

STATE OF SOUTH CAROLINA  
COUNTY OF BAMBERG  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-05-0039

THE FORFEITED LAND COMMISSION OF BAMBERG COUNTY

EARTHA DEAN MOODY BEARD, ET. AL.

FILED  
BAMBERG COUNTY  
2014 DEC -1 AM 10:07  
JAMES H. ...  
CLERK OF COURTS  
BAMBERG COUNTY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: J. MARTIN HARVEY

Attorney for :  Plaintiff  Defendant  
or  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRCP;  Rule 41(a) SCRCP (Vol. Nonsuit);  Rule 43(k), SCRCP (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRCP;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

RECEIVED  
DEC 22 2014  
SC Court of Appeals

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Ralph Johnson	Willis Thompson, Bessie Thompson	\$n/a
	Coretta McMillan, Samuel Lee Morant, Jr., Betsy Felicia Morant	\$n/a
		\$n/a

If applicable, describe the property, including tax map information and address, referenced in the order:  
TMS 008604-01-027-

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2153

Judge Code

November 24

2014

Date



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BAMBERG )

The Forfeited Land Commission of )  
Bamberg County, )  
 )  
Plaintiff )

vs. )

Eartha Dean Moody Beard, et.al. Ralph )  
Johnson, et al., of whom Ralph Johnson is )  
answering as )  
 )  
Defendant - )  
Third Party Plaintiff )

Vs. )

Bank One, N.A., Conseco Finance )  
Servicing Corp., Equity One, Inc., )  
JPMorgan Chase Bank, National )  
Association, as trustee for the C-BASS )  
Mortgage Loan Asset-Backed Certificates, )  
Series 2005-CB2, and Mark D. Johnson, )  
JOHN DOE AND MARY ROE, )  
fictitious names representing any unknown )  
minors, incompetents, persons in the )  
military, persons imprisoned and persons )  
under any other legal disability and )  
RICHARD ROE AND SARAH DOE, )  
fictitious names representing unknown )  
devisees, distributees, or personal )  
Representatives of LILLIAN G. BROWN, )  
GERALDINE G. REED, RETHA G. )  
GREGGS, LILLIE D. GRAY, GEORGE )  
DAVIS, JULIA DAVIS, VIVIAN DAVIS, )  
MARGARET DAVIS, LILLIE MAE )  
DAVIS, LECIA RICE, ROY H. SETZLER, )  
DYAN SETZLER, LUCIOUS WRIGHT )  
JULIA JONES, EDITH K. GILMORE, )  
EDDIE GRIMES, HENRY C. GUESS, )  
WILLIE THOMPSON, BESSIE )  
THOMPSON, ANNIE MAE WHITE, )  
and also all other unknown persons claiming )

IN THE COURT OF COMMON PLEAS

C/A NO: 2010-CP-05-39

FILED  
BAMBERG COUNTY  
2014 DEC -1 AM 10:08  
CLERK OF COURT  
BAMBERG, SC

**RECEIVED**  
DEC 22 2014  
**SC Court of Appeals**

ORDER QUIETING TITLE

*1/8/20*

any right, title, estate, or lien upon the real )  
estate which is the subject of this action, )  
 )  
Third Party Defendant)  
 )  
\_\_\_\_\_ )

This action was originally filed by the Forfeited Land Commission of Bamberg County to set aside certain tax deeds. Hearings on November 18, 2013, and August 28, 2014, resulted in the dismissal of the Plaintiff's claims and entry of default judgment in favor of Defendant Ralph Johnson [hereafter "Johnson"] on his cross-claims to quiet his title by virtue of tax deeds to properties described in the Complaint and Cross-claims as to all but one co-defendant and third-party defendant.

A bench trial was held on September 22, 2014 on Johnson's remaining cross-claim to quiet his title to property formerly titled in the names of Willis Thompson and Bessie Thompson. J. Martin Harvey appeared on behalf of Ralph Johnson. Michael C. Tanner appeared on behalf of Coretta McMillan, an heir of the Thompsons. William S. Kemp, Esq. Guardian ad Litem Nisi, also appeared.

Upon examination of the file, I find that this matter was commenced by the filing of a Summons, Complaint and Lis Pendens on February 19, 2010. Ralph Johnson filed and served his Answer, Counter-claim, Cross-Claim and Third-Party Complaint and Lis Pendens on May 10, 2010, which he thereafter amended on November 9, 2011. William S. Kemp was appointed as Guardian ad Litem Nisi on May 18, 2010. All defendants were served personally, by certified mail, return receipt requested, or by publication on or prior to September 8, 2011. Coretta McMillan appeared at the November 18, 2013 hearing, claiming to be an heir of Defendants Willis and Bessie Thompson. McMillan filed an Answer and Counterclaim on April 8, 2014 seeking to set aside Johnson's tax deed as to the Thompson property. Johnson timely replied. Other heirs or devisees of Willis and Bessie Thompson, Samuel Lee Morant, Jr., and Betsy Felicia Morant, were identified to the Court, but have not made appearances. I find and conclude that they were properly served as unknown heirs of the Thompsons, and are in default.

Based on the pleadings and record before me, I make the following findings of fact:

1. The remaining real estate at issue in Johnson's Cross-claim and Third-Party Complaint consists of a parcel of land, more particularly described as follows:

Parcel No. 38:

All that certain lot of land situate in the County of Bamberg, State of South Carolina, and having the following boundaries:

On the Northeast by Geraldine Dowling; on the Southeast by Eugene Smalls Heirs, et al.; on the Southwest by Binnicker Bridge Road; on the Northwest by Frances S. Bonaparte.

This being the same property conveyed to Willis and Bessie Thompson by Willis and Bessie Thompson on January 11, 2001, and being recorded in the Bamberg County Clerk of Court's office in Deed Book 116, Page 11, on January 22, 2001. Also referenced in Plat Book J, Page 55.

Tax Map #: 0086-04-01-027

2. Defendant Bessie Thompson, died September 27, 2004. Her husband, Willis Thompson died on October 21, 2005. The administration of their estates had not been commenced as of the date of filing of this action. Their estates have not been completely administered as of the date of trial. Coretta McMillan, Samuel Lee Morant, Jr., and Betsy Felicia Morant are devisees and/or heirs at law of Willie and Bessie Thompson. Ms. McMillan admitted she did not notify the Tax Assessor that her grandparents were deceased, and did not give the Assessor a different address to which the tax notice should be mailed. Ms. McMillan rented the property to Bernard Holman, who occupies the property to this day.

3. Defendants Richard Roe and Sarah Doe, being fictitious names, are named as parties herein to represent such unknown devisees, distributees, or Personal Representatives of the said deceased defendants, the identities of whom are not indicated on the public record, and also all other unknown persons claiming any right, title, estate, or lien upon the real estate which is the subject of this action. Defendants JOHN DOE AND MARY ROE, being fictitious names, were named as parties herein to represent such unknown minors, incompetents, persons in the military, persons imprisoned and persons under any other legal disability, if they exist. The Guardian reported that no one claiming to be an heir of Willis Thompson and Bessie Thompson had contacted him, and that no defendant was actively serving in the military.

4. Third Party Defendant BankOne, N.A., is a foreign corporation authorized to transact business in South Carolina and was made a party to this action by virtue of Mortgage of Willie Thompson and Bessie W. Thompson to Bank One, N.A., covering TMS 086-04-01-027, more fully described hereinbelow dated March 21, 2003 and recorded April 4, 2003 in Mortgage Book 153 at page 9. BankOne, N.A. is in default.

5. Bamberg County ad valorem taxes assessed for 2006 on the properties at issue became delinquent. The County complied with S. C. Code Ann. §12-45-180 on March 17, 2007 by having the Treasurer send the Tax Collector a Notice that the taxes on the property were

delinquent, a copy of which was mailed on the same day by certified mail, return receipt requested to the defaulting taxpayers, Willis and Bessie Thompson, at the addresses shown on the tax receipts, to-wit: 2055 Binnicker Bridge Road, Bamberg, SC 29003. Mr. Holman denies receiving any mail from the County, which is understandable inasmuch as he could not have taken delivery due to the restricted delivery requirement.


6. The taxes on the parcel in question remained unpaid, and by virtue of such execution, on May 17, 2007, or soon thereafter, the Tax Collector sent notices to the defaulting taxpayers, the co-defendants affected herein at their addresses of record, by certified mail, restricted delivery, return receipt requested stating that if the taxes, penalties, assessments, and costs were not paid, the property must be duly advertised and sold to satisfy the delinquency.

7. The taxes were unpaid after 30 days and the Tax Collector attempted to comply with the second step of the process, §12-51-40(b), by taking exclusive possession of the property and sending a second notice by certified mail, return receipt requested, restricted delivery, which was returned because Mr. and Mrs. Thompson were both deceased, and the Postal Service could not have complied with the restricted delivery requirement.

8. Because the certified letter was returned, the Tax Collector should have complied with §12-51-40(c), taking exclusive possession by posting the property. The Tax Collector's file contains a copy of a notice dated June 19, 2007. The file documentation does not contain separate indication of posting, as other files reviewed by the Tax Collector during her testimony. Mr. Holman denied that the premises were posted, and denied that the notice was delivered to him as the occupant of the premises.

9. There is no dispute that the property was part of the advertisement of the tax sale published in the local newspaper as required by §12-51-40(d). The publication listed the deceased property owners; however, §12-51-40(f) requires the property to be advertised and sold in the name of the deceased owners of record. The Tax Collector sold the property in question on November 5, 2007. The Tax Collector, acting as statutory agent for the County Forfeited Land Commission, bid the property in for the amount of the taxes, penalties and interest due.

10. The Tax Collector complied with the requirement of S. C. Code Ann. §12-51-120 by sending the notice of right to redeem to the owners of record, the Thompsons, and their mortgagee, BankOne, N.A. at the addresses of record, on October 3, 2008 by certified mail, return receipt requested, restricted delivery.

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11. During the redemption period, the Tax Collector, acting on behalf of the Forfeited Land Commission, assigned the county's bids on the property in question to Johnson.

12. The property at issue was not redeemed ~~even~~ <sup>the</sup> and County issued a tax deed to Johnson, as assignee of the high bidder at the tax sale, on February 27, 2009, which was recorded in Deed Book 245 at pages 218- 222.

13. Johnson attempted to take possession of the property upon receiving title by filing an eviction action in the Bamberg County Magistrate's Court on January 26, 2010 and serving eviction papers as to the occupant of the property, Bernard Holman, thereby ousting the co-defendants and third party defendants. After Johnson sent McMillan written notice of his ownership and intent to evict, Coretta McMillan made inquiry about the taxes and admitted she was told that Johnson had purchased the property at the tax sale.

#### CONCLUSIONS OF LAW

This Court has jurisdiction over the parties and the subject matter of this action.

This action is brought pursuant to S. C. Code Ann. §15-61-10, et. seq., to quiet plaintiff's title in the real estate in question, specifically described hereinabove.

The issues involved in the case are: (A) whether the Tax Collector, as agent of the Forfeited Land Commission, is authorized to assign the FLC's bid to Johnson? (B) whether the Tax Collector strictly followed the procedures of S. C. Code Ann. §§ 12-51-40. et.seq., as amended? (C) whether in spite of any irregularities Johnson's tax deed is incontestable under §12-51-90(c) and §12-51-160?

A. I conclude that the Tax Collector is authorized to assign the Forfeited Land Commission's bid. S.C. Code Ann. §12-51-55 authorizes the Forfeited Land Commission of the county to place a bid at the tax sale equal to the amount of all unpaid property taxes, penalties, and assessments due the county. It follows that the FLC becomes a "purchaser" for purposes of the remainder of the tax sale process. S.C. Code Ann. §12-51-90(A) contemplates that a purchaser may assign its bid. If the FLC is a purchaser, then the FLC is entitled to assign its bid to a third party. This is consistent with §12-51-130 which directs the tax collector to "make a tax title to the purchaser or the purchaser's assignee." Id.

B. I conclude that the Tax Collector complied with §12-51-40(a) by mailing of notice of delinquent property taxes, penalties, assessments, and costs to the defaulting taxpayer

on May 17, 2007. The Tax Collector mailed the notice “to the best address available, which is either the address shown on the deed conveying the property to him, the property address, or other corrected or forwarding address of which the officer authorized to collect delinquent taxes, penalties, and costs has actual knowledge.” Id.

The record indicates the only address available to the Tax Collector for the Thompsons, the owners of record at the time the taxes became delinquent, at the time the sale was held and upon the expiration of the redemption period, was the physical address of the property. Mailing notice of the delinquent taxes and other required documents to the address given to the Assessor is sufficient to comply with the requirements of the tax sale statutes. Johnson v. Arbabi, 355 S.C. 64, 584 S.E.2d 113 (2003). Ms. McMillan cannot complain that she didn’t get the mail. The Tax Collector’s file indicates notices were sent by certified mail, return receipt requested, restricted delivery, to the address provided by the owner of record. Further the statute requires the manner by which notice is sent. The statute does not require that the taxpayer receive the notice.

I conclude, however, that the Tax Collector’s failure to post the property and deliver notice of execution to the occupant is an irregularity that would otherwise lead me to overturn the tax deed, but for the expiration of the statute of limitations.

C. I conclude that even if the tax sale process was not strictly observed, Ralph Johnson’s tax deed is incontestable under §12-51-90(c) and §12-51-160. The tax deed transferred ownership as of February 27, 2009, the date it was recorded, subject to the two-year statute of limitations, after which time the purchaser’s title is uncontestable. S. C. Code Ann. §12-51-90(c). Delivery of the tax title to the clerk of court or register of deeds is considered "putting the purchaser, or assignee, in possession". S. C. Code Ann. §12-51-130.

As most recently as 2010 our Supreme Court has discussed the importance of statutes of limitations:

Statutes of limitations are not simply technicalities.” *Moates v. Bobb*, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct.App.1996). “Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs.” *Id.* (citation omitted). Statutes of limitations relieve courts of the burden of trying stale claims of those who have slept on their rights. *See McKinney v. CSX Transp., Inc.*, 298 S.C. 47, 49–50, 378 S.E.2d 69, 70 (Ct.App.1989). “The purpose of statutes of limitation is to ensure litigation is ‘brought within a reasonable time in order that evidence be

reasonably available and there be some end to litigation.’ ” *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 377 S.C. 217, 227, 659 S.E.2d 213, 218 (Ct.App.2008) (quoting *City of North Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 231, 599 S.E.2d 462, 464 (Ct.App.2004)).

Transp. Ins. Co. & Flagstar Corp. v. S. Carolina Second Injury Fund, 389 S.C. 422, 428, 699 S.E.2d 687, 690 (2010)

The applicable statutes of limitations in this case are S. C. Code Ann. §§12-51-90(c) and 12-51-160. The former provides:

(C) If the defaulting taxpayer, grantee from the owner, or mortgage or judgment creditor fails to redeem the item of real estate sold at the delinquent tax sale within the twelve months provided in subsection (A) and after the passing of an additional twelve months, the tax deed issued is incontestable on procedural or other grounds.

The latter similarly provides:

In all cases of tax sale the deed of conveyance, 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. An action for the recovery of land sold pursuant to this chapter or for the recovery of the possession must not be maintained unless brought within two years from the date of sale as provided in Section 12-51-90(C).

S.C. Code Ann. § 12-51-160

The Supreme Court instructed on interpreting statutes of limitations in Transp. Ins. Co. & Flagstar Corp.:

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citation omitted). The text of a statute as drafted by the legislature is considered the best evidence of the legislative intent or will. *See id.* “If a statute’s language is plain, unambiguous, and conveys a clear meaning, then the rules of statutory interpretation are not needed and a court has no right to impose another meaning.” *Strickland v. Strickland*, 375 S.C. 76, 88, 650 S.E.2d 465, 472 (2007) (citation omitted). “The Court will give words their plain and ordinary meaning, and will not resort to a subtle or forced construction that would limit or expand the statute’s operation.” *Harris v. Anderson County Sheriff’s Office*, 381 S.C. 357, 362, 673 S.E.2d 423, 425 (2009) (citation omitted).

Transp. Ins. Co. & Flagstar Corp. v. S. Carolina Second Injury Fund, 389 S.C. 422, 429, 699 S.E.2d 687, 690 (2010)

The plain and ordinary reading of both statutes mandate timely compliance. Having slept

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on her rights, in spite of knowing for more than 2 years that Johnson had a recorded tax deed and in spite of his efforts to evict her tenant beginning well over 4 years before she challenged his title, McMillan cannot contest Johnson's deed on any procedural or other grounds, as provided by S. C. Code Ann. §§12-51-90(c) and 12-51-160.

A taxpayer's cause of action to set aside a tax deed accrues when the purchaser takes action informing the taxpayer of his ownership. King v. James, 388 S. C. 16, 694 S.E.2d 35 (Ct.App.2010).<sup>1</sup> Under King, Johnson's action to evict was an affirmative step that triggered the two-year statutes of limitations, which ran on January 26, 2012. McMillan's counterclaim was not filed until April 8, 2014, and is therefore time-barred. Now, therefore,

IT IS ORDERED that Ralph Johnson shall have quiet title in the property described hereinabove to the extent that any defendant named herein have a claim, legal or equitable, that may be a cloud on the title.

IT IS FURTHER ORDERED, that Johnson have his costs from Coretta McMillan as provided by Rule 54(e), South Carolina Rules of Civil Procedure.

AND IT IS SO ORDERED.



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Edgar W. Dickson, Presiding Judge  
Second Judicial Circuit

November 24, 2014  
Orangeburg, South Carolina

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<sup>1</sup> Reeping v. JEBBCO, LLC, 402 S.C. 195, 740 S.E.2d 504 (Ct. App. 2013), is fully distinguishable in that the Court's basis for not applying the statutes of limitations was the Tax Collector's failure to send notice to an alternate address provided by the taxpayer. As stated herein, Ms. McMillan did not notify the Tax Collector of her grandparents' deaths nor did she provide the Tax Assessor with a forwarding address to which tax notices could have been mailed.