STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	)
COUNTY OF BEAUFORT	) CIVIL ACTION NO: 2013-CP-07-03131

J DUB HOLDINGS, LLC,)
)
Plaintiff,)
)
vs.) AMENDED ORDER
)
SBK INVESTMENTS, L.P. AND)
BEAUFORT COUNTY,)
)
Defendants.)

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SC Court of Appeals

1. This Court issued its original Order in this matter after the trial of this case on March 4, 2015. On March 17, 2015, the Plaintiff filed a Motion to Reconsider (" Motion ") . The hearing on said Motion was held before me on May 15, 2015, attended by Curtis L. Coltrane , counsel for the Plaintiff; Russell P. Patterson, counsel for SBK; and Mary Bass Lohr, counsel for Beaufort County. SBK submitted its Memorandum of Law in Opposition to the Motion at the time. After careful consideration of the Motion, SBK's memorandum, and arguments of counsel, this Court denies said Motion, with the exception of the revisions in sections ten (10) and eleven (11) set forth below in this Amended Order.

2. This matter came before me upon cross motions for Summary Judgment. This is a dispute over the validity of a Beaufort County tax sale. A Motion for Summary Judgment, dated March 24, 2014, was filed jointly by J Dub Holdings, LLC ("Dub") and Beaufort County ("County"). On July 30, 2014, the

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Defendant, SBK Investments, L.P. ("SBK"), filed its First Amended Motion for Summary Judgment. A hearing was held before me at the Beaufort County Courthouse on September 19, 2014 at 9:00 a.m., attended by Curtis L. Coltrane, counsel for Dub, Mary Bass Lohr, counsel for County, and Russell P. Patterson, counsel for SBK.

3. In addition to considering arguments from counsel and the two motions cited above, the Court reviewed and considered to following submitted at or prior to said hearing: (1) SBK's First Amended Responses to Plaintiff's Request for Admissions, dated February 11, 2014; (2) Affidavit of David Fisher; (3) Affidavit of Spencer B. King; (4) Affidavit of Gail H. King; (5) Affidavit of Tom C. Jackson; (6) SBK's Memorandum of Law in Opposition to the Plaintiff's Motion for Summary Judgment, dated September 17, 2014; (7) Memorandum of Law in Support of First Amended Motion for Summary Judgment of SBK, dated September 18, 2014; and (8) Portions of the depositions of Doug Henderson (pages 1, 54 – 57, 78 – 81, 86 – 93); and Kimberly Chesney (pages 1, 54 – 57, 74 – 85), as well as deposition exhibits 17(A), 18, 19, 20, and 29.

4. Thereafter, the Court conducted two telephonic conferences calls on September 26, 2014 and October 15, 2014 where the Court further considered oral arguments from all counsel.

5. After due and careful consideration, this Court grants the Motion for Summary Judgment filed by SBK, denies the Motion for Summary Judgment by Dub and the County, and voids the subject tax sale for the reasons discussed below.

I. SUMMARY JUDGMENT STANDARD

6. Under Rule 56, SCRCP, Summary Judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Café Associates Limited v. Gengross, 305 S.C. 6, 406 S.E.2d 162 (S.C. 1991). In determining whether any material issues of act exist, the evidence and all inferences that can be drawn from the evidence must be viewed in the light most favorable to the party resisting the motion. Redwend Limited Partnership v. Edwards, 354 S.C. 58, 581 S.E.2d 496 (S.C.App. 2003). The purpose of Summary Judgment is to expedite the disposition of cases that do not require the services of a fact finder. Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (S.C. 2003). For purposes of summary judgment, an issue is 'material' if the facts alleged are such as to constitute a legal defense or are of such a nature as to affect the result of the action. P.G. Industries, Inc. v. Orangeburg Paint & Decorating Center, Inc., 297 S.C. 176, 375 S.E.2d 331 (S.C.App. 1988). Once the moving party has met its burden of demonstrating that no genuine issue of material fact exists, a party defeats summary judgment by affirmatively demonstrating the presence of a genuine issue of material fact. Rule 56(e), SCRCP, states, a party may not rest upon the mere allegations or denials of his pleadings. Hoard ex rel. Hoard v. Roper Hospital, Inc., 387 S.C. 539, 694 S.E.2d 1 (S.C. 2010).

II. MOTION FOR SUMMARY JUDGMENT FILED BY SBK

7. The strict requirements imposed by the Courts against a tax authority in connection with tax sales is succinctly set forth in the case of King v. James, 388 S.C. 16, 25, 694 S.E.2d 35, 39-40 as set forth below:

> "Tax sales must be conducted in strict compliance with statutory requirements." *In Re Ryan Investment Co.*, 335 S.C. 392, 395, 517 S.E.2d 692, 693 (1999) (citing *Dibble*, 274 S.C. at 483, 265 S.E.2d at 675). "[A]ll requirements of the law leading **40 up to tax sales which are intended for the protection of the taxpayer against surprise or the sacrifice of his property are to be regarded [as] mandatory and are to be strictly enforced." *Donahue v. Ward*, 298 S.C. 75, 83, 378 S.E.2d 261, 265 (Ct.App. 1989) (citing *Osborne v. Vallentine*, 196 S.C. 90, 94, 12 S.E.2d 856, 858 (1941). "Even actual notice is insufficient to uphold a tax sale absent strict compliance with statutory requirements." *Ryan Inv. Co.*, 335 S.C. at 395, 517 S.E.2d at 693. "Failure to give the required notice [of a tax sale] is a fundamental defect in the tax sale proceedings which renders the proceedings absolutely void." *Rives v. Bulsa*, 325 S.C. 287, 293, 478 S.E.2d 878, 88 (Ct.App. 1996)."

8. The above obligations have been interpreted to impose by the Court a duty on the County tax authority to exercise due diligence in attempting to determine the best address available for the taxpayer when the tax notices required under § 12-51-120 are returned undelivered. If that duty is not met, the tax sale is deemed void. Good v. Kennedy, 291 S.C. 204, 352 S.E.2d 708 (1997); Benton v. Logan, 323 S.C. 338, 474 S.E.2d 446 (1996); Reeping v. Jebbco, 402 S.C. 195, 740 S.E.2d 504 (2013).

In Good, the leading case for this proposition, the Court held that the delinquent tax office could not simply rely on the records provided by the assessor's office. The tax collection office must exercise diligence to ascertain the correct address of the property owner. The Court at p. 208 set forth the standard as follows:

> "[t]hough diligence is a relative term depending on the circumstances of each case, we hold that imparts upon a public official due care in the performance of her duties." (cite omitted) Regardless of whether due diligence required resort to records other than the Tax Assessor's to ascertain where to send the notice of redemption initially, it should become evident to the Tax Collector that such address was not the best address available for Good when the notice was returned undelivered."

As the evidence in Good was that the Tax Assessor took no action to locate a better address after it knew the address it was using was not the "best available," the tax sale was deemed void.

Following the holding of Good, the court in Benton also held that when the tax office received notices back from the post office as being undelivered, the Beaufort County Treasurer had a duty to exercise due diligence to enquire further as to a better address. In that case, the tax office received from the post office a notice that the forwarding order had expired. It was thus evident the post office had on file a better address. The tax office had a duty of further inquiry, which it breached when it did nothing. The Court in Benton clearly required the Treasurer to go outside the four walls of the courthouse and obtain the "best available address" from a third party (i.e., the post office in that case). The Court overturned the sale.

Finally, in the 2013 Reeping decision, the tax office received notices from the post office returned as "undeliverable" and "no such number". The court held that the Treasurer's Office, with a minimal amount of due diligence, could have uncovered a correct address by further investigation and could not simply rely on the Tax Assessor's records, which they knew were not correct. Again, the tax

office did nothing after it learned the address it was using was not valid and the Court overturned the tax sale.

In this case, pursuant to the testimony of Doug Henderson, the Beaufort County Treasurer, upon receiving multiple notices back from the post office as being undeliverable to SBK, his office took **absolutely no additional steps to locate a better address**.

> "Q. When your office received back Exhibit 29 [8/31/12 "Final Notice – Ending of the Redemption Period"] and you knew you did not have a sufficient address for the taxpayer, is that correct?
>
> A. That is correct.
>
> Q. What efforts if any did you then take to find a better address?
>
> A. We don't. We don't do anything else. We can't."

(Henderson Dep. p. 79, lines 12 – 25 – Parenthetic material added). This was further confirmed by Kimberly Chesney, also in the tax office. In reference to the return of the Notice of the Redemption Period to SBK (Dep. Ex. 29), she stated as follows:

> "Q. What happened when you received the notice back from the post office, the insufficient address? What did your office do next?
>
> A. I am not sure that at that time that they did anything next.
>
> * * *

Q. After you received back Exhibit 29 in your office, your office knew that the address you were using was not sufficient, is that correct?

A. There was an insufficient address that it couldn't be delivered, yes.

Q. And did your office make any further efforts to determine a better available address after receipt of 29 back from the post office?

A. There were no notes in the file that indicated otherwise.

Q. Can you think of anything that the tax office could have done to find a better available address after Exhibit 29?

A. What they could have done? It wasn't involved in the – this was the process. **They weren't required to do anything more than that**, so I am sure there is all sorts of ideas of things that could be done. But we just had to do I guess what was required."

(Chesney Dep. p. 75 line 15 to p. 76, line 24 – emphasis added)

9. The tax office clearly had an affirmative duty to take additional steps, as established under Good, Benton and Reeping. The County has admitted that it took no such steps of any kind. This is not a case of the tax office taking certain additional steps to locate a better address and the taxpayer asserting said office was not diligent enough. In this case, the County has admitted it took no additional steps because they did not have the time or

resources, or took the position it had no obligation to do so. Under said circumstances, summary judgment should be granted.

10. I find and conclude that the County after it became aware it was using an erroneous address, had a duty to at least conduct further inquiry as to a more accurate address. Some examples of action it could have taken would include, but is not limited to, one or more of the following:

(a) Attempt to review and retrieve the checks by which SBK paid taxes on the Subject Property from 2004 through 2009, all of which reflected the current mailing address (King Aff. § 6, Exs. 6(a) – 6(g)).

(b) I further find and conclude that the County was under an obligation to at least make an attempt to contact Christopher T. Graham, the attorney who prepared the deed into SBK (King Aff. § 5, 6(c) (1), ex... 51).

(c) Check the free, online database of the Georgia Secretary of State, for the current address for SBK. This simple task, which Ms. Chesney with the County admitted she has done on the South Carolina Secretary of State website in less than a minute (Chesney Dep. p. 79, lines 16 – 22), would have revealed at least ten (10) documents on file for SBK with the correct address. (King Aff. § 17, (c) (2), Ex. 16(b)(2))

11. While SBK's counsel asserts the County could have easily located a current address through other similar means (ie. contact local water and sewer

company; contact the property owner's association, etc.), this Court finds the three (3) above sources , and possibly others, could have been used for the County to meet its due diligence obligations. Since nothing was done by the Court after it received the returned notice of the end of the redemption period, I find and conclude the tax sale is void.

III. MOTION FOR SUMMARY JUDGMENT FILED BY DUB AND COUNTY

12. Dr. Spencer B. King ("Dr. King") and his wife, Gail King, both fulltime residents of Georgia, purchased Lot 30, Phase I, The Daufuskie Island Club, an ocean-front, full-sized lot near Bloody Point on Daufuskie originally on May 23, 2002. In November, 2003, for estate planning purposes, Dr. King deeded the property to his wife. Thereafter, on November 17, 2013 Mrs. King conveyed the subject property to SBK. (Dr. King Aff., §§ 3 – 5.) Due to a scrivener's error by their attorney, the address for SBK in this deed was improperly listed as 929 Lullwater Parkway NE, Atlanta, GA 30307-1235, instead of the correct address of 925 Lullwater Parkway NE, Atlanta GA 30307-1235. (Dr. King Aff., § 5, Ex. 5). The full name and address of their attorney, Christopher T. Graham, was set forth on the first page of this recorded deed (King Aff., §§ 5, 17(c) (1), Ex. 5).

13. For seven years, from 2003 through 2008, Beaufort County taxes were paid by checks from Dr. King or SBK, listing their correct mailing address on the face of said checks as 925 Lullwater Parkway NE. All of said checks were received by Beaufort County and applied towards the taxes. (Dr. King Aff., § 6). Copies of the checks that are available are attached to Dr. King's Affidavit as

Exhibits 6(a), 6(c), and 6(e). The remaining checks were scanned by Beaufort County and destroyed, thus explaining why Dr. King does not have all the cancelled checks.

14. The 2010 tax bill, for reasons unknown, was never received by SBK or Dr. King, nor did said parties receive any notice of the delinquency in said payment, the tax sale, or the end of the redemption period. This is true even though Dr. King had paid the taxes for the prior seven (7) years, and Beaufort County had received checks with his correct address in each of the prior seven years. (Dr. King Aff., §§ 6, 7).

15. That as a result of the nonpayment of the 2010 taxes, the County proceeded under § 12-51-40 et. seq. of the S.C. Code of Laws (1976) to collect said delinquent taxes.

16. A sale of the Subject Property was conducted on October 3, 2011 at which time Dub was the successful bidder at $40,000, which was timely paid to the County.

17. On August 31, 2012, the County sent by certified mail, return receipt requested a "Final Notice – Ending of the Redemption Period" (Dep. Henderson and Chesney, Ex. 29) in an effort to comply with § 12-5-90 of the S.C. Code of Laws (1976). This notice sent to SBK was returned by the U.S. Post Office with the following notation: "Return to Sender, Insufficient Address; Unable to Forward".

18. Both the County Treasurer (Dep. Henderson p. 78 line 11 – p. 79 line 15) and his assistant (Dep. Chesney, p. 75 lines 2 – 7) admitted they were

 4224

aware the post office indicated in writing the address being used by the County was insufficient and that said notice, required by statute, was undeliverable.

19. The County Treasurer and his assistant both admitted that after receipt of the returned notice from the U.S. Post Office no effort of any kind was undertaken to locate or find a better address for SBK (Henderson Dep. p. 79 lines 18 – 19 – "We don't. We don't do anything else. We can't"; Chesney Dep. p. 76 lines 14 – 15 – "There were no notes in the file that indicated otherwise.").

20. The Treasurer testified he did not have the manpower or resources to do anything further to locate a better address, but took the position his office was not required to do anything more, including contacting the attorney whose name was on the deed or checking the Georgia Secretary of State's website for a better address for SBK, although he acknowledged said records were readily available (Henderson Dep. p. 79 line 16 – p. 81 line 22). His assistant, Ms. Chesney, also confirmed her office could have contacted the attorney whose name was on the deed or check the Georgia Secretary of State's records, but took the position her office was not required to take any action other than mail out the notice at the end of the redemption period (Chesney Dep. p. 76 line 5 – p. 77, line 12).

21. It should be noted that Ms. Chesney testified in the future for South Carolina business entities she will be checking the South Carolina Secretary of State's website to obtain the name and address of the registered agent. She admitted for a South Carolina entity it was a simple process that took less than a minute. (Chesney Dep. p. 77 line 13, p. 71 line 22). She further admitted that if it

was a good idea to check the Georgia Secretary of State Office, it may be "possible" to also check Georgia's Secretary of State website.

22. That the full, complete and accurate address of SBK (925 Lullwater Parkway, NE, Atlanta, Georgia 30307) was listed at least ten (10) times on records readily available, at no cost to the County, online through the website of the Georgia Secretary of State (Aff. King, § 17(c)(2), Ex. 16(b)(2)).

23. That at the end of the redemption period, since SBK had not timely redeemed the property, the County issued a Tax Title by the Treasurer on December 3, 2012 in the name of Dub.

24. Tom C. Jackson ("Jackson"), a local realtor, was aware that the subject property was owned by Dr. King and SBK. (Jackson Aff., § 3). He reviewed the Beaufort County website listing the tax overage funds held by Beaufort County and noticed there was $21,870.25 ("Overage Funds") held by Beaufort County. He contacted Mrs. Gail King and advised her that Beaufort County was holding the Overage Funds. On December 5, 2012 he sent an e-mail to her advising how to collect the "2011 tax overage funds," ending his e-mail by stating, "Good luck and Merry Christmas". (Jackson Aff., Ex. 5). He never advised her that the funds resulted from a tax sale on the subject property. (Jackson Aff., § 6; Gail King Aff., §§ 7 and 8). Mrs. Gail King forwarded the e-mail from Mr. Jackson to her husband on the same day. (Gail King Aff., § 9, Ex. 9).

25. Upon receipt of the e-mail forwarded from Mr. Jackson, both Dr. and Mrs. King were under the impression said monies were simply a refund or

rebate of taxes that had previously been paid. (Gail King Aff., § 8; Dr. King Aff., § 8). Dr. King forwarded the information as to the tax "rebate" to his financial advisor, David Fisher, on December 6, 2012 asking him to confirm if the rebate was for real. The full text of his e-mail is as follows:

> "David this real-estate person called Gail and said that he found out there was a rebate owed to all of us at Daufuskie island from the Beaufort Co tax office. I have attached the note from him. Could someone check the tax office to see if this is real? It would not attach so I will forward it to you." (Dr. King Aff., § 9, Exhibit 9).

26. Julia Paparelli, with David Fisher's office, thereafter contacted Beaufort County and confirmed there were tax surplus monies owing to SBK. David Fisher then notified Dr. King later that day, congratulating him on the found money. The e-mail from Mr. Fisher to Dr. King is set forth below:

> "**Merry Christmas, the money is real**! Julia was able to get on the website for the county and confirm this amount is owed to you. She is going to call the tax office and see if she can get the refund confirmed and what the procedures are to handle this. She will reply back to this e-mail when she has information if there is anything you all need to do.
>
> **I am sure that made your day**!" (emphasis added)

(Dr. King Aff., § 10, Ex. 10; Fisher Aff., § 5, Ex. 5).

27. Thereafter, David Fisher's office forwarded to Dr. King the Tax Sale Overage Request Form which he signed and submitted to the County. Dr. King subsequently received the $21,870.25. (Dr. King Aff., §§ 11, 12, and 16, Ex. 11(a); Fisher Aff., §§ 6, 7 and 8).

28. Dr. King first became aware that his property had been sold for taxes when he received on or about September 13, 2013 a letter from John

Wilkins, Esquire, an owner of Dub, requesting he sign a quit claim deed for the property. (Dr. King Aff., § 13, Ex. 13).

29. Within two (2) weeks of receiving the September 13, 2013 letter from John Wilkins, Dr. Fisher retained legal counsel, who entered into settlement discussions to resolve this matter. Those discussions were unsuccessful and Dub filed suit on or about December 11, 2013. (Dr. King Aff., § 14). Three weeks later, SBK filed an Answer and Counterclaim seeking to void the tax sale and return the surplus funds to the Clerk of Court.

30. On January 16, 2014 SBK filed a motion to deposit said funds with the Clerk of Court. On March 20, 2014 Judge Donald Hocker granted said motion, and the 2011 Tax Overage Funds were thereafter deposited with the Clerk of Court, where said funds sit today.

IV. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

31. The Plaintiff's Motion for Summary Judgment seeks an order confirming the validity of the tax sale based upon the receipt by SBK of the $21,870.25 in tax overage funds under a variety of legal theories. For the reasons discussed below, this Court denies said Motion.

32. This Court is unaware of any South Carolina case, or any case in any other jurisdiction, which has ever held that the receipt by a taxpayer of tax overage funds result in the waiver, estoppel or ratification of a tax sale where the rigorous standards of the tax sale process have not been met. Counsel for Dub and the County have provided no such authorities. This Court has cited above

the rigorous requirements that must be met to validate a tax sale. King, supra. A real estate property tax sale is the most extreme forfeiture available under South Carolina law, and has been described as a "sacrifice of a taxpayer's property". Osbourne v. Vallentine, 196 S.C. 90, 94, 12 S.E.2d 856 (1941); Donohue v. Ward, 298 S.C. 75, 83, 378 S.E.2d 261, 265 (1989). Providing the proper notice to the taxpayer is regarded as jurisdictional in tax sale cases. Good v. Kennedy, 291 S.C. 204, 352 S.E.2d 708, 711 (1997)

33. As discussed above, this Court has concluded that there was a material, substantive defect in the sales process. The Court also finds as significant that Dr. King and Mrs. King are Georgia residents who were advised that there was "found" money, ("Merry Christmas, the money is real!" Ex. 2). In addition, the Tax Sale Overage Request form relied upon by Dub and the County for the various theories under their motion does not clearly set forth to a layman the source of the funds, and contains no language that receipt of the funds relinquishes any and all claims or objections to the tax sale process.

34. A review of the specific theories advanced by said parties also leads to the conclusion Summary Judgment in their favor is inappropriate.

(a) The Principle of Ratification Does Not Apply

35. Dub and County assert that SBK, through its receipt of the tax overage funds amounts to a ratification of the tax sale, citing Brazell Brothers Contractors v. Hill, 245 S.C. 69, 138 S.E.2d 835 (1964). A brief review of this case finds that such an argument is without merit.

36. In that case, Brazell sued Hill in connection with a car wreck. Hill filed a counterclaim against Brazell. The insurance carrier for Brazell settled the Hill counterclaim, and upon receipt of the settlement funds, Hill entered into a release of his counterclaim. The attorney for Brazell then obtained an Order dismissing the Hill counterclaim, based upon the written release and settlement. When Brazell attempted to continue his action against Hill on his Complaint, Hill asserted that Brazell was barred from doing so upon the principle of ratification of the compromise and settlement made by the insurance carrier as to the counterclaim dismissal. The Court defined ratification as ". . . the adoption by one person of an act done or bargain made for him by another under such circumstances that he would not have been bound but for a subsequent assent." Id., p. 837. In the instant case, there is only one party that took any action, SBK. There is no possible adoption by SBK of an act done or bargain made on behalf of SBK by some other entity or person that results in SBK being bound.

37. In addition, the Court in Brazell noted that even if ratification was applicable, and Brazell was bound by the terms of the settlement reached by his insurance carrier, the result of ratification "can rise no higher as a bar to this action than the terms of that agreement." Id., p. 837. What that meant in that case was that even if the doctrine were applicable, Brazell was only bound by the release entered by the carrier, which clearly did not release the claims of Brazell against Hill, as Hill was the only party to sign same. In the instant case, even if ratification somehow were applicable, there is absolutely no language in the Tax Sale Overage Request that could possibly be read as SBK waiving or

relinquishing any of its claims to challenge the tax sale. Given the understanding of SBK as to the genesis of the funds (i.e., tax rebate, tax refund, found money, Merry Christmas!), and the lack of any express language relinquishing any legal rights, this Court finds the principle of ratification is not applicable.

(b) The Doctrine of Waiver is Not Applicable

38. South Carolina has long recognized that waiver is a voluntary and intentional abatement or relinquishment of a known right. The determination of whether ". . . one's actions constitutes waiver is a question of fact". Laser Supply and Servs., Inc. v. Orchard Park Associates, 382 S.C. 326, 337, 676 S.E.2d 139, 145 (Ct.App. 2009). "In order for a party to waive a right, the party must have known of the right and known that the right was being abandoned." Eason v. Eason, 384 S.C. 473, 480, 6282 S.E.2d 804, 807 (2009).

The detailed affidavits submitted by SBK confirms SBK was advised it in fact had received a "tax refund," "rebate" or "found money," and that all parties were very excited to confirm the money was real. This Court finds that SBK had no idea that it had just lost its valuable ocean-front lot in a tax sale.

39. The case of King v. James, 388 S.C. 16, 694 S.E.2d 35 (2010) is directly on point. In that case, after the Beaufort County tax sale was completed, the tax sale purchaser leased back to the prior owner the property for seven (7) months at $500 a month. When the prior owner later filed suit to challenge the validity of the tax sale, the tax sale purchaser raised the defenses of waiver, acquiescence and estoppel. The court rejected these defenses, finding the owner timely took steps to challenge the sale and the lease was possibly a

strategic maneuver made in anticipation of litigation. The Court found no abandonment, waiver or any type of release of their rights.

40. In this case, we have a Georgia doctor who is advised he received a "Christmas present" of a $21,870.25 tax refund. As soon as he was made aware by the letter of John Wilkins on September 13, 2013 of the true nature of said funds, he immediately retained counsel, entered into settlement discussions, and subsequently filed a counterclaim to contest the sale and return the funds to the Clerk of Court (Aff. King, §§ 13, 14, 16). No waiver is present under these facts. In addition, as stated above, the Tax Sale Overage Request Form contains no language indicating that it was an attempt to secure a waiver or release, or prevent SBK from challenging the tax sale in the future.

(c) Estoppel is Not Applicable

41. For many of the same reasons related to ratification and waiver discussed above, estoppel is equally not applicable.

(i) Elements to be Met as to County

The Court in Town of Kingstree v. Chapman, 405 S.C. 282, 747 S.E.2d 494 (2013) set forth the following elements the party claiming estoppel (County) must prove, as follows:

1. Lack of knowledge and means of knowledge of truth as to facts in question;
2. Reliance upon conduct of the party estopped; and
3. Prejudicial change in position.

42. The County has met none of these elements. They certainly had the means and knowledge to know that the tax sale procedures they followed

 [handwritten initials]

were defective, as set forth by the South Carolina Supreme Court. (See: Good, Benton, Reeping). There no evidence of detrimental reliance by the County by the conduct of SBK, in that the tax overage funds paid by SBK are currently safely held by the Clerk of Court at this time. Finally, there is no prejudicial change in position for the same reason.

The King decision is again helpful. The tax overage resulting from that Beaufort County tax sale had escheated to the Beaufort County General Fund and was not available to the delinquent tax office. The tax office asserted this "loss" of funds met the prejudice requirement. The Court held that since it was the County's own failure to comply with the statutory requirements that led to an invalid tax sale, it could not claim prejudice as to it's the failure to receive said funds. In this case, the tax overage funds are available with the Clerk of Court, so there is not even an argument of prejudice available.

(ii) Elements to be Met as to SBK

The court in The Town of Kingstree held that the following elements must be shown as to the party estopped, in this case SBK:

1. Conduct by the party estopped amounting to a false representation or a concealment of material fact;

2. The intention such conduct to be acted upon by the other party; and

3. Actual constructive knowledge of the true facts.

It is this Court's conclusion none of these elements are met. SBK made no false representation or concealment of material fact since at no time was it ever aware that its property had been sold for nonpayment of taxes. The Tax

Sale Overage Form does not contain a representation SBK agrees the tax sale was valid and proper. Since it never received any notices from the County, due to the defects in the tax sale process, it also had no actual constructive knowledge of the true facts.

V. Disposition of Tax Sale Overage Paid, Refund of Monies Paid by Dub

43. Having determined that the tax sale is void, this Court must next determine how the monies paid and expended by Dub while it held title should be reimbursed, the disposition of the $21,870.25 held by the Clerk of Court, as well as any interest due by the County to Dub on Dub's bid.

44. The first calculation that must be made is how much monies SBK should pay to Dub since the tax sale is overturned. This would include the repayment of the Dub bid of $40,000, property taxes and assessments paid by Dub after it obtained title to the property, as well as the water and sewer availability charges paid by Dub. Per the attached Schedule, these expenditures total $58,132.31. I order that the Clerk of Court pay to Dub the $21,870.27 it has been holding in this matter, plus any accrued interest on said sum , leaving a balance to be paid by SBK to Dub of $36,262,04 ($58,132.31-$21,870.27) .

45. In addition to the foregoing, JDub argues that it entitled to be paid interest on the amount of its bid by the County, consistent with what would be paid had SBK Investments, LP, redeemed the property. It asserts that this argument is supported by the case of *H & K Specialists v. Brannen,* 340 S.C. 585, 532 S.E.2d 617 (SCApp. 2000). In that case, our Court of Appeals held as follows:

> Beaufort County Respondents argue that the situation presented here does not constitute a redemption because the statutory redemption period had expired. We view the return of the property to the Brannens as the ultimate redemption and hold that section 12-51-100 applies. It is inconceivable to this court that the General Assembly would require the taxing entity to expeditiously refund the purchase price to the tax sale purchaser when the property is redeemed during the redemption period, but not require the entity to do so when a tax sale is set aside. In our view, this would constitute an absurd result and one that could not have been intended by the General Assembly.

Additionally, JDUB contends is should be awarded interest on the post judgment rate in the time period between the redemption period and the judicial voiding of the sale.

46. The County contends that JDub is not entitled to redemption interest and post judgment interest amount but rather would be entitled to the interest required pursuant to S.C. Code Ann. §12-51-150. That section provides in relevant part

> If the official in charge of the tax sale discovers before a tax title has passed that there is a failure of any action required to be properly performed, the official may void the tax sale and refund the amount paid, plus interest in the amount actually earned by the county on the amount refunded, to the successful bidder.

The County contends that this section adopted by the legislature in 2006, post-dates the ruling in *H&K Specialists*, and is a more accurate reflection of the intention of the Legislature with regard to payment of interest in a voided sale.

The Legislature clearly intends that the County Treasurer may void a sale prior to the passing of title and is not required to pay the penalty of redemption, but rather pay to the purchaser any interest it actually earned on the purchase

price. This would mean effectively following the payment of taxes, the interest earned while holding the overage. There is no logical reason to distinguish why the County would be required to pay the actual interest earned in the event the Treasurer perceives an error and voids the sale, but be required to pay the redemption interest and then post judgment interest on that sum if the title has passed before an issue is raised and judicial voiding is then required. To allow such a distinction would be violative of public policy as it would encourage purchasers in challenged tax sales to draw out litigation in the hopes of earning a greater interest rate than their funds would be able to earn upon normal investment with a financial institution.[1] This is especially true as many times the Treasurer (or the County) is not the primary party in a challenged tax sale and is often not brought into the case until after a great deal of time has passed in an action to quiet the tax deed. Similarly, the redemption interest is in the nature of a penalty to a delinquent tax payer to encourage early payment as is the statutory interest rate on post judgment interest. It is not to the public good to assess the penal interest rates to the public's funds in order to reward a purchaser at tax sale with repayment in a value far greater than that normal rate capable of being earned upon deposit at a financial institution. Purchasers at tax sale should bear some risk for the great reward they often receive in bidding on seized properties. The ruling encouraged by JDUB places all the risk on the Treasurer's public funds in attempting to execute the ministerial function of the office.

[1] This is obviously not the case in the matter before the court but a recognition of a negative outcome of the resolution proposed by JDUB.

Clearly in its adoption of S.C. Code Ann. § 12-51-150, the Legislature has attempted to make everyone whole in the event of a voided sale by requiring payment of the benefit of any interest actually earned on the funds by the County be paid to the purchaser. The County receives no windfall, and the Purchaser is made whole, with the benefit of whatever interest the County was able to earn while holding the purchase price. The Legislature has crafted a equitable outcome in the event of the voiding. To require redemption interest and then post judgment interest until some resolution (which the county often cannot control and where the purchaser can manipulate the duration of a resolution) is completely inequitable.

47. Based on the foregoing, I find that the JDUB should be returned return the total purchase price plus any actual interest earned by the County Treasurer on those funds as set forth at of S.C. Code Ann. § 12-51-150.

48. The actual interest earned on the purchase price from the date of the tax sale until the overage check was issued to SBK was Three Hundred and eighty two and 94/100 Dollars ($382.94).

It is therefore ORDERED, ADJUDGED and DECREED as follows:

1. That the 2011 tax sale of the Subject Property is null and void.

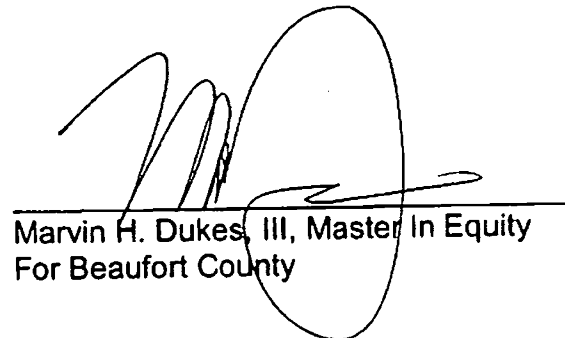
2. That title to the Subject Property is held in the name of the Defendant, SBK Investments, LP. That Dub shall within fourteen (14) days execute a quit claim deed to SBK.

3. That the Beaufort County Clerk of Court shall pay the $21,870.25 it has been holding, plus any interest accruing on same, to Dub.

4. To reimburse Dub for the out-of-pocket expenses discussed above, SBK will pay to Dub the sum of $36,262.04 within fourteen (14) days.

5. That the Treasurer will pay to JDUB any actual interest earned by the Treasurer on the $40,000 purchase price as set forth at of S.C. Code Ann. § 12-51-150 in the amount of Three Hundred and eighty two and 94/100 Dollars ($382.94).

AND IT IS SO ORDERED.



Marvin H. Dukes, III, Master In Equity
For Beaufort County

Beaufort, South Carolina
May 18, 2015