

COPY

CASE NO. 2014 CP-42-1685

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Blackwell Property Rentals, LLC

Robert J. Keys, Sr., et al.

JUN 04 2015

US Bank National Association (Third-Party Plaintiff)

County of Spartanburg, South Carolina (Third-Party Defendant)

PLAINTIFF(S)

SC Court of Appeals

DEFENDANT(S)

Submitted by: John H. Harris

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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; 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

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: Order granting Motion to Dismiss filed by Third-Party Defendant

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)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

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

3065
 Judge Code

4-30-2015
 Date

For Clerk of Court Office Use Only

This judgment was entered on the 1 day of May 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 4 day of May 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Scott F. Talley, Esq. (Blackwell Property Rentals, LLC),
2500 Winchester Place, Ste. 1000
Spartanburg, SC 29301

John H. Harris, Esq. (County of Spartanburg)
P. O. Box 5666
Spartanburg, SC 29304

Sean O'Connor, Esq. (US Bank National Association)
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North Charleston, SC 29405

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

M. Hope Blackley
CLERK OF COURT C. J. Jones, Jr.

Court Reporter: Sarah Hollis

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

SPARTANBURG COUNTY
2015 MAY -1 PM 1:21
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF SPARTANBURG) C.A. No. 2014-CP-42-1685

Blackwell Property Rentals, LLC,)
)
 Plaintiff)

v.)

Robert J. Keys, Sr., US Bank National)
 Association, Howard R. Burns, Jr.,)
 Herman Dodd, Jr., Vanessa Twitty,)
 Rosa L. Dodd, Janice L. Dodd, Brenda)
 G. Dodd, John Doe and Jane Doe,)

Defendants)

US Bank National Association,)
)
 Third-Party Plaintiff,)

v.)

County of Spartanburg, South Carolina)
)
 Third-Party Defendant.)

**ORDER OF DISMISSAL
 OF THIRD-PARTY
 COMPLAINT**

CLERK OF COURT
 SPARTANBURG COUNTY
 2015 MAY -1 PM 1:21
 M. HOPE BLACKLEY

THIS MATTER comes before this Court by way of a Motion to Dismiss pursuant to Rule 12(b)(6) filed by the Third-Party Defendant, Spartanburg County (hereinafter "County"), against the above-named Third-Party Plaintiff (hereinafter "US Bank") for the purpose of dismissing the Third-Party Complaint, which seeks to overturn a tax sale of a parcel identified as tax map number 2-13-00-124.00 (hereinafter the "Subject Property").

Present at the motion hearing on April 13, 2015 were John H. Harris, Attorney for County; Sean O'Connor, Attorney for US Bank; and Scott Talley, Attorney for Blackwell Property Rentals, LLC.

STANDARD OF REVIEW

The Supreme Court of South Carolina in Spence v. Spence succinctly summarized the criteria for considering a motion to dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure as follows:

Under Rule 12(b)(6), SCRPC, a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action. In considering such a motion, the trial court must base its ruling solely on allegations set forth in the complaint. If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). In deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. *Gentry v. Yonce*, 337 S.C. 1, 522 S.E.2d 137 (1999). A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff to relief under any theory. *Id.* Furthermore, the complaint should not be dismissed *117 merely because the court doubts the plaintiff will prevail in the action. *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987).

Spence v. Spence, 368 S.C. 106, 116-17, 628 S.E.2d 869, 874 (2006).

FINDINGS OF FACT

On November 20, 2014, US Bank filed an Answer to the complaint filed by Blackwell Property Rentals, LLC and filed a Third-Party Complaint against the County. Subsequently, the County was served with the Third-Party Complaint and in response, filed its Motion to Dismiss on February 6, 2015. In the Third-Party Complaint against the County, US Bank sought to set aside the tax sale based upon three alleged defects. Those defects are as follows:

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- (1) The end of redemption notice did not sufficiently identify the property.
- (2) The end of redemption notice did not identify the public record by which Spartanburg County determined that US Bank possessed an interest in the property.
- (3) The letter from US Bank to the County stays the redemption period when County does not respond.

The Subject Property is identified in the Spartanburg County records as tax map number 2-13-00-124.00. The Third-Party Complaint alleges that the end of redemption notice failed to comply with the notice requirement of S.C. Code Ann. § 12-51-120 because it did not sufficiently identify the property. In its complaint, US Bank admitted the property was described in the end of redemption notice by tax map number. (Third Party Complaint Paragraph 31.) Furthermore, the Memorandum in Opposition admits "US Bank received a notice that the redemption period for TMS # 2-13-00-124.00 would expire on December 4, 2013." (US Bank's Memorandum in Opposition to Motion to Dismiss p. 2). Based on a review of the pleadings in this case, I find that that the end of redemption notice issued by the County sufficiently identified the Subject Property and contained the correct tax map number for the Subject Property.

CONCLUSION OF LAW

1. End of redemption notice describes the real property as required by law.

The Court finds that since the end of redemption notice contained the tax map number for the Subject Property, as a matter of law the Subject Property was sufficiently identified. The S.C. Supreme Court has held that a description of real property by tax map number is a sufficient description of the real property because "interested persons can discover the details ... of [the] property by using the tax account number [or the tax map number] to look up further information in the county tax assessor's office. Hawkins v. Brumo Yacht Sales, Inc., 353 S.C. 31, 42 (2003). The S.C. Code of Laws provides that when advertising a property for tax sale "the county auditor's map-block-parcel number [is] sufficient for a description of realty". S.C. Code Ann. § 12-51-40(d). In light of the Court's opinion in Hawkins and the General Assembly's guidance in S.C.

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Code Ann. § 12-51-40(d) on how to describe the property for advertisement, the Court finds a tax map number is a sufficient description of the real property.

The Court also takes judicial notice of the information contained on the County's website as to the formatting requirements for entering the tax map number. Based on the formatting information provided, the burden is shifted to US Bank to investigate and then put the information into the website as provided in the end of redemption notice to obtain information regarding the Subject Property.

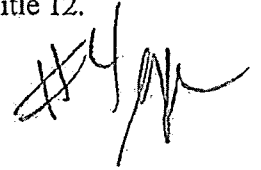
2. End of redemption notice does not have to specify public record creating interest in the property

US Bank asserts that the end of redemption notice was defective because it did not identify the public record by which the County determined US Bank possessed an interest in the property. However, there is no requirement in S.C. Code Ann. § 12-51-120 that the end of redemption notice specify the public record creating the mortgagee's interest in the property. The requirement is that the notice specify "that the real property described on the notice" was sold for taxes and if not redeemed a tax title must be delivered to the tax sale purchaser. S.C. Code Ann. § 12-51-120.

The requirement in the S.C. Code of Laws for the County to specify the book and page where a mortgage is recorded is found in S.C. Code Ann. § 12-49-1130. However, this section is not applicable to an end of redemption notice. Furthermore, it only applies where the mortgagee has complied with the provisions of S.C. Code Ann. § 12-49-1150 and the Third Party Plaintiff's complaint contains no allegations that it provided the County a mortgage list. US Bank also asserts in its memorandum in opposition that somehow the notice to mortgagee provisions found in Chapter 49 of Title 12 are incorporated into Chapter 51. However, US Bank's contention is unsupported by the law.

3. Letter by mortgage company does not stay redemption period

The Third Party Plaintiff alleges in its complaint that the failure of the County to respond to a letter causes the redemption period to be stayed. (Third Party Complaint Paragraphs 25 and 26.) The law does not support this contention. To follow this line of thinking would result in a re-write of the tax sale statutes found in Chapter 51 of Title 12.

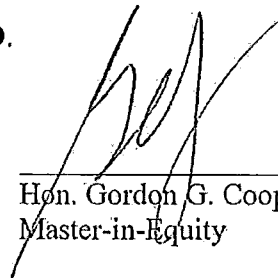


The concept of staying the one year redemption period for a tax sale by sending a letter to the County would disrupt the entire tax sale process. It would result in defaulting taxpayers and mortgage companies sending letters to the County in order to buy additional time to pay the taxes or complete a foreclosure. There is nothing in the tax sale statutes or case law that supports the concept of staying a redemption period by sending the County a letter.

Therefore, the Court grants the County's Motion to Dismiss based on the fact that it does not find any grounds upon which relief can be granted and finds that US Bank has failed to plead facts sufficient to constitute a cause of action.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the Third Party Complaint is dismissed.

AND IT IS SO ORDERED.



Hon. Gordon G. Cooper
Master-in-Equity

April 30, 2015
Spartanburg, South Carolina

CLERK OF COURT
SPARTANBURG COUNTY
2015 MAY -1 PM 1:22
J. HOPE BLASBY

A CERTIFIED COPY

M. Hope Blasby
CLERK OF COURT
SPARTANBURG COUNTY
BY: [Signature] D.C.
DATED 5/1/15