

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Carmen T. Mullen, Judge

Case No. 2012-CP-27-00760
Court of Appeals Case No.: 2014-000823

ROBERT C. SHCIVERA, Executor of the Estate of Fred J. Hughes,.....Respondent.

v.

C. RUSSELL KEEP, III, ESQUIRE, and RHONDA MITCHELL,
Jasper County Tax Collector, of whom C. RUSSELL KEEP, III, ESQUIRE IS....Appellant.

INITIAL BRIEF OF RESPONDENT

Law Office of R. Thayer Rivers, Jr.



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Attorney for the Plaintiff

Ridgeland, South Carolina,

August 22, 2014.

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SC Court of Appeals

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5. Good v. Kennedy, 291 S.C. 204, 352 S.E.2d 708 (Ct. App. 1987)
6. Reeping v. JEBBCO, 402 S.C. 195, 740 S.E.2d 504 (Ct. App. 2013)

STATEMENT OF ISSUES ON APPEAL

- I. **DID THE COUNTY AUTHORITIES FAILURE TO USE THE CORRECT ADDRESS OF THE TAX PAYER CREATE A FATAL JURISDITONAL DEFECT?**
- II. **DOES POSTING THE PROPERTY ALLEVIATE ALL THE ABOVE CITED DEFECTS?**
- III. **DID THE LEGISLATIVE AMENDMENT OF THE TAX LAW CREATE A TWO YEAR WINDOW TO BRING SUIT FOR JURISDICTIONAL DEFECTS?**

STATEMENT OF THE CASE

This is a tax sale case. Land of the late Fred J. Hughes, Jr., was sold at a tax sale by the Jasper County taxing authorities. Suit was brought by Robert C. Schivera, as Executor of the Estate of Fred J. Hughes, Jr., who died after the date of the sale. This matter was heard by the Honorable Carmen T. Mullen, resident Judge for the Fourteenth Judicial Circuit on April 17, 2013. She granted Summary Judgment for the Respondent, thereby voiding the sale. The Motion to Reconsider was heard on or around February 19, 2014 by Judge Mullen, who denied the Appellant's Motion to Reconsider. This appeal hereby followed.

FACTUAL ISSUES RELEVANT TO THE APPEAL

Title to the property was acquired by the late Fred J. Hughes, III, on June 11, 2008, for a sale price of \$190,000.00. The deed reflected an address of 1320 Highway 80 West, Garden City, Georgia, 31408, as the address of the Grantee. In non-compliance with Section 12-51-40, the Office of the Tax Assessor and thereafter the Office of the Treasurer and the delinquent Tax Collector for Jasper County, did not change the records to use the address of the Grantee for all notices. The same Respondent owned three parcels that adjoined the land in question. These have correct addresses and the taxes on these parcels were kept current. The tax notice for 2009 was sent 8512 Kent Drive, Savannah, Georgia, 31406, which was the address of the Grantor, not that of the Respondent. Thereafter the taxes were not paid and the office of the Tax Collector did an

execution on the property and was sold for taxes on or about the 1st day of November, 2010, to the Appellant C. Russell Keep, III, for the price of \$6,600.00. All of the requisite notices that are required by statute: 1. the original tax notice; 2. the notice of delinquency; 3. the notice of tax sale; 4. the notice of the redemption period; 5. the notice of the expiration of time to redeem the property from the tax sale; and 6. the notice that the tax sale had become final were all sent to the address of the former owner of the property and not to the Respondent.

ARGUMENT

1. DID THE COUNTY AUTHORITIES FAILURE TO USE THE CORRECT ADDRESS OF THE TAX PAYER CREATE A FATAL JURISDITIONAL DEFECT?

Rives v. Balsa, 325 S.C. 287, 487 S.E.2d 878 (S.C. App. 1996)

“...A tax execution is not issued against the property, it is issued against the defaulting tax payer. Aldridge v. Rutledge, 269 S.C. 475, 238 S.E.2d 165 (1977). Due process of law required some sort of notice to a landowner before he is deprived of his property. Osborne v. Vallentine, 196 S.C. 90, 12 S.E.2d 856 (1941). The taxing statutes and a legion of cases interpreting these statutes make it clear that property shall be listed, assessed, levied upon, advertised and sold in the name of the true owner. Donohue v. Ward, 298 S.C. 75, 378 S.E.2d 261 (Ct. App. 1989). Further, the general law is that where a statute requires as a condition precedent to foreclosing a taxpayer’s rights in property sold for taxes that he be given notice of his right to redeem, such a requirement is generally regarded as jurisdictional, and therefore, the owner’s right of redemption cannot be cut off unless the required notice is given. Good v. Kennedy, 291 S.C. 204, 352 S.E.2d 708 (Ct. App. 1987). Failure to give the required notice is fundamental defect in the tax proceedings which renders the proceedings absolutely void. Donahue v. Ward, supra.

This matter was heard by the Honorable Trial Judge on a stipulated statement of fact. There were no factual issues to be determined. Through the Answer, Affidavit and admission by the county taxing authorities, they at no time used the correct address for the late Mr. Hughes to send him his notices. Tr _____. Therefore, he was: 1. never notified of the taxes being due, 2. the amount of taxes being due, 3. that they had become delinquent, 4. that the delinquency could

result in a sale, 5. that the delinquency did result in a sale, 6. that he had a certain period in which to redeem the sale, 7. that the time to redeem the sale was running neigh, and 8. that the sale had resulted in a deed to someone else. Any of these, and certainly, the totality of them, set up a jurisdictional defect which results in the tax sale being defective. A jurisdictional defect such as this can be raised at any point and is not required to be raised within the two year statute of limitations. Reeping v. JEBBCO, 402 S.C. 195, 740 S.E.2d 504 (Ct. App. 2013)

The Appellant raised and relies heavily on the issue of the two year statute of limitations. This matter was addressed most recently by the Court of Appeals in Reeping v. JEBBCO which was filed shortly before the hearing on this matter. In regard to the statute of limitations, the court in Reeping quoted Leysath v. Leysath, 209 S.C. 342, 40 S.E.2d 233 (1946), in which the Supreme Court of South Carolina clearly held that the statute of limitations did not apply to a jurisdictional defect. In Reeping, the court further noted in Donahue v. Ward, 298 S.C. 75, 378 S.E.2d 261 (Ct. App. 1989)

“It appears to be the general rule that a short statute of limitations of the kind under consideration does not apply where, by reason of same jurisdictional defect, the tax deed is absolutely void upon its face; and perhaps the majority of the courts hold that the bar of the statute does not apply if there are jurisdictional or fundamental defects in the tax proceedings which render such proceedings absolutely void. However, in some jurisdictions a statue of this kind is more liberally construed in favor of the purchaser, and it is held that the statute applies in every case in which there has been possession under a deed which is not void on its face. But the courts following the majority rule are not in entire accord as to the jurisdictional grounds which render a tax deed absolutely void. In some states defects which in others are deemed jurisdictional are considered mere irregularities...

...We do not undertake to lay down a general rule defining those defects in tax proceedings which should be considered as mere irregularities, to which the statute under consideration would apply, and those which should be deemed jurisdictional, so as to render the statute inapplicable.

As noted by the court in Reeping:

“The next question presented is whether failure to give the required notice constitutes more than a mere irregularity the effect of which invalidates the tax

proceeding and prevents the running of the limitations statute. It is stated “all requirements of the law leading up to tax sales which are intended for the protection of the taxpayer against surprise or the sacrifice of his property are to be regarded mandatory and are to be strictly enforced. “Osborn v. Vallentine”, 196 S.C. 90, 94, 12 S.E.2d 856, 858 (1941); accord, Leysath v. Leysath, 209 S.C. 342, 40 S.E.2d 233 (1946). We think the Legislature in requiring the Treasurer of Horry County to give a twenty day notice prior to advertising the property for sale intended such provision for the protection of the taxpayer against a sacrifice of his property. We therefore hold that failure to give the required notice is a fundamental defect in the tax proceedings which rendered the proceedings absolutely void.”

Based upon the above law and authorities, the Respondent respectfully submits that the Honorable Circuit Judge correctly ruled that the tax sale was defective and therefore void.

II. DOES POSTING THE PROPERTY ALLEVIATE ALL THE ABOVE CITED DEFECTS?

The Appellant is incorrectly convinced that the proper posting of the premises by the Sheriff or tax collector agent, removes all of the above irregularities in the process and describes these as “mere irregularities”. The Respondent would respectfully submit that “notice and opportunity to be heard” are the foundations of all due process decisions in this state and in this country. The failure to follow the statute, which is admitted by the county authorities, set this whole process in motion. In addition to which, as in Reeping, the County had in their offices the correct address for Mr. Hughes. Tr _____. The three adjoining properties were all owned by him, all had the correct address, and all had their taxes properly paid. As soon as the mandated series of letters came back, the taxing authority should have been on notice they were using an incorrect address and in fact had in their files sitting right next to this file, the correct addresses for Mr. Hughes.

Again, the Respondent respectfully submits that these irregularities set up the jurisdictional defects that require the voiding on the tax deed.

III. DID THE LEGISLATIVE AMENDMENT OF THE TAX LAW CREATE A TWO YEAR WINDOW TO BRING SUIT FOR JURISDICTIONAL DEFECTS?

The Appellant makes numerous arguments about statutory changes done by the legislature and proposes a “drop-dead” date of two years after the sale in which to bring suit. This is easily dealt with by a mere reference to Reeping which was decided after the legislative changes and again reiterated the black letter law that the statute of limitations did not apply to jurisdictional defects. Reeping.

CONCLUSION

The Respondent’s position is that the record clearly shows numerous jurisdictional defects, violations of mandatory statutory law as to taxing addresses, and that this tax sale was fatally flawed. The Respondent submits that the Circuit Judge was entirely correct in ruling that due to the defects and irregularities in this tax sale, it was void. The ruling of the lower court should be upheld.

Respectfully submitted,

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Ridgeland, South Carolina,
August 22, 2014.

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Carmen T. Mullen, Judge

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ROBERT C. SHCIVERA, Executor of the Estate of Fred J. Hughes,.....Respondent.

v.

C. RUSSELL KEEP, III, ESQUIRE, and RHONDA MITCHELL,
Jasper County Tax Collector, of whom C. RUSSELL KEEP, III, ESQUIRE IS....Appellant.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondent and Respondent's Designation of Matter to be Included in the Record on the Appellant, C. Russell Keep, III, by depositing a copy of same in the United States Mail, postage prepaid, on August 22, 2014, to C. Russell Keep, III, Post Office Box 5877, Hilton Head Island, SC 29938, and to Marvin C. Jones, attorney for the Defendant, Rhonda Mitchell, Jasper County Tax Collector, Post Office Box 420, Ridgeland, SC, 29936.

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August 22, 2014

C. Russell Keep, III, Esquire
Post Office Drawer 5877
Hilton Head Island, SC 29938

**RE: SCHIVERA v. C. RUSSELL KEEP AND RHONDA MITCHELL
JASPER COUNTY TAX COLLECTOR
COURT OF APPEALS CASE NO.: 2014-000823**

Dear Mr. Keep:

Enclosed herewith please find a copy of the Respondent's Initial Brief and Designation of Matter in the above matter.

Thank you and kindest regards.

Most sincerely,



Kathleen J. Bearden
Paralegal to R. Thayer Rivers, Jr.

:kjb
Enclosures

cc: Marvin C. Jones, Esquire
Court of Appeals

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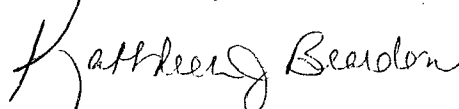
**RE: SCHIVERA v. C. RUSSELL KEEP AND RHONDA MITCHELL
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COURT OF APPEALS CASE NO.: 2014-000823**

Dear Mr. Jones:

Enclosed herewith please find a copy of the Respondent's Initial Brief and Designation of Matter in the above matter.

Thank you and kindest regards.

Most sincerely,



Kathleen J. Bearden
Paralegal to R. Thayer Rivers, Jr.

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cc: C. Russell Keep, III, Esquire
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The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: ROBERT C. SHIVERA v. C. RUSSELL KEEP, III
APPELLATE CASE NUMBER: 2014-000823

Dear Ms. Kitchings:

Enclosed herewith please find the original and one (1) copy each of the Respondents' Initial Brief and Respondents' Designation to be Included in the Record on Appeal in the above matter. Please file the original and return a clocked-in copy to me in the envelope provided.

Thank you and kindest regards.

Most sincerely,

Kathleen J. Bearden

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Paralegal to R. Thayer Rivers, Jr.

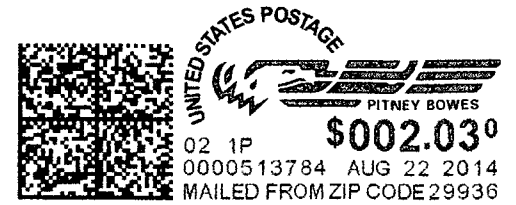
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