

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Docket No. 2013-ALJ-17-0365-CC

Connery Properties, Inc., Respondent,

v.

Charleston County Assessor, Appellant.

**FINAL REPLY BRIEF OF APPELLANT
CHARLESTON COUNTY ASSESSOR**

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TABLE OF AUTHORITIES

CASES

Long Cove Home Owners' Ass'n v. Beaufort County Tax Equalization Bd.,
327 S.C. 135, 488 S.E.2d 857 (1997) 1

McKenzie v. Standard Accident Ins. Co.,
16 S.E.2d 529, 198 S.C. 109 (1941) 2, 3

Reeping v. Jebco, LLC,
402 S.C. 195, 740 S.E.2d 504 (Ct.App.2013) 1

STATUTES

S.C. Code Ann. § 12-51-160 1, 2

LAW / ARGUMENT

I. RESPONDENT FAILS TO ADDRESS IF THE TITLE TO THE PROPERTY IS DEFECTIVE.

Respondent fails to answer the fundamental question in this appeal: whether or not it has good title to the Property. If Respondent's title is defective, that implies that the underlying tax sale was flawed and therefore, Respondent is not the owner of the Property. See Reeping v. Jebbco, LLC, 402 S.C. 195, 740 S.E.2d 504 (Ct.App.2013). The South Carolina General Assembly has made it abundantly clear that a tax title is a good title. S.C. Code Ann. § 12-51-160 provides “[i]n all cases of a tax sale the deed of conveyance . . . is prima facie evidence of a good title in the holder”¹ Respondent stops just short of saying that the Property's deed is defective because claiming otherwise would mean that Respondent is not the owner of the Property and has no standing to bring an action. Id.

In order to circumvent the issue of whether its title is good, Respondent contends that a tax deed creates a “cloud on title”. (Resp't Br. p. 9). Respondent also supports the ALC's position that a tax title is a **deed restriction**. (Resp't Br. p. 11) (emphasis added). Deed restrictions place limitations on the **use** of property. See Long Cove Home Owners' Ass'n v. Beaufort County Tax Equalization Bd., 327 S.C. 135, 488 S.E.2d 857 (1997). Here, there is no restriction on the Property's use. The Property's current zoning allows its owner to construct two residences on the vacant lot and

¹ Respondent dances around the vital question of whether or not its title is good by discussing the potential of improper notice pursuant to S.C. Code Ann. § 12-51-160 and the allegation that the Property may be heirs property. (Resp't Br. p. 8) The legislature implemented a two year statute of limitations requiring that an action contesting a tax sale be brought within two years from the date of sale. The intent is clear: the Legislature provides those purchasing land at tax sales a level of comfort regarding when a tax sale can be challenged, thus encouraging potential buyers by providing them a level of protection.

nothing prevents Respondent from accomplishing this. (R. p. 161). Respondent straddles the fence in failing to answer whether or not his title to the Property is good. If he claims that the title is defective, he is not the Property's owner whereas if he claims title is good, the Property's fair market value for Tax Year 2009 is \$60,000. The Property's title is either defective or not; Respondent is stuck between a rock and a hard place because he either has good, defect-free title or is not the true Property owner. Respondent fails to take a position and, in doing so, fails to answer the most basic and essential question in this action: is the title good or is the title defective?

II. RESPONDENT'S RELIANCE ON MCKENZIE IS MISPLACED.

Respondent's reliance on Mckenzie v. Standard Accident Ins. Co. is a red herring in his argument. McKenzie, 16 S.E.2d 529, 198 S.C. 109 (1941). The Court in McKenzie states: "Prima facie evidence is distinguishable from conclusive evidence, which evidence the law does not allow to be contradicted." (Id. at 532, 117). Respondent makes a futile attempt to disregard the language of S.C. Code § 12-51-160 by introducing a standard of "conclusive evidence" that is not applicable and a distraction. (Resp't Br. p. 8). The fallacy in this argument is that this case is not about whether or not anything is conclusive. Nevertheless, a tax title is prima facie evidence of good title.

Respondent's weak attempts to bolster his position that a tax title is a defective title by unsuccessfully trying to differentiate between prima facie evidence and conclusive evidence are futile. (Resp't Br. p. 8) Respondent fails to provide a relevant connection between that the statute's clear language that a tax deed is "prima facie evidence of a good title in the holder" and Respondent's reliance on McKenzie to define

conclusive evidence. Id. at 532, 117 (Resp't Br. p. 8). Respondent makes the bold statement that "[t]he fact that a deed [is] entitled to a presumption of validity has never been accepted by the title practitioners as conclusive evidence that the grantee's title is superior to all others." (Resp't Br. p. 8). When did the opinion of title practitioners prevail over state law? Again, Respondent fails to rebut the presumption of good title because, if he does, he is not the Property's rightful owner.

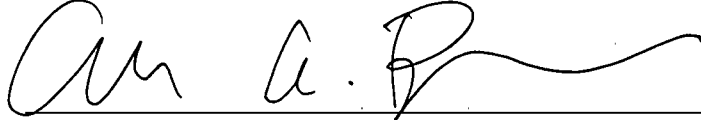
Respondent fails to show that his title to the Property is not good title. Respondent is able to utilize the Property to the fullest extent allowed by its zoning and can, therefore, use the Property as intended. The misguided attempt furthers the ridiculousness of Respondent's position. (See Appellant Br. p. 10, FN 3).

CONCLUSION

For the reasons stated herein, this Honorable Court should reverse the decision of the Administrative Law Court finding that a tax deed affects use, that a tax title, marketability and insurability are factors to consider in determining fair market value, and find that the Property has a fair market value of \$60,000 as set forth in the County's appraisal.

Respectfully submitted,

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