on January 28, 2004, entered as Judgment in the Office of the Clerk of Court for Anderson County on February 19, 2004;
- (b) Judgment No. 2004-03371 in the amount of One Thousand Nine Hundred Eighty-Seven and 50/100 (\$1,987.50) Dollars issued by Transcript of Judgment in Magistrate's Court on September 28, 2004, entered as Judgment in the Office of the Clerk of Court for Anderson County on October 22, 2004;
- (c) Judgment No. 2006-03761 in the amount of Thirty-Three Thousand Two Hundred Forty-Eight and 53/100 (\$33,248.53) Dollars issued by Order for Judgment in Court of Common Pleas on April 25, 2007, entered as Judgment in the Office of the Clerk of Court for Anderson County on April 30, 2007;

- (d) Judgment No. 2009-03378 in the amount of Three Thousand Four Hundred Twenty-Nine (\$3,429.00) Dollars issued by Transcript of Judgment in Magistrate's Court on December 14, 2006, entered as Judgment in the Office of the Clerk of Court for Anderson County on August 28, 2009;
- (e) Judgment No. 2011-01497 in the amount of Six Thousand Eight Hundred Eighty-Nine (\$6,889.00) Dollars issued by Transcript of Judgment in Magistrate's Court on March 10, 2010, entered as Judgment in the Office of the Clerk of Court for Anderson County on May 3, 2011.

12. The Court finds that the Tax Collector handled the Tax Sale, including providing required notices, in compliance with controlling statutes. The Plaintiff and Defendant AnMed are in agreement with this finding by way of their Stipulation of Facts.

CONCLUSIONS OF LAW

1. The sale of real property for the satisfaction of *ad valorem* taxes is governed by Sections 12-49-10 through 300 and 12-51-10 through 170, Code of Laws of South Carolina, 1976, as amended.
2. A tax deed, "whether executed to a private person, a corporation, or a forfeited land commission, is *prima facie* evidence of a good title in the holder, that all proceedings have been regular and that all legal requirements have been complied with." Section 12-51-160, Code of Laws of South Carolina, 1976, as amended; Leysath v. Leysath, 209 S.C. 342, 40 S.E.2d 233, (1946). The burden of proving that the title is defective is on the party attacking the deed. Leysath v. Leysath, Id.

3. If the defaulting taxpayer fails to redeem the property during the twelve month period, his title is defeated and title to the property is transferred to the successful bidder. Von Elbrecht v. Jacobs, 286 S.C. 240, 332 S.E.2d 568 (Ct. App. 1985); See Sections 12-51-90, 100 and 130.

4. Plaintiff has established that it has a deed to the property through the Anderson County Delinquent Tax Collector. Defendant AnMed, however, argues that if the Sale is validated, then the Plaintiff owns the property *subject to* AnMed's liens, listed above.

5. The thrust of Defendant AnMed's argument is that even though the Tax Sale complied with controlling statutes, its several liens survive the sale and continue to "attach" to the subject property. That is, AnMed questions neither the validity of the sale, nor the present ownership of the property by the Plaintiff; rather, AnMed concedes that the Plaintiff owns the property, but opines that the Plaintiff owns the property *subject to* AnMed's liens.

To support its position, AnMed points to the case of F.C. Enterprises v Dibble, 335 S.C. 260, 516 S.E.2d 459 (Ct. App. 1999). In F.C. Enterprises, the Court recognized that a recorded lease/option survived the Tax Sale such that it had to be honored by the Tax Sale purchaser. This Court distinguishes the facts in F.C. Enterprises from the facts in the instant case. Most important, in F.C. Enterprises, the Court recognized the survival of a lease/option, which by its own terms was specific to the parcel sold by way of the Tax Sale. In the instant case, on the other hand, AnMed's judgment liens do not involve an interest specific to the parcel which was sold at the Tax Sale, the parcel which is the subject of this litigation.

Relatedly, in F.C. Enterprises, if the Court had determined that the Tax Sale extinguished the lease/option in the Tax Sale parcel, then the lease/option interest would have been extinguished altogether, since it was specific to the Tax Sale parcel. In the instant case, on the contrary, AnMed's

judgment liens will remain enforceable against the defaulting taxpayer, Donald Fred Payton, as to any other assets Mr. Payton presently possesses, or assets he might acquire in the future, for the duration of the statutory period during which the judgments are enforceable. AnMed's judgments are *not* satisfied, *nor* extinguished as to other options and alternatives for collection; rather the judgments are extinguished only for the tax sale property which is the subject of this litigation. (The Court notes that most of AnMed's judgments were recorded prior to the date of the Tax Sale. Under no circumstances would post-sale judgments attach to the subject parcel.)

In light of these subtle-but-critical differences between F.C. Enterprises and our instant case, this Court does not find F.C. Enterprises to be controlling in the instant case.

6. AnMed also argues in a general way that it is contrary to principles of due process to allow the tax sale to extinguish its judgment liens as to the subject property without notice and an opportunity to either pay the delinquent taxes pre-sale, or redeem the property post-sale. The Court notes that the tax sale notice statutes are very specific, and that the statutes do not require notice to a judgment creditor such as AnMed, either pre-sale, nor post-sale.

The Plaintiff points out the absence in the notice statutes of any requirement for either pre-sale or post-sale notice to a judgment creditor. For illustration the Plaintiff notes South Carolina Code Ann. Section 12-51-120 (Law. Co-op. 1976, as amended), which enumerates the parties to whom redemption notices must be sent; judgment creditors are not included. The Plaintiff points also to South Carolina Code Ann. Section 12-51-90 (Law. Co-Op. 1976, as amended), which enumerates parties who may redeem a property; this list specifically includes judgment creditors. This Section goes on to explain, in sub-part (c), some of the particulars of the tax deed - if the allowed parties, *including the judgment creditor*, fail to redeem the property during the redemption period.

The judgment creditor, therefore, certainly has the right to redeem the Tax Sale property in order to preserve the asset, although there is no requirement for notice to the judgment creditor. In creating the Tax Sale statutes, perhaps the legislature intended to place the burden on the judgment creditor to monitor assets of the debtor, monitor tax sales, and similar.

7. Finally, although unable to point to supporting authority directly on point, the Plaintiff argued that there is long-standing and seemingly universal acceptance in South Carolina of the “rule” and practice that a Tax Sale extinguishes judgment liens as to the real property sold by way of the Tax Sale. The Court is similarly unaware of any authority directly on this point, but readily recognizes this rule and practice which has been followed consistently with Tax Sales in South Carolina in modern times. In this regard, the Plaintiff argues the applicability of Fox v. Moultrie, 379 S.C. 609, 666 S.E.2d 915 (2008). The question in Fox was whether or not a federal tax lien survives a Tax Sale in South Carolina. The Court determined that a Tax Sale *subordinates* a federal tax lien, but does not *extinguish* it. That is, a Tax Sale purchaser who buys a property to which a federal tax lien is attached, buys the property subject to the federal tax lien. (The federal lien does not survive the Sale if the Tax Collector provided the required notice to the appropriate federal agency; however, apparently Tax Collectors customarily have not provided such notice.)

Fox illustrates the Plaintiff’s point well, and supports the Plaintiff’s position. In Fox, the Court determined that the federal lien survived the Tax Sale because of the federal statute which so dictates. In our instant case, there is no such statute indicating the survival of judgment liens. Furthermore, the Court’s discussion in Fox strongly implies that other liens, such as state tax liens, judgment liens, and the like, which do not have statutory protection, are extinguished by the Tax Sale.

CONCLUSION

1. For all these reasons, this Court concludes that the Plaintiff herein is entitled to a judgment terminating any and all interests of the Defendants, as well as any and all interests of the Defendants' heirs, devisees, successors, assigns, or anyone or anything in the whole world claiming under them, regardless of the nature of that interest or claim, in and to the property at issue, and barring any future claims that may be asserted by any person or entity.
2. The Court concludes that AnMed's liens are extinguished as to the real property which was sold at Tax Sale, the property which is the subject of this litigation, as described with specificity elsewhere herein. AnMed's liens are not impacted in any manner as to enforceability except as to this subject real property.
3. The Plaintiff herein, TLR-V, LLC, is the owner in fee simple, and is entitled to possession of the property which is more fully described as follows:

All that piece, parcel or lot of land lying and being in Varennes Township, Anderson County, SC, and in School District Number 5, this lot is shown as Lot Number Two (2) on a plat by James A. Winter, RLS, dated February, 1949, which plat is duly recorded in the Office of the Clerk of Court for Anderson County in Plat Book 23 at page 116.

Derivation: The above described property is the same conveyed to US Bank-CUST/SASS MUNI V DTR by deed of the Treasurer of Anderson County dated November 30, 2010 and recorded in the Office of the Register of Deeds for Anderson County on February 24, 2011, in Book 09938 at page 201. Thereafter, the property was transferred to TLR-V, LLC, by Quit-Claim Deed dated March 15, 2011 and recorded in the Office of the Register of Deeds for Anderson County on May 13, 2011, in Book 10024 at Page 90.

TMS #: 151-01-02-010

Property Address: 2322 S. McDuffie Street, Anderson, SC

4. The claims, if any, of the Defendants herein and all who claim title under them, in and to the subject property are without any right, and have no estate, right, lien, or interest in or to the property or any part of the property.

5. The Defendants herein and all who claim title under them are permanently enjoined from asserting any estate, right, title, lien, or interest in the subject property or any part thereof.

6. The Plaintiff herein, TLR-V, LLC, is the owner of the property, "free and clear," in fee simple absolute.

NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

A. Judgment is hereby entered in favor of the Plaintiff, TLR-V, LLC, against the Defendants, Donald Fred Payton and AnMed Health, formerly known as Anderson Area Medical Center, Inc., terminating and extinguishing any and all interests and liens of Defendants, their spouses, heirs, devisees, successors, assigns, and anyone or anything in the whole world claiming under them, irrespective of the nature of such claim, has in and to the real property described herein below, and barring any future claims Defendants, their spouses, heirs, devisees, successors, assigns and anyone or anything in the whole world claiming under them irrespective of the nature of such claim, has in and to the following described real property, to wit:

All that piece, parcel or lot of land lying and being in Varennes Township, Anderson County, SC, and in School District Number 5, this lot is shown as Lot Number Two (2) on a plat by James A. Winter, RLS, dated February, 1949, which plat is duly recorded in the Office of the Clerk of Court for Anderson County in Plat Book 23 at page 116.

Derivation: The above described property is the same conveyed to US Bank-CUST/SASS MUNI V DTR by deed of the Treasurer of



Anderson County dated November 30, 2010 and recorded in the Office of the Register of Deeds for Anderson County on February 24, 2011, in Book 09938 at page 201. Thereafter, the property was transferred to TLR-V, LLC, by Quit-Claim Deed dated March 15, 2011 and recorded in the Office of the Register of Deeds for Anderson County on May 13, 2011, in Book 10024 at Page 90.

TMS #: 151-01-02-010

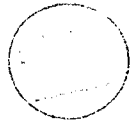
Property Address: 2322 S. McDuffie Street, Anderson, SC

B. A copy of this Order shall be recorded and properly indexed in the Office of the Register of Deeds for Anderson County, South Carolina. Specifically, the Anderson County Register of Deeds shall index this Order under the Plaintiff's name, TLR-V, LLC, in the Grantee and Grantor indices, and under the name of Defendant Donald Fred Payton, in the Grantor index. The Register of Deeds may also, if it chooses, index this Order under the names of the other Defendants.

C. The Sheriff of Anderson County, South Carolina, is hereby ordered and directed to eject and remove from the premises the occupant(s), if any, of the herein described property, together with all personal property located therein, and to put the Plaintiff, TLR-V, LLC, and its agents, employees, and representatives or assigns in full, quiet and peaceable possession of the property described herein without delay, and to keep the Plaintiff, TLR-V, LLC, and its agents, employees, and representatives or assigns in such full, quiet and peaceful possession.

D. This Court retains jurisdiction of this case to address issues of possession generally, as needed, and for the issuance of a Writ of Assistance, if needed.

AND IT IS SO ORDERED, ADJUDGED, AND DECREED.



Ellis B. Drew, Jr.

Ellis B. Drew, Jr.
Master In Equity for Anderson County

Dec 27, 2013

Anderson, South Carolina

FILED-CLERK'S OFFICE
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2013 DEC 31 A 9:25
COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
TLR-V, LLC,)
Plaintiff,)

IN THE COURT OF COMMON PLEAS)
CASE NO.: 2011-CP-04-03131)

RECEIVED

AUG 07 2014

SC Court of Appeals

vs.)

ORDER DENYING DEFENDANT'S RULE 59)
MOTION TO ALTER OR AMEND)

Donald Fred Payton and AnMed Health,)
formerly known as Anderson Area Medical)
Center, Inc.,)
Defendants.)

A TRUE COPY
JUL - 8 2014

This matter came before the Court for hearing on June 5, 2014, on Motion of Defendant AnMed Health, formerly known as Anderson Area Medical Center, Inc. ("AnMed"), to alter or amend the Court's previous Order in this case dated December 27, 2013. Present for the Movant/Defendant was its attorney, Steven C. Kirven, and present for the Plaintiff was its attorney, Gregory G. Williams.

The Court studied the Defendant's Motion carefully, and considered all Thirteen (13) of Defendant's exceptions enumerated in its Motion. The Court listened attentively to the oral arguments of the Defendant's counsel, Mr. Kirven. The Court notes that Defendant's counsel drafted the Motion and articulated the exceptions with exceptional thoroughness and skill; Movant's counsel argued the exceptions orally with like skill. The Court is convinced, however, that its original ruling is proper and accurate. Other than the correction of a harmless oversight noted below, the Court denies the Defendant's Motion as to all the exceptions raised.


In paragraph number One (1) of the Movant's Motion to Alter or Amend, the Movant opines that the Court's Order of December 27, 2013, inaccurately cites the sections of the South Carolina Code pursuant to which the Plaintiff brought the action. Plaintiff's counsel acknowledges that the citation proposed by the Movant is the correct cite, and readily consents to revising the reference

accordingly. Both counsel acknowledge that the incorrect statutory reference was an oversight not caught by either during the process of drafting the Order. By mutual consent, therefore, it is understood that the Plaintiff's action to quiet title was brought pursuant to South Carolina Code Annotated Section 12-61-10, *et seq.* (Law. Co-op. 1976, as amended), and this Court's prior Order of December 27, 2013, is amended accordingly.

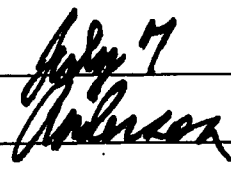
As noted above, the remaining exceptions included in the Defendant's Motion to Alter or Amend, specifically the arguments numbered Two (2) through Thirteen (13) of the Motion, are denied.

Accordingly, the Defendant's Motion to Alter or Amend is denied, except as indicated herein above.

AND IT IS SO ORDERED.



Ellis B. Drew, Jr.
Master In Equity for Anderson County


_____, 2014
_____, South Carolina

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