

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON ) IN THE COURT OF COMMON PLEAS  
 ) FOR THE NINTH JUDICIAL CIRCUIT  
 ) CASE NO. : 2013-CP-10-793

William Coker,

Plaintiff,

v.

Anna Lee Givens, and if she is deceased, her heirs,  
 personal representatives, successors, and assigns  
 and spouses, if any they have and all other persons  
 with any right, title or interest in and to the real  
 estate described in the Complaint, commonly known  
 as: 3765 Humbert Road, Johns Island,  
 South Carolina, TMS # 250-00-00-048  
 and also any unknown adults and those persons as  
 who may be in the Military Service of the United  
 States of America, all of them being a class  
 designated as John Doe; and any unknown minors  
 or persons under a disability being a class  
 designated as Richard Roe,

Defendants.

**ORDER QUIETING TITLE  
 AFTER TAX SALE**

FILED  
 2014 SEP 22 AM 9:35  
 JULIE J. ARMSTRONG  
 CLERK OF COURT

**RECEIVED**

OCT 22 2014

**SC Court of Appeals**

**BACKGROUND**

This is an action to quiet title pursuant to Sections 12-61-10 through 60 and 15-67-10 through 100, Code of Laws of South Carolina, 1976, as amended. Plaintiff initiated this matter on February 8, 2013, seeking to quiet title to a piece of real property located in Charleston, South Carolina, which it acquired at a Charleston County Delinquent Tax Sale.

Tameika Givens of Jersey City, New Jersey filed an Answer, Affirmative Defenses and Counterclaims on April 25, 2013.

This Court issued an Order allowing the Plaintiff to serve the Defendants by Publication on October 15, 2013. Public notice ran on November 6, 2013, November 13, 2013 and November 20, 2013. The named Defendants, Anna Lee Givens and her heirs were served by Publication as evidenced by an Affidavit of The City Paper was filed on December 6, 2013. The duly appointed Guardian ad Litem filed an Answer on behalf of the Defendants Doe and Roe on October 17, 2013. The remaining Defendants filed no responsive pleadings and were determined to be in Default according to an Order of Default and Reference entered in this Court on January

17, 2014. This matter was referred to the Master in Equity by the before mentioned Order of Default and Reference.

A hearing was held on July 2, 2014. Present at the hearing were the Plaintiff, William Coker, , attorney for Plaintiff, Jeffrey T. Spell and the Guardian *ad Litem*, Carl B. Hubbard. The Defendants did not appear either in person or through a representative. Based on the presentation of the Plaintiff, I make the following findings a fact:

### FINDINGS OF FACT

I hereby specifically find from the testimony and exhibits presented at trial:

1. That the Defendant, Anna Lee Givens is or was a citizen of Charleston County.
2. That the real property, which is the subject of this action, was conveyed to Defendant Anna Lee Givens by deed of Solomon Givens dated July 3, 1999 and recorded in the Office of the Register of Mesne Conveyance for Charleston County, South Carolina, in Book Z329, at Page 298 and is described to wit:

ALL THAT LOT PIECE AND PARCEL OF LAND, WITH THE BUILDINGS AND IMPROVEMENTS THEREON, SITUATE, LYING AND BEING ON JOHNS ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA.

MEASURING AND CONTAINING .069, MORE OR LESS, BEING MORE FULLY DESCRIBED ON A PLAT BY W.L. STEPHENS, JR. PE & LS, DATED APRIL 7, 1972 AND RECORDED IN THE RMC OFFICE FOR CHARLESTON COUNTY IN PLAT BOOK Q PAGE 57. SAID LOT DESIGNATED THEREON AS LOT B.

TMS #: 250-00-00-048

3. That Defendant Anna Lee Givens' address of record is 4209 42<sup>nd</sup> Ave. N, Milwaukee, WI 53216 according to her Deed.
4. That according to the records of the Delinquent Tax Collector of Charleston County mail sent to the Defendants address of record was returned by the Postal Service with a note "Forwarding Time Exp." Indicating the Defendants new address PO Box 76793 Milwaukee, WI 53216. See Exhibit "A" ATTACHED HERETO.
5. That Defendant neglected to pay the ad valorem taxes on the Property by the political subdivisions of the State of South Carolina legally authorized to assess real property taxes against the Property.
6. That Andrew C. Smith, the Treasurer of Charleston County, South Carolina, issued a tax execution for the tax year 2008 directed to the Charleston County Delinquent Tax Collector against the Defendant, strictly charging and commanding Charleston County

Delinquent Tax Collector to levy by distress and sell so much of the estate of Defendant to satisfy the delinquent ad valorem taxes, assessments, penalties and costs for their collection, a copy of which was sent to Defendant by the Charleston County Delinquent Tax Collector.

7. That by virtue of the tax executions for the tax year 2008, the Charleston County Delinquent Tax Collector took "exclusive possession" of the Property by sending, via certified mail, return receipt requested - delivery restricted to addressee, proper notice of the sale to Defendant.
8. That the Charleston County Delinquent Tax collector did serve upon Defendant, by publication, all notices of delinquent taxes, assessments, penalties and costs to which it was entitled, in a timely manner. Furthermore, the tax collector did send to the Defendant, Anna Lee Givens, the following:
  - a. Execution notice sent on April 1, 2009
  - b. Official Notice of Levy sent on May 11, 2009
  - c. Final Notice of Redemption Property Notice sent on September 14, 2010.
9. That the Delinquent Tax Collector posted a Delinquent Tax Sale notice on the property on August 24, 2009 at the tax address of 3765 Humbert Road as shown in Exhibit "B".
10. That the Charleston County Delinquent County Tax Collector also did send notice to a Tamika Givens "Aunt's Niece" at 30 Newport Parkway Suite 211, Jersey City, NJ 07310. Shown as Exhibit "C".
11. That on October 5, 2009, during the usual hours of sale, the Charleston County Delinquent Tax Collector, after due advertisement, did sell the Property and give receipt to the Plaintiffs, the successful bidder at such sale for the sum of \$4,000.00.
12. That prior to the expiration of the twelve (12) month redemption period the Charleston County Delinquent Tax Collector provided to Defendants all notices to which they were entitled, in a timely manner by mailing notice, via certified mail, return receipt requested - delivery restricted to addressee, to Defendants notifying them that the Property had been sold for taxes and that if it was not redeemed by paying taxes, assessments, penalties, costs and interest on the bid price on or before October 6, 2010, that a tax title to the Property would be delivered to the successful bidder at the tax sale.
13. That no one redeemed the Property during the twelve (12) month redemption period beginning on October 5, 2009, the date of the aforementioned sale, and ending on October 6, 2010.
14. That the aforementioned execution and sale of the Property was proper in that it strictly complied with Sections 12-49-10 through 300 and 12-51-10 though 170, Code of Laws of South Carolina, 1976, as amended, in all material respects.
15. That by Deed dated March 4, 2011, and recorded on March 11, 2011, in the office of the Register of Mesne Conveyance for Charleston County, South Carolina, in Book 0176, at Page 449, the Delinquent Tax Collector for Charleston County, South Carolina, did convey the Property to the Plaintiff, William Coker.

16. That the duly assessed ad valorem taxes for the tax year 2008, together with all assessments, penalties and costs, constituted a first lien in all cases whatsoever upon the Property, which first lien attached at the beginning of the tax year 2008, as provided in Section 12-49-10, Code of Laws of South Carolina, 1976, as amended, and that the aforementioned tax lien was senior to and took priority over any mortgage liens on the Property, and that the mortgage liens, if any, were junior to and subordinate to the aforementioned tax lien.
17. That by virtue of Defendant's failure to redeem the Property and by virtue of the conveyance of the Property to the Plaintiffs, any and all interest Defendant had in and to the Property has been extinguished.
18. That the Defendant, Anna Lee Givens and her heirs were properly served with process in this action by publication and were properly notified of the final hearing in this matter as evidenced by Affidavits and Certificates on file with this Court. ALL NOTICES MAILED TO THE DEFENDANT ANNA LEE GIVENS WERE RETURNED.
19. That the Plaintiff sent a copy of the Summons and Complaint to Tameika Givens at the address in the delinquent tax collector file.
20. Tameika Givens filed an Answer with the court on April 25, 2013 and asserted various counterclaims and defenses. In her answer Tameika Givens provided her address as 35 River Drive Unit 506, Jersey City, NJ 07310. In her cover letter which accompanied her Answer, Tameika Givens provided her address as 35 River Drive Unit 506, Jersey City, NJ 07310.
21. That Tameika Givens was properly notified of the final hearing in this matter as evident by Affidavits and Certificates on file with this court and supporting documentation attached hereto as Exhibit "D".
22. That based upon the Affidavit of the Delinquent Tax Collector filed with this Court, the Tax Sale was conducted in strict compliance with the statutory requirements.
23. That because the Defendant Tamika Givens failed to appear at the final hearing her defenses are found to be without merit and her counterclaims are dismissed.

### CONCLUSIONS OF LAW

The sale of real property for the satisfaction of ad valorem taxes is governed by Sections 12-49-10 through 330 and 12-51-40 through 170, Code of Laws of South Carolina, 1976, as amended. If the governmental agency charged with collecting delinquent ad valorem taxes fails to strictly comply with the statutory requirements of a tax sale, the sale is invalid; *Manji v. Blackwell*, 232 S.C. 91, 473 S.E.2d 837 (S.C. App. 1996). A tax deed, "whether executed to a private person, a corporation, or a forfeited land commission, must be held and taken as 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*, supra.

If a taxpayer fails to pay the ad valorem taxes on a piece of real property by March 17<sup>th</sup> of year immediately succeeding the year for which the taxes are due, the county treasurer must issue a tax execution directed to the person authorized to collect delinquent taxes. Section 12-45-180, Code of Laws of South Carolina, 1976, as amended. Once a County treasurer has issued a tax execution, the delinquent tax collector must:

- (a) On April first or as soon thereafter as practicable, mail a notice of delinquent property taxes, penalties, assessments, and costs to the owner of record at the best address available which is either the address shown on the deed conveying the property to him, the property address, or such other corrected or forwarding address that the owner of record has filed with the appropriate tax authority and to a known grantee of the delinquent taxpayer of the property on which the delinquency exists. The notice must specify that if the taxes, penalties, assessments, and costs are not paid, the property must be advertised and sold to satisfy the delinquency.
- (b) If the taxes remain unpaid after thirty days from the date of mailing of the delinquent notice, or as soon thereafter as practicable, take exclusive possession of so much of the defaulting taxpayers' property as is necessary to satisfy the payment of the taxes, assessments, penalties, and costs may be taken. In the case of real property, exclusive possession is taken by mailing a notice of delinquent property taxes, assessments, penalties, and costs to the defaulting taxpayer at the address shown on the tax receipt or to a more correct address known to the officer, by "certified mail, return receipt requested - deliver to addressee only" . . . All delinquent notices shall specify that if the taxes, assessments, penalties, and costs are not paid on or 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".
- (c) In the event the "certified mail" notice has been returned, take exclusive physical possession of the property against which the taxes, assessments, penalties, and costs were assessed by posting a notice at one or more conspicuous places on the premises, in the case of real estate, reading: "Seized by person officially charged with the collection of delinquent taxes of (name of political subdivision) to be sold for delinquent taxes", the positing of the notice is equivalent to levying by distress, seizing, and taking exclusive possession thereof, or by taking exclusive possession of personally. . . .
- (d) The property must be advertised for sale at public auction. The advertisement must be in a newspaper of general circulation within the county or municipality, if applicable, and must be entitled "Delinquent Tax Sale". It shall include the delinquent taxpayers' name and the description of the property, a reference to the

county auditor's map block and parcel number being sufficient for a description of realty. The advertising must be published once a week prior to the legal sales date for three consecutive weeks for the sale of the real property. . . . All expense of the levy, seizure, and sale must be added and collected as additional costs, and shall include, but not be limited to, the expense of taking possession of real or personal property, advertising, storage, identifying the boundaries of the property, and mailing certified notices. When the real property is divisible, the tax assessor, county treasurer, and county auditor shall ascertain that portion of the property that is sufficient to realize a sum upon sale sufficient to satisfy the payment of the taxes, assessments, penalties, and costs. In such cases, the officer shall partition the property and furnish a legal description of it. Section 12-51-40, code of Laws of South Carolina, 1976, as amended.

"The property duly advertised must be sold by the person officially charged with the collection of delinquent taxes at public auction at the courthouse on a legal sales date during regular hours for legal tender payable in full on the date of the sale." Section 12-51-40, Codes of Laws of South Carolina, 1976, as amended. The delinquent tax collector must submit a bid equal to the amount of the unpaid taxes, penalties and costs on behalf of the Forfeited Land Commission. Section 12-51-55, Code of Laws of South Carolina, 1976, as amended. Unless someone else submits a higher bid, the Forfeited Land Commission is deemed the successful bidder.

For the twelve month period immediately succeeding the tax sale, title to the property remains in the defaulting tax payer; however his title is defeasible upon his failure to redeem the property during the twelve month period. *Von Elbrecht v Jacobs*, 286 S.C. 240, 332 S. E. 2d 568 (Ct. App. 1985); See Sections 12-51-90, 100 and 130, Code of Laws of South Carolina, 1976 as amended. If the defaulting tax payer redeems the property during the twelve month period, the tax sale is cancelled and the successful bidder's money is refunded together with interest. Sections 12-51-90 and 100.

If, however, 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*, supra; See Sections 12-51-90, 100 and 130. Prior to the end of the twelve month period, the delinquent tax collector must give the owner of record notice "at the best address available", via "certified mail, return receipt requested - deliver to addressee only," that the redemption period is about to expire. Section 12-51-120, Code of Laws of South Carolina, 1976, as amended. The notice must be sent no "more than forty-five days nor less than twenty days prior to the end of redemption period," and must alert the owner that the property described therein has been sold for taxes and if not redeemed in the manner specified therein by the date specified therein (twelve months from the date of the sale) a tax deed will be delivered to the successful bidder. *Id.* Because this right to notice is jurisdictional, an owner's right to redeem cannot be terminated unless the notice is given; and failure to give such notice in the manner

proscribed prevents the title to the property from being transferred to the successful bidder, *Good v. Kennedy*, 291 S.C. 204, 352 S.E. 2d 708 (Ct.App. 1987); *Id.*

Plaintiff has established that it has a Deed to the Property from the Charleston County Delinquent Tax Collector, and the Defendants have failed to rebut the presumption that Plaintiff's title is good by providing any evidence that the title is defective. This standing alone is sufficient to merit the entry of judgment in favor of Plaintiff quieting title to the Property. The evidence adduced at trial, however, clearly establishes that the sale was proper.

Upon Defendant's failure to pay the 2008 ad valorem taxes on the Property, the Charleston County Treasurer, Andrew C. Smith issued a tax execution directed to the Charleston County Delinquent Tax Collector. Thereafter, the Charleston County Delinquent Tax Collector sent notice to Defendants at 4209 42<sup>nd</sup> Ave. N, Milwaukee, WI 53216, their address on record, notifying them that the 2008 ad valorem taxes on the property were delinquent and that if they did not pay them the Property would be advertised and sold to satisfy the delinquency. Despite this notice, the 2008 ad valorem taxes were not paid during the next thirty days.

The Delinquent Tax Collector posted a Delinquent Tax Sale Notice on property on August 24, 2009 at the tax address of 3765 Humbert Road.

The Charleston county Delinquent Tax Collector took "exclusive possession" of the Property to satisfy payment of the 2008 ad valorem taxes. They took "exclusive possession" by mailing notices to Defendants at 4209 42<sup>nd</sup> Ave. N, Milwaukee, WI 53216, via "certified mail, return receipt requested deliver to addressee only" notifying them of the amount of the unpaid 2008 ad valorem taxes, assessments, penalties and costs on certain specified dates, and advising them that if the same was not paid the Property would be advertised and sold on October 5, 2009, to satisfy the delinquent taxes, assessments, penalties and costs. Still the delinquent taxes were not paid.

The Charleston County Delinquent Tax Collector advertised the Property for sale at public auction. They did so by running an advertisement in the Post and Courier, a newspaper of general circulation in Charleston County, South Carolina, under the heading "DELINQUENT TAX SALE, County of Charleston, State of South Carolina." In the advertisement he advertised numerous properties for sale, and included each taxpayer's name, a description of each property by Charleston County tax map identification number and the amount of delinquent taxes, assessments, penalties and costs due on each property. Yet, the ad valorem taxes on the Property remained unpaid.

That the Charleston County Delinquent Tax collector did serve upon Defendant, by publication, all notices of delinquent taxes, assessments, penalties and costs to which it was entitled, in a timely manner.

On October 5, 2009, the Property was sold at public auction by the Charleston County Delinquent Tax Collector to the Plaintiffs herein for \$4,000.00, the amount of the delinquent taxes, assessments, penalties, and costs due on the Property as of that date.

The Charleston County Delinquent Tax collector sent notice to Defendant of the nearing of the end of the twelve month redemption period. The notice was sent to Defendant at 4209 42<sup>nd</sup> Ave. N, Milwaukee, WI 53216, via "certified mail, return receipt requested – deliver to addressee only." The notice described the Property by its county TMS #, 250-00-00-048, and stated that if the property was not redeemed on or before October 6, 2010, by paying the taxes, assessments, penalties and costs together with interest on the bid amount, which according to the notice totaled \$2,337.46 a tax title would be delivered to the successful bidder at the tax sale. The Property was not redeemed.

Furthermore, the tax collector did send to the Defendant, Anna Lee Givens, the following: Execution notice on April 1, 2009; Official Notice of Levy on May 11, 2009 and Final Notice of Redemption Property Notice on September 14, 2010.

On October 5, 2009, Plaintiffs purchased the property at a public auction from the Delinquent Tax Collector for \$4,000.00. Title to the Property was conveyed to Plaintiff by Tax Deed of the Delinquent Tax Collector dated March 11, 2011. The Plaintiff's Deed to the Property was recorded in the Office of the Register of Mesne Conveyance on March 11, 2011, in Deed Book 0176, at Page 449.

It is clear from the foregoing that the sale of the Property was conducted in strict compliance with the statutes governing tax sales and that Plaintiff has good title to the Property. Accordingly, judgment must be entered in Plaintiffs' favor.

#### DECREE

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

- A. That judgment is hereby entered in favor of Plaintiff, William Coker, against Defendant, Anna Lee Givens, terminating any and all interest Defendant, Anna Lee Givens, her heirs, devisees, successors, assigns and anyone or anything in the whole world claiming under their, irrespective of the nature of such claim, has in and to the real property described herein below, and barring any future claims Defendant, Anna Lee Givens, its heirs, devisees, successors, assigns and anyone or anything in the whole world claiming under their irrespective of the nature of such claim, has in and to the following described real property, to-wit:

ALL THAT LOT PIECE AND PARCEL OF LAND, WITH THE BUILDINGS AND IMPROVEMENTS THEREON, SITUATE, LYING AND BEING ON JOHNS ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA.

MEASURING AND CONTAINING .069, MORE OR LESS, BEING MORE FULLY DESCRIBED ON A PLAT BY W.L. STEPHENS, JR. PE & LS, DATED APRIL 7, 1972 AND RECORDED IN THE RMC OFFICE FOR CHARLESTON COUNTY IN PLAT BOOK Q PAGE 57. SAID LOT DESIGNATED THEREON AS LOT B.

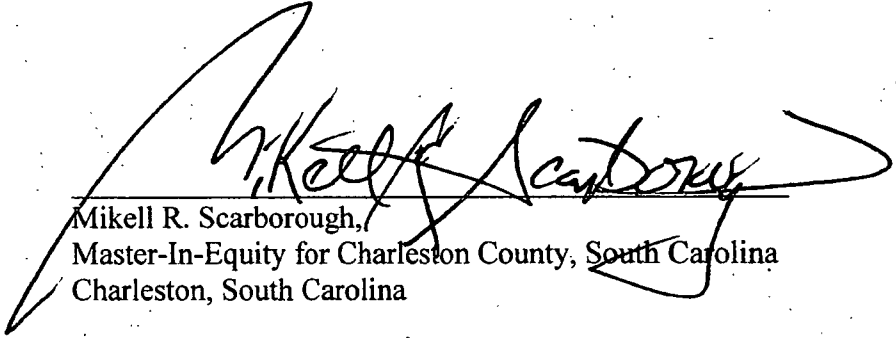
TMS #: 250-00-00-048

- B. That a copy of this Order shall be recorded in the Office of the Register of Mesne Conveyance for Charleston County, South Carolina, and shall be properly indexed in the chain of title to the herein described real property under the name of William Coker, as grantee in the same manner as other deeds are recorded.

AND IT IS SO ORDERED!

Date

9/18/14

  
Mikell R. Scarborough,  
Master-In-Equity for Charleston County, South Carolina  
Charleston, South Carolina

CHAS, SC