

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

SC Court of Appeals

Ellis B. Drew, Master in Equity

Case No.: 2011-CP-04-03131

TLR-V, LLC.....Respondent,

vs.

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

Of whom AnMed Health, formerly known as Anderson Area
Medical Center, Inc. is the.....Appellant

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Did the Master in Equity err in concluding that the tax sale and subsequent tax deed extinguished the prior judgment liens of AnMed which were attached to the subject property?

STATEMENT OF THE CASE

This action was commenced by TLR-V, LLC ["TLR-V"] on October 19, 2011, and characterized as a Quiet Title Action pursuant to S.C. Code Ann. §12-61-10 *et seq.* (1976, as amended) [now S.C. Code Ann. § 12-61-10 *et seq.* (2014)] seeking a decree adjudging that TLR-V was seized with fee simple, good and marketable title to the subject real property free from any lien or claim of the Defendants, including AnMed Health, formerly known as Anderson Area Medical Center, Inc. ["AnMed"]. AnMed timely served its Answer admitting and confirming that it held judgments which had attached to the property but denying the material allegations of the Complaint including those which alleged that the judgment liens held by AnMed were extinguished by the tax sale and subsequent tax deed. Defendant Donald Fred Payton ["Payton"], the delinquent taxpayer, failed to answer or otherwise appear and was determined to be in default.

By Consent Order of Reference dated May 8, 2012, the matter was referred to the Master in Equity for Anderson County to make final judgment with any appeal therefrom directly to the South Carolina Supreme Court or the South Carolina Court of Appeals as appropriate. This matter was tried before the Master in Equity on September 26, 2013. Prior to the hearing the parties entered into a Stipulation of Facts dated and filed with the Court on September 26, 2013. The Master in Equity issued his Order on December 27, 2013.

Thereafter AnMed timely served its Motion to Alter or Amend on January 10, 2014, which was denied except for the correction of the applicable statute upon

which the action was brought by Order of the Master in Equity dated July 7, 2014. AnMed timely served its Notice of Intent to Appeal on August 5, 2014.

ARGUMENT

Did the Master in Equity err in concluding that the tax sale and subsequent tax deed extinguished the prior judgment liens of AnMed which were attached to the subject property?

Title vs. Quality of Title

At the core of this case is the distinction between obtaining title to real estate and the quality of the title obtained. AnMed does not contend that it was entitled to notification of the tax sale as a judgment creditor of record under the existing statutory schemes. Likewise, AnMed does not contend that the tax sale process was deficient and acknowledges that Anderson County complied with the statute governing the tax sale process. It is AnMed's contention simply that the tax sale purchaser acquired via the tax deed only the quality of title which the delinquent tax payer held prior to the tax sale which included prior, existing judgment liens. The tax deed functions much like a quit claim deed. It passes such title to the grantee as was held by the previous owner, the defaulting tax payer. The delinquent tax sale and subsequent tax deed does not cleanse the title of all prior existing liens but rather simply passes the title to the tax sale purchaser subject to such prior and existing liens.

It is important to note that this action was initiated by TLR-V expressly pursuant to S.C. Code Ann. §§ 12-61-10, *et seq.* (2014). § 12-61-20 provides that suits to clear tax titles may be brought by various interested parties ...”to the end that such rights, titles, interests, claims or liens may be adjudicated in such action and forever barred by the judgment and decree of the Court **if such are found to be junior or subsequent to the title of the county or any person purchasing at or acquiring title to property through a tax sale**”. [Emphasis added]. It seems clear, therefore, that the intent of the statute was to provide a procedure and mechanism for determination of the quality of title actually acquired by a tax sale purchaser. Liens senior to or pre-existing the title acquired by the tax sale purchaser are clearly contemplated and are to be unaffected by the tax sale process. As stated in S.C. Code Ann. § 12-61-60 (2014), the chapter providing for suits to clear tax titles is designed to provide a mechanism for a tax sale purchaser to “obtain a final and complete adjudication of the nature and extent of the title.”

Nothing contained in the statutes relied upon by TLR-V provides for extinguishment of prior judgment liens as a result of a tax sale. TLR-V seems to rely totally on the argument that because the tax sale statutes do not require notice to prior judgment creditors and Anderson County complied with the various tax sale procedures, TLR-V is entitled to a declaration from the Court that all prior liens against the subject property are automatically extinguished and, in effect, foreclosed simply by virtue of the tax deed. TLR-V has failed to offer any authority to support such a proposition.

Two South Carolina cases are helpful in examining these issues. First, *F. C. Enterprises, Inc. v. Dibble*, 335 S.C. 260, 516 S.E. 2d 459 (1999) holds specifically that “as a matter of law, a purchaser at a tax sale acquires only that interest held by the owner of the property at the time of the tax sale.” *F. C. Enterprises* at p. 266, 462. In reaching that holding, the South Carolina Court of Appeals drew a clear distinction between an interest in property sold at a tax sale arising prior to the tax delinquency and those occurring after the delinquency. In that case, the owner of the property (C & M) leased portions of it to F. C. Enterprises in August of 1992. The owner subsequently failed to pay the 1992 property taxes by the due date on January 15, 1993, and a tax sale followed resulting in a tax deed delivered to Dibble in November 1994. The court held that the title acquired by Dibble at the tax sale was subject to the previously recorded Lease and Option since those interests had accrued prior to the owner becoming delinquent in payment of the taxes. As stated by the court at page 266, 462: “Although a lien for delinquent taxes relates back to December 31 of the prior year, the taxes do not become delinquent until January 15 of the following year. There was no tax delinquency at the time the parties executed the agreements and no tax sale had yet occurred. Dibble, as purchaser at a judicial sale, secured the same rights and title in the property as C & M owned at the time of the sale. Because C & M’s rights in the property were subject to the lease and option with F. C. Enterprises at the time of the tax sale, Dibble purchased the property subject to the lease and option.”

The *F. C. Enterprises* case makes it clear that the reason that notice is not required to judgment creditors of record at the time of a tax sale is because purchasers at the tax sale are on notice of the existence of those prior judgment liens and make their purchase at the tax sale subject to them. Conversely, a judgment which attached to the subject property after the January 15 delinquency date would be an interest accruing after the delinquency and, therefore, would be defeated by the tax sale and resulting tax deed under the *F. C. Enterprises* rationale. It should be noted that at least some or most of the AnMed judgments were entered prior to the beginning of the 2008 tax year which would predate even a relating back to December 31, 2007. (Stipulation of Facts, p. 2).

The other case which is helpful is *Corbin v. Carlin, et. al.* 366 S.C. 187, 620 S.E. 2d 745 (2005). That case involved a somewhat complicated factual situation as to the prior ownership of property sold at a tax sale. The trial court determined that Corbin owned the subject property through the doctrine of after-acquired property based upon facts which transpired prior to the tax delinquency and sale. The Grantee of the tax sale purchaser sought to bar Corbin's action to quiet title based on the time limitations contained in the tax sale statutes. In refusing to apply the tax sale statute, the court stated at page 194, 749 that: "We find the instant action was not one to set aside a tax sale falling under the provisions of §12-51-160, but instead was an action to quiet title and for Corbin to assert his proper ownership rights to Tract B."

The *Corbin* case illustrates that there is a clear distinction between issues of title to real property, on the one hand, and the quality or condition of the title obtained by a tax sale purchaser, on the other hand. The *Corbin* case is applicable to the case at hand in that it supports AnMed's contention that even though Anderson County complied with the tax sale statutes and the tax sale purchaser obtained title to the Property by virtue of the tax deed it received that title still subject to the liens and encumbrances established prior to the tax delinquency which triggered the tax sale process.

Attachment to Subject Property

The Master in Equity in his Order attempted to draw a distinction between a judgment lien and a lease such as the one in *F.C. Enterprises* case discussed above. (Order of December 27, 2013, pp. 8-9). The attempted distinction is that since a judgment lien is general in nature and applies to all property owned by the judgment debtor within the county where the judgment is entered, it is somehow different from a lease which creates an interest as to specific property. Although a judgment lien does not specifically reference individual parcels of property owned by the judgment debtor, the lien emanating from the judgment attaches to each and every individual and specific parcel of property owned by the judgment debtor in the county where the judgment is entered. S.C. Code Ann. §15-35-810 (2005); *South Carolina Tax Commission v. Belk*, 266 S.C. 539, 225 S.E. 2d 177 (1976); *State Farm Mut. Ins. Co. v. Hamilton*, 326 F. Supp. 931

(D.C.S.C. 1971).

Once the judgment lien attaches to every parcel of property owned by the judgment debtor, it creates an interest in that property and a right in favor of the judgment creditor which is just as specific and just as enforceable as a lease which contains a description of the real property subject to the lease agreement. Accordingly, there is no difference between a lien against a particular parcel of real property created by the entry of a judgment and such a property right created by a lease agreement of record.

Due Process

In the construction and application of statutory provisions, where there are two possible constructions, one of which results in a denial of due process and would therefore be unconstitutional while the other does not violate any due process rights, the construction which avoids the unconstitutionality must be accepted and applied. *Thompson v. Hoffmann*, 263 SC 314, 210 SE 2d 461 (1978), *Henderson v. Evans*, 268 SC 127, 232 SE 2d 331 (1977). In the present case, it is undisputed that the tax sale procedures currently in place do not require the tax collector to give notice of the impending tax sale to a judgment creditor. It is submitted that the reason such notice is not required is that the judgment creditor's rights in the subject property are unaffected by the tax sale process. To apply the statute otherwise and hold that the judgment lien is automatically extinguished simply by virtue of the tax sale and subsequent tax deed would result in a denial of the judgment creditor's due process rights and

thus risk rendering the tax sale procedure statutes unconstitutional.

It is also worth noting that in a foreclosure proceeding a judgment creditor must be named as a defendant and served with the summons and complaint in order to effectively bar the rights and claims of the judgment lien holder. There is no logical basis to create a different standard for a foreclosure action as opposed to a tax sale. By not providing for notice to the judgment creditors in a tax sale process, it seems apparent that the legislative intent was that the judgment liens attached to the property sold at a tax sale would not be extinguished as a result.

Burden of Diligence

As in other situations where the purchase of a real estate is undertaken, it is reasonable that the buyer be assigned the burden of diligence in making a determination as to the quality of the title he will be purchasing. A judgment lien is a matter of public record and, accordingly, a prospective purchaser at a tax sale is on notice of the existence of the judgments which affect the property which he intends to purchase. To require a judgment creditor to monitor every tax sale and every delinquent tax payer by name would be an inequitable and intolerable burden to place on a judgment lien creditor when the much simpler alternative is to require that the purchaser bear the burden of diligence in ascertaining whether or not there are any judgments on record which might affect the quality of the title of the property he intends to purchase. As noted in *Fox v. Moultrie*, 379 SC 609, 619, 666 SE 2d 915, 920 (2008) ..., "potential buyers must

research tax sale property purchases and thereby would be put on notice of any federal tax liens.”

Tax Deed as Quit Claim Deed

As stated at the outset of this argument, a tax deed is effective to convey the title to the subject property to the tax sale purchaser; however, it only conveys such title as the delinquent tax payer held prior to the sale. This is directly analogous to the nature of a quit claim deed which passes to the grantee whatever title the grantor may possess in the property described but does not warrant to any extent the quality of such title. This seems to be consistent with a comment by the South Carolina Supreme Court in its *per curiam* opinion in *Ex parte Charles M. Watson, Jr., County Attorney for Greenwood County, Petitioner, In Re: The Unauthorized Practice of Law*, 356 SC 432, 589 SE 2d 760 (S.C. 2003). Although that case dealt with issues of what constitutes the unauthorized practice of law, the Court did offer some insight into the nature and effect of a tax deed when it stated at p. 435, 761: “Although the tax title is of a quit claim deed nature, it still has a legal effect: it signifies that title has been conveyed.”

Conclusion

Even though Anderson County complied with the tax sale statutes and the tax sale purchaser acquired title to the Property through the tax deed it received, that title can be no better than the title possessed by Payton, the delinquent taxpayer, prior to the tax sale. Payton’s title was subject to the judgment liens of AnMed

prior to his tax delinquency and, accordingly, the tax sale purchaser's title under the tax deed (and TLR-V's under its quit claim deed) is also subject to the judgment liens of AnMed. Despite TLR-V's contention to the contrary, receipt of a tax deed does not operate to extinguish liens existing prior to the tax delinquency and there is no authority offered by the Plaintiff to justify or support in any way the termination and elimination of those prior judgment liens simply because TLR-V wishes them to disappear. This proceeding is not like a foreclosure action where a lien holder has the right to enforce his lien and extinguish all liens junior to it. In this case, a purchaser, who had every opportunity to make itself aware of the status of the title, including the judgment liens of record, prior to its purchase at the tax sale, seeks to enhance its position by some type of legal sorcery. Allowing that to occur would be tantamount to allowing a third mortgage-holder to foreclose his mortgage and, in the process, eliminate the first and second mortgages.

The statutes and cases in point clearly contemplate that prior, existing liens and interests in the property sold at the tax sale shall be given full force and effect and shall be unaffected by the tax sale process. Accordingly, this court should reverse the lower court and hold that TLR-V's title acquired through the tax deed (and subsequent quit claim deed) is subject to prior liens and encumbrances which attached before Payton became delinquent in his 2008 tax payment which delinquency occurred on January 15, 2009.

Respectfully submitted,

September 17, 2014.



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September 17, 2014

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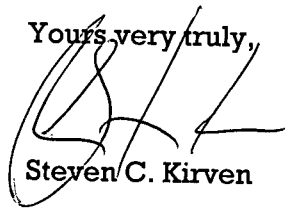
RE: TLR-V, LLC, Respondent vs. Donald Fred Payton and AnMed Health, formerly known as Anderson Area Medical Center, Inc., Defendants, of whom AnMed Health, formerly known as Anderson Area Medical Center, Inc., is the Appellant
Civil Action No.: 2011-CP-04-03131

Dear Ms. Kitchings:

Enclosed herewith for filing please find the Initial Brief of Appellant and Appellant's Designation of Matter to be Included in the Record on Appeal along with Proofs of Service on opposing counsel as to each. As always, your assistance is greatly appreciated.

With best regards, I am

Yours very truly,



Steven C. Kirven

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Enclosures

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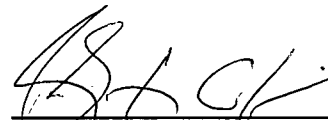
Of whom AnMed Health, formerly known as Anderson Area Medical
Center, Inc. is theAppellant

PROOF OF SERVICE

The undersigned does hereby certify that he is the attorney for the Appellant in the above
entitled action; that he has this date served a copy of the Initial Brief of Appellant upon the
Respondent by depositing the said copy in the United States Mail at Anderson, South
Carolina, with prepaid, first class postage affixed, addressed as follows:

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