

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Opinion No. 2015-UP-384
(S.C. Ct. App. filed August 20, 2015)

Robert C. Schivera, Executor of the Estate of Fed J. Hughes, III.....Respondent

Vs.

C. Russell Keep, III, Esquire and Rhonda Mitchell, Jasper County Tax Collector,
Defendants,

Of Whom C. Russell Keep, III, Esquire is the Petitioner.

APPENDIX

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IN THE COURT OF APPEALS

APPEAL FROM JASPER COUNTY
COURT OF COMMON PLEAS
CARMEN T. MULLEN, JUDGE

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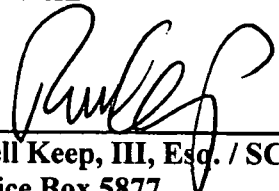
CASE NO. 2012-CP-27-0760
COURT OF APPEALS CASE NO. 2014-000823

Robert C. Schivera, Executor of the Estate of Fred J. Hughes, III.....Respondent

Vs.

C. Russell Keep, III, Esquire and Rhonda Mitchell, Jasper County Tax Collector of which C.
Russell Keep, III, Esquire is the.....Appellant.

BRIEF OF APPELLANT


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STATEMENT OF ISSUES ON APPEAL

1. The Trial Court erred when it ruled that the tax sale was not conducted in strict compliance with statutory requirements because it refused to consider Case Law (*King v. James*) and any Statutory Law whatsoever.
2. The Trial Court erred when it ruled that the tax sale was not conducted in strict compliance with statutory requirements because the Treasurer sent the tax notice in the name of "Andrew R. Deen and Henry G. Deen c/o Fred J. Hughes, III."
3. The Trial Court erred when it granted Summary Judgment to the Respondent because a landowner is only required to get constructive notice, not actual notice.
4. The Trial Court erred when it ruled that the tax sale was not conducted in strict compliance with statutory requirements because it relied on a misreading of *Rives v. Bulsa*.
5. The Trial Court erred in granting the Respondent Summary Judgment because it relied on *Reeping v. Jebbco, LLC*, which is not applicable to the facts of this case.
6. The Trial Court erred when it granted the Respondent Summary Judgment because it ignored Legislative Intent and Revised Statutory Law.
7. The Trial Court erred when it granted the Respondent Summary Judgment because there are "divergent decisions" regarding if and when the Statute of Limitations begins to run and the Trial Court chose the wrong divergent decision.
8. The Trial Court erred when it granted the Respondent's Motion for Summary Judgment because revised (2006) § 12-51-160, 90(c) are Statutes of Repose.

STATEMENT OF THE CASE

This case came before the Trial Court on Wednesday, April 17, 2013, pursuant to a Motion for Summary Judgment filed by the Respondent *and* the Appellant, C. Russell Keep, III, Esq. (R.p. 84, 104) The Parties stipulated there was no issue of fact before the Court (R.p. 48 lines 19-20, 53 lines 15-16).

The Trial Judge signed an Order dated May 31, 2013 granting the Respondent Summary Judgment (R.p. 4). The Appellant filed a timely Motion to Reconsider within 10 days of receiving the Order (R.p. 12). The Trial Judge denied the Motion to Reconsider by Order of April 14, 2014 (R.p. 9).

FACTS

- A. Mr. Hughes's land was sold for unpaid taxes for the 2009 tax year on November 1, 2010 to the Appellant (R.p. 31, paragraph 11, R.p. 34, paragraph 8).
- B. The Respondent brought suit more than two years after the tax sale (R.p. 40, paragraph 23, R.p. 42, paragraph 8).
- C. The redemption notice was mailed to "Andrew R. Dean and Henry G. Dean c/o Fred J. Hughes, III" by certified restricted delivery mail to the address of the previous owners (the Deans) in violation of S.C. Code Section § 12-51-40(b) (R.p. 49 lines 5 - 9, R.p. 119, R.p. 121).
- D. When that redemption notice was returned "undelivered," Co-Defendant Jasper County took "exclusive possession" of the property by "posting" it as required by S.C. Code Section §12-51-40(c) Alternative Procedure for Collection of Taxes (R.p. 42, paragraph 3). There was photographic proof of the posting in the Co-Defendant Jasper County's file which was entered into evidence by stipulation (R.p. 53, lines 19-24, R.p. 116).
- E. Co-Defendant Jasper County listed, assessed, levied upon, advertised and sold the land in the name of the true owner, Fred J. Hughes, III in accordance with S.C. Law (R.p. 140 and 173).
- F. The property is raw land and was not Mr. Hughes' residence (R.p. 102).

G. The Delinquent Tax Collector delivered the tax deed to the Registrar of Deeds "putting the purchaser, or assignee, in possession" pursuant to SC Code Section §12-51-130 (R.p. 111).

ARGUMENTS

1. THE TRIAL COURT ERRED WHEN IT RULED THAT THE TAX SALE WAS NOT CONDUCTED IN STRICT COMPLIANCE WITH STATUTORY REQUIREMENTS BEAUSE IT REFUSED TO CONSIDER CASE LAW (*KING V. JAMES*) AND ANY STATUTORY LAW WHATSOEVER.

In *King v. James*.¹, "the certified mail notice was returned undelivered" to King, the tax payer and land owner. The tax deed was set aside in *King* for four (4) reasons which can be distinguished from the case at hand;

First: In the present case, the Master held, and we agree, the County *failed* to establish by a preponderance of the evidence that it *took "exclusive possession" of the Property by posting, as is required under section § 12-51-40(c)* (italics added)².

Second: Beaufort County in *King* did not take photos of the posting, unlike Co-Defendant Jasper County (R.p. 116).

Third: The Court found that the two (2) year statute of limitations of **Section § 12-51-160** was inapplicable to King's action because King remained in possession of the property at all times. Unlike the case at hand, King "used the Property as her primary residence."³ Mr. Hughes' property herein is raw land with no building on it (R.p. 102).

Fourth: It should be noted that *King* is an Appellant's nightmare;

¹ 388 S.C. 16, 22, 694 S.E. 2d 35, 38 (Ct. App. 2010)

² *ibid* at S.C. 27, S.E. 2d 40

³ *ibid* at S.C. 21, S.E. 2d 38

Moreover, neither of the Appellants has appealed the Master's finding that the tax sale was not conducted in strict compliance with statutory requirements. Therefore, this ruling is the law of the case. See *ML-Lee Holding Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (holding an unappealed ruling, right or wrong, becomes the law of the case). Accordingly, we affirm the Master's finding as to the invalidity of the tax sale and tax deed⁴.

The *King* decision affirms that the Jasper tax sale herein must be sustained because Co-Defendant Jasper County (unlike Beaufort County in *King*) proved it "took exclusive possession" of the property "by posting" as required under code section § 12-51-40(c). This "exclusive possession by posting" is an "Alternative Procedure" sanctioned by South Carolina Code Chapter 51, Alternative Procedure For Collection Of Property Taxes § 12-51-40(c) "when the exclusive possession taken by mailing" as contemplated by § 12-51-40 fails;

§ 12-51-40(c) Alternative Procedure for Collection of Property Taxes

If the "certified mail" notice has been returned (italics added), 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 posting of the notice is equivalent to levying by distress, seizing, and taking exclusive possession of it (italics added).

The Respondent waited more than two years to sue after the tax sale. The Co-Defendant Jasper County took "exclusive physical possession of the property" "by posting," when the

⁴ *ibid* at S.C. 25, S.E. 2d 37

"certified mail" notice was "returned," so the tax sale is "uncontestable on procedural or other grounds" pursuant to **South Carolina Code Sections**;

§ 12-51-90(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* (italics added).

§ 12-51-160 *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* (italics added). 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).

The Court of Appeals is asked to overrule the Trial Court because, 1. the Co-Defendant Jasper County "took exclusive possession" of the property "by posting" as required under Section § 12-51-40(c)" as an **Alternative Procedure For Collection Of Taxes** 2. the Plaintiff did not use the property as his residence (R.p. 102) 3. the posting was photographed (R.p. 116).

2. THE TRIAL COURT ERRED WHEN IT RULED THAT THE TAX SALE WAS NOT CONDUCTED IN STRICT COMPLIANCE WITH STATUTORY REQUIREMENTS BECAUSE THE TREASURER SENT THE TAX NOTICE IN THE NAME OF "ANDREW R. DEEN AND HENRY G. DEEN C/O FRED J. HUGHES, III."

This is one of a pair of "mere irregularities"⁵ - as is the wrong street address (which will be addressed next in part 3). In *Leysath*, the taxpayer owner challenged the validity of the tax sale on several grounds including that the tax collector or rather assistant tax collector "did not seize and take exclusive possession of the property"⁶. The *Leysath* court found the defects;

were serious enough to have required the court to set aside the tax deed in an action seasonally begun, we do not think that they can be properly classified as

⁵ *Leysath v. Leysath*, 209 S.C. 342, 40 S.E. 2d 233, 236 (SC Sup. Ct. 1946)

⁶ *ibid* at S.C. 343 S.E. 2d 234

jurisdictional defects ... but rather are among the irregularities which the Statute in question was framed to cover and set at rest⁷.

It is important to note that a tax sale may be overturned for "mere irregularities," however, a lawsuit to do so must be brought within the two year statute of limitations⁸.

This was not done. It is uncontested that the Respondent waited more than 2 years from the tax sale to sue (R.p. 40, paragraph 23, R.p. 42, paragraph 8). The Court of Appeals is asked to address whether a "c/o" placed in front of a tax payer's name is a "mere irregularity" after two years of inaction in light of *Leysath* and overrule the Trial Court.

3. THE TRIAL COURT ERRED WHEN IT GRANTED SUMMARY JUDGMENT TO THE RESPONDENT BECAUSE A LANDOWNER IS ONLY REQUIRED TO GET CONSTRUCTIVE NOTICE, NOT ACTUAL NOTICE.

The Code has an "**Alternative**" cure for tax notices that are returned "undelivered" - it is called "posting" which is constructive notice. The issue of the wrong address on the tax notice (causing it to be returned "undelivered") is a red herring. "constructive notice by the levy, advertisement and sale in the owners' name is deemed sufficient," *Dibble v. Bryant*⁹. The Court in *Dibble* stated that actual notice to the tax payer is not required, only constructive notice;

In *Osborne v. Vallentine*¹⁰, *supra*, and most recently in *Aldridge v. Rutledge*¹¹, *supra*, non-compliance by failure to levy and sell the property in the name of the real owner demanded invalidation of tax deeds. In *Osborne*, we stated;

It is a well-established principle that due process of law requires some sort of notice to a landowner before he is deprived of his property. *It is an anomalous situation that the statutes of this State require actual notice to a mortgagee of land about to be sold for taxes, and make no such requirement for actual notice to the owner. It would appear that the constructive notice provided by the levy, advertisement and sale in the owner's name is deemed sufficient.* Such notice to the owner, as required by the tax sale statutes, being *constructive* rather than

⁷ *ibid* at S.C. 344 S.E. 2d 235

⁸ Hayes, Tax Sales of Real Property and Mobile Homes in South Carolina, SC Bar publication, Page 29

⁹ 265 S.E. 2d 675, 274 S.C. 481 (SC Sup. Ct. 1980)

¹⁰ 196 S.C. 90, 12 S.E. 2d 856 (SC Sup. Ct. 1941)

¹¹ 269 S.C. 475, 238 S.E. 2d 165 (SC Sup. Ct. 1977)

actual, the court requires strict compliance therewith (italics added) *Dibble, supra*, Note 10.

Sending the tax notice to the wrong address is not a "jurisdictional defect," *Leysath, supra* (unless the tax notice is sent to the mortgagee who must get actual notice). In fact, **Chapter 51, Alternative Procedure for Collection of Property Taxes** (please note the word "Alternative") § 12-51-90(c), 160 and 120 anticipates tax notices will be mailed to the wrong address and provides the defaulter with ample protection;

1. Posting (as an "alternative" to taking "possession by mailing," which was done in the case herein).
2. "constructive notice by levy, advertisement and sale in the owner's name," *Dibble, supra*, which occurred in the case herein.
3. The tax payer is given a full 2 years to discover the sale and take appropriate action, which he did not herein.

The Statutory Law is very clear;

§ 12-51-120 Alternative Procedure for the Collection of Property Taxes;

* * * *

Pursuant to this chapter, the return of the certified mail "undelivered" is not grounds for a tax title to be withheld or be found defective and ordered set aside or canceled of record (italics added).

Indeed, Tax Sales, *supra*, at page 29, elaborates;

Section § 12-51-120 states: "Pursuant to this chapter, the return of the certified mail "undeliverable" is not grounds for a tax title to be withheld or be found defective and ordered set aside or canceled of record." This language seems to

create a presumption that a sale won't be voided on the grounds the certified mail is returned "undelivered." Tax Sales, *supra* note 8 at page 28.

In short, under the "**Alternative Procedure**" of Chapter 51 of the Code, "the return receipt of the certified mail notice is equivalent to levying by distress" (§ 12-51-40(b)) "if exclusive possession is (NOT) taken by mailing" (§ 12-51-40(b)) and if the "certified mail has been returned" the County may "take exclusive physical possession of the property" "by posting" (§ 12-51-40(c)) "the posting of the notice is equivalent to levying by distress, seizing and taking exclusive possession" (§ 12-51-40(c)) and "constructive notice by the levy, advertisement and sale in the owner's name is deemed sufficient," *Dibble, supra*. The Court of Appeals is asked to overrule the trial Court because the constructive notice by the posting levy, advertisement and sale in the owner's name is sufficient when the certified mail was returned undeliverable.

4. THE TRIAL COURT ERRED WHEN IT RULED THAT THE TAX SALE WAS NOT CONDUCTED IN STRICT COMPLIANCE WITH STATUTORY REQUIREMENTS BECAUSE IT RELIED ON A MISREADING OF *RIVES V. BULSA*.

*Rives v. Bulsa*¹² states;

In both *Osborne* and *Aldridge*, our Supreme Court held that noncompliance by failure to levy and sell the property in the name of the real owner demanded the invalidation of tax deeds.

... this cannot circumvent the requirement that *the levy, advertisement and sale must be made in the name of the true owner*. Without strict compliance with the statutory requirements, a tax sale may not be upheld.

It is clear from the record that no notice of the tax sale was given to Brian and Karen Rives, the true owners of the property. It is also evidence that the property was *not assessed, advertised, levied upon or sold* in their names. Accordingly, we hold the tax collector failed to comply with the strict statutory

¹² 325 S.C. 287, 291, 487 S.E. 2d. 878, 880 (Ct. App. 1996)

requirement of a tax sale. The order of the master setting aside the tax deed is therefore affirmed (*italics added*).

The land herein was "assessed, advertised, levied upon and sold," *Rives, supra*, in the name of Fred J. Hughes, III (R.p. 140 and 173). There is a presumption in the absence of proof to the contrary that public officers have properly discharged the duties of their office,¹³.

In *Wilson v. Cantrell*, 40 S.C. 114, 18 S. E. 517, 525, the court had under consideration a tax deed. The plaintiff was the purchaser at the tax sale. The court stated: "**** the sheriff's deed is only prima facie evidence of the regularity of the tax proceedings prior to its execution, and may be attacked. But, while this is so, the burden is upon the defendant to prove that one or more of the essential requirements of the law have not been complied with, and that the tax proceedings have not been regular, which the defendant in this case has failed to do¹⁴."

The Order(s) Appealed also states;

All of the requisite notices required by statute (1. the original tax notice; 2. the notice of delinquency; 3. the notice of tax sale; 4. the notice of the redemption period; 5. the notice of the expiration of time to redeem the property from the tax sale; and 6. the notice that the tax sale had become final) were all sent to the address of the former owner of the property and not the Plaintiff.

This may be all true but it has no significance. These are all a "mere irregularities,"

Leysath, supra and for which the Statute provides an **Alternative** procedure.

§ 12-51-120, Notice of Approaching End of Redemption Period, states;

* * * *

¹³ *Fisher v. Bennett*, 202 S.C. 541, 25 S.E. 2d 746 (SC Sup. Ct. 1943) see also revised § 12-51-160 which states "in all cases of tax sale the deed of conveyance is prima facia evidence of a good title in the name of the holder."

¹⁴ Quoted with approval in *Osbourne v. Valentine*, 196 S.C. 90, 12 S.E. 2d 856 (SC Sup. Ct. 1941)

Pursuant to this chapter, the return of the certified mail "undeliverable" is *not* grounds for a tax sale to be withheld and found to be defective and ordered set aside or cancelled or returned (*italics added*).

Likewise an error in;

1. the original tax notice;
2. the notice of delinquency;
3. the notice of the tax sale;

are all cured by levying, advertising and by posting. Actual notice by mail is not required; "*constructive notice* by the levy, advertisement and sale in the owners' name is deemed sufficient (*italics added*)," *Dibble, supra*. This was all done in Fred J. Hughes, III's name.

Fred J. Hughes, III, was given sufficient "constructive notice" by levying, advertising and posting and that, pursuant to *Rives*, "the levy, advertisement and sale were made in the name of the true owner" - Fred J. Hughes, III. The Trial Court erred when it ruled that the tax sale was not conducted in strict compliance with the statutory requirements including § 12-51-40(C) and §12-51-90(C).

5. THE TRIAL COURT ERRED WHEN IT GRANTED THE RESPONDENT SUMMARY JUDGMENT BECAUSE IT RELIED ON *REEPING V. JEBBCO, LLC*, WHICH IS NOT APPLICABLE TO THE FACTS OF THIS CASE.

*Reeping*¹⁵ is not applicable at all to the facts of this case. The Issue of levying, advertising and posting ("equivalent to levying by distress, seizing, and taking exclusive possession of it"¹⁶) was not before the *Reeping* court. The *Reeping* decision does not address the issue of whether the

¹⁵ 402 S.C. 195, 740 S.E. 2d 504 (Ct. App. 2013)

¹⁶ S.C. Code Ann. § 12-51-40(c)

County took the corrective action of taking "exclusive possession of it" by posting, pursuant to **South Carolina Code Section § 12-51-40 (c)** after the "certified mail notice" was "returned."

Reeping, *supra*, is in conflict with the South Carolina Supreme Court's prior decisions¹⁷ wherein the South Carolina Supreme Court declared "[O]nce two years have passed after the sale, the sale is not a cloud on the property's title." This argument will be further developed in part 8.

6. THE TRIAL COURT ERRED WHEN IT GRANTED THE RESPONDENT SUMMARY JUDGMENT BECAUSE IT IGNORED LEGISLATIVE INTENT AND REVISED STATUTORY LAW.

To determine the application of the revised (in 2006) § 12-51-160 and §12-51-90(C) on the present case, the Trial Court must apply the rules of statutory construction. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature¹⁸." "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it reasonably can be discovered in the language used, and the language must be construed in the light of the intended purpose of the statute¹⁹." "Statutes, as a whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy of lawmakers²⁰."

Tax Sales, *supra*, at note 8, at page 27, 28, states;

¹⁷ Federal Finacial Company v. Hartley 380 S.C. 65, 66, 688 S.E. 2d 410, 411, Wilson v. Mosley, 327 S.C. 144, 145, 488, S.E. 2d 862, 863 (SC Sup. Ct. 1997)

¹⁸ Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003)

¹⁹ City of Sumter Police Dep't v. One (1) 1992 Blue Mazda Truck (VIN # JM2UF1132N0294812) 330 S.C. 371, 375, 498 S.E.2d 894, 896 (Ct. App. 1998)

²⁰ TNS Mills, Inc. v. South Carolina Dep't of Revenue, 331 S.C. 611, 624, 503 S.E.2d 471, 478 (SC Sup. Ct. 1998).

In two cases, the South Carolina Supreme Court has narrowly construed the application of this statute of limitations and has permitted the defaulting taxpayer to maintain the action even though the action was brought after two years from the date of sale. However, it should be noted that these cases were decided before the 1985 revisions to the Code. After the 1985 revisions, the Court of Appeals, in *Corbin v. Carlin*²¹, held that an action to quiet title and set aside a tax sale and tax deed fell outside the provisions of Section § 12-51-160. There was some confusion in *Corbin* regarding the descriptions and locations of the real property, and the Court determined there was nothing to put *Corbin*, the delinquent taxpayer, on notice of the delinquency.

The Corbin decision was filed on October 3, 2005. Less than six months later, on March 15, 2006, revisions to Sections § 12-51-160 took effect, and these revisions appear to make it more difficult to avoid the bar of the two-year statute of limitations. Section § 12-51-90 was revised to include a paragraph (C), which states: "If the defaulting taxpayer, grantee from the owner, or mortgage or judgment creditor fails to redeem the item of real estate sold at 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." Section § 12-51-160 was revised to add the reference to Section § 12-51-90(C) in the statement: "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)." There have been no recorded cases construing these revised statutes (italics added).

Since publication of this excellent book by Mr. Hayes, Esq., *King, supra*, note 1, was decided by the Court of Appeals on April 20, 2010. The Court of Appeals found the time started to run from the date when the county or the tax sale purchaser took "possession" of the property. "Possession" is a term of art. The Court of Appeals found the County can "take exclusive possession" "by making" the notice required by § 12-51-40(b), and if that tax notice is returned "undelivered," by "posting" the property as required by § 12-51-40(c). In King, the Court of Appeals ruled the County failed to prove it posted the property (Beaufort County did not take a

²¹ 366 S.C. 187, 620 S.E. 2d. 745 (2005)

picture of postings at that time unlike Co-Defendant Jasper County (R.p. 53, lines 19-24, R.p. 116)), therefore the statute did not start to run.

The legislature, in the wake of the *Corbin* decision (October 3, 2005), revised § 12-51-160 and § 12-51-90(C), taking effect March 15, 2006.

Revised SC Code Section § 12-51-160;

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) (italics added).

Revised SC Code Section § 12-51-90(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* (italics added).

A tax deed, after two years from the tax sale, is "uncontestable on procedural or other grounds."²² The Court of Appeals should overrule the Trial Court because the Revised § 12-51-90(c), 160 evidenced an intent by the legislature to bar recovery of the land after two (2) years of inaction on the part of the Respondent.

7. THE TRIAL COURT ERRED BECAUSE THERE ARE "DIVERGENT DECISIONS" REGARDING IF AND WHEN THE STATUTE OF LIMITATIONS BEGINS TO RUN AND THE TRIAL COURT CHOSE THE WRONG DIVERGENT DECISION.

²² South Carolina Code Ann. § 12-51-90(C).

The Court in *King*, *supra* note 1 at S.C. 26, S.E. 2d 39, found that;

This court has held the purpose of the statute of limitations as set forth in section 12-51-160 is "to create a time limit during which one who lost title to property through a tax sale, after proper notice, may attempt to regain title." *Corbin v. Carlin*, 366 S.C. 187, 194, 620 S.E.2d 745, 749 (Ct.App.2005). *A review of case law in this area reveals somewhat divergent decisions (bold added) regarding if and when the statute of limitations begins to run in situations such as this (italics added).*

On the one hand, we find case law that says when notice to the homeowner is not in strict compliance with the statute, such a defect is "jurisdictional," and the statute of limitations does not run at all (italics added). See Donohue v. Ward²³, 298 S.C. 75, 82, 378 S.E.2d 261, 265 (1989) (holding where a defect in notice is jurisdictional, such a defect "invalidates the tax proceeding and prevents the running of the limitations statute"); Good v. Kennedy²⁴, 291 S.C. 204, 207, 352 S.E.2d 708, 711 (1987) (holding "the general law is that where a statute requires as a condition precedent to foreclosing a taxpayer's rights in property sold for taxes that he be given notice of his right to redeem, such a requirement is generally regarded as jurisdictional") (internal quotations omitted).

On the other hand, we also find case law in which our courts interpreted previous versions of section § 12-51-160 as saying even if the notice is defective, the statute of limitations still applies, but only begins to run when the purchaser comes into possession (italics added). See Dibble v. Bryant, 274 S.C. 481, 487, 265 S.E.2d 673, 677 (1980) (holding previous version of section 12-51-160 "was intended to bar a defaulting and ousted taxpayer from maintaining an action to defeat the title of the tax sale purchaser and recover the land if brought more than two years from the date the purchaser came into possession") (emphasis added); Glymph v. Smith, 180 S.C. 382, 384, 185 S.E. 911, 914 (1936) (holding even though the plaintiff brought the action six years after the tax sale, the two-year statute of limitations never began to run because the sheriff never took possession of the subject property, and the purchaser was never put into possession following the execution of the tax deed) (italics added); Gardner v. Reedy, 62 S.C. 503, 503,

²³ In Donohue, the property was not listed, assessed, levied upon, advertised and sold in the name of the true owner, unlike the case herein.

²⁴ In Good, the issue of posting was not before the Court unlike the case herein. It should also be noted that both Donohue and Good were decided before 2005 when § 12-51-160, 90 were revised - "these revisions appear to make it more difficult to avoid the bar of the two year statute of limitations." *Tax Sales*, *supra* note 8, at page 28.

40 S.E. 947, 947 (1902) (holding the two-year statute of limitations would only begin to run if and when the purchaser took possession)²⁵.

Since there are "divergent decisions" (according to *King, supra*) the Trial Court erred when it sided with the irrelevant *Good* (posting issue not before the court) and *Donohue* (property not listed, assessed, levied upon, advertised and sold in the name of the true owner) and not *Dibble / Glymph / Gardner* especially as it is uncontested that the Appellant, the purchaser, was put into possession of the land (R.p. 112).

8. THE TRIAL COURT ERRED WHEN IT GRANTED THE RESPONDENT'S MOTION FOR SUMMARY JUDGMENT BECAUSE **REVISED (2006) § 12-51-160, 90(c)** ARE STATUTES OF REPOSE.

The revised (2006) § 12-51-160 and § 12-51-90(c) are Statutes of Repose depriving the Court of jurisdiction to hear this case.

As previously noted, Respondent's suit is a statutory cause of action to set aside a tax deed. The rights asserted in this cause of action were created in **Code of Laws of South Carolina § 12-51-160 and § 12-51-90(C)**, each of which provide as follows:

§ 12-51-160 Deed as evidence of good title; statute of limitations.

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 holder, that all proceedings have been regular and that all legal requirements have been complied with. *An action for 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)* (emphasis supplied).

²⁵ It should be noted that *King* is a tax purchaser's procedural nightmare; "Moreover, neither of the Appellants has appealed the Master's finding that the tax sale was not conducted in strict compliance with statutory requirements. Therefore, this ruling is the law of the case. *See* *ML-Lee Holding Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (holding an unappealed ruling, right or wrong, becomes the law of the case). Accordingly, we affirm the Master's finding as to the invalidity of the tax sale and tax deed."

§ 12-51-90 Redemption of real property; assignment of purchaser's interest.

* * * *

(C) If the defaulting taxpayer, grantee from the owner, or mortgages or judgment creditor fails to redeem the item of real estate sold at the delinquent tax sale within 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* (emphasis supplied).

The italicized language reflects the intention of the Legislature that as of the specified date (that is to say, two (2) years after the sale), "the tax deed issued is incontestable on procedural or other grounds" and no action "for the recovery of land sold" may be maintained. The language creates a jurisdictional limitation rather than a statute of limitations. The difference is that " a true statute of limitations extinguishes only the right to enforce the remedy and not the substantive right itself, [while] the limitation of time for commencing an action under a statute creating a new right enters into and becomes a part of the right of action itself and is a limitation, not only of the remedy, but of the right also²⁶; . . . ".

Considering the language of revised § 12-51-90(C), the South Carolina Supreme Court has ruled in 2008 that "[o]nce two years have passed after the sale, the sale is not a cloud on the property's title" *Federa, supra* note 17. It is hard to overemphasize the importance of this South Carolina Supreme Court decision. If a tax sale is not a cloud on the property's title, then a Quiet Title Action is no longer needed because the tax deed is "uncontestable," as it is in the case before this Court. The Trial Court erred when it ruled Appellant was not entitled to judgment pursuant to *Federal, supra*. In as much as on November 1, 2012, no pleadings had been served on Co-Defendant Jasper County and/of the Appellant, the statutory rights asserted in this action

²⁶ See generally 51 Am. Jur. 2nd (Limitation of Actions) § 30 (footnotes omitted)

to raise questions of title were dissolved and ceased to exist and the tax deed issued on November 1, 2010, no longer had a cloud on it and it became and is "incontestable. " In fact, our SC Supreme Court has referred to the two year period for tax deeds as a "Statute of Repose" for over 60 years, in *Leysath*, *supra* note 5 at S.C. 345, S.E. 2d 235;

If the two year limitation does not apply to defects of the character now under consideration, what purpose does it serve? If it only applies where the tax proceedings are regular in every respect, the purchaser would have no need of this protection which this limitation was designed to give. A **Statute of Repose** is not needed in favor of purchasers at valid tax sales. The very purpose of such Statute is to shut off inquiry into such defects as are now complained of, and confirm the tax deed in spite of them, and unless it does this it is nugatory (bold added).

Ninety Two (92) years ago, our SC Supreme Court ruled;

Another consideration moves us to sustain in the appeal in this case. The revenue of a municipal corporation is its lifeblood. The assurance of securing this revenue is in the efficiency of the ultimate remedy. This efficiency is strengthened by the presumption of regularly regularity created by section 474 and by the limitation of two years within which an action to recover must be brought. Even if the remedy provided by this section be not exclusive, it is clear to permit an action such as the one at bar, after the lapse of more than three years, the purchaser in the meantime being in possession, would be to practically annul the limitation provided herein²⁷.

For these reasons, Appellant C. Russell Keep, III, Esq., should have been granted Summary Judgment. The Trial Court erred when it refused to rule § 12-51-160 and 90 are Statutes of Repose (R.p. 62, lines 12-18, R.p. 12), which utterly deny Respondent of any Right of Action.

The Legislature passed Section § 12-51-90 and § 12-51-160 as an absolute bar to recovery after two whole years. The medical malpractice six year absolute bar to recovery is analogous. South Carolina Code § 15-3-545 **Actions for Medical Malpractice** evidences the

²⁷ Wilson v. Dove, 118 S.C. 256, 257, 110 S.E. 390, 391 (SC Sup. Ct. 1922)

Legislature's impatience with those who sleep on their rights. The language concerning notice or lack thereof in the malpractice statute of limitations is similar to the revised § 12-51-90, 160; "three years from the date of discovery or when it is reasonably ought to have been discovered, *not to exceed six years from the date of occurrence...*"

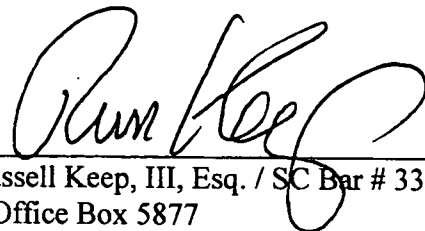
It is clear that the legislature and the South Carolina Supreme Court in *Federal*, supra, meant for the two year time bar in § 12-51-90(c), 160 to be absolute. The Trial Court erred by refusing to rule on the revised § 12-51-90, 160 in its Order (R.p. 73, lines 4-25, R.p. 12).

CONCLUSION

For the reasons stated, this Court should reverse the Judgment of the Circuit Court and grant the Appellant Summary Judgment.

Respectfully submitted,

October 8, 2014



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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM JASPER COUNTY
COURT OF COMMON PLEAS
CARMEN T. MULLEN, JUDGE

CASE NO. 2012-CP-27-0760
COURT OF APPEALS CASE NO. 2014-000823

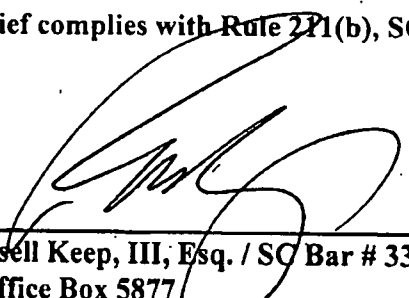
Robert C. Schivera, Executor of the Estate of Fred J. Hughes, III.....Respondent

Vs.

C. Russell Keep, III, Esquire and Rhonda Mitchell, Jasper County Tax Collector of which C.
Russell Keep, III, Esquire is the.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.


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November 20, 2014

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SC Court of Appeals

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

COURT OF APPEALS CASE NO. 2014-000823

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OCT 20 2014

SC Court of Appeals

Robert C. Schivera, Executor of the Estate of Fred J. Hughes, III.....Respondent

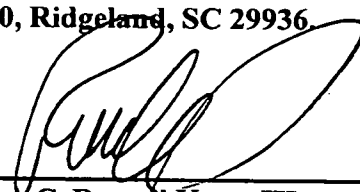
Vs.

C. Russell Keep, III, Esquire and Rhonda Mitchell, Jasper County Tax Collector of which
C. Russell Keep, III, Esquire is the.....Appellant.

PROOF OF SERVICE

I certify that I have served a copy of the Brief of Appellant, upon the Respondents, Robert C. Schivera, et al., by depositing a copy of the Brief of Appellant, in the United States Mail, postage prepaid, on October 15, 2014, and addressed to their Attorney of Record, Thayer Rivers, Esq., Post Office Box 668, Ridgeland, SC 29936 and copied Marvin C. Jones, Jasper County Attorney, Post Office Box 420, Ridgeland, SC 29936.

October 15, 2014


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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Carmen T. Mullen, Judge

Case No. 2012-CP-27-00760
Court of Appeals Case No.: 2014-000823

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SC Court of Appeals

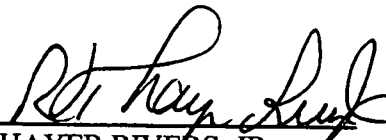
ROBERT C. SCHIVERA, Executor of the Estate of Fred J. Hughes,.....Respondent.

v.

C. RUSSELL KEEP, III, ESQUIRE, and RHONDA MITCHELL,
Jasper County Tax Collector, of whom C. RUSSELL KEEP, III, ESQUIRE IS....Appellant.

FINAL BRIEF OF RESPONDENT

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TABLE OF AUTHORITIES

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5. Good v. Kennedy, 291 S.C. 204, 352 S.E.2d 708 (Ct. App. 1987)
6. Reeping v. JEBBCO, 402 S.C. 195, 740 S.E.2d 504 (Ct. App. 2013)

STATEMENT OF ISSUES ON APPEAL

- I. **DID THE COUNTY AUTHORITIES FAILURE TO USE THE CORRECT ADDRESS OF THE TAX PAYER CREATE A FATAL JURISDITIONAL DEFECT?**
- II. **DOES POSTING THE PROPERTY ALLEVIATE ALL THE ABOVE CITED DEFECTS?**
- III. **DID THE LEGISLATIVE AMENDMENT OF THE TAX LAW CREATE A TWO YEAR WINDOW TO BRING SUIT FOR JURISDICTIONAL DEFECTS?**

STATEMENT OF THE CASE

This is a tax sale case. Land of the late Fred J. Hughes, Jr., was sold at a tax sale by the Jasper County taxing authorities. Suit was brought by Robert C. Schivera, as Executor of the Estate of Fred J. Hughes, Jr., who died after the date of the sale. This matter was heard by the Honorable Carmen T. Mullen, resident Judge for the Fourteenth Judicial Circuit on April 17, 2013. She granted Summary Judgment for the Respondent, thereby voiding the sale. The Motion to Reconsider was heard on or around February 19, 2014 by Judge Mullen, who denied the Appellant's Motion to Reconsider. This appeal hereby followed.

FACTUAL ISSUES RELEVANT TO THE APPEAL

Title to the property was acquired by the late Fred J. Hughes, III, on June 11, 2008, for a sale price of \$190,000.00. The deed reflected an address of 1320 Highway 80 West, Garden City, Georgia, 31408, as the address of the Grantee. In non-compliance with Section 12-51-40, the Office of the Tax Assessor and thereafter the Office of the Treasurer and the delinquent Tax Collector for Jasper County, did not change the records to use the address of the Grantee for all notices. The same Respondent owned three parcels that adjoined the land in question. These have correct addresses and the taxes on these parcels were kept current. The tax notice for 2009 was sent 8512 Kent Drive, Savannah, Georgia, 31406, which was the address of the Grantor, not that of the Respondent. Thereafter the taxes were not paid and the office of the Tax Collector did an

execution on the property and was sold for taxes on or about the 1st day of November, 2010, to the Appellant C. Russell Keep, III, for the price of \$6,600.00. All of the requisite notices that are required by statute: 1. the original tax notice; 2. the notice of delinquency; 3. the notice of tax sale; 4. the notice of the redemption period; 5. the notice of the expiration of time to redeem the property from the tax sale; and 6. the notice that the tax sale had become final were all sent to the address of the former owner of the property and not to the Respondent.

ARGUMENT

1. DID THE COUNTY AUTHORITIES FAILURE TO USE THE CORRECT ADDRESS OF THE TAX PAYER CREATE A FATAL JURISDICTIONAL DEFECT?

Rives v. Balsa, 325 S.C. 287, 487 S.E.2d 878 (S.C. App. 1996)

“...A tax execution is not issued against the property, it is issued against the defaulting tax payer. Aldridge v. Rutledge, 269 S.C. 475, 238 S.E.2d 165 (1977). Due process of law required some sort of notice to a landowner before he is deprived of his property. Osborne v. Vallentine, 196 S.C. 90, 12 S.E.2d 856 (1941). The taxing statutes and a legion of cases interpreting these statutes make it clear that property shall be listed, assessed, levied upon, advertised and sold in the name of the true owner. Donohue v. Ward, 298 S.C. 75, 378 S.E.2d 261 (Ct. App. 1989). Further, the general law is that where a statute requires as a condition precedent to foreclosing a taxpayer’s rights in property sold for taxes that he be given notice of his right to redeem, such a requirement is generally regarded as jurisdictional, and therefore, the owner’s right of redemption cannot be cut off unless the required notice is given. Good v. Kennedy, 291 S.C. 204, 352 S.E.2d 708 (Ct. App. 1987). Failure to give the required notice is fundamental defect in the tax proceedings which renders the proceedings absolutely void. Donahue v. Ward, supra.

This matter was heard by the Honorable Trial Judge on a stipulated statement of fact. There were no factual issues to be determined. Through the Answer, Affidavit and admission by the county taxing authorities, they at no time used the correct address for the late Mr. Hughes to send him his notices. Tr: 2,121. Therefore, he was: 1. never notified of the taxes being due, 2. the amount of taxes being due, 3. that they had become delinquent, 4. that the delinquency could

result in a sale, 5. that the delinquency did result in a sale, 6. that he had a certain period in which to redeem the sale, 7. that the time to redeem the sale was running neigh, and 8. that the sale had resulted in a deed to someone else. Any of these, and certainly, the totality of them, set up a jurisdictional defect which results in the tax sale being defective. A jurisdictional defect such as this can be raised at any point and is not required to be raised within the two year statute of limitations. Reeping v. JEBBCO, 402 S.C. 195, 740 S.E.2d 504 (Ct. App. 2013)

The Appellant raised and relies heavily on the issue of the two year statute of limitations. This matter was addressed most recently by the Court of Appeals in Reeping v. JEBBCO which was filed shortly before the hearing on this matter. In regard to the statute of limitations, the court in Reeping quoted Leysath v. Leysath, 209 S.C. 342, 40 S.E.2d 233 (1946), in which the Supreme Court of South Carolina clearly held that the statute of limitations did not apply to a jurisdictional defect. In Reeping, the court further noted in Donahue v. Ward, 298 S.C. 75, 378 S.E.2d 261 (Ct. App. 1989)

"It appears to be the general rule that a short statute of limitations of the kind under consideration does not apply where, by reason of same jurisdictional defect, the tax deed is absolutely void upon its face; and perhaps the majority of the courts hold that the bar of the statute does not apply if there are jurisdictional or fundamental defects in the tax proceedings which render such proceedings absolutely void. However, in some jurisdictions a statute of this kind is more liberally construed in favor of the purchaser, and it is held that the statute applies in every case in which there has been possession under a deed which is not void on its face. But the courts following the majority rule are not in entire accord as to the jurisdictional grounds which render a tax deed absolutely void. In some states defects which in others are deemed jurisdictional are considered mere irregularities...

...We do not undertake to lay down a general rule defining those defects in tax proceedings which should be considered as mere irregularities, to which the statute under consideration would apply, and those which should be deemed jurisdictional, so as to render the statute inapplicable.

As noted by the court in Reeping:

"The next question presented is whether failure to give the required notice constitutes more than a mere irregularity the effect of which invalidates the tax

proceeding and prevents the running of the limitations statute. It is stated "all requirements of the law leading 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 mandatory and are to be strictly enforced. "Osborn v. Vallentine", 196 S.C. 90, 94, 12 S.E.2d 856, 858 (1941); accord, Leysath v. Leysath, 209 S.C. 342, 40 S.E.2d 233 (1946). We think the Legislature in requiring the Treasurer of Horry County to give a twenty day notice prior to advertising the property for sale intended such provision for the protection of the taxpayer against a sacrifice of his property. We therefore hold that failure to give the required notice is a fundamental defect in the tax proceedings which rendered the proceedings absolutely void."

Based upon the above law and authorities, the Respondent respectfully submits that the Honorable Circuit Judge correctly ruled that the tax sale was defective and therefore void.

II. DOES POSTING THE PROPERTY ALLEVIATE ALL THE ABOVE CITED DEFECTS?

The Appellant is incorrectly convinced that the proper posting of the premises by the Sheriff or tax collector agent, removes all of the above irregularities in the process and describes these as "mere irregularities". The Respondent would respectfully submit that "notice and opportunity to be heard" are the foundations of all due process decisions in this state and in this country. The failure to follow the statute, which is admitted by the county authorities, set this whole process in motion. In addition to which, as in Reeping, the County had in their offices the correct address for Mr. Hughes. Tr: 99-102. The three adjoining properties were all owned by him, all had the correct address, and all had their taxes properly paid. As soon as the mandated series of letters came back, the taxing authority should have been on notice they were using an incorrect address and in fact had in their files sitting right next to this file, the correct addresses for Mr. Hughes.

Again, the Respondent respectfully submits that these irregularities set up the jurisdictional defects that require the voiding on the tax deed.

**III. DID THE LEGISLATIVE AMENDMENT OF THE TAX LAW
CREATE A TWO YEAR WINDOW TO BRING SUIT FOR
JURISDICTIONAL DEFECTS?**

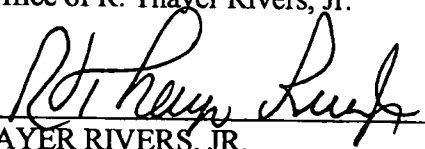
The Appellant makes numerous arguments about statutory changes done by the legislature and proposes a "drop-dead" date of two years after the sale in which to bring suit. This is easily dealt with by a mere reference to Reeping which was decided after the legislative changes and again reiterated the black letter law that the statute of limitations did not apply to jurisdictional defects. Reeping.

CONCLUSION

The Respondent's position is that the record clearly shows numerous jurisdictional defects, violations of mandatory statutory law as to taxing addresses, and that this tax sale was fatally flawed. The Respondent submits that the Circuit Judge was entirely correct in ruling that due to the defects and irregularities in this tax sale, it was void. The ruling of the lower court should be upheld.

Respectfully submitted,

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Ridgeland, South Carolina,
November 13, 2014.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Carmen T. Mullen, Judge

Case No. 2012-CP-27-00760
Court of Appeals Case No.: 2014-000823

ROBERT C. SCHIVERA, Executor of the Estate of Fred J. Hughes,.....Respondent.

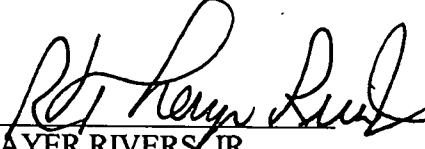
v.

C. RUSSELL KEEP, III, ESQUIRE, and RHONDA MITCHELL,
Jasper County Tax Collector, of whom C. RUSSELL KEEP, III, ESQUIRE IS.....Appellant.

PROOF OF SERVICE

I certify that I have served the Final Brief of Respondent on the Appellant, C. Russell Keep, III, by depositing a copy of same in the United States Mail, postage prepaid, on November 13, 2014, to C. Russell Keep, III, Post Office Box 5877, Hilton Head Island, SC 29938, and to Marvin C. Jones, attorney for the Defendant, Rhonda Mitchell, Jasper County Tax Collector, Post Office Box 420, Ridgeland, SC, 29936.

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

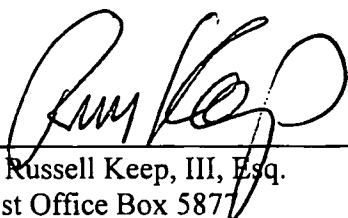
Case No. 2014-000823

Robert C. Schivera, Executor of the Estate of Fed J. Hughes, III.....Respondent

Vs.

C. Russell Keep, III, Esquire and Rhonda Mitchell, Jasper County Tax Collector of which C.
Russell Keep, III, Esquire is the.....Appellant.

REPLY BRIEF OF APPELLANT



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SC Bar # 3321

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I. TABLE OF AUTHORITIES

Cases

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2. Donohue v. Ward, 298 S.C. 75, 378 S.E. 2d 261 (Ct. App.J 1989)
3. Good v. Kennedy, 291 S.C. 204, 352 S.E. 2d 708 (Ct. App 1987)
4. Osborne v. Vallentine, 196 S.C. 90, 12 S.E. 2d 856 (1941)
5. Reeping v. JEBBCO, 402 S.C. 195, 740 S.E. 2d 504 (Ct. App. 2013)
6. Rives v. Balsa, 478 S.E. 2d 878, 325 S.C. 287 (S.C. App. 1996)

All of the above may be found on Page 3.

7. S.C. Code Ann 12-51-90(C)
8. S.C. Code Ann. 12-51-160

All of the above may be found on Page 4.

II. STATEMENT OF ISSUES ON REPLY

Do any of the six cases cited in the Brief of the Respondent support his position that the tax sale herein has a fatal jurisdictional defect that cannot be cured by advertising, levying by posting and selling the property in the name of the true owner, Fred J. Hughes, III?

III. ARGUMENT

No, none of the six (6) cases cited by the Respondent in the Brief of the Respondent support his position that the tax sale herein is invalid;

Rives, "the property was not advertised, levied or sold in the true owner's name." In the present case, the property was advertised, levied and sold in the name of the true owner, Fred J. Hughes, III.

Aldridge, "the land was advertised, levied and sold in the name of the true owner's *father* (italics added)." How unlike the case at hand.

Osborne, "at the time of the levy the owners of the property were the devisees, but the levy was made in the name of the deceased Testatrix." How unlike the case at hand.

Donohue, "the property was not listed, levied upon, advertised or sold in the name of Mrs. Donohue or the Trustee." Not so in the case at hand.

Good, is not a posting case at all, unlike the case at hand. It is irrelevant.

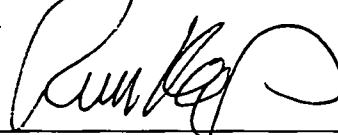
Reeping, not a posting case, so the case is totally irrelevant.

IV. CONCLUSION

None of the six (6) cases relied on and cited by the Respondent supports his position that the "mere irregularities" were not cured by advertising, levying, posting and selling the property in the name of the true owner, Fred J. Hughes, III, pursuant to S.C. Code §12-51-90(c), 160.

October 2, 2014

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

OCT 09 2014

SC Court of Appeals

CASE NO. 2012-CP-27-00760

Robert C. Schivera, et al.....Respondents

Vs.

C. Russell Keep, III, Esq., et al.....Appellant.

PROOF OF SERVICE

I certify that I have served a copy of the Reply Brief of Appellant, upon the Respondents, Robert C. Schivera, et al., by depositing a copy of the Reply Brief of Appellant, in the United States Mail, postage prepaid, on October 6, 2014, and addressed to their Attorney of Record, Thayer Rivers, Esq., Post Office Box 668, Ridgeland, SC 29936 and copied Marvin C. Jones, Jasper County Attorney, Post Office Box 420, Ridgeland, SC 29936.

October 6, 2014



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**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM JASPER COUNTY
COURT OF COMMON PLEAS
CARMEN T. MULLEN, JUDGE**

**CASE NO. 2012-CP-27-00760
COURT OF APPEALS CASE NO. 2014-000823**

Robert C. Schivera, Executor of the Estate of Fed J. Hughes, III.....Respondent,

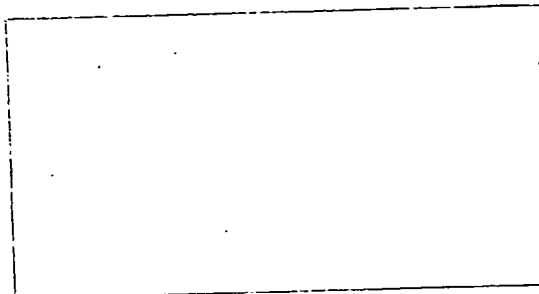
Vs.

**C. Russell Keep, III, Esquire and Rhonda Mitchell, Jasper County Tax Collector of which
C. Russell Keep, III, Esquire is the.....Appellant.**

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS
CASE NO.: 12-CP-27-00760

ROBERT C. SCHIVERA,
Executor of the Estate of
Fred J. Hughes, III,

Plaintiff,

v.

C. RUSSELL KEEP, III, Esquire and
RHONDA MITCHELL, Jasper County
Tax Collector,

Defendant.

ORDER

2013-01-06 6:10:32
JASPER COUNTY
CLERK OF COURT
J. SCOTT

This matter came to be heard before me on April 17, 2013 on the Plaintiff's Motion for Summary Judgment on a suit to set aside a tax sale. Present at the hearing were R. Thayer Rivers, Jr., Esquire, for the Plaintiff, Marvin Jones, Esquire, for the Defendant, Jasper County, and Russell Keep, Esquire, for himself as the Defendant.

The record before me reveals the following:

1. On June 11, 2008, the Plaintiff (Fred J. Hughes, III apparently died after acquiring the property, but prior to suit being commenced) received title to the property in question. The sales price was \$190,000.00 and the deed reflected an address of 1320 Highway 80 West, Garden City, Georgia, 31408, as the address of the Grantee. In non-compliance with Section 12-51-40, the Office of the Tax Assessor and thereafter the office of the Treasurer, and the Delinquent Tax Collector for Jasper County, did not change the records to use the address of the Grantee as the address for all notices. The same Plaintiff owned 3 parcels that adjoined the land in question. These have the correct address on them and the taxes on them were kept current.

The tax notice for the year 2009 was sent to 8512 Kent Drive, Savannah, Georgia, 31406, which the address of the Grantor and not that of the Plaintiff. Thereafter when the taxes were not

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paid the Office of the Tax Collector for Jasper County did an execution upon the property with the result that it was sold for taxes on or about the 1st day of November, 2010 to the Defendant, C. Russell Keep, III, for the price of \$6,600.00.

All of the requisite notices required by statute (1. the original tax notice; 2. the notice of delinquency; 3. the notice of tax sale; 4. the notice of the redemption period; 5. the notice of the expiration of time to redeem the property from the tax sale; and 6. the notice that the tax sale had become final) were all sent to the address of the former owner of the property and not to the Plaintiff.

The evidence before me not only shows that the incorrect address was used, but that on at least one occasion, the Treasurer of Jasper County sent the notice in the name of Andrew R. Dean and Henry G. Dean c/o Fred J. Hughes, III, at 1320 Kent Drive, Savannah, Georgia, 31406. This was returned with an address noted on there as 8512 Kent Drive, Savannah, Georgia, 31406 (see Reeping v. JEBBCO, et al, Appellate Case Number 2012-208-226). Additionally, the Treasurer had the wrong persons listed as owner, the correct street number for the tax payer, and the wrong (the old Kent Drive address) address.

Rives v. Balsa, 325 S.C. 287, 487 S.E.2d 578 (S.C. App. 1996)

"...A tax execution is not issued against the property, it is issued against the defaulting tax payer. Aldridge v. Rutledge, 269 S.C. 475, 238 S.E.2d 165 (1977). Due process of law required some sort of notice to a landowner before he is deprived of his property. Osborne v. Vallentine, 196 S.C. 90, 12 S.E.2d 856 (1941). The taxing statutes and a legion of cases interpreting these statutes make it clear that property shall be listed, assessed, levied upon, advertised, and sold in the name of the true owner. Donohue v. Ward, 298 S.C. 75, 378 S.E.2d 261 (Ct. App. 1989). Further, the general law is that where a statute requires as a condition precedent to foreclosing a taxpayer's rights in property sold for taxes that he be given notice of his right to redeem, such a requirement is generally regarded as jurisdictional, and therefore, the owner's right of redemption cannot be cut off unless the required notice is given. Good v. Kennedy, 291 S.C. 204, 352 S.E.2d 708 (Ct. App. 1987). Failure to give the required notice is a fundamental defect in the tax proceedings which renders the proceedings absolutely void. Donohue v. Ward, supra.

In both Osborne and Aldridge, our Supreme Court held that noncompliance by failure to levy and sell the property in the name of the real owner demanded the invalidation of tax deeds.

... this cannot circumvent the requirement that the levy, advertisement and sale must be made in the name of the true owner. Without strict compliance with the statutory requirements, a tax sale may not be upheld.

It is clear from the record that no notice of the tax sale was given to Brian and Karen Rives, the true owners of the property. It is also evidence that the property was not assessed, advertised, levied upon or sold in their names. Accordingly, we hold the tax collector failed to comply with the strict statutory requirements of a tax sale. The order of the master setting aside the tax deed is therefore affirmed."

The Defendant raises and relies heavily upon the issue of the two year statute of limitations. This matter was addressed most recently by the Court of Appeals in Reeping v. JEBBCO which was filed shortly before the hearing on this matter. In regard to the statute of limitations, the court in Reeping quoted Leysath v. Leysath, 209 S.C. 342, 40 S.E.2d 233 (1946), in which the Supreme Court of South Carolina clearly held that the statute of limitations did not apply to a jurisdictional defect. In Reeping, the court further noted in Donahue v. Ward, 298 S.C. 75, 378 S.E.2d 261 (Ct. App. 1989)

"It appears to be the general rule that a short statute of limitation of the kind under consideration does not apply where, by reason of some jurisdictional defect, the tax deed is absolutely void upon its face; and perhaps the majority of the courts hold that the bar of the statute does not apply if there are jurisdictional or fundamental defects in the tax proceedings which render such proceedings absolutely void. However, in some jurisdictions a statute of this kind is more liberally construed in favor of the purchaser, and it is held that the statute applies in every case in which there has been possession under a deed which is not void on its face. But the courts following the majority rule are not in entire accord as to the jurisdictional grounds which render a tax deed absolutely void. In some states defects which in others are deemed jurisdictional are considered mere irregularities....

...We do not undertake to lay down a general rule defining those defects in tax proceedings which should be considered as mere irregularities, to which the statute under consideration would apply, and those which should be deemed jurisdictional, so as to render the statute inapplicable."

As noted by the court in Reeping,

"The next question presented is whether failure to give the required notice constitutes more than a mere irregularity the effect of which invalidates the tax proceeding and prevents the running of the limitations statute. It is stated "all requirements of the law leading 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 mandatory and are to be strictly enforced. "Osborne v. Vallentine, 196 S.C. 90, 94, 12S.E.2d 856, 858 (1941); accord, Leysath v. Leysath, 209 S.C. 342, 40 S.E.2d 233 (1946). We think the Legislature in requiring the Treasurer of Horry County to give a twenty day notice prior to advertising the property for sale intended such provision for the protection of the taxpayer against a sacrifice of his property. We therefore hold that failure to give the required notice is a fundamental defect in the tax proceedings which renders the proceedings absolutely void."

For the foregoing reasons, the tax sale in issue here is hereby declared to be void. The Defendant is entitled to the return of any sums paid to the County of Jasper.



CARMEN T. MULLEN
Presiding Judge of the Fourteenth Judicial
Circuit

May 31, 2013

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**Order Denying Motion to Vacate Judgment
and 59(e) Motion to Reconsider of April 14,
2014**

000008

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**C. Russell Keep, III, Esquire and
Rhonda Mitchell, Jasper County
Tax Collector,
Defendants.**

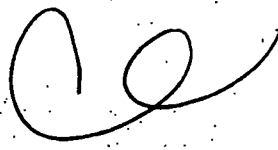
address of the Grantor and not of Mr. Hughes. The Jasper County Treasurer listed the wrong persons as the property owner in addition to the wrong address. All subsequent notices were also sent to this improper address. On at least one occasion, a notice sent to the Kent Drive address was returned to sender.

Taxes were not paid thereafter, and the Jasper County Tax Collector's Office did an execution upon the property in question. In addition to mailing the required notices to the wrong address on file, Jasper County properly posted notice on the property as required by our Code of Laws, and took a picture of that proper posting. On November 1, 2010, the property in question was sold for \$6,600 at a tax sale to Defendant C. Russell Keep, III. The instant litigation resulted more than two years later.

CONCLUSION

Upon oral argument and review of supporting documentation, Defendant's Motion to Vacate Judgment and Rule 59(e) Motion to Reconsider are hereby respectfully DENIED. The prior statement of facts does not function to alter or amend the undersigned's prior order dated May 31, 2013, but does act to further clarify the series of events leading up to that 2013 order for purposes of easier appellate review.

AND IT IS SO ORDERED.


Carmen T. Mullén
Fourteenth Judicial Circuit

This 14 day of April, 2014.
Beaufort, South Carolina

**Appellant's Motion to Reconsider, Alter or
Amend Judgment dated January 21, 2014**

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STATE OF SOUTH CAROLINA
COUNTY OF JASPER

ROBERT C. SCHIVERA,
Executor of the Estate of
Fred J. Hughes, III,

Plaintiff,

v.

C. RUSSELL KEEP, III, Esquire
and Rhonda Mitchell,
Jasper County Tax Collector

Defendants.

IN THE COURT OF COMMON PLEAS
CASE NO. 2012-CP-27-00760

**MOTION TO RECONSIDER,
ALTER OR AMEND A JUDGEMENT
RULE 59**

FILED
2014 JAN 23 AM 10:34
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY SC

TO: JUDGE CARMEN T. MULLEN:

I.

The Order granting the Plaintiff Summary Judgment dated May 31, 2013 (but not served on anyone) should state, pursuant to South Carolina Rule of Civil Procedure 59, in the **Findings of Fact** section;

A. This case came before the Court on Wednesday, April 17, 2013, pursuant to a Motion for Summary Judgment filed by the Plaintiff *and* the Defendant, C. Russell Keep, III, Esq. The Parties stipulated there was no issue of fact before the Court.

B. The Plaintiff's land was sold for unpaid taxes for the 2009 tax year on November 1, 2010 to the individual Defendant.

C. The Plaintiff brought suit more than two years after the tax sale.

D. The redemption notice was mailed to Fred J. Hughes, III by certified restricted delivery mail to the wrong address in violation of S.C. Code Section § 12-51-40(b).

E. When that redemption notice was returned "undelivered," Co-Defendant Jasper County took "exclusive possession" of the property by properly "posting" it as required by S.C. Code Section § 12-51-40(c) and there was photographic proof of this from the Co-Defendant Jasper County's entire file which was entered into evidence by stipulation.

F. Co-Defendant Jasper County listed, assessed, levied upon, advertised and sold the land in the name of the true owner, Fred J. Hughes, III in accordance with S.C. Law.

- G. The property is raw land and was not Mr. Hughes' residence.
- H. All of the requisite notices required by statute (1. the original tax notice; 2. the notice of delinquency; 3. the notice of tax sale; 4. the notice of the redemption period; 5. the notice of the expiration of time to redeem the property from the tax sale; and 6. the notice that the tax sale had become final) were all sent to the address of the former owner of the property and not the Plaintiff.

* * * *

II.

Pursuant to South Carolina Rules of Civil Procedure 59 and *Mims v. Alston*¹, (an issue neither raised nor ruled upon below will not be considered on appeal); *Noisette v. Ismail*², (where a trial court does not explicitly rule on an argument raised, and an appellant makes no Rule 59 motion to obtain a ruling, the appellate court may not address the issue); *Hoffman v. Powell*³, the Defendant, Russell Keep, asks that the Court rule on the following issues;

1. ***King v. James* and Posting pursuant to 12-51-40(c) "if the "certified mail "notice has been returned" -**

The Order fails to address *King v. James*.⁴ In *King*, "the certified mail notice was returned undelivered" to King, the tax payer and land owner. The tax deed was set aside in *King* for four (4) reasons.

¹ 312 S.C. 311, 440 S.E. 2d 357 (1994)

² 304 S.C. 56, 403 S.E. 2d 122 (1991)

³ 298 S.C. 338, 380 S.E. 2d 821 (1989)

⁴ 388 S.C. 16, 22, 694 S.E. 2d 35 (2010)

First: In the present case, the Master held, and we agree, the County *failed* to establish by a preponderance of the evidence that it *took "exclusive possession" of the Property by posting, as is required under section § 12-51-40(c)* (italics added)⁵.

Second: Beaufort County in *King* did not take photos of the posting, unlike Co-Defendant Jasper County.

Third: The Court found that the two (2) year statute of limitations of "Section 12-51-160 was inapplicable to King's action because King remained in possession of the property at all times."⁶ Unlike the case at hand, King "used the Property as her primary residence."⁷ The property herein is raw land with no building on it.

Fourth: It should be noted that *King* is an Appellant's nightmare;

Moreover, neither of the Appellants has appealed the Master's finding that the tax sale was not conducted in strict compliance with statutory requirements. Therefore, this ruling is the law of the case. *See ML-Lee Holding Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (holding an unappealed ruling, right or wrong, becomes the law of the case). Accordingly, we affirm the Master's finding as to the invalidity of the tax sale and tax deed.

The *King* decision affirms that the Jasper tax sale herein must be sustained because Co-Defendant Jasper County (unlike Beaufort County in *King*) proved it "took exclusive possession" of the property "by posting" as required under section § 12-51-40(c)." This "exclusive possession by posting" is an "**Alternative Procedure**" sanctioned by South Carolina Code Chapter 51, Alternative Procedure For Collection Of Property Taxes § 12-51-40(c) "when the exclusive possession taken by mailing" as contemplated by § 12-51-40 fails;

⁵ *ibid*

⁶ *ibid*

⁷ *ibid*

§ 12-51-40(c) Alternative Procedure for Collection of Property Taxes

If the "certified mail" notice has been returned (italics added), 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 posting of the notice is equivalent to levying by distress, seizing, and taking exclusive possession of it (italics added).

The Plaintiff waited more than two years to sue after the tax sale. The Co-Defendant Jasper County took "exclusive physical possession of the property" "by posting," when the "certified mail" notice was "returned," so the tax sale is "uncontestable on procedural or other grounds" pursuant to South Carolina Code Sections;

§ 12-51-90(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* (italics added).

§ 12-51-160 *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* (italics added). 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).

The Court is asked to rule that, 1. the Co-Defendant Jasper County "took exclusive possession" of the property "by posting" as required under Section § 12-51-40(c)" 2. the Plaintiff did not use the property as his residence.

2. **Leysath v. Leysath and "Mere Irregularities" -**

The Order finds fault with the addition of a "c/o" to Fred J. Hughes, III's name on the mailed tax notice. This is one of a pair of "mere irregularities"⁸ - as is the wrong street address (which will be addressed next in part 3). In *Leysath, supra*, the taxpayer owner challenged the validity of the tax sale on several grounds including that the tax collector or rather assistant tax collector "did not seize and take exclusive possession of the property"⁹. The *Leysath* court found;

the defects ... were serious enough to have required the court to set aside the tax deed in an action seasonally begun, we do not think that they can be properly classified as jurisdictional defects ... but rather are among the irregularities which the Statute in question was framed to cover and set at rest¹⁰.

It is important to note that a tax sale may be overturned for "mere irregularities," however, a lawsuit to do so must be brought within the two year statute of limitations¹¹.

This was not done. It is uncontested that the Plaintiff waited more than 2 years from the tax sale to sue. The court is asked to address whether a "c/o" placed in front of a tax payer's name is a "mere irregularity" after two years of inaction in light of *Leysath*.

3. **§12-51-120 "the return of the certified mail "undeliverable" is not grounds for a tax title to be withheld or be found defective and ordered set aside or cancelled of record," and *Dibble v. Bryant* -"constructive notice by the levy, advertisement and sale in the owner's name is deemed sufficient" and actual notice is not required.**

The Code has an "Alternative" cure for tax notices that are returned "undelivered" - it is called "posting." Making an issue of the wrong address on the tax notice (causing it to be returned "undelivered") is a red herring. "constructive notice by the levy, advertisement and sale

⁸ *Leysath v. Leysath*, 209 S.C. 342, 40 S.E. 2d 233, 237 (1946)

⁹ *ibid*

¹⁰ *ibid*

¹¹ Hayes, Tax Sales, SC Bar publication, Page 29

in the owners' name is deemed sufficient," *Dibble v. Bryant*¹². The Court in *Dibble* stated that actual notice to the tax payer is not required, only constructive notice;

In *Osborne v. Vallentine*¹³, *supra*, and most recently in *Aldridge v. Rutledge*¹⁴, *supra*, non-compliance by failure to levy and sell the property in the name of the real owner demanded invalidation of tax deeds. In *Osborne*, we stated;

It is a well-established principle that due process of law requires some sort of notice to a landowner before he is deprived of his property. *It is an anomalous situation that the statutes of this State require actual notice to a mortgagee of land about to be sold for taxes, and make no such requirement for actual notice to the owner. It would appear that the constructive notice provided by the levy, advertisement and sale in the owner's name is deemed sufficient.* Such notice to the owner, as required by the tax sale statutes, being *constructive* rather than actual, the court requires strict compliance therewith (*italics added*)¹⁵.

Sending the tax notice to the wrong address is not a "jurisdictional defect," *Leysath, supra* (unless the tax notice is sent to the mortgagee who must get actual notice). In fact, Chapter 51, Alternative Procedure for Collection of Property Taxes (please note the word Alternative) § 12-51-90(c), 160 and 120 anticipates tax notices will be mailed to the wrong address and provides the defaulter with ample protection;

1. Posting (as an "alternative" to taking "possession by mailing," which was done in the case herein).
2. "constructive notice by levy, advertisement and sale in the owner's name," *Dibble, supra*, which occurred in the case herein.

¹² 265 S.E. 2d 675, 274 S.C. 481 (S.C. 1980)

¹³ 196 S.C. 90, 12 S.E. 2d 856 (1941)

¹⁴ 269 S.C. 475, 238 S.E. 2d 165 (1977)

¹⁵ *Dibble, supra* S.E. 2d at page 675

3. The tax payer is given a full 2 years to discover the sale and take appropriate action, which he did not herein.

The Statutory Law is very clear;

§ 12-51-120 Alternative procedure for the collection of property taxes;

* * * *

Pursuant to this chapter, the return of the certified mail "undelivered" is not grounds for a tax title to be withheld or be found defective and ordered set aside or canceled of record (italics added).

Indeed, Tax Sales, *supra*, at page 29, elaborates;

Section § 12-51-120 states: "*Pursuant to this chapter, the return of the certified mail "undeliverable" is not grounds for a tax title to be withheld or be found defective and ordered set aside or canceled of record.*" This language seems to create a presumption that a sale won't be voided on the grounds the certified mail is returned "undelivered"¹⁶."

In short, under the "Alternative Procedure" of Chapter 51 of the Code, "the return receipt of the certified mail notice is equivalent to levying by distress" (§ 12-51-40(b)) "if exclusive possession is (NOT) taken by mailing" (§ 12-51-40(b)) and if the "certified mail has been returned" the County may "take exclusive physical possession of the property" "by posting" (§ 12-51-40(c)) "the posting of the notice is equivalent to levying by distress, seizing and taking exclusive possession" (§ 12-51-40(c)) and "constructive notice by the levy, advertisement and sale in the owner's name is deemed sufficient," *Dibble, supra*. The court is asked to address why the constructive notice by the posting levy, advertisement and sale in the owner's name is not sufficient when the certified mail was returned undeliverable.

¹⁶ Tax Sales, *supra*, page 28

4. *Rives v. Bulsa* - "the property must be assessed, advertised levied upon and sold in the name of the true owner."

The Order quotes *Rives v. Bulsa*,¹⁷ which actually states;

In both *Osborne* and *Aldridge*, our Supreme Court held that noncompliance by failure to levy and sell the property in the name of the real owner demanded the invalidation of tax deeds.

... this cannot circumvent the requirement that *the levy, advertisement and sale must be made in the name of the true owner*. Without strict compliance with the statutory requirements, a tax sale may not be upheld.

It is clear from the record that no notice of the tax sale was given to Brian and Karen Rives, the true owners of the property. It is also evidence that the property was *not assessed, advertised, levied upon or sold* in their names. Accordingly, we hold the tax collector failed to comply with the strict statutory requirement of a tax sale. The order of the master setting aside the tax deed is therefore affirmed (*italics added*).

The land herein was "assessed, advertised, levied upon and sold," *Rives, supra*, in the name of Fred J. Hughes, III. There is a presumption in the absence of proof to the contrary that public officers have properly discharged the duties of their office,¹⁸.

In *Wilson v. Cantrell*, 40 S.C. 114, 18 S. E. 517, 525, the court had under consideration a tax deed. The plaintiff was the purchaser at the tax sale. The court stated: "**** the sheriff's deed is only prima facie evidence of the regularity of the tax proceedings prior to its execution, and may be attacked. But, while this is so, the burden is upon the defendant to prove that one or more of the essential requirements of the law have not been complied with, and that the tax proceedings have not been regular, which the defendant in this case has failed to do¹⁹."

The Order also states;

¹⁷ 325 S.C. 287, 293-4, 487 S.E. 2d. 878 (S.C. App. 1996)

¹⁸ *Fisher v. Bennett*, 202 S.C. 541, 25 S.E. 2d 746 (1943) see also revised § 12-51-16 which states "in all cases of tax sale the deed of conveyance is prima facia evidence of a good title in the name of the holder."

¹⁹ Quoted with approval in *Osbourne v. Valentine*, 196 S.C. 90, 12 S.E. 2d 856.

All of the requisite notices required by statute (1. the original tax notice; 2. the notice of delinquency; 3. the notice of tax sale; 4. the notice of the redemption period; 5. the notice of the expiration of time to redeem the property from the tax sale; and 6. the notice that the tax sale had become final) were all sent to the address of the former owner of the property and not the Plaintiff.

This may be all true but it has no significance. These are all a "mere irregularities,"

Leysath, supra and for which the Statute provides an alternative procedure.

§ 12-51-120, Notice of Approaching End of Redemption Period, states;

* * * *

Pursuant to this chapter, the return of the certified mail "undeliverable" is *not* grounds for a tax sale to be withheld and found to be defective and ordered set aside or cancelled or returned (italics added).

Likewise an error in;

1. the original tax notice;
2. the notice of delinquency;
3. the notice of the tax sale;

are all cured by levying, advertising and by posting. Actual notice by mail is not required; "constructive notice by the levy, advertisement and sale in the owners' name is deemed sufficient (italics added)," *Dibble, supra*. This was all done in Fred J. Hughes, III's name.

Please rule on why Fred J. Hughes, III, was not given sufficient "constructive notice" by levying, advertising and posting and that, pursuant to *Rives*, "the levy, advertisement and sale were made in the name of the true owner" - Fred J. Hughes, III. The court is asked to rule that the tax sale was conducted in strict compliance with the statutory requirements including 12-51-40(C) and 12-51-90(C).

5. The issue of posting was not before the court in *Reeping v. Jebbco, LLC* -

The Court should rule why *Reeping v. Jebbco, LLC*²⁰, quoted in the Order, is applicable at all to the facts of this case. The Issue of levying, advertising and posting ("equivalent to levying by distress, seizing, and taking exclusive possession of it"²¹) was not before the *Reeping* court. The *Reeping* decision does not address the issue of whether the County took the corrective action of taking "exclusive possession of it" by posting, pursuant to South Carolina Code Section § 12-51-40 (c) after the "certified mail notice" was "returned."

Reeping, supra, is a Court of Appeals case and is in conflict with the South Carolina Supreme Court's prior decision²² wherein it declared "[O]nce two years have passed after the sale, the sale is not a cloud on the property's title" this argument will be furthered developed in part 8.

6. Legislative Intent and Revised Statutory Law -

To determine the application of the revised (in 2006) section § 12-51-160 and §12-51-90(C) on the present case, the Court must apply the rules of statutory construction. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature²³." "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it reasonably can be discovered in the language used, and the language must be construed in the light of the intended purpose of the statute²⁴." "Statutes, as a whole, must receive practical,

²⁰ 402 S.C. 195, 740 S.E. 2d 504 (Ct. App. 2013)

²¹ SC Code § 12-51-40(c)

²² Leysath, supra at page 236-7

²³ Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003)

²⁴ City of Sumter Police Dep't v. One (1) 1992 Blue Mazda Truck (VIN # JM2UF1132N0294812), 330 S.C. 371, 375, 498 S.E.2d 894, 896 (Ct.App.1998)

reasonable, and fair interpretation, consonant with the purpose, design, and policy of lawmakers²⁵.”

Tax Sales, *supra*, at page 27, 28, states;

In two cases, the South Carolina Supreme Court has narrowly construed the application of this statute of limitations and has permitted the defaulting taxpayer to maintain the action even though the action was brought after two years from the date of sale. However, it should be noted that these cases were decided before the 1985 revisions to the Code. After the 1985 revisions, the Court of Appeals, in *Corbin v. Carlin*²⁶, held that an action to quiet title and set aside a tax sale and tax deed fell outside the provisions of Section § 12-51-160. There was some confusion in *Corbin* regarding the descriptions and locations of the real property, and the Court determined there was nothing to put *Corbin*, the delinquent taxpayer, on notice of the delinquency.

The Corbin decision was filed on October 3, 2005. Less than six months later, on March 15, 2006, revisions to Sections § 12-51-160 took effect, and these revisions appear to make it more difficult to avoid the bar of the two-year statute of limitations. Section § 12-51-90 was revised to include a paragraph (C), which states: "If the defaulting taxpayer, grantee from the owner, or mortgage or judgment creditor fails to redeem the item of real estate sold at 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." Section § 12-51-160 was revised to add the reference to Section § 12-51-90(C) in the statement: "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)." There have been no recorded cases construing these revised statutes (italics added).

Since publication of this excellent book by Mr. Hayes, Esq., *King, supra*, was decided by the Court of Appeals on April 20, 2010. The Court found the time started to run from the date when the county or the tax sale purchaser took “possession” of the property. “Possession” is a

²⁵ *TNS Mills, Inc. v. South Carolina Dep't of Revenue*, 331 S.C. 611, 624, 503 S.E.2d 471, 478 (1998).

²⁶ *Corbin v. Carlin* 366 S.C. 187, 620 S.E. 2d. 745 (2005)

term of art. The Court found the County can "take exclusive possession" "by making" the notice required by Section § 12-51-40(b), and if that tax notice is returned "undelivered," by "posting" the property as required by Section § 12-51-40(c). In King, the Court ruled the County failed to prove it posted the property (Beaufort County did not take a picture of postings at that time unlike Co-Defendant Jasper County), therefore the statute did not start to run.

The legislature, in the wake of the *Corbin* decision (October 3, 2005), revised section § 12-51-160 and § 12-51-90(C), taking effect March 15, 2006.

Revised SC Code Section § 12-51-160;

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) (italics added).

Revised SC Code Section § 12-51-90(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* (italics added).

A tax deed, after two years from the tax sale, is "uncontestable on procedural or other grounds."²⁷ The Court should rule on why the revised code sections § 12-51-90(c), 160 do not evidence an intent by the legislature to bar recovery of the land after two (2) years of inaction on the part of the Plaintiff.

²⁷ South Carolina Code Section § 12-51-90(C).

7. "divergent decisions" -

The Court in *King*, *supra*, also found that;

This court has held the purpose of the statute of limitations as set forth in section 12-51-160 is "to create a time limit during which one who lost title to property through a tax sale, after proper notice, may attempt to regain title." *Corbin v. Carlin*, 366 S.C. 187, 194, 620 S.E.2d 745, 749 (Ct.App.2005). *A review of case law in this area reveals somewhat divergent decisions (bold added) regarding if and when the statute of limitations begins to run in situations such as this (italics added).*

On the one hand, we find case law that says when notice to the homeowner is not in strict compliance with the statute, such a defect is "jurisdictional," and the statute of limitations does not run at all (italics added). See Donohue v. Ward²⁸, 298 S.C. 75, 82, 378 S.E.2d 261, 265 (1989) (holding where a defect in notice is jurisdictional, such a defect "invalidates the tax proceeding and prevents the running of the limitations statute"); Good v. Kennedy²⁹, 291 S.C. 204, 207, 352 S.E.2d 708, 711 (1987) (holding "the general law is that where a statute requires as a condition precedent to foreclosing a taxpayer's rights in property sold for taxes that he be given notice of his right to redeem, such a requirement is generally regarded as jurisdictional") (internal quotations omitted).

On the other hand, we also find case law in which our courts interpreted previous versions of section § 12-51-160 as saying even if the notice is defective, the statute of limitations still applies, but only begins to run when the purchaser comes into possession (italics added). See Dibble v. Bryant, 274 S.C. 481, 487, 265 S.E.2d 673, 677 (1980) (holding previous version of section 12-51-160 "was intended to bar a defaulting and ousted taxpayer from maintaining an action to defeat the title of the tax sale purchaser and recover the land if brought more than two years from the date the purchaser came into possession") (emphasis added); Glymph v. Smith, 180 S.C. 382, 384, 185 S.E. 911, 914 (1936) (holding even though the plaintiff brought the action six years after the tax sale, the two-year statute of limitations never began to run because the sheriff never took possession of the subject property, and the purchaser was never put into possession following

²⁸ In *Donohue*, the property was not listed, assessed, levied upon, advertised and sold in the name of the true owner, unlike the case herein.

²⁹ In *Good*, the issue of posting was not before the Court unlike the case herein. It should also be noted that both *Donohue* and *Good* were decided before 2005 when § 12-51-160, 90 were revised - "these revisions appear to make it more difficult to avoid the bar of the two year statute of limitations." *Tax Sales*, *supra*, at page 28.

the execution of the tax deed) (italics added); *Gardner v. Reedy*, 62 S.C. 503, 503, 40 S.E. 947, 947 (1902) (holding the two-year statute of limitations would only begin to run if and when the purchaser took possession)³⁰.

Since there are "divergent decisions" (according to *King, supra*) this Court should rule why it is siding with the irrelevant *Good* (posting issue not before the court) and *Donohue* (property not listed, assessed, levied upon, advertised and sold in the name of the true owner) and not *Dibble / Glymph / Gardner* especially as it is uncontested that the Defendant, Russell Keep, the purchaser, was put into possession of the land.

8. Statutes of Repose -

The Court is requested to rule on the argument made by the Co-Defendant Jasper County that the revised (2006) § 12-51-160 and § 12-51-90(c) are Statutes of Repose depriving the Court of jurisdiction to hear this case.

As previously noted, Plaintiff's suit is a statutory cause of action to set aside a tax deed. The rights asserted in this cause of action were created in Code of Laws of South Carolina § 12-51-160 and § 12-51-90(C), each of which provide as follows:

§ 12-51-160 Deed as evidence of good title; statute of limitations.

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 holder, that all proceedings have been regular and that all legal requirements have been complied with. *An action for 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)* (emphasis supplied).

³⁰ 388 S.C. 16, 25-27. It should be noted that King is a tax purchaser's procedural nightmare; "Moreover, neither of the Appellants has appealed the Master's finding that the tax sale was not conducted in strict compliance with statutory requirements. Therefore, this ruling is the law of the case. See *ML-Lee Holding Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (holding an unappealed ruling, right or wrong, becomes the law of the case). Accordingly, we affirm the Master's finding as to the invalidity of the tax sale and tax deed."

§ 12-51-90 Redemption of real property; assignment of purchaser's interest.

* * * *

(C) If the defaulting taxpayer, grantee from the owner, or mortgages or judgment creditor fails to redeem the item of real estate sold at the delinquent tax sale within 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* (emphasis supplied).

The italicized language reflects the intention of the Legislature that as of the specified date (that is to say, two (2) years after the sale), "the tax deed issued is incontestable on procedural or other grounds" and no action "for the recovery of land sold" may be maintained. The language creates a jurisdictional limitation rather than a statute of limitations. The difference is that "a true statute of limitations extinguishes only the right to enforce the remedy and not the substantive right itself, [while] the limitation of time for commencing an action under a statute creating a new right enters into and becomes a part of the right of action itself and is a limitation, not only of the remedy, but of the right also³¹; . . .".

Considering the language of revised § 12-51-90(C), the South Carolina Supreme Court has ruled "[o]nce two years have passed after the sale, the sale is not a cloud on the property's title³²." It is hard to overemphasize the importance of this South Carolina Supreme Court decision. If a tax sale is not a cloud on the property's title, then a Quiet Title Action is no longer needed because the tax deed is "uncontestable," as it is in the case before this Court. The Defendant requests the Court to rule why he is not entitled to judgment pursuant to *Federal*,

³¹ See generally 51 Am. Jur. 2nd (Limitation of Actions) § 30 (footnotes omitted)

³² *Federal Financial Company v. Hartley, et al.*, 380 S.C. 65, 68, 668 S.E.2d 410, 412, (S.Ct. October 13, 2008)

supra. In as much as on November 1, 2012, no pleadings had been served on Defendants Jasper County and Russell Keep, the statutory rights asserted in this action to raise questions of title were dissolved and ceased to exist and the tax deed issued on November 1, 2010, no longer had a cloud on it and it became and is "incontestable." In fact, our courts have referred to the two year period for tax deeds as a "Statute of Repose," for over 60 years;

If the two year limitation does not apply to defects of the character now under consideration, what purpose does it serve? If it only applies where the tax proceedings are regular in every respect, the purchaser would have no need of this protection which this limitation was designed to give. A **Statute of Repose** is not needed in favor of purchasers at valid tax sales. The very purpose of such Statute is to shut off inquiry into such defects as are now complained of, and confirm the tax deed in spite of them, and unless it does this it is nugatory (bold added)³³.

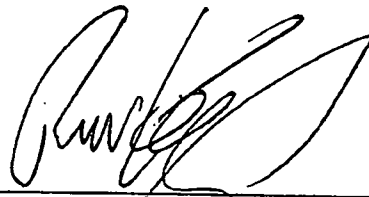
For these reasons, Defendant, Russell Keep, should have been granted Summary Judgment and the Court is requested to Rule on why § 12-51-160 and 90 are not Statutes of Repose, which utterly deny Plaintiff of any Right of Action.

The Legislature passed Section § 12-51-90 and § 12-51-160 as an absolute bar to recovery after two whole years. The medical malpractice six year absolute bar to recovery is analogous. South Carolina Code § 15-3-545 Actions for Medical Malpractice evidences the Legislature's impatience with those who sleep on their rights. The language concerning notice or lack thereof in the malpractice statute of limitations is similar to the revised § 12-51-90, 160; "three years from the date of discovery or when it is reasonably ought to have been discovered, *not to exceed six years from the date of occurrence...*"

It is clear that the legislature and the South Carolina Supreme Court in Federal, *supra*, meant for the two year time bar in § 12-51-90(c), 160 to be absolute and the Court is asked to rule on the revised § 12-51-90, 160 in its Order.

³³ Leysath, *supra* at page 236-7

By: _____



C. RUSS KEEP, III, ESQUIRE
Keep Law Office
Suite 303, WatersEdge
Shelter Cove Harbour
Post Office Drawer 5877
Hilton Head Island, SC 29938
(843) 842-6268
PRO SE

Hilton Head Island, SC
January 21, 2014

**Complaint dated
December 11, 2012**

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	CASE NO.: 2012-CP-27-_____
	)	NON JURY
	)	
ROBERT C. SCHIVERA,	)	
Executor of the Estate of	)	
Fred J. Hughes, III,	)	
	)	
	)	
Plaintiff,	)	COMPLAINT
v.	)	
	)	
RUSSELL KEEP, and Rhonda	)	
Mitchell, Jasper County Tax Collector	)	
	)	
Defendants.	)	

1. The plaintiff is a licensed attorney, practicing in Savannah, Ga. and is the duly appointed Executor of the estate of the late Fred J. Hughes, III.

2. The Defendant is on information and belief, a citizen and resident of Beaufort County, South Carolina.

3. The real property, which is the subject of this action (which is described in the attached Exhibit A) is located in Jasper County, S.C.

4. On or around the 9th day of June, 2008, the late Fred J. Hughes III, acquired title to the premises by a deed recorded in Volume 0670 at pages 0135-0137 in the office of the Register of Deeds for Jasper County South Carolina. Said deed having been recorded on June 11, 2008. (A copy of which is attached as Exhibit B.)

5. The deed listed on its face that the correct mailing address of the Grantee, Fred J. Hughes III is 1320 Highway 80 West, Garden City, Georgia, 31408. The address of the Grantor was 8512 Kent Drive, Savannah Georgia, 31406.

6. Thereafter, and the following tax year, in violation of the Code of Laws of South Carolina, the office of the Jasper County Tax Assessor did not change the tax notice for the tax year 2009 to the address shown on the deed for the Grantee, 1320 Highway 80 West, Garden City, Georgia, 31408, but instead kept the 8512 Kent Drive address of the previous owner. (Copy attached as Exhibit C.) Thereafter for the tax years of 2010 and 2011, there was likewise no change of address, and the tax notice was sent to the incorrect address for those tax years.

7. That the late Fred J. Hughes died on or around February 12, 2012. Thereafter, as no tax notice was received for the property, such was not paid, and the Jasper County Tax Collector proceeded to send the requisite notices to Fred J. Hughes III at 8512 Kent Drive, Savannah Georgia, 31406, which was the incorrect address. (Copies attached as Exhibit D.)

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8. Thereafter, all notices pursuant to the tax collection statutes of the Laws of the State of South Carolina were sent to 8512 Kent Drive, Savannah Georgia, 31406 address, all in violation of the Laws of the State of South Carolina.

9. That there existed during this period of time, surrounding properties (TMS 072-00-02-041, 072-00-02-036, 072-00-02-057, copies attached as Exhibit E), which were owned by Mr. Hughes, which were listed by the correct address of 1320 Highway 80 West, Garden City, Georgia, 31408. That with the exercise of minimal diligence, should have been discovered by the Office of the Tax Assessor, and thereafter by the Office of the Treasurer of Jasper County.

10. That all notices sent to those addresses for other parcels owned by Mr. Hughes were all paid.

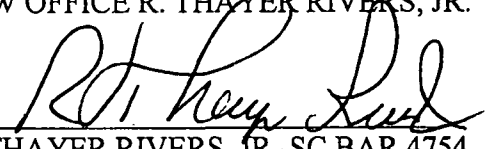
11. On or around the 13th day of May 2012. The Tax Collector of Jasper County did purport to seize the premises in question, and on or around Nov. 1, 2010, sell the same to the Defendant for an amount of \$6,600. (Reference to Exhibit B, which shows that the Decedent paid some \$190,000 for the premises.

12. The Plaintiff is informed and believes that the actions of the various taxing authorities in Jasper County South Carolina, in not properly utilizing the correct address for the Plaintiff's decedent's, and not using the best available address in the offices of the Register of Deeds as well as the Tax Assessor's Office as well as the Treasurer for Jasper County South Carolina are jurisdictional defects. As such, the purported sale to the Defendant is null and void and are tolled by no Statute of Limitation.

Wherefore, the Plaintiff prays as follows:

1. That the Court inquire into these matters and determine that the deed to the Defendant is null and void.
2. That this Court issue a deed to the Plaintiff for the premises.
3. That the Plaintiff be awarded the costs of the above matter.
4. As none of the above delicts were the fault of the Plaintiff, that he be held harmless as to any payment of interest.

LAW OFFICE R. THAYER RIVERS, JR.


R. THAYER RIVERS, JR. - SC BAR 4754
P O BOX 668, 304 RUSSELL STREET
RIDGELAND, S.C. 29936
TEL: 843 726 8136
FAX: 843 726 4401

ATTORNEY FOR PLAINTIFF

Dated: December 11, 2012
Ridgeland, SC

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**Answer and Counter Claim (of Jasper
County Tax Collector) dated May 4, 2013**

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FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

2013 MAR -4) PM 3:15

COUNTY OF JASPER

MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY SC

CASENUMBER: 12-CP-27-00760

ROBERT C. SCHIVERA,
Executor of the Estate of
Fred J. Hughes, III,

Plaintiff,

v.

C. RUSSELL KEEP, III, Esquire and
RHONDA MITCHELL, Jasper County
Tax Collector,

Defendant.

ANSWER AND COUNTERCLAIM

 The Defendant, Rhonda Mitchell, Jasper County Tax Collector, by way of Answer to the above described Complaint of the Plaintiff, dated December 11, 2012, would respectfully show unto the Court:

1. The Defendant denies each and every allegation of the Complaint not specifically admitted or qualified.

FOR A FIRST DEFENSE

(General Denial)

2. This Defendant has no knowledge of the allegations contained in Paragraph 1 and 2 of the Complaint and demands strict proof thereof.
3. This Defendant admits the allegations contained in Paragraphs 3, 4 and 5 of the Complaint.

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4. As to the allegations of Paragraph 6 of the Complaint, the Jasper County Tax Collector admits that it appears from records that the County Assessor changed the address of the property owner to C/O Fred J. Hughes, III, 1320 Highway 80 West, Garden City, Georgia 31408 on February 23, 2009, but thereafter, based upon a subsequent change of address, changed the address again to 8512 Kent Drive, Savannah, Georgia 31406 on June 12, 2009. Further, from records, it appears that on November 4, 2011, the Tax Assessor changed the address to 1320 Highway 80 West, Garden City, Georgia 31408. The Jasper County Tax Collector admits that she used the address of 8512 Kent Drive, Savannah, Georgia 31406 for correspondence with the property owner regarding tax collection between June 12, 2009 and November 4, 2011. The Jasper County Tax Collector specifically denies that she had any actual knowledge of the address or addresses of Mr. Hughes and further denies each and every other allegation of Paragraph 6 of the Complaint.
5. As to the allegations of Paragraphs 7 and 8 of the Complaint, the Jasper County Tax Collector incorporates her answers and affirmative allegations to Paragraph 6 as if set out herein verbatim; the Jasper County Tax Collector has no knowledge of the other allegations of Paragraphs 7 or 8 and therefore denies the same.
6. This Defendant denies the allegations contained in Paragraph 9 of the Complaint.
7. This Defendant admits the allegations contained in Paragraph 10 of the Complaint.
8. As to the allegations of Paragraph 11 of the Complaint, the Jasper County Tax Collector admits that on November 1, 2010 the property was sold at the Tax Sale for \$6,600.00; the Jasper County Tax Collector denies each and every other allegation of Paragraph 11. The Jasper County Tax Collector would affirmatively assert that on September 28, 2010, the property which is subject to this action was seized.
9. The Jasper County Tax Collector denies the allegations contained in Paragraph 12 of the Complaint.

FOR A SECOND DEFENSE

(Code of Laws of South Carolina § 12-51-90(C))

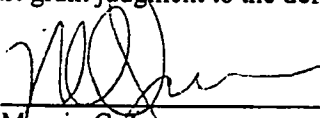
10. For purposes of this defense the Jasper County Tax Collector realleges all of her affirmative allegations and admissions contained in Paragraph 1 thorough 9 hereof.
11. Neither the defaulting Taxpayer nor any other person redeemed the property which is subject to this litigation prior to twelve (12) months following September 28, 2010.
12. The Jasper County Tax Collector accepted service of the Summons and Complaint in this cause on February 11th, 2013.
13. The Tax Deed to these premises issued by the Jasper County Tax Collector which is the subject of this action is incontestable on procedural or other grounds.

FOR A THIRD DEFENSE

(Code of Laws of South Carolina § 12-51-160)

14. For purposes of this defense the Jasper County Tax Collector realleges all of her affirmative allegations and admissions contained in Paragraph 1 thorough 13 hereof.
15. An Action for the recovery of the real property which is the subject of this action must not be maintained because it was not "brought within two years from the date of sale" as provided in Section 12-51-90(C).

WHEREFORE, THE DEFENDANT, the Jasper County Tax Collector having answered the Complaint herein, prays that the Court grant judgment to the defendants.



Marvin C. Jones
Jasper County Attorney
South Carolina Bar Number: 3201
Post Office Box 420
Ridgeland, South Carolina 29936
E-Mail: mjones@jaspercountysc.gov
Telephone: 843-726-5403

March 4, 2013

Answer and Counter Claim (of Appellant)
dated January 4, 2013

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STATE OF SOUTH CAROLINA

COUNTY OF JASPER

ROBERT C. SCHIVERA,
Executor of the Estate of
Fred J. Hughes, III,

Plaintiff,

v.

C. RUSSELL KEEP, III, Esquire
and Rhonda Mitchell,
Jasper County Tax Collector

Defendant.

IN THE COURT OF COMMON PLEAS
CASE NO. 2012-CP-27-00760
NON JURY

ANSWER & COUNTER CLAIM

FILED
2013 JAN -7 AM 9:41
MARGARET BOSCHICK
CLERK OF COURT
JASPER COUNTY SC

TO: THAYER RIVERS, ATTORNEY FOR THE PLAINTIFF, ROBERT C. SCHIVERA, Executor of the Estate of Fred J. Hughes, III:

NOW COMES THE DEFENDANT, C. RUSSELL KEEP, II, ESQUIRE, TO ANSWER THE COMPLAINT DATED DECEMBER 11, 2012:

1. All allegations of the Complaint not hereinafter admitted are denied.
2. Paragraphs 1, 2, 3, 4, 5, 6 and 10 are admitted.
3. Except for the sentence "Thereafter, as no tax notice was received for the property, such was not paid." which is a conclusion of law and an opinion and therefore denied, the rest of paragraph 7 & 8 are admitted.
4. With the exception of "That with the exercise of minimal diligence, should have been discovered by the Office of the Tax Assessor, and thereafter by the Office of the Treasurer of Jasper County." which is a conclusion of law and an opinion and therefore denied, the rest of paragraph 9 is admitted.
5. As to paragraph 11 with the exceptions of "Did purport to" which is a conclusion of law and an opinion which is therefore denied and the invidious language of how much the Plaintiff and the Decedent paid for the land which is not relevant, this paragraph is admitted.
6. Paragraph 12 is denied.

FOR A SECOND DEFENSE

SOUTH CAROLINA CODE SECTION 12-51-90(C)

7. The Defendant repeats and re-alleges paragraphs 1 through 6.
8. South Carolina Code Section § 12-51-90(C) states; "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* (italics added)."

FOR A THIRD DEFENSE

SOUTH CAROLINA CODE SECTION 12-51-160

9. The Defendant repeats and re-alleges paragraphs 1 through 8.
10. South Carolina Code Section § 12-51-160 states; "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)."

FOR A FOURTH DEFENSE

LATCHES

11. The Defendant repeats and re-alleges paragraphs 1 through 10.
12. The Plaintiff has slept on its rights for an unreasonable amount of time.

FOR A COUNTER CLAIM

13. The Defendant repeats and re-alleges paragraphs 1 through 12.
14. This Defendant is complaining of the Plaintiff above-named and would respectfully show unto this honorable court:

15. That the Defendant is a citizen and resident of the County of Beaufort, State of South Carolina.

16. That the Plaintiff, Robert C. Schivera, Esquire, Executor of the Estate of Fred J. Hughes, III, is a citizen and resident of Chatham County, State of Georgia.

17. That the real property that is the subject of this action is located in the County of Jasper, State of South Carolina and is more particularly described as follows ("real property");

TMS# 072-00-02-038

18. The Jasper County Tax Collector seized and took possession of the real property on May 13, 2010 by posting it pursuant to South Carolina Code Section § 12-51-40(C).

19. That on or about November 1, 2010, Rhonda Mitchell, as Jasper County Delinquent Tax Collector, sold the real property at public sale for non-payment of taxes to the Defendant, Russell Keep, as the highest bidder at the sale.

20. That the Defendant, Russell Keep, is currently the owner of the real property by virtue of a tax deed executed in 2011, by Rhonda Mitchell, as Jasper County Delinquent Tax Collector. This tax deed was recorded, in the Jasper County Register of Deed's Office in Record Book 824, at Pages 56-58.

21. That at the time of the tax sale, Fred J. Hughes, III was the owner of record of the real property, and other than the tax deed issued to Russell Keep, by Rhonda Mitchell, as Jasper County Delinquent Tax Collector, there are no other conveyances of the property after the tax sale.

22. That South Carolina Code § 12-51-160 states that "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." South Carolina Code § 12-51-90(C) states; "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* (italics added)."

23. That is has been more than two years since the date of the tax sale of the real property.

24. That the Defendant is therefore entitled to an order quieting title to the real property in the name of the Defendant, holding that the Defendant is the fee simple owner of the real property, and that the Plaintiff or their assignees, have no right in, lien on, or interest in the real property.

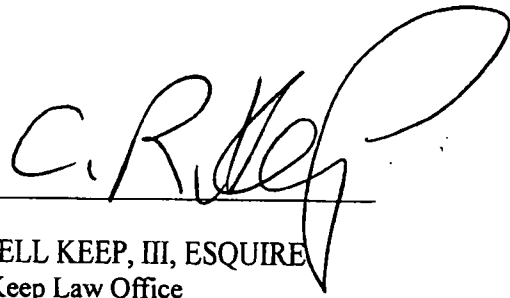
WHEREFORE, having fully set forth his Counter Claim, the Defendant prays:

(A) For an order quieting title to the real property in the name of the Individual Defendant, holding that the Individual Defendant is the fee simple owner of the real property, and that the Plaintiff, or their assignees, have no right in, lien on, or interest in the real property.

(B) Dismissing the Complaint as being time barred by South Carolina Code Section § 12-51-160 and § 12-51-90(C).

(C) Dismissing the Complaint because the property was properly taken possession of by the County by properly posting it pursuant to South Carolina Code Section § 12-51-40(C).

(D) For such other and further relief as may be just and proper.

By: 

C. RUSSELL KEEP, III, ESQUIRE

Keep Law Office
Suite 303, WatersEdge
Shelter Cove Harbour
Post Office Drawer 5877
Hilton Head Island, SC 29938
(803) 842-6268
ATTORNEY FOR DEFENDANT

Hilton Head Island, SC
January 4, 2013

**Reply (of Respondent) dated
January 29, 2013**

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF JASPER	)	CASE NO.: 12-CP-27-00760
	)	
ROBERT C. SCHIVERA,	)	
Executor of the Estate of	)	
Fred J. Hughes, III,	)	
	)	
Plaintiff,	)	REPLY TO COUNTERCLAIM
	)	
v.	)	
	)	
C. RUSSELL KEEP, III, Esquire and	)	
RHONDA MITCHELL, Jasper County	)	
Tax Collector,	)	
	)	
Defendant.	)	

To: C. RUSSELL KEEP, ESQUIRE, Defendant

The Plaintiff, Robert C. Schivera, Executor of the Estate of Fred J. Hughes, III, hereby replies to the Counterclaim of the Defendant as follows:

1. Upon information and belief, the Plaintiff admits the allegations of the 15th Paragraph of the Counterclaim.

P/
2. That the Plaintiff admits the allegations of the 16th and 17th Paragraphs of the Counterclaim.

3. Upon information and belief, the Plaintiff admits so much of the allegations of Paragraph 18 as the property was posted, and denies the remaining allegations of Paragraph 18 of the Counterclaim.

4. Upon information and belief, the Plaintiff admits Paragraph 19 of the Counterclaim.

5. Upon information and belief, the Plaintiff admits so much of the allegations of Paragraph 20 as the Defendant Keep has a deed to the premises recorded where indicated, and denies the remaining allegations of Paragraph 20 of the Counterclaim.

6. That the Plaintiff admits the allegations of Paragraph 21 of the Counterclaim.

7. That the Plaintiff would aver that the Code Section means what it says but does not apply to any Supreme Court decision involving tax deeds.

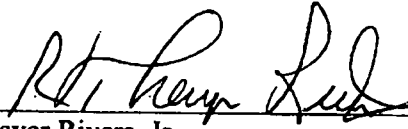
8. That the Plaintiff admits the allegations of Paragraph 23 of the Counterclaim.

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9. That the Plaintiff denies the allegations of Paragraph 24 of the Counterclaim.

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WHEREFORE, having fully replied to the Counterclaim of Defendant Keep, the Plaintiff prays that the same be dismissed with costs.

LAW OFFICE OF R. THAYER RIVERS, JR.


R. Thayer Rivers, Jr.
Post Office Box 668
Ridgeland, SC 29936
843-726-8136

Attorney for the Plaintiff

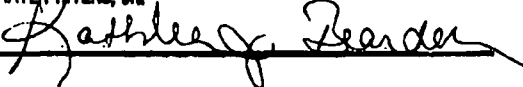
January 29, 2013.

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

- ☐ depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.
☐ handing counsel a copy thereof.
☒ by facsimile and depositing in the U.S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 29 day of Jan, 2013
R. THAYER RIVERS, JR.

BY 

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**Transcript of the Proceedings for Motion for
Summary Judgment on April 17, 2013**

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STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

COURT OF COMMON PLEAS

ROBERT C. SCHIVERA,)
EXECUTOR OF THE ESTATE OF)
FRED J. HUGHES, III,)

PLAINTIFF,)

v.)

TRANSCRIPT OF RECORD
12-CP-27-00760

C. RUSSELL KEEP, III, ESQ.)
AND RHONDA MITCHELL,)
JASPER COUNTY TAX)
COLLECTOR,)

DEFENDANTS.)

April 17, 2013
Ridgeland, South Carolina

B E F O R E :

THE HONORABLE CARMEN MULLEN, JUDGE

A P P E A R A N C E S:

THAYER RIVERS, ESQ.
Attorney for the Plaintiff

C. RUSSELL KEEP, III, ESQ.
Representing himself

MARVIN JONES, ESQ.
Attorney for the County and Rhonda
Mitchell

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

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(There were no exhibits admitted.)

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1
2 THE COURT: This number 52 is Robert
3 Schivera versus Russell Keep and Mr. Keep is
4 representing himself. As you know, this is Thayer
5 Rivers. I say you should, as you should know.

6 You still the last one?

7 MR. JONES: No, I'm —

8 THE COURT: Okay, you're here.

9 MR. JONES: Yes, ma'am, I'd like to note
10 my appearance, Marvin Jones, county attorney. The
11 county tax collector, Ron Mitchell, is also added as
12 a defendant.

13 THE COURT: Okay, thank you. Now this is
14 — just so I'm clear — it's a cross motion for
15 summary judgment; is that correct?

16 MR. RIVERS: Yes.

17 THE COURT: All right, who filed their's
18 first?

19 MR. KEEP: Mine is December 20th. What's
20 yours?

21 MR. RIVERS: I think theirs — let's see,
22 Your Honor.

23 THE COURT: Whenever you're ready. And
24 just for the record, does anyone have objection to
25 me actually hearing this? I know Mr. Keep is a

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1 defendant, and he's a member certainly of the Hilton
2 Head bar and also Beaufort County bar. Does either
3 one of you have an objection?

4 MR. RIVERS: I don't, Your Honor.

5 MR. JONES: No, ma'am.

6 THE COURT: Thank you. Mr. Keep, you want
7 me to remove myself?

8 MR. KEEP: No, Judge.

9 THE COURT: All right. Mr. Rivers, I'm
10 looking in the file for a copy of your motion.

11 MR. RIVERS: I'll give you a clocked copy
12 of it. It should be in there, put it that way.

13 THE COURT: The return says plaintiff's
14 motion for summary judgment. All right, whenever
15 you're ready.

16 MR. RIVERS: I believe I gave Allison a
17 copy of my brief before we —

18 THE COURT: Okay.

19 MR. RIVERS: I don't think the facts are
20 greatly in dispute. In 2008 my client Fred J.
21 Hughes, III, who has since died and Mr. Schivera is
22 his personal representative, he bought this parcel
23 of land in June 9th, 2008, and I reference the deed,
24 attached the deed. And the deed shows that the
25 Seller's addresses, the grantor's address, is 8512

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1 Kent Drive, Savannah, Georgia. It shows that my
2 client's address Fred J. Hughes, III is 1320 Highway
3 80 West Garden City, Georgia. As is admitted in the
4 answer filed by Mr. Jones for the tax collector, as
5 is admitted in the request to admit also filed
6 Mr. Jones as attorney for the county, for whatever
7 reason the address never was changed so all the
8 notices were sent to the Seller's address which is
9 not the buyer's address. Therefore, they did not
10 get notice of, here's your tax bill. They did not
11 get notice of, it's been a year, you've not paid
12 your tax. They did not get a notice of, it's been
13 another year, we're going to sell your land. They
14 did not get a notice of, we've sold your land, you
15 have so many months to redeem it. They did not get
16 a notice of, you're down to 30 days to redeem your
17 land. They did not get a notice of, we have now
18 concluded this and sold your land because all the
19 notices went to the address of the seller of the
20 property, not to the buyer.

21 Now we have referenced in this the, under
22 the tax sale statutes — I got copies for all. The
23 procedure says that they will send this to the best
24 address available which is either the address shown
25 on the deed, which was not done, or such corrected

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1 address that the current owner — that's my
2 client — has filed with them to correct the
3 address. Well, of course, my client's not filed
4 anything so they don't have anything to either one.
5 So they have not complied with the statute
6 throughout the entire process. In fact, attached to
7 Mr. Jones' request to admit, he's showing one
8 deed — this is the address and owner, he's got
9 Andrew Dean and Henry Gee who were the old owners,
10 care of Fred Hughes, my client, at the Savannah,
11 Georgia address that belongs to Mr. Dean and
12 Mr. Gee. So even what they have provided the Court
13 they are showing they have never changed it to the
14 address shown on the deed. And there's never been
15 anything filed by my client saying, oh, the address
16 on the deed is wrong, my correct address really is,
17 and giving that.

18 Now, I have listed in my brief the long
19 line of South Carolina cases as to what is a
20 jurisdictional defect; and as we know, a
21 jurisdictional defect is one that is not affected by
22 any statute of limitations. There is a two year
23 statute that says you can't contest a deed after two
24 years. However, the supreme court has held for
25 almost a century if there's a jurisdictional defect,

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1 then the statute does not affect it. And in the
2 cases I have cited I've given you the most recent
3 case which came about two weeks ago, it says failure
4 to notify you of your taxes owed of your chance to
5 redeem is the most basic jurisdictional defect. If
6 that is not done, then the deed is not valid; the
7 title is not valid. There is no statute of
8 limitations that would stop or alter the taxpayer,
9 or in my case, his estate from saying I never got a
10 notice. And in this case I think we've shown pretty
11 much overwhelmingly that for whatever reason, when
12 the deed came in they didn't pick it up, they didn't
13 change the address, and thereafter, a series of
14 stuff.

15 And I also point out in our brief that my
16 client owns three adjoining tracts of land, bing,
17 bing, bing, that's around this with the correct
18 address and the taxes are paid every year on those.

19 THE COURT: Your client owns them?

20 MR. KEEP: Yes.

21 THE COURT: Okay.

22 MR. RIVERS: So it's not like, well, he
23 just went to sleep, period. No, he got the correct
24 notices on the surrounding pieces all sent to his
25 correct address and those are all paid. After he

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1 died the estate continued to pay those taxes. It's
2 the ones sent to the old seller that never got to
3 him as what gave rise to what we're here for today,
4 and I submit that the law is overwhelming to this
5 failure to notify is a jurisdictional defect. It is
6 not affected by the statute of limitations, and it
7 makes the tax sale fatally defective. And while
8 Mr. Jones is required by law as the county attorney
9 to fight to uphold the tax sale, his answer admits
10 it was sent to the wrong address. His reply to
11 request to admit admits it was sent to the wrong
12 address. So I don't know what else we've got, but I
13 think it's overwhelming that it was done
14 incorrectly, not in accordance with the law. It is
15 a jurisdictional defect, and it's cost my client
16 title to his property. He paid 220,000-dollars for
17 that and it's in default \$6,000 bucks —

18 THE COURT: Okay.

19 MR. KEEP: Judge, Thayer has quoted some
20 law but it's real old law; and not only has the
21 legislature overruled it, but case law overrule it.
22 And it's absolutely true for a hundred years. You
23 have to be careful about these statutes but they've
24 been revised. First, Your Honor, I want to point
25 out — and Thayer's handed up to Your Honor Chapter

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1 11. If Your Honor will take a look at 12-51-40
2 Section C -- that's at the bottom, bottom of the
3 page 40. The -- D, I mean B, states that it can be
4 levied by -- the land can be levied by distress by
5 sending a mail notice. But's there's an alternative
6 way that land now under the current law can be
7 levied by distress. And it states, in the event the
8 certified mail notice has been returned -- and I'll
9 put in the sheriff, or the county takes exclusive
10 physical possession of the property against which
11 the taxes, assessments, penalty were assessed by
12 posting a notice at one or more conspicuous places.
13 In other words, the statute has a fallback position
14 if the certified mail is not effective. And Judge,
15 the nice thing about this case is there really are
16 no facts in dispute. Here is an affidavit and it
17 shows the posting.

18 THE COURT: Yes, sir.

19 MR. KEEP: It's beyond dispute and it's
20 been the subject of request to admit that the land
21 was properly posted, and we have an affidavit from
22 Rhonda Mitchell to that effect and a picture of the
23 poster so this was repaired and all pursuant to
24 statute 12-51-40(c).

25 THE COURT: Okay.

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1 MR. KEEP: I would like to say, Judge,
2 that there is a presumption of validity in the tax
3 deed; and the reason for that is to stop endless
4 litigation years and years later. Now there's no
5 question, Judge -- and it's in my brief that's part
6 of my motion for summary judgment -- that there were
7 some cases that said it had to be done perfectly.
8 But Judge, the fact is, that almost nothing in human
9 life is done perfectly which is why there is an
10 alternative way that this property is seized.

11 Now, the most recent case, not the most
12 recent but, in 2005 there was the Corbin versus
13 Carlin (ph) case, and that's cited in my motion.
14 And in that the -- there was -- many of these cases
15 are very fact specific, and there was a real
16 confusion in that case where the land even was, and
17 that's the way all these cases are that decide that
18 in old times that everything had to be strictly
19 construed. The legislature paid attention to the
20 Corbin case, Your Honor, and just six months after
21 the Corbin case they revised Section 12-51-160. And
22 in it it says, and 51-90, and if Your Honor doesn't
23 mind I'll just quote. If the defaulting taxpayer
24 grantee from the owner a mortgagee or judgment
25 creditor fails to redeem the item of real estate

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1 sold at delinquent tax sale within 12 months
2 provided Subsection A and after the passing of
3 additional twelve months the tax deed issue is
4 uncontestable on procedural or other grounds. And
5 there's no question — Thayer will be the first to
6 say it — more than two years went by. The lawsuit
7 wasn't brought — the lawsuit was brought about
8 three months after the two years expired. It was
9 brought sometime in December or January of finally
10 serving the county in February so it was two or
11 three months late outside of the new statute making
12 an absolute drop-dead date of two years. And Judge,
13 I will say that was about the same year that the
14 legislature made the absolute drop-dead date of six
15 years in medical malpractice. It didn't matter that
16 there was a sponging if you waited more than six
17 years, you were just out of the court. The
18 legislature wanted a finality in these sort of
19 things so that they, you know, the court system
20 wouldn't be continually jammed up.

21 The — let me reiterate that there's a
22 second way of taking exclusive possession and —

23 THE COURT: You're referring to 12-51-40
24 Subsection C, right?

25 MR. KEEP: Yes, ma'am, that's exactly

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1 right. I would also like to say that —

2 THE COURT: Does anyone have a copy of
3 12-51-90? I don't have a Code up here.

4 MR. KEEP: I can quote you 90.

5 THE COURT: You already did. I wanted to
6 actually read it.

7 MR. KEEP: Okay, Judge.

8 THE COURT: Allison is going to pull that
9 for me, don't worry about it. Okay.

10 MR. KEEP: In conclusion, the — this
11 really excellent book here, Tax Sales of Real Estate
12 and Mobile Homes in South Carolina, if I can just
13 read for a moment from that. The — this book
14 quotes the King versus — Interest of King versus
15 James case. This decision said a review —

16 THE COURT: Go ahead, I'm sorry.

17 MR. KEEP: The court in King versus James,
18 which was decided in 2010, states that a review of
19 case law in this area reveals somewhat divergent
20 decisions regarding if and when the statute of
21 limitations begin to run in situations such as this.
22 And here's what King said. On one hand we find case
23 law that says when notice to the homeowner is not in
24 strict compliance with the statute such a defect is
25 jurisdictional, the statute of limitations does not

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1 run at all. King goes on to say, on the other hand
2 we also find case law in which our courts
3 interpreted previous versions of Section 12-51-60 as
4 saying even if the notice is defective the statute
5 of limitations still applies, but only begins to run
6 when the purchaser comes into possession. And of
7 course, that's what the sheriff did; he came into
8 possession by posting it.

9 The King case concluded with — regardless
10 of which of the two, above two interpretations is
11 correct, appellant's argument as to the statute of
12 limitations necessarily fails because King brought
13 her action within two years of a buyer coming into
14 possession. In the present case the master held,
15 and we agree, the county failed to establish by
16 preponderance of the evidence that it took exclusive
17 possession of the property by posting as it's
18 required under Section 12-51-40. So in other words,
19 King failed and the statute never started running
20 because that county is not like our county where
21 they take pictures and can prove it was posted. So
22 King stands for the fact that if you post the
23 property, that is a corrective action sanctioned by
24 the South Carolina Code Section 12-51-40(c). Quote,
25 again, if certified mail notice has been returned

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1 takes exclusive physical possession of property
2 against which by posting.

3 So I would say, Judge, that when the
4 posting occurred, more than two years occurred after
5 the sale and plaintiff is time barred.

6 THE COURT: Okay.

7 MR. KEEP: Thank you, Judge.

8 MR. RIVERS: If I may, Your Honor,
9 briefly. Apparently the South Carolina Court of
10 Appeals doesn't follow what the legislature does
11 'cause three weeks ago -- and I included this case
12 with me -- it came out with a decision re: Dean (ph)
13 versus Jeffco written by our friend Didi Konduros.
14 It says, no, if you didn't send them a notice you
15 didn't send them a notice. And if you didn't send
16 them a notice it's a jurisdictional defect, it is
17 not time barred by statute of limitations. In that
18 particular case they sent the notice to the people
19 and the post office had nicely put forwarding
20 expired, send it to their correct address, sent it
21 back to the tax office and said, okay, nice. And
22 they sent the next notice, certified that, it came
23 along marked with green card, no, they moved, here's
24 where they are, and gave them back the notice. Now
25 the Court of Appeals just three weeks ago said, you

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1 knew where they were, you didn't serve them with the
2 written notice they're required. The written notice
3 of all this stuff is so far in the middle it is a
4 jurisdictional defect, no statute of limitation
5 applies to it.

6 And by the way, what Mr. Keep is pointing
7 out is one of the things saying these notices does
8 is it has a fiction. You get certain notice then
9 the fiction is there's been a possession of
10 property. Nothing about actual doing it takes place
11 of sending the poor guy a notice, hi, your taxes are
12 due. And as I said, there are like five different
13 steps in these series of notices they're required to
14 send someone before they can think, well, I'll take
15 what's called a drastic step or Al steals from his
16 own property. But in any event, they held in that
17 case three weeks ago that the statute of limitations
18 did not preclude them ruling after the statute
19 expired that there hadn't been any notice sent. The
20 rule says — that's filed March 20th. It came out
21 on the computer like ten days ago. I'm very proud
22 of myself; I keep up so good I found it. But in any
23 event, I'm just saying that there's a high hurdle
24 you got to come over as a buyer to show that the
25 governing body has jumped through all the hoops so

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1 as to deprive the tax payer of their property. And
2 I think in this one, this one clearly can see they
3 screwed it up from the getgo.

4 THE COURT: Okay. And just so I'm clear,
5 you weren't in the legislature when they passed —

6 MR. RIVERS: No.

7 THE COURT: No, when they passed the two
8 year presumed limitation?

9 MR. RIVERS: Yea, 'cause they always got a
10 set of folks that are saying what the next thing,
11 you know, the supreme court is not going to uphold
12 this, they've already got it, and somebody —

13 THE COURT: All right. Anything else,
14 y'all?

15 MR. RIVERS: No, ma'am.

16 THE COURT: Mr. Jones?

17 MR. JONES: Your Honor, do you — if
18 you're satisfied.

19 THE COURT: No, I'm happy to hear from you
20 actually.

21 MR. JONES: We filed responses to request
22 to admissions that were referred to by Mr. Rivers.
23 We — I say we, we served them; we have not filed
24 them. And I will file them this morning if that's
25 something that is of interest to the Court.

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1 THE COURT: They were actually, I think,
2 they were within your packet, yeah.

3 MR. JONES: Well then I'll just, I'll file
4 them with the clerk later on this morning.

5 THE COURT: And basically you just admit
6 that you weren't in compliance; is that correct?

7 MR. JONES: Well —

8 THE COURT: No?

9 MR. JONES: —not quite. What we admit
10 is that based on our records we received back the
11 exhibit A which has a change, what appeared to be a
12 change of address. That was a change of address
13 back to the grantor's address; but bear in mind, the
14 taxing authorities don't know these things. They
15 saw it; they changed that address. It's obviously
16 wrong, but it was — that's the address that was
17 used, unfortunately, until the very last note,
18 statutory notice, which is the one that says we've
19 sold your property and title has now conveyed. It's
20 the very last one which would have done Mr. Rivers'
21 client no good at all. So far as the posting is
22 concerned I think we did that properly and —

23 THE COURT: Do you take the position it
24 can be either/or under 12-51-40?

25 MR. JONES: Oh, I —

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1 THE COURT: When you read it, when you
2 talk about the proper notice. I mean, Mr. Keep is
3 arguing that 21-51-40(c) is an alternative as
4 opposed to there's still the requirement of A, B,
5 and C.

6 MR. JONES: I heard that for the first
7 time in this case, and it's real interesting. I'm
8 thinking about that a little bit. I had never
9 thought about it. Well, we take a whole different
10 view of it which is that we're not really talking
11 about a statute of limitations, although admittedly
12 the courts have called it that. What you have here
13 is a statute of repose because the language of 90
14 says an action shall not be maintained; it's not.
15 The action doesn't exist if you don't start it for
16 two years. It's not that it is barred; it no longer
17 exists. And so that's another whole approach to
18 this.

19 THE COURT: Okay.

20 MR. RIVERS: It looks like the guys that
21 argued that case last week weren't as smart as
22 Mr. Jones. They didn't mention that, neither did
23 the court.

24 MR. JONES: Well, I've never heard it
25 argued, but that's my little flag that I waive

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1 frequently but I have yet to take it to any of the
2 appellate courts.

3 THE COURT: Okay. Well, let me do this,
4 let me read Judge Konduros's case and I'll let y'all
5 know something.

6
7 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 8th day of September, 2014.

Frances B Ray

FRANCES BAKIS-RAY, RPR

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**Transcript of Proceedings for Motion to
Reconsider on February 19, 2014**

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00104

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF JASPER
COURT OF COMMON PLEAS
CASE NO. 2012-CP-27-00760

ROBERT C. SCHIVERA,
EXECUTOR OF THE ESTATE OF
FRED J. HUGHES III

PLAINTIFF

ORIGINAL

VERSUS

FEBRUARY 19, 2014

TRANSCRIPT OF HEARING

RIDGELAND, SOUTH CAROLINA

C. RUSSELL KEEP III AND
RHONDA MITCHELL, JASPER
COUNTY TAX COLLECTOR

DEFENDANT

B E F O R E:

HON. CARMEN T. MULLEN, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

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APPEARANCES

ON BEHALF OF PLAINTIFF
ROBERT C. SCHIVERA, EXECUTOR
OF THE ESTATE OF FRED J. HUGHES III:

HON. R. THAYER RIVERS
POST OFFICE BOX 688
RIDGELAND, SOUTH CAROLINA 29936-0668
TELEPHONE 843-726-8136

ON BEHALF OF DEFENDANT
C. RUSSELL KEEP III:

HON. C. RUSSELL KEEP III
SUITE 303 WATERSEDGE
SHELTER COVE HARBOUR
POST OFFICE DRAWER 5877
HILTON HEAD ISLAND, SOUTH CAROLINA 29938-5877
TELEPHONE 843-842-6268

ON BEHALF OF THE COUNTY OF
JASPER:

HON. HON. MARVIN C. JONES
JASPER COUNTY ATTORNEY
262 THIRD AVENUE
POST OFFICE BOX 420
RIDGELAND, SOUTH CAROLINA 29936-0420
TELEPHONE 843-726-5403

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EXHIBITS

No exhibits were admitted.

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BEGINNING 10:00 A.M.

BY THE COURT:

THE COURT: All right. The next one I have up, Mr. Keep, I think you're here. Robert Schivera versus Russell Keep.

MR. KEEP: Yes, ma'am.

THE COURT: It's Groundhog Day. All right. Gentlemen, we are back to the tax sale. Know it well. All right. This is your motion, Mr. Keep.

MR. KEEP: Yes, your Honor. It's a Rule 59 motion, motion to reconsider. The brief order in this case does not cite any statutory authority. It cites a few inapplicable --

THE COURT: Cases.

MR. SCHIVERA: -- cases, but no --

THE COURT: And unfortunately, when I heard this, this had just come down, a case from the Court of Appeals, which basically was entirely what Mr. Rivers had relied upon. And I would agree that it changed the law, clearly, but it was the controlling law and still is at this point. So I'm clear, Mr. Rivers, is that correct?

MR. RIVERS: Yes, ma'am.

THE COURT: And I will tell you, again, Mr. Keep, I am very sympathetic. I will be the first to tell you

1 that. I am very sympathetic.

2 If you can show me how that's not controlling law
3 and how it doesn't apply to your case, and I agree, and
4 understand the reasoning behind not being able to come
5 back and re-visit something that occurred more than --
6 is it two years under the original statute? Is it two
7 years that it's final and done?

8 MR. KEEP: Yes, Judge.

9 THE COURT: Okay. And again, I think me, more than
10 anyone, is sympathetic when you buy something at a tax
11 sale that needs to be over. However, again, that case
12 had just come down. Again, Mr. Rivers, it was literally
13 three weeks before we heard that motion where -- and I
14 believe it was Mitch Konduras wrote the opinion on it.
15 Is that correct? And again, remind me of the case name.

16 MR. KEEP: It was *Reeping versus JEBBCO*, your
17 Honor.

18 THE COURT: Thank you. Okay. And if you don't
19 mind, would someone hand me up a copy of that case, as
20 well, if you have it with you?

21 MR. KEEP: Yes, ma'am. Judge, *Reeping versus*
22 *JEBBCO*, the facts are quite similar. It is a --

23 THE COURT: Can I have a copy of the case while
24 you're talking about it.

25 MR. KEEP: Yes, ma'am.

1 THE COURT: And if you don't mind, either Mr.
2 Rivers, Mr. Jones, I just remember that there was an
3 improper notice. It was -- I understand that it was
4 mailed to a wrong address, the notice. Just give me the
5 background again.

6 MR. RIVERS: When my client bought the property,
7 his deed had his correct mailing address. In fact, he
8 owned the three surrounding pieces that all had the same
9 mailing address.

10 THE COURT: Right.

11 MR. RIVERS: The tax assessor's office never
12 changed the address. The address actually went to men
13 that I know very well from Savannah, who both are dead.

14 THE COURT: Okay.

15 MR. RIVERS: So, consequently, the treasurer used
16 that address, the tax collector used that address.
17 There are six different steps that I've added in my
18 brief that you've got to serve to the correct address.
19 And frankly, the statute which is 12-51-40, requires
20 them to use the address on the deed.

21 THE COURT: Okay.

22 MR. RIVERS: Which Mr. Jones, as County Attorney,
23 filed an affidavit saying, well, for whatever reason, we
24 didn't do that.

25 THE COURT: Okay.

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1 MR. RIVERS: So, --

2 THE COURT: Can I ask you why it took later than
3 the two years? Quite frankly, I'm sympathetic to both
4 sides on this case. I mean, clearly, this man is saying
5 he didn't get notice. Clearly, he paid his taxes on the
6 surrounding property.

7 But then, additionally, Mr., you know, Keep went
8 and bought it at a tax sale, and two years passed, and
9 now he's losing his property.

10 MR. RIVERS: Well, I don't -- I'm not going to
11 fight you about it, because you're with me, but I don't
12 know that that Reeping case changed that much, because a
13 jurisdictional defect has always been grounds, 10, 20,
14 30 years after the sale, to set it aside. And then, I
15 cited numerous cases so you'd see. Failure to send to
16 the correct address is a jurisdictional defect. And
17 I've tried these cases in Beaufort, with Mary Lohr, and
18 the first that's said, what's your jurisdictional
19 defect; here it is; and they'll say, ooh, you got it.
20 Or they say that hadn't been litigated yet.

21 THE COURT: Um-hmm.

22 MR. RIVERS: Or they'll say, oh, we won that one
23 last week. But the jurisdictional defect is the
24 beginning and end of all tax sale cases, and here you've
25 got one as blatant as you could possibly have.

1 THE COURT: Okay.

2 MR. RIVERS: I'll shut up.

3 THE COURT: Mr. Keep?

4 MR. KEEP: Yes, your Honor. On the surface,
5 *Reeping versus JEBBCO*, it's very similar. The notice
6 was sent to the wrong address, but Judge, this is not a
7 posting case. The land was never posted. It was never
8 levied on. It was never sold in the name of the true
9 owner. That completely distinguishes *Reeping versus*
10 *JEBBCO*. And what we need to do and what I am asking the
11 Court to do is, in the order, to make a specific ruling
12 that the tax sale was conducted in strict compliance
13 with statutory requirements. And Judge, --

14 THE COURT: How can I say that, Mr. Keep, if we all
15 can agree that it wasn't sent to the proper notice? I
16 mean, I've got the town attorney telling me it wasn't
17 send to the address on the deed. How can I make that
18 finding?

19 MR. KEEP: Oh, I know how, Judge. Section 12-51-
20 40(c) offers, an, quote, *alternative procedure* to give
21 notice. The notice is constructive under 12-51-40(c).
22 That states -- and again, I emphasize, right in the
23 code, *alternative procedure* for the collection of
24 property taxes if the certified mail notice has been
25 returned. I take exclusive physical possession of the

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1 property against which the taxes, assessments, penalties
2 thus were assessed blah, blah, blah. The posting of the
3 notice is equivalent to levying by distress, seizing and
4 taking exclusive possession of it.

5 In other words, Judge, the legislature has
6 concluded that lots of times there have been sent a
7 letter to the wrong place, or it's going to come back
8 for some reason; and that constructive notice is good
9 enough. And the case law on the constructive notice is
10 *King versus James* is one of them, and *Dibble versus*
11 *Bryant*.

12 *Dibble versus Bryant* states, your Honor:

13 *Constructive notice of the levy,*
14 *advertisement, and sale in the owner's*
15 *name is deemed sufficient, and actual*
16 *notice is not required.*

17 Judge, rather than stand up here and read my 19-
18 page brief, I know all these cases are before you in my
19 brief -- or in my motion.

20 THE COURT: In the *Reeping* case, though, it was not
21 a notice case, correct? Did they post a notice?

22 MR. KEEP: The *Reeping* case was not a posting case.

23 THE COURT: A posting case.

24 MR. KEEP: They were served in the alternative way
25 by the posting, the advertisement, and the sale in the

1 proper -- in the true owner's name.

2 I have looked at the cases cited in the order that
3 I'm asking the Judge to reconsider, and I'll be quiet
4 for a moment, because I see your Honor is reading.

5 THE COURT: Was there a posting in this case, Mr.
6 Rivers?

7 MR. RIVERS: Yes, ma'am.

8 THE COURT: There was?

9 MR. RIVERS: I think you may need to ask Mr. Jones.
10 In South Carolina law, you can use Plan A to collect
11 taxes or Plan B. The one Mr. Keep is quoting is the
12 alternative method to collect taxes.

13 THE COURT: Thank you. And for the record, this is
14 Marvin Jones, the town attorney. Yes?

15 MR. JONES: I hate to say this, your Honor, but
16 we've never -- I've never had that question -- that
17 particular question asked. There are two methods, but
18 we use the method -- the method which provides for
19 posting, and we do post. I don't know whether that's A
20 or B, but we do post.

21 THE COURT: So, subsequent to this being returned,
22 then you turned around and posted it.

23 MR. JONES: Yes, ma'am.

24 THE COURT: Okay. Well, then, how, according to
25 the statute, is that not proper service?

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1 MR. JONES: I think that -- I think that cures the
2 original -- the original -- we obviously made an error
3 when we sent the -- when we sent out the first letter.

4 THE COURT: Okay.

5 MR. JONES: But I think that that's cured by the
6 posting we did.

7 THE COURT: Okay. Mr. Rivers, will you answer
8 that.

9 MR. RIVERS: I've given you -- cited numerous
10 cases, but let me give you --

11 A tax execution is not issued against
12 the property; it's issued against the
13 defaulting taxpayer.
14 That's Aldridge versus Rutledge, 269 South Carolina
15 475.

16 Due process of law requires some sort
17 of notice to the landowner who is deprived
18 of his property. The taxing statute in a
19 legion of cases interpret these statutes
20 that the property shall be listed, assessed,
21 levied upon, advertised, and sold in the
22 name of the true owner.

23 And they cite Donohue versus Ward, which was a case
24 the Reeping jury -- or excuse me -- the Reeping court
25 relied on substantially.

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1 Furthermore, the general law is that,
2 where a statute requires as a condition for
3 us in the foreclosing of a taxpayer's right
4 to the property sold for taxes, he be given
5 notice of his right to redeem. Such a
6 requirement generally regarded as jurisdictional.

7 THE COURT: But why isn't the posting notice?

8 MR. RIVERS: All the posting notice says is, hi,
9 you're going to lose your property for taxes.

10 THE COURT: But if the statute allows you to post,
11 and that is one of an alternate notice --

12 MR. RIVERS: Don't agree.

13 THE COURT: Pardon me?

14 MR. RIVERS: Don't agree at all. None of these
15 cases discuss that or come up with, oh, if you posted it
16 -- there are six different steps you've got to take to
17 properly sell a property. You've got to send a notice
18 to the taxpayer, number one, to the correct address.

19 You then have got to send a notice, hi, you didn't
20 pay your taxes. That's number two.

21 Then, you've got to send a notice saying, we're
22 going to sell your property. That's number three.

23 Then, you've got to send a notice saying, oh, we
24 sold your property, but you've got a year to redeem it.

25 Then, you've got to send a notice saying, you're

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1 down to two weeks.

2 THE COURT: And what happens when all those come
3 back because you don't have the right address, because
4 you've been sending it to the wrong address?

5 MR. RIVERS: So, that means it never was reached,
6 but all these required steps, and the Courts have found
7 they were all jurisdictional. And not a single one was
8 carried out here, because they used the wrong address
9 the entire time, and frankly, it had the correct address
10 for the landowner. The three adjoining parcels all got
11 the correct address, because he owned those, too.

12 THE COURT: Can someone give me the statute. Do
13 you have a copy directly of the statute?

14 MR. KEEP: Yes, Judge. May I say that --

15 THE COURT: I don't want it to be read to me. I
16 want it to be given to me.

17 MR. KEEP: Yes, Judge.

18 THE COURT: I want to read it. Thank you.

19 MR. KEEP: Judge, may I approach the Bench?

20 THE COURT: Sure. Is this the whole thing?

21 MR. KEEP: Yes, ma'am.

22 THE COURT: Okay.

23 MR. KEEP: That is 12-55-40. Here is 12-51-90.
24 Oh, and 120, your Honor.

25 THE COURT: Thank you.

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1 MR. KEEP: Yes, ma'am.

2 THE COURT: Mr. Rivers, what about Section 12-51-
3 120 that states that:

4 Pursuant to this chapter, the return
5 of the certified mail undelivered is not
6 grounds for a tax title to be withheld or
7 to be found effective in order to set aside
8 or cancel the record.

9 MR. RIVERS: Your Honor, all these cases presuppose
10 that the county authorities have done a proper job of
11 sending a notice of which they were aware to the
12 defaulting taxpayer. That's why all this due process
13 language is news. As we both know, that's notice and
14 opportunity to be heard. If they don't follow the
15 statute to use the correct address, then the defaulting
16 taxpayer has no possibility of noticing.

17 THE COURT: Okay.

18 MR. RIVERS: In this case, the man was dead. And
19 Mr. Keep one time raised, well, he should have paid his
20 bill. Well, he's dead. The two boys that sold the
21 place died shortly after the sale. The man that bought
22 it died shortly after the sale. So, the posting doesn't
23 tell anybody anything.

24 THE COURT: Okay.

25 MR. RIVERS: Whereas, sending that to his proper

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1 address, those taxes on the adjoining parcels that he
2 owned and paid for by the executor of his estate.

3 THE COURT: You say posting doesn't tell them
4 anything, but the statute allows posting if you get --
5 if it's sent and returned. I understand it's -- if
6 there is compliance, I -- your argument is, if there is
7 compliance with the proper address, but the statute does
8 allow for posting as notice.

9 MR. RIVERS: Frankly, we still don't know whether
10 we're using Plan A or Plan B in Jasper County, because
11 they've got two different things, but I don't believe
12 posting does away with all these cases I cited to you.
13 And in fact, in *Reeping*, it's not even mentioned, and we
14 assume that the Orangeburg County authorities did a
15 proper job of posting it.

16 I just don't agree that that trumps what the law
17 has required for a hundred years as far as the only
18 taxpayer being entitled to notice properly send by the
19 county authorities.

20 THE COURT: Mr. Keep?

21 MR. KEEP: Judge, the cases cited in the order are
22 really irrelevant to this case. One is the *Aldridge*
23 case. In that case, the tax sale was set aside because
24 the land was advertised that they sold it in the name of
25 the true owner's father. We don't have that here.

1 *Donohue versus Ward*, the execution levy
2 advertisement of sale of property was not in the
3 homeowner's name, so it was a jurisdictional error. But
4 in this case, it was in the owner's name.

5 *Good versus Kennedy* is cited in the order. It was
6 sent to their wrong address, but that's not a posting
7 case.

8 *Leysath*, which is a very interesting case, states
9 that the two-year statute is absolute. This is a case
10 back from 1946. It upheld the tax sale, and it stated
11 -- there were some irregularities in the tax sale, and
12 they said if the case had been brought within two years,
13 it would have been set aside, but it wasn't. And in
14 this case, Judge, more than two years went by since the
15 time of the tax sale.

16 *Osborne versus Vallentine* is cited in the order.
17 And that just states, again, that the burden is on the
18 taxpayer, the homeowner, to prove that the levy
19 advertisement for sales were not in the names of the
20 true owners. Not the case here.

21 Again, *Reeping versus JEBBCO*, 2013 case, mailed to
22 the wrong address all right, but it was not posted.

23 And *Rives versus Bulsa*, again, in that case, the
24 property was not advertised, levied upon, or sold in the
25 true owner's name.

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1 So, not only is this order completely devoid of any
2 citation to statutory law, the case law is not relevant.

3 MR. RIVERS: Your Honor, in each one of those cases
4 cited, the taxing authorities had not followed the law.
5 They did not dot the I's, they did not cross the T's.
6 And our appellate courts have made it clear over and
7 over and over, in order to take someone's property from
8 them, the State's got to show that they did dot all the
9 I's, they did cross all the T's, and any deviation of
10 that is a jurisdictional defect, which there is no
11 statute of limitations.

12 You can wait 15 years from now. I've got one in
13 Beaufort that was raised ten years after the fact. But
14 if it's jurisdictional, it's jurisdictional.

15 THE COURT: All right, you all. I'm going to go
16 back and re-read all the case law. Did it last time.
17 Apparently, I'm going to do it again. I'll let you know
18 something. Okay?

19 MR. KEEP: Yes, your Honor.

20 THE COURT: Thank you.

21 MR. KEEP: Thank you, ma'am.

 END PROCEEDING 10:19 A.M.

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CERTIFICATE OF REPORTER

FEBRUARY 19, 2014 TRANSCRIPT OF HEARING

STATE OF SOUTH CAROLINA

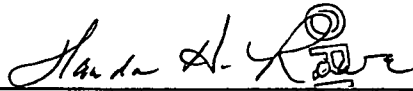
COUNTY OF JASPER

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing February 19, 2014 Transcript of Hearing is a true, accurate, and complete record of the proceedings had on said date in the case of Robert C. Schivera, et al, versus C. Russell Keep III, et al, Jasper County, South Carolina, Court of Common Pleas, Case Number 2012-CP-27-00760; that no exhibits were admitted.

I further certify that I am of neither kin, counsel, nor interest to any party hereto.

The original of this transcript, nor any copy of same, is not certified, nor authorized for use by me, to be true, accurate, and complete without my original signature and stamp affixed hereto.

Witness my signature June 9, 2014.


Wanda H. Rowe, CVR-M
Official Court Reporter

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**Respondent's Motion for Summary
Judgment with attachments and exhibits
dated December 13, 2012, including Affidavit
of Pam Goodwin**

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00123

STATE OF SOUTH CAROLINA)

COUNTY OF JASPER)

ROBERT C. SCHIVERA,)
Executor of the Estate of)
Fred J. Hughes, III,)

Plaintiff,)

v.)

RUSSELL KEEP, and Rhonda)
Mitchell, Jasper County)
Tax Collector)

Defendants.)

COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-27-00160
NON JURY

MOTION FOR SUMMARY JUDGMENT

MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY SC

2012 DEC 20 PM 12:10

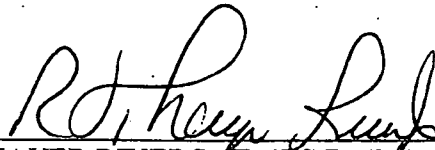
FILED

TO: C. Russell Keep III:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through his attorney, will move before the Honorable Perry C. Buckner, Presiding Judge for the Fourteenth Judicial Circuit on Monday, January 28, 2013 at 10 a.m. or as soon hereafter as counsel can be heard at the Jasper County courthouse, Ridgeland, SC, for the granting of an Order of Summary Judgment in favor of the Plaintiff. This motion will be based upon the attached Affidavits and exhibits, any Memorandums of Law as well as the laws of the State of South Carolina.

You may be present if so minded.

LAW OFFICE OF R. THAYER RIVERS, JR.



R. THAYER RIVERS, JR. (SC BAR 4754)
Post Office Box 668, 262 Russell St.
Ridgeland, SC 29936
843-726-8136 Fax 843-726-4401
riverslaw@gmail.com
ATTORNEY FOR THE PLAINTIFF

Ridgeland, SC,
December 13, 2012

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00124

DEED BOOK: 0670 PAGE: 274
DATE: 06/11/2008 04:41:28 PM
Hazel Holmes / EM
AUDITOR JASPER COUNTY, SC

200800003129 06/11/2008 AT:10:18 AM
OR Volume 0670 Page 0135-0137
Filed for Record in JASPER COUNTY
Deed Fee: \$10.00
State Tax: \$494.00 Local Tax: \$209.00

Exhibit B

SPACE ABOVE THIS LINE FOR RECORDING DATA

Return recorded document to:
WEINER, SHEAROUSE, WEITZ, GREENBERG & SHAW, LLP
Attn: Peggy Kretsch
14 East State Street
Savannah, GA 31401

The within instrument has been transferred
on 06/18/2008 09:15:17 AM, and recorded in
the Jasper County Assessor's Office.
Tax Map No.: 072-00-02-038
Transfer No.: 8-27-659
Lisa Malphrus - JASPER COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that A. Kenneth Williamson, Jr. as Administrator C.T.A. of the estate of Henry Gary Dean and as Executor and Temporary Administrator of the estate of Andrew Roderick Dean, whose address is 8512 KENT DRIVE, SAVANNAH, GEORGIA 31406 (hereinafter the "Grantor"), in consideration of the sum of One Hundred Ninety Thousand and 00/100 (\$190,000.00), to us in hand paid at and before the sealing of these presents by FRED J. HUGHES, III (hereinafter the "Grantee"), of 1320 HIGHWAY 80 WEST, GARDEN CITY, GEORGIA 31408, for which the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee, his heirs and assigns, forever in fee simple, the following described property, to-wit:

All that certain piece, parcel, or tract of land, situate, lying and being in Jasper County, South Carolina, Bellinger Hill Section, being shown as Tract B on that Plat of S.S. Snook, Registered Land Surveyor, dated April 25, 1969, containing 21 acres, more or less, and being bound now or formerly as follows: On the Northeast by lands of Tom Nelson and lands of Edna Crosby; on the Southeast by lands of Alice Larson; on the Southwest by lands of Joe German; and on the Northwest by lands of Samuel Scott.

This being the same property conveyed to Henry Gary Dean and Andrew Roderick Dean on 12/27/76 and recorded in Deed Book 76 at page 1920; in the Register of Deeds of Jasper County, South Carolina and having Tax Map No. 072-00-02-038.

This deed was prepared by the law firm of WEINER, SHEAROUSE, WEITZ, GREENBERG & SHAW, LLP, 14 East State Street, Savannah, Georgia 31401, (912) 233-2251.

TOGETHER with all singular the improvements, tenements, hereditaments, rights and members thereunto belonging or anywise appertaining.

File #: 11459.3.6 - FRED J. HUGHES, III

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TO HAVE AND TO HOLD the said granted property above described to the only proper use, benefit and behoof of the said Grantee, his heirs and assigns, in fee simple forever.

IN WITNESS WHEREOF, the Grantor as Administrator C.T.A. of the estate of Henry Gary Dean and as Executor and Temporary Administrator of the estate of Andrew Roderick Dean, has hereunto set his hand and seal this 9th day of June, 2008.


A. Kenneth Williamson, Jr. as Administrator C.T.A.
of the estate of Henry Gary Dean


A. Kenneth Williamson, Jr. as Executor and
Temporary Administrator of the estate of Andrew
Roderick Dean

Signed, sealed and delivered in the presence of:


Signature of 1st Witness


Signature of Notary Public / 2nd Witness

STATE OF GEORGIA
COUNTY OF CHATHAM

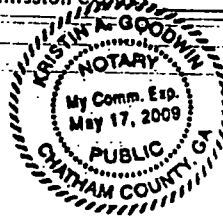
ACKNOWLEDGMENT

I, the undersigned Notary Public do certify that A. Kenneth Williamson, Jr. as Administrator C.T.A. of the estate of Henry Gary Dean and as Executor and Temporary Administrator of the estate of Andrew Roderick Dean,, personally appeared before me this 9th day of June, 2008 and acknowledged the due execution of the foregoing instrument.

Witness my official seal this 9th day of June, 2008.

Kristin A. Goodwin
Notary Public

My Commission expires



File #: 11459.3.6 - FRED J. HUGHES, III

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00127

Exhibit C

680000

Jasper County Tax Collector
P.O. Box 428
Ridgeland, S.C. 29936

JASPER COUNTY, S.C.

ACCOUNT NUMBER	VALUATION OF PROPERTY		TAX LEVY IN MILLS	TAXES	- LOST CREDIT	TOTAL TAXES
	TOTAL REAL	TOTAL PERS.				
009504-09-3	160		267.00	42.72	3.90	38.82
TRACT B BELLINGER AD#10-01121						
48 APPR 3920	TAX RECEIPT			PENALTY		5.82
	2009			TOTAL		44.64
01	Map - Sheet - Block Parcel					
HUGHES FRED J III			ACRES 21.00		LOIS	
8512 KENT DRIVE			VALUE LAND		160	70.00
SAVANNAH GA 31406			IMPR			
			VALUE IMPR.			114.64
						TOTAL COST

PAID 11/06/2010 TS

00128

TAX RECEIPT - KEEP THIS COPY FOR YOUR RECORDS
VERNA L. GARVIN, COUNTY TREASURER

JASPER COUNTY, S.C.

RECEIPT NUMBER	009372-10-3	PROPERTY VALUATION	TAX LEVY	PROPERTY TAX	LESS L.O.S.T.	LESS HOMESTEAD EXEMPTION	NET TAX
JASPER COUNTY		160	276.5	44.24	3.91	.00	40.33
CITY OF			.0				
DISTRICT	NO. ACRES	NO. LOTS	VALUE OF ACRES/LOTS	NO. IMPR.	VALUE OF IMPROVEMENTS	REAL VALUATION	PERSONAL VALUATION
01	21.00		160			160	
HUGHES FRED J III							
8512 KENT DRIVE							
SAVANNAH GA 31406							
			SCHOOL OPERATIONS			SCHOOL DEBT SERVICE	FIRE DISTRICT
			21.04			3.04	.00
			COUNTY OPERATIONS			COUNTY DEBT SERVICE	PENALTY
			19.68			.48	
							TOTAL PAID
							40.33
							4.03
							44.36

PAID DATE 02/02/2011 CL DUP
** NOT FOR VEHICLE TAXES ** 2010

4% APPR 3920

MAP# 072-00 -02-038
TRACT B BELLINGER HILL

RECEIPT NUMBER	009372-10-3	PROPERTY VALUATION	TAX LEVY	PROPERTY TAX	LESS L.O.S.T.	LESS HOMESTEAD EXEMPTION	NET TAX
JASPER COUNTY		160	276.5	44.24	3.91	.00	40.33
CITY OF			.0				
DISTRICT	NO. ACRES	NO. LOTS	VALUE OF ACRES/LOTS	NO. IMPR.	VALUE OF IMPROVEMENTS	REAL VALUATION	PERSONAL VALUATION
01	21.00		160			160	
HUGHES FRED J III							
8512 KENT DRIVE							
SAVANNAH GA 31406							
			SCHOOL OPERATIONS			SCHOOL DEBT SERVICE	FIRE DISTRICT
			21.04			3.04	.00
			COUNTY OPERATIONS			COUNTY DEBT SERVICE	PENALTY
			19.68			.48	
							TOTAL PAID
							40.33
							4.03
							44.36

PAID DATE 02/02/2011 CL DUP
** NOT FOR VEHICLE TAXES ** 2010

4% APPR 3920

MAP# 072-00 -02-038
TRACT B BELLINGER HILL

00129

TAX RECEIPT - KEEP THIS COPY FOR YOUR RECORDS
VERNA L. GARVIN, COUNTY TREASURER

JASPER COUNTY, S.C.

RECEIPT NUMBER	008850-11-3		PROPERTY VALUATION	TAX LEVY	PROPERTY TAX	LESS L.O.S.T.	LESS HOMESTEAD EXEMPTION	NET TAX								
JASPER COUNTY	160		347.25	55.56	4.03	.00	51.53									
CITY OF			.0													
DISTRICT	NO. ACRES	NO. LOTS	VALUE OF ACRES / LOTS	NO. IMPR.	VALUE OF IMPROVEMENTS	REAL VALUATION	PERSONAL VALUATION									
01	21.00		160			160										
HUGHES FRED J III 1320 HIGHWAY 80 W GARDEN CITY GA 31408																
									SCHOOL OPERATIONS		26.44	SCHOOL DEBT SERVICE	FIRE DISTRICT	.00	51.53	
									COUNTY OPERATIONS		23.20	COUNTY DEBT SERVICE	TOTAL PAID			51.53
												1.92				

HUGHES FRED J III
1320 HIGHWAY 80 W
GARDEN CITY GA 31408

MAP# 072-00 -02-038
TRACT B BELLINGER HILL

PAID DATE 01/18/2012 CL DUP
** NOT FOR VEHICLE TAXES ** 2011

4% APPR 3920

RECEIPT NUMBER	008850-11-3	PROPERTY VALUATION	TAX LEVY	PROPERTY TAX	LESS L.O.S.T.	LESS HOMESTEAD EXEMPTION	NET TAX
JASPER COUNTY		160	347.25	55.56	4.03	.00	51.53
CITY OF			.0				
DISTRICT	NO. ACRES	NO. LOTS	VALUE OF ACRES / LOTS	NO. IMPR.	VALUE OF IMPROVEMENTS	REAL VALUATION	PERSONAL VALUATION
01	21.00		160			160	
							51.53
							51.53

HUGHES FRED J III

1320 HIGHWAY 80 W

GARDEN CITY GA 31408

TOTAL PAID

HUGHES FRED J III
1320 HIGHWAY 80 W
GARDEN CITY GA 31408

MAP# 072-00 -02-038
TRACT B BELLINGER HILL

PAID DATE 01/18/2012 CL DUP
** NOT FOR VEHICLE TAXES ** 2011

4% APPR 3920

160000

00130

DATE 05/06/10
TAX YEAR 2009 - 2009

Exhibit D

RECNO.....009504-09-3

NAME.....HUGHES FRED J III

8512 KENT DRIVE
SAVANNAH GA 31406

MAP REFERENCE NUMBER....072-00 -02-038

ASSESSMENT RATIO %.....4%

DISTRICT/TOWN.....01

ASSESSED VALUE.....160

ORIGINAL TAX.....38.82

15% PENALTY.....5.82

COSTS.....20.00

TOTAL AMOUNT NOW DUE....64.64

PROPERTY DESCRIPTION....TRACT B BELLINGER HILL

ACRE = 21.00

OCR NO.....7100 5868 2452 7901 6775

POSTAGE......44

CERTIFIED FEE.....2.80

RETURN RECEIPT FEE.....2.30

RESTRICTED DELIVERY FEE...4.50

TOTAL POSTAGE & FEES....10.04

POSTMARK BELOW

000092

00131

Jasper County Tax Collector
P.O. Box 428
Ridgeland, S.C. 29936

JASPER COUNTY, S.C.

ACCOUNT NUMBER	VALUATION OF PROPERTY			TAX LEVY IN MILLS	TAXES	- LOST CREDIT	TOTAL TAXES	
	TOTAL REAL	TOTAL PERS	TOTAL					
009504-09-3	160			267.0 .0	42.72 .00	- -	3.90 .00	
TRACT B BELLINGER AD#10-01121 4% APPR 3920							PENALTY	5.82
TAX RECEIPT							TOTAL	44.64
2009 TAXES								
01	HUGHES FRED J III 8512 KENT DRIVE SAVANNAH GA 31406			Map - Sheet - Block Parcel				
				072-00 -02-038				
				ACRES 21.00	LOTS	70.00		
				VALUE LAND	160	TOTAL COST		
				IMPR		114.64		
				VALUE IMPR.				

PAID 11/06/2010 TS

000093

00132

JASPER COUNTY
DELINQUENT TAX OFFICE
P O BOX 428
RIDGELAND, SC 29936-0428

DATE: NOVEMBER 04, 2010

TO: HUGHES FRED J III

8512 KENT DRIVE

SAVANNAH GA 31406

FROM: LINDA M. MOUZON
JASPER COUNTY TAX COLLECTOR

RE: SALE OF PROPERTY FOR DELINQUENT TAXES

MAP # 072-00 -02-038 DISTRICT 01

ITEM# 10-01121

TRACT B BELLINGER HILL

This letter is to advise you that the property listed above was sold at public auction for delinquent taxes on NOVEMBER 01, 2010. Section 12-51-90 of the South Carolina Code of Laws provides that the defaulting taxpayer, any grantee from the owner or any mortgage or judgement creditor may redeem the above property within (12) months from the date of the delinquent tax sale by paying to this office delinquent taxes penalties, and costs together with the appropriate percent of interest on the total bid price at the tax sale. If you wish to redeem the above described property, the redemption amount will be as listed below:

\$ <u>269.61</u>	(03%) due on or before	<u>FEBRUARY 02, 2011</u>
\$ <u>269.61</u>	Redemption Execution	<u>MARCH 18, 2011</u>
\$ <u>315.99</u>	(06%) due on or before	<u>MAY 02, 2011</u>
\$ <u>315.99</u>	(09%) due on or before	<u>AUGUST 02, 2011</u>
\$ <u>315.99</u>	(12%) due on or before	<u>NOVEMBER 02, 2011</u>

FINAL DATE TO REDEEM THE ABOVE PROPERTY IS ON/BEFORE NOVEMBER 02, 2011 !!!

If you fail to redeem the property by said date, a tax deed will be issued to the successful bidder.

000094

00133



Jasper County Tax Collector

P. O. BOX 428, RIDGELAND, S.C. 29936
358 THIRD AVENUE, RIDGELAND, S.C. 29936
PHONE: 843-717-3611
FAX: 843-717-3625

RHONDA R. MITCHELL
TAX COLLECTOR

10-4, 2011

TO: Hughes Fred J III
8512 Kent Drive
Savannah GA 31406

FROM: Rhonda R. Mitchell, Jasper County Tax Collector

RE: SALE OF PROPERTY FOR DELINQUENT TAXES

MAP # 072-00-02-038 Tract B Bellinger Hill

This letter is to inform you that the property listed above was sold at public auction for delinquent taxes on November 1, 2010. Section 12-51-90 of the South Carolina Code of Laws provides that the defaulting taxpayer, any grantee from the owner or any mortgage or judgment creditor may redeem the above property within twelve (12) months from the date of the delinquent tax sale by paying to this office delinquent taxes, penalties, and costs together with the appropriate percent of interest on the total bid price at the tax sale.

If you wish to redeem the above-described property, the redemption amount is listed below:

\$ 35.77 due on or before November 2, 2011

FINAL DATE TO REDEEM THE ABOVE PROPERTY IS ON OR BEFORE NOVEMBER 2, 2011!!!!!!

If you fail to redeem the property by said date, a tax deed will be issued to the successful bidder.

No Checks!! Money Order, Cashier's Check, or Cash Only.

rmitchell@jaspercountysc.gov
www.jaspercountysc.org

- 000095

- 00134

SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Hughes Fred J III
8512 Kent Drive
Savannah, GA 31406

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☐ Agent ☐ Addressee

X. *F. J. Hughes*

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☒ Certified Mail ☐ Express Mail
- ☐ Registered ☒ Return Receipt for Merchandise
- ☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
(Transfer from service label)

7011 0470 0003 1470 5738

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

U.S. Postal ServiceTM CERTIFIED MAILTM RECEIPT (Domestic Mail Only, No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Environment Returned)	
Registered Delivery Fee (Environment Returned)	
Total Postage & Fees	\$ 5.59

Postmark
Here

7011 0470 0003 1470 5738
Sent to
Hughes Fred J III
8512 Kent Drive
Savannah GA 31406

000096

00135



Jasper County Tax Collector

P. O. BOX 428, RIDGELAND, S.C. 29936
358 THIRD AVENUE, RIDGELAND, S.C. 29936
PHONE: 843-717-3611
FAX: 843-717-3625

RHONDA R. MITCHELL
TAX COLLECTOR

10-4, 2011

TO: Hughes Fred J III
8512 Kent Drive
Savannah GA 31406

FROM: Rhonda R. Mitchell, Jasper County Tax Collector

RE: SALE OF PROPERTY FOR DELINQUENT TAXES

MAP # 072-00-02-038 Tract B Bellingr Hill

This letter is to inform you that the property listed above was sold at public auction for delinquent taxes on November 1, 2010. Section 12-51-90 of the South Carolina Code of Laws provides that the defaulting taxpayer, any grantee from the owner or any mortgage or judgment creditor may redeem the above property within twelve (12) months from the date of the delinquent tax sale by paying to this office delinquent taxes, penalties, and costs together with the appropriate percent of interest on the total bid price at the tax sale.

If you wish to redeem the above-described property, the redemption amount is listed below:

\$ 35.99 due on or before November 2, 2011

FINAL DATE TO REDEEM THE ABOVE PROPERTY IS ON OR BEFORE NOVEMBER 2, 2011!!!!!!

If you fail to redeem the property by said date, a tax deed will be issued to the successful bidder.

No Checks!! Money Order, Cashier's Check, or Cash Only.

000097

rmitchell@jaspercountysc.gov
www.jaspercountysc.org

00136

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Hughes Fred J III
8512 Kent Drive
Savannah, GA 31406

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☐ Agent ☒ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☒ No
If YES, enter delivery address below:

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.
 4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
(Transfer from service label)

7011 0470 0003 1470 5738

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

U.S. Postal Service CERTIFIED MAILTM RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage

\$

Certified Fee

Return Receipt Fee
(Enforcement Required)

Restricted Delivery Fee
(Enforcement Required)

Total Postage & Fees

\$ 5.59

Postmark
Here

Sent to

Hughes Fred J III
8512 Kent Drive
Savannah GA 31406

For delivery information visit our website at www.usps.com

000098

00137

Exhibit E

Jasper County Assessors Office

[Recent Sales in Area](#)[Previous Parcel](#)[Next Parcel](#)[Return to Main Search Page](#)[Subscription Home](#)[Jasper Home](#)**Owner and Parcel Information**[Owner Name](#)

HUGHES FRED J III

[Today's Date](#)

August 30, 2012

[Mailing Address](#)1320 HWY 80 WEST
GARDEN CITY GA 31408[Parcel Number](#)

072-00 -02-036

[Location Address](#)[Tax District](#)

County (District 01)

[Class Code \(NOTE: Not Zoning Info\)](#)353
MV
397[Acres](#)

231.00

[Description](#)

WRIGHT RIVER

[Parcel Map](#)[Show Parcel Map](#)[Legal Information](#)[Record Type](#)[Town Code / Neighborhood](#)[Owner Occupied](#)[Generate Owner List by Radius](#)**2011 Value Information**[Land
Value](#)

\$ 2,131,600

[Improvement
Value](#)

\$ 140,700

[Total
Value](#)

\$ 2,272,300

[Taxable
Value](#)

\$ 172,500

[Total
Assessment](#)

\$ 7,190

Building Information[Heated Square Footage](#)

0

Lot Size Information (Dimensions in Feet)[Front](#)[Back](#)[Left](#)[Right](#)**Sale Information**[Sale Date](#)

02-28-2007

[Price](#)

\$ 2,750,000

[Deed Book](#)

525 134

[Plat Book](#)

16 73

[Grantor](#)

EXLEY F SPRAGUE & JANE L

03-02-2007

Not Available

525 129

Not Available

Not Available

08-18-2005

Not Available

328 260

Not Available

Not Available

[Recent Sales in Area](#)[Previous Parcel](#)[Next Parcel](#)[Return to Main Search Page](#)[Subscription Home](#)[Jasper Home](#)

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000096

00138

Jasper County Assessors Office

Recent Sales in Area	Previous Parcel	Next Parcel	Return to Main Search Page	Subscription Home	Jasper Home
Owner and Parcel Information					
<u>Owner Name</u>	HUGHES FRED J III		<u>Today's Date</u>	August 30, 2012	
<u>Mailing Address</u>	3690 BELLINGER HILL RD		<u>Parcel Number</u>	072-00 -02-057	
	1320 HWY 80 WEST		<u>Tax District</u>	County (District 01)	
	GARDEN CITY GA 31408				
<u>Location Address</u>	3690 BELLINGER HILL RD				
<u>Class Code (NOTE: Not Zoning Info)</u>	311		<u>Acres</u>	1.00	
<u>Description</u>	ON WRIGHT RIVER		<u>Parcel Map</u>	Show Parcel Map	
<u>Legal Information</u>			<u>Record Type</u>		
<u>Town Code / Neighborhood</u>			<u>Owner Occupied</u>		
Generate Owner List By Radius					

2011 Value Information				
<u>Land Value</u>	<u>Improvement Value</u>	<u>Total Value</u>	<u>Taxable Value</u>	<u>Total Assessment</u>
\$ 55,000	\$ 288,900	\$ 343,900	\$ 343,900	\$ 13,760

Building Information	
<u>Heated Square Footage</u>	3,800

Lot Size Information (Dimensions in Feet)			
<u>Front</u>	<u>Back</u>	<u>Left</u>	<u>Right</u>

Sale Information				
<u>Sale Date</u>	<u>Price</u>	<u>Deed Book</u>	<u>Plat Book</u>	<u>Grantor</u>
02-28-2007	\$ 2,750,000	525 134	19 173	EXLEY F SPRAGUE & JANE L
03-02-2007	Not Available	525 129	Not Available	Not Available
08-18-2005	Not Available	328 260	Not Available	Not Available

Recent Sales in Area	Previous Parcel	Next Parcel	Return to Main Search Page	Subscription Home	Jasper Home
--------------------------------------	---------------------------------	-----------------------------	--	-----------------------------------	-----------------------------

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000100

00139

Jasper County Assessors Office

[Recent Sales in Area](#)
[Previous Parcel](#)
[Next Parcel](#)
[Return to Main Search Page](#)
[Subscription Home](#)
[Jasper Home](#)

Owner and Parcel Information

<u>Owner Name</u>	HUGHES FRED J III	<u>Today's Date</u>	August 30, 2012
<u>Mailing Address</u>	1320 HIGHWAY 80 WEST GARDEN CITY GA 31408	<u>Parcel Number</u>	072-00 -02-041
<u>Location Address</u>		<u>Tax District</u>	County (District 01)
<u>Class Code (NOTE: Not Zoning Info)</u>	353 MV	<u>Acres</u>	19.05
<u>Description</u>	HWY 92 BELLINGER HILL	<u>Parcel Map</u>	Show Parcel Map
<u>Legal Information</u>	PLAT CHANGED ACREAGE 31/135	<u>Record Type</u>	
<u>Town Code / Neighborhood</u>		<u>Owner Occupied</u>	
Generate Owner List By Radius			

2011 Value Information

<u>Land Value</u>	<u>Improvement Value</u>	<u>Total Value</u>	<u>Taxable Value</u>	<u>Total Assessment</u>
\$ 116,200	\$ 0	\$ 116,200	\$ 3,100	\$ 120

Building Information

Heated Square Footage

0

Lot Size Information (Dimensions in Feet)

Front

Back

Left

Right

Sale Information

<u>Sale Date</u>	<u>Price</u>	<u>Deed Book</u>	<u>Plat Book</u>	<u>Grantor</u>
06-09-2008	\$ 200,000	670 133		SASEEN JOSEPH O

[Recent Sales in Area](#)
[Previous Parcel](#)
[Next Parcel](#)
[Return to Main Search Page](#)
[Subscription Home](#)
[Jasper Home](#)

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000101

00140

Jasper County Assessors Office

[Recent Sales in Area](#)[Previous Parcel](#)[Next Parcel](#)[Return to Main Search Page](#)[Subscription Home](#)[Jasper Home](#)[Owner Name](#)[Mailing Address](#)[Location Address](#)[Class Code](#) (NOTE: Not Zoning Info)[Description](#)[Legal Information](#)[Town Code / Neighborhood](#)[Generate Owner List By Radius](#)**Owner and Parcel Information**

KEEP RUSSELL

P O BOX 5877
HILTON HEAD ISLAND SC 29938353
MV

TRACT B BELLINGER HILL

[Today's Date](#)[Parcel Number](#)[Tax District](#)[Acres](#)[Parcel Map](#)[Record Type](#)[Owner Occupied](#)

August 30, 2012

072-00 -02-038

County (District 01)

21.00

[Show Parcel Map](#)

lost tax sale

2011 Value Information[Land Value](#)
\$ 86,600[Improvement Value](#)
\$ 0[Total Value](#)
\$ 86,600[Taxable Value](#)
\$ 3,920[Total Assessment](#)
\$ 160**Building Information**[Heated Square Footage](#)
0**Lot Size Information (Dimensions in Feet)**[Front](#)[Back](#)[Left](#)[Right](#)**Sale Information**[Sale Date](#)
03-12-2012
06-09-2008[Price](#)
\$ 6,600
Not Available[Deed Book](#)
824 56
670 135[Plat Book](#)
11 150
Not Available[Grantor](#)
HUGHES FRED J III
Not Available[Recent Sales in Area](#)[Previous Parcel](#)[Next Parcel](#)[Return to Main Search Page](#)[Subscription Home](#)[Jasper Home](#)

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000102

00141

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

AFFIDAVIT

PERSONALLY APPEARED before me, Pam Godwin, being duly sworn deposes and says that:

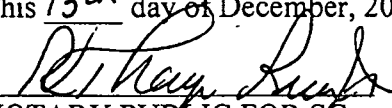
My name is Pam Godwin, and I am a resident of Beaufort County, South Carolina. For more than the last 25 years, I have worked as a title abstractor in the courthouses and records departments of Beaufort, Jasper and surrounding counties. I have been qualified and testified numerous times as an expert on the books and records of these counties.

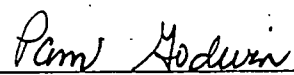
I have examined the records in the office of the Recorder of Deeds, the Tax Assessor for Jasper County and the Tax Collector for Jasper County with regard to parcel number TMS 072-00-02-038. The records show that this parcel was transferred to Fred J. Hughes III on June 9, 2008 and that the deed was recorded in Volume 670 at Pages 0135-0137 on June 11, 2008. The correct address for Fred J. Hughes III on the deed was 1320 Highway 80 West, Garden City, Georgia 31408. The Grantor's address was 8512 Kent Drive, Savannah, Georgia 31406. Thereafter in 2009 the office of the Tax Assessor for Jasper County did not change the address on this property from the old owners to the new owners. This also was not done for tax years 2010 and 2011. As a consequence, the Treasurer for Jasper County sent the tax notice for the years 2009, 2010 and 2011 to 8512 Kent Drive, Savannah, Georgia 31406 (which is the address of the prior owner). Thereafter the office of the Tax Collector for Jasper County sent tax notices, Notice of Sale, Notice of Expiration of Redemption Period, Notice of Redemption, Notice of Issuance of Deed to the address of the prior owner and not to Mr. Hughes.

The records of these offices show that Mr. Hughes owns the three surrounding properties (TMS 072-00-02-041, 072-00-02-036, 072-00-02-057) and that those parcels have the correct address and that those taxes were paid for Tax Years 2009, 2010 and 2011.

Further affiant sayeth not.

SWORN TO before me
This 13th day of December, 2012.


NOTARY PUBLIC FOR SC
My comm. Exp: 7-16-2013



000103

00142

**Return to Plaintiff's Motion for Summary
Judgment and Motion for Summary
Judgment dated January 11, 2013**

- 000104

- 00143

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)
)
ROBERT C. SCHIVERA,)
Executor of the Estate of)
Fred J. Hughes, III,)
)
Plaintiff,)
v.)
)
C. RUSSELL KEEP, III, Esquire)
and Rhonda Mitchell,)
Jasper County Tax Collector)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
CASE NO. 2012-CP-27-00760
NON JURY

RETURN TO PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT
AND
MOTION FOR SUMMARY JUDGMENT

2012 JAN 1 AM 9:55
JASPER COUNTY SC
BOSTICK
CLERK OF COURT

TO: THAYER RIVERS, ATTORNEY FOR THE PLAINTIFF, ROBERT C. SCHIVERA,
Executor of the Estate of Fred J. Hughes, III:

FACTS

1. The property owner's land was sold for unpaid taxes for the 2009 tax year on November 1, 2010 to the Individual Defendant.
2. The Plaintiff brought suit more than two years later to set aside the tax sale.
3. The tax notice was sent to the wrong address in violation of S.C. Code Section § 12-51-40(b).
4. When that tax notice was returned undelivered the County took "exclusive possession" of the property by properly posting it as required by S.C. Code Section § 12-51-40(c).

ISSUE

1. Does the revised (March 15, 2006) paragraph (C) of Section § 12-51-90 and revised § 12-51-160, two year statute of limitations for recovery of land sold under a tax sale, apply despite a defect in written notice to the taxpayer?

2. When the County took "exclusive physical possession" of the property by properly posting the property pursuant to South Carolina Code Section § 12-51-40(C), did it rectify the defect in written notice to the taxpayer?

THE LAW

In two cases, the South Carolina Supreme Court has narrowly construed the application of this statute of limitations and has permitted the defaulting taxpayer to maintain the action even though the action was brought after two years from the date of sale. However, it should be noted that these cases were decided before the 1985 revisions to the Code. After the 1985 revisions, the Court of Appeals, in *Corbin v. Carlin*¹, held that an action to quiet title and set aside a tax sale and tax deed fell outside the provisions of Section § 12-51-160. There was some confusion in *Corbin* regarding the descriptions and locations of the real property, and the Court determined there was nothing to put *Corbin*, the delinquent taxpayer, on notice of the delinquency.

The *Corbin* decision was filed on October 3, 2005. Less than six months later, on March 15, 2006, revisions to Sections § 12-51-160 took effect, and these revisions appear to make it more difficult to avoid the bar of the two-year statute of limitations. Section § 12-51-90 was revised to include a paragraph (C), which states: "If the defaulting taxpayer, grantee from the owner, or mortgage or judgment creditor fails to redeem the item of real estate sold at 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." Section § 12-51-160 was revised to add the reference to Section § 12-51-90(C) in the statement: "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)." There have been no recorded cases construing these revised statutes.

¹ *Corbin v. Carlin* 366 S.C. 187, 620 S.E. 2d. 745 (2005)

**Tax Sales of Real Property and Mobile Homes in South Carolina, Dean
Hayes, Esquire, S.C. Bar CLE publication**

Since publication of this excellent book by Mr. Hayes, *King v. James*² was decided by the Court of Appeals on April 20, 2010. The Court found the statute of limitations started to run from the date when the county or the tax sale purchaser took "possession" of the property. "Possession" is a term of art. The Court found the county can take "exclusive possession" by sending the notice required by Section § 12-51-40(b), and if that notice is returned undelivered, by posting the property as required by Section § 12-51-40(c). The Court ruled the County failed to prove it posted the property (the County did not take a picture of postings at that time), therefore the statute did not start to run.

ANALYSIS I.
STATUTORY LAW

To determine the application of the revised section §12-51-90(C) on the present case, we must apply the rules of statutory construction. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hawkins v. Bruno Yacht Sales, Inc.*, 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003); *Bayle v. South Carolina Dep't of Transp.*, 344 S.C. 115, 122, 542 S.E.2d 736, 739 (Ct.App.2001). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it reasonably can be discovered in the language used, and the language must be construed in the light of the intended purpose of the statute." *City of Sumter Police Dep't v. One (1) 1992 Blue Mazda Truck (VIN # JM2UF1132N0294812)*, 330 S.C. 371, 375, 498 S.E.2d 894, 896 (Ct.App.1998). "Statutes, as a whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy of

² *King v. James* 388 S.C. 16, 694 S.E. 2d 35 (2010)

lawmakers." *TNS Mills, Inc. v. South Carolina Dep't of Revenue*, 331 S.C. 611, 624, 503 S.E.2d 471, 478 (1998).

The legislature, in the wake of the *Corbin* decision (October 3, 2005), revised section § 12-51-160 and § 12-51-90(C), taking effect March 15, 2006. A tax deed, after two years from the tax sale, is "uncontestable on procedural or other grounds."³

The legislature passed Section § 12-51-90 and § 12-51-160 as an absolute bar to recovery after two whole years. The medical malpractice six year absolute bar to recovery is analogous. South Carolina Code § 15-3-545 evidences the legislature's impatience with those who sleep on their rights. The language concerning notice or lack thereof in the malpractice statute of limitations is similar to the new § 12-51-90, 160; "three years from the date of discovery or when it is reasonably ought to have been discovered, *not to exceed six years from the date of occurrence...*"

It is clear that the legislature meant for the two year time bar to be absolute but it was not interpreted that way by the *King* court so let us look for guidance in that case.

ANALYSIS II. CASE LAW

The Court in *King v. James* found that;

This court has held the purpose of the statute of limitations as set forth in section 12-51-160 is "to create a time limit during which one who lost title to property through a tax sale, after proper notice, may attempt to regain title." *Corbin v. Carlin*, 366 S.C. 187, 194, 620 S.E.2d 745, 749 (Ct.App.2005). *A review of case law in this area reveals somewhat divergent decisions regarding if*

³ South Carolina Code Section § 12-51-90(C).

and when the statute of limitations begins to run in situations such as this (italics added).

On the one hand, we find case law that says when notice to the homeowner is not in strict compliance with the statute, such a defect is "jurisdictional," and the statute of limitations does not run at all (italics added). See Donohue v. Ward, 298 S.C. 75, 82, 378 S.E.2d 261, 265 (1989) (holding where a defect in notice is jurisdictional, such a defect "invalidates the tax proceeding and prevents the running of the limitations statute"); Good v. Kennedy, 291 S.C. 204, 207, 352 S.E.2d 708, 711 (1987) (holding "the general law is that where a statute requires as a condition precedent to foreclosing a taxpayer's rights in property sold for taxes that he be given notice of his right to redeem, such a requirement is generally regarded as jurisdictional") (internal quotations omitted).

On the other hand, we also find case law in which our courts interpreted previous versions of section § 12-51-160 as saying even if the notice is defective, the statute of limitations still applies, but only begins to run when the purchaser comes into possession (italics added). See Dibble v. Bryant, 274 S.C. 481, 487, 265 S.E.2d 673, 677 (1980) (holding previous version of section 12-51-160 "was intended to bar a defaulting and ousted taxpayer from maintaining an action to defeat the title of the tax sale purchaser and recover the land if brought more than two years from the date the purchaser came into possession ") (emphasis added); Glymph v. Smith, 180 S.C. 382, 384, 185 S.E. 911, 914 (1936) (holding even though the plaintiff brought the action six years after the tax sale, the two-year statute of limitations never began to run because the sheriff never took possession of the subject property, and the purchaser was never put into possession following the execution of the tax deed) (italics added); Gardner v. Reedy, 62 S.C. 503, 503, 40 S.E. 947, 947 (1902) (holding the two-year statute of limitations would only begin to run if and when the purchaser took possession).

Regardless of which of the two above interpretations is correct, Appellant's argument as to the statute of limitations necessarily fails because

King brought her action within two years of the buyer coming into possession. In the present case, the Master held, and we agree, the County failed to establish by a preponderance of the evidence that it took "exclusive possession" of the Property by posting, as is required under section § 12-51-40(c).

COUNCLUSION OF LAW

The *King v. James* decision affirms that the tax sale herein must be sustained as the County took "exclusive possession" of the property by posting as required in South Carolina Code Section § 12-51-40(c). This posting is a corrective action sanctioned by South Carolina Code Section 12-51-40(c) which states,

If 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 posting of the notice is equivalent to levying by distress, seizing, and taking exclusive possession of it.

The Plaintiff has waited more than two years to sue since the County took "exclusive possession" so the tax sale is "uncontestable on procedural or other grounds."

By: _____



C. RUSSELL KEEP, III, ESQUIRE

Keep Law Office
Suite 303, WatersEdge
Shelter Cove Harbour
Post Office Drawer 5877
Hilton Head Island, SC 29938
(803) 842-6268
ATTORNEY FOR DEFENDANT

Hilton Head Island, SC
January 11, 2013

Tax deed dated March 12, 2012

000111

00150

THE STATE OF SOUTH CAROLINA)

COUNTY OF JASPER)

TAX DEED

Sold for the Year 2009

Whereas, by an action of the General Assembly of the State of South Carolina, entitled An act in relation to forfeited lands, delinquent lands and collection of taxes, approved December 24, 1887, and acts amendatory thereof, it is provided that hereafter, immediately upon the expiration of the time allowed by the law for the payment of taxes in any year, the county treasurer of each county, shall and is hereby authorized and directed, to issue in the name of the State a warrant or execution, in duplicate, against each defaulting taxpayer in the county, signed by treasurer in her official capacity, directed to the tax collector of the county or lawful deputy, requiring and commanding the tax collector to levy the same by distress and sale of so much of the defaulting taxpayers estate, real or personal, or both, as may be sufficient to satisfy the taxes, state, school, county and special, of such defaulter specifying therein the aggregate amount of all taxes as well as the amount to each fund; and

Whereas, it is further provided by said act, and amendatory acts, that under and by virtue of said warrant or execution, the tax collector shall seize and take exclusive possession of so much of the defaulting taxpayers estate, real, or personal, or both, as may be necessary, to raise the sum of money mentioned therein, and the charges thereon, and after due advertisement sell at public auction at the courthouse or other convenient place within the county if designated and advertised on a legal sales date during regular hours for legal tender payable in cash, cashiers check, certified check, or money order, give to the purchaser (upon compliance with the terms of the sale) a receipt for the purchase money, but not make title to the purchaser until the expiration of twelve months from the day of the sale, if the property sold not be redeemed as therein provided, and annex said receipt with the duplicate warrant, with the endorsement thereon of his actions, hereunder; and

Whereas, Verna L. Garvin, the County Treasurer of Jasper County has issued her warrant, directed Linda Mouzon, as Tax Collector for Jasper County, by authority of said act, against FRED J. HUGHES, III, a defaulting taxpayer(s) of said County, strictly charging and commanding Linda Mouzon, as Tax Collector of said County, to levy by distress and sale of personal property, and if sufficient personal property cannot be found, then by distress and sale of land of FRED J. HUGHES, III, defaulter(s), the sum of One Hundred Fourteen and 64/100ths (\$114.64) Dollars, together with Sixty and 00/100ths (\$60.00) Dollars, the charge thereof; and

Whereas, by virtue of said warrant or execution, to Linda Mouzon, Tax Collector of the County and State aforesaid, she did on the 13th day of May, 2010, seize and take possession of the said FRED J. HUGHES, III's property hereinafter described, and on the sales day of November 1st, 2010, during the usual hours of sale, after due advertisement, sell the same to RUSSELL KEEP, the purchaser and the highest bidder at such sale the sum of Six Thousand Six Hundred and 00/100ths (\$6,600.00) Dollars and gave a receipt for said purchase money to RUSSELL KEEP; and

Whereas, I Rhonda R. Mitchell succeeded Linda Mouzon as Tax Collector for Jasper County on August 8th, 2011; and

Whereas, twelve months have elapsed since the date of the sale, and the said FRED J. HUGHES, III, the defaulting taxpayer or other parties interested after due notice have failed to redeem said land so sold for taxes;

Now therefore, I, Rhonda R. Mitchell, Tax Collector of said County, in consideration of the premises, and for the sum of Six Thousand Six Hundred and 00/100ths (\$6,600.00) Dollars, to me paid by the said RUSSELL KEEP, whose address is Post Office Box 5877, Hilton Head, SC 29938, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said RUSSELL KEEP, his heirs and assigns, forever, the following described property, to wit:

All that certain piece, parcel or tract of land, situate, lying and being in Jasper County, South Carolina Bellinger Hill Section, being shown as Tract B on that Plat of S. S. Snook, Registered Land Surveyor, dated April 25, 1969, containing 21 acres, more or less, and being bound now or formerly as follows: On the Northeast by lands of Tom Nelson and lands of Edna Crosby; on the Southeast by lands of Alice Larson; on the Southwest by lands of Joe German; and on the Northwest by lands of Samuel Scott.

This being that same piece, parcel or lot of land conveyed to Fred J. Hughes, III by deed of A. Kenneth Williamson, Jr. as Administrator C.T.S of the estate of Henry Gary Dean and as Executor and Temporary Administrator of the estate of Andrew Roderick Dean being dated June 8th, 2008, and filed in the Office of the Clerk of Court for Jasper County, South Carolina in Deed Book 670 at Page 135.

Jasper County TMS #072-00-02-038

Together with all and singular rights, members, hereitaments and appurtenances to the said premise belonging or in anywise, incident or appertaining.

To have and to hold all and singular the premises herein granted, with the appurtenances, unto the said RUSSELL KEEP, his heirs and assigns, forever, according to the form, force, and effect of the laws and usages of the State of South Carolina in such

cases made and provided.

WITNESS my hand and seal this 12th day of March, in the Two Thousand and Twelfth year of our Lord.

Signed, sealed and delivered in the
Presence of us:

Ann Nimmer
Patsy M. Greene

Rhonda R. Mitchell
Rhonda R. Mitchell
Tax Collector
Jasper County, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Rhonda R. Mitchell, Tax Collector for the County of Jasper, sign, seal and as her act and deed deliver the above deed of conveyance and that (s)he with the other witness witnessed the execution thereof.

Ann Nimmer

SWORN to before me this 12 day of

March, 2012.

Patsy M. Greene (L.S.)
Notary Public for South Carolina
My Commission Expires: 4-25-2021

Deed prepared by Marvin C. Jones, County Attorney for Jasper County, South Carolina at the request of the Grantor herein without benefit of a title search or title examination. No certification given against title defects and/or error in chain of title.

**Affidavit of Rhonda Mitchell, Co-Defendant
dated February 11, 2013**

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00154

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

ROBERT C. SCHIVERA,
Executor of the Estate of
Fred J. Hughes, III,

Plaintiff,

v.

C. RUSSELL KEEP, III, Esquire
and Rhonda Mitchell,
Jasper County Tax Collector

Defendant.

IN THE COURT OF COMMON PLEAS
CASE NO. 2012-CP-27-00760
NON JURY

AFFIDAVIT

1. Enclosed is a business record of the executed copy received from Posting Pro dated September 28, 2010 of tax map # 072-00-02-038.

Further the Affidavit sayeth not.

By: *Rhonda K Mitchell*
RHONDA MITCHELL

Sworn to before me this

11th day of Feb., 2013.

[Signature]

Notary Public for South Carolina
My Commission Expires:

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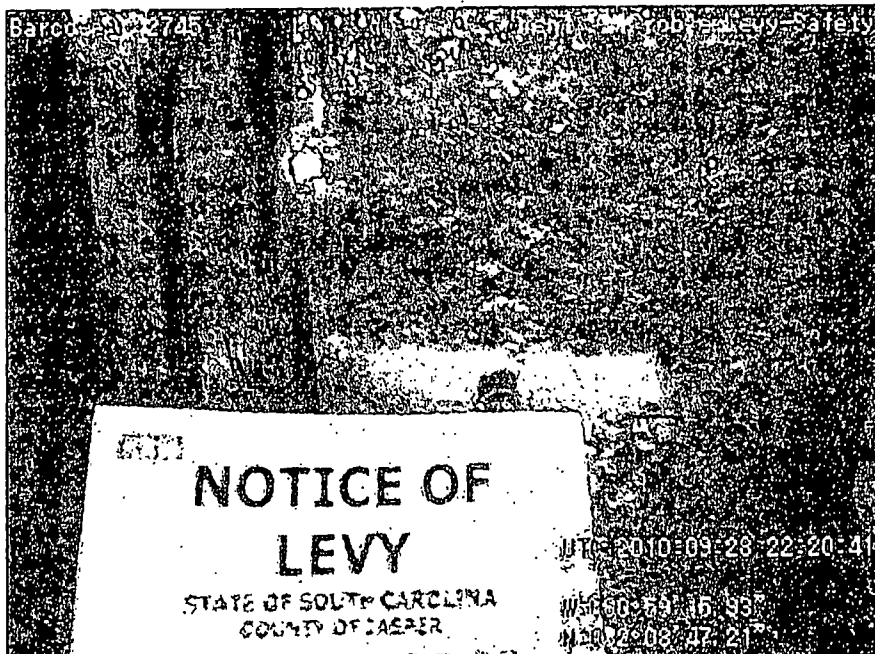
Property ID: 442745
 Listing Year: 2009
 Tax Map Number: 072-00 -02-038
 County Item Number: 001121
 Property Type: Residential
 Taxpayer Name: HUGHES FRED J III

Acres: 21
 Lot: 0
 Building: 0

Received Time Stamp: 9/20/2010 7:15:31 PM
 Image Approved: 10/5/2010 10:02:20 AM
 Image Approved by: erinO
 MobileHomeLandMapNo: 072-00 -02-038
 Image Comment: PL1 PROBLEM LEVY

Full Address: 8512 KENT DRIVE
 Full City: SAVANNAH GA
 Full Zip: 314060000

Property Description: TRACT B BELLINGER HILL



Sandy Fowler personally placed the Delinquent Tax Notice on the above referenced property on 9/28/2010 6:15:22 PM.

Sandy F. Fowler

00156

000117

**Respondent's Request to Admit dated
April 15, 2013 to Rhonda Mitchell**

J-000118

- 00157

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

ROBERT C. SCHIVERA,
Executor of the Estate of
Fred J. Hughes, III,

Plaintiff,

v.

C. RUSSELL KEEP, III, Esquire and
RHONDA MITCHELL, Jasper County
Tax Collector,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 12-CP-27-00760

REQUEST TO ADMIT

To: MARVIN JONES, ESQUIRE, Attorney for the Defendant, RHONDA MITCHELL,
Jasper County Tax Collector

The Plaintiff ROBERT C. SCHIVERA, Executor of the Estate of Fred J. Hughes, request
that you admit to the following:

1. That the address used on the records of the Office of the Delinquent Tax Collector
for Jasper County is 8512 Kent Drive, Savannah, Georgia, 31406. This is not the address of
1320 Highway 80, West Garden City, Georgia, 31408, being the address in the Deed to Fred J.
Hughes, III, and not being in compliance with Section 12-51-40(a) of the SC Codes of Laws for
1976.

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the
foregoing matter with a copy of this pleading by:

- ☒ depositing in the U. S. Mail a copy of same in a properly
addressed envelope with adequate postage thereon.
☐ handing counsel a copy thereof.
☐ by facsimile and depositing in the U.S. Mail a copy of same
in a properly addressed envelope with adequate postage thereon.

This 15 day of April, 2013
R. THAYER RIVERS, JR.

Kathleen Beard

April 15, 2013.

LAW OFFICE OF R. THAYER RIVERS, JR.

R. Thayer Rivers, Jr.
Post Office Box 668
Ridgeland, SC 29936
843-726-8136

Attorney for the Plaintiff

000119

00158

**Response (of Rhonda Mitchell, Co-
Defendant) to Request to Admit dated
April 16, 2013**

000120

00159

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF JASPER)

CASENUMBER: 12-CP-27-00760

ROBERT C. SCHIVERA,
Executor of the Estate of
Fred J. Hughes, III,

Plaintiff,

RESPONSE TO REQUEST TO ADMIT

v.

C. RUSSELL KEEP, III, Esquire and
RHONDA MITCHELL, Jasper County
Tax Collector,

Defendant.

TO: R. Thayer Rivers, Jr., Attorney for the Plaintiff.

The Defendant, Rhonda Mitchell, Jasper County Tax Collector, in response to the Request to Admit would respond as follows:

1. As to the first sentence of the request for admissions, Rhonda Mitchell, the Jasper County Tax Collector would admit that it appears from her records that the County Assessor changed the address of the property owned to c/o Fred J. Hughes, III, 1320 Highway 80 West, Garden City, Georgia 31408 on February 23, 2009, but thereafter, based upon a subsequent change of address (see Exhibit "A") attached hereto, changed the address again to 8512 Kent Drive, Savannah, Georgia 31406 on June 12, 2009. Further, from records it appears that on November 4th, 2001, the Tax Assessor changed the address to 1320 Highway 80 West, Garden City, Georgia 31408. As to the second sentence of the request for admissions, the address in the deed to Fred J. Hughes, III, is shown as 1320 Highway 80, West Garden City, Georgia 31408, as appears on the

attached Exhibit "B" Deed to Fred J. Hughes, III; the Defendant, Rhonda Mitchell, Jasper County Tax Collector, denies that the addresses used by Jasper County were not in compliance with Code of Laws of South Carolina § 12-51-40(a) (1976).

Respectfully submitted,



Marvin C. Jones
Jasper County Attorney
South Carolina Bar Number: 3201
Post Office Box 420
Ridgeland, South Carolina 29936
E-Mail: mjones@jaspercountysc.gov
Telephone: 843-726-5403

16 April 2013

00162

LX11011 D

DEED BOOK: 0670 PAGE: 274
 DATE: 08/11/2008 04:41:28 PM
 Hazel Holmes / EM
 AUDITOR JASPER COUNTY, SC

200800003128 08/11/2008 AT 10:18 AM
 OR Volume 0670 Page 0135 - 0137
 Filed for Record in JASPER COUNTY
 Deed Fee: \$10.00
 State Tax: \$494.00 Local Tax: \$209.00

----- SPACE ABOVE THIS LINE FOR RECORDING DATA -----

Return recorded document to:
 WEINER, SHEAROUSE, WEITZ, GREENBERG & SHAW, LLP
 Attn: Peggy Krehner
 14 East State Street
 Savannah, GA 31401

The within instrument has been transferred
 on 08/16/2008 09:15:17 AM, and recorded in
 the Jasper County Assessor's Office.
 Tax Map No.: 072-00-02-038
 Transfer No.: 8-27-659
 Lisa Malphrus JASPER COUNTY, SC

STATE OF SOUTH CAROLINA

TITLE TO REAL ESTATE

COUNTY OF JASPER

KNOW ALL MEN BY THESE PRESENTS, that A. Kenneth Williamson, Jr. as Administrator C.T.A. of the estate of Henry Gary Dean and as Executor and Temporary Administrator of the estate of Andrew Roderick Dean, whose address is 8512 KENT DRIVE, SAVANNAH, GEORGIA 31406 (hereinafter the "Grantor"), in consideration of the sum of One Hundred Ninety Thousand and 00/100 (\$190,000.00), to us in hand paid at and before the sealing of these presents by FRED J. HUGHES, III (hereinafter the "Grantee"), of 1320 HIGHWAY 80 WEST, GARDEN CITY, GEORGIA 31408, for which the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee, his heirs and assigns, forever in fee simple, the following described property, to-wit:

All that certain piece, parcel, or tract of land, situate, lying and being in Jasper County, South Carolina, Bellinger Hill Section, being shown as Tract B on that Plat of S.S. Snook, Registered Land Surveyor, dated April 25, 1969, containing 21 acres, more or less, and being bound now or formerly as follows: On the Northeast by lands of Tom Nelson and lands of Edna Crosby; on the Southeast by lands of Alice Larson; on the Southwest by lands of Joe German; and on the Northwest by lands of Samuel Scott.

This being the same property conveyed to Henry Gary Dean and Andrew Roderick Dean on 12/27/76 and recorded in Deed Book 76 at page 1920, in the Register of Deeds of Jasper County, South Carolina and having Tax Map No. 072-00-02-038.

This deed was prepared by the law firm of WEINER, SHEAROUSE, WEITZ, GREENBERG & SHAW, LLP, 14 East State Street, Savannah, Georgia 31401, (912) 233-2251.

TOGETHER with all singular the improvements, tenements, hereditaments, rights and members thereunto belonging or anywise appertaining.

TO HAVE AND TO HOLD the said granted property above described to the only proper use, benefit and behoof of the said Grantee, his heirs and assigns, in fee simple forever.

IN WITNESS WHEREOF, the Grantor as Administrator C.T.A. of the estate of Henry Gary Dean and as Executor and Temporary Administrator of the estate of Andrew Roderick Dean, has hereunto set his hand and seal this 9th day of June, 2008.



A. Kenneth Williamson, Jr. as Administrator C.T.A.
of the estate of Henry Gary Dean

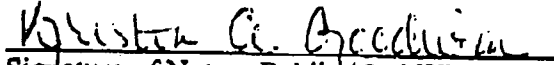


A. Kenneth Williamson, Jr. as Executor and
Temporary Administrator of the estate of Andrew
Roderick Dean

Signed, sealed and delivered in the presence of:



Signature of 1st Witness



Signature of Notary Public / 2nd Witness

STATE OF GEORGIA)

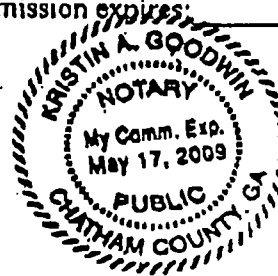
COUNTY OF CHATHAM)

ACKNOWLEDGMENT

I, the undersigned Notary Public do certify that A. Kenneth Williamson, Jr. as Administrator C.T.A. of the estate of Henry Gary Dean and as Executor and Temporary Administrator of the estate of Andrew Roderick Dean,, personally appeared before me this 9th day of June, 2008 and acknowledged the due execution of the foregoing instrument.

Witness my official seal this 9th day of June, 2008.

Kristin A. Goodwin
Notary Public
My Commission expires: _____



**Request to Admit dated January 10, 2013 by
the Appellant**

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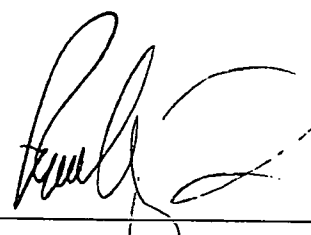
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6. An Answering Party may not give lack of information or knowledge as a reason for failure to admit or deny unless s/he states that s/he has made reasonable inquiry and that the information known or readily obtainable by him/her is insufficient to enable him/her to admit or deny.

7. A Party who considers that a matter of which an admission has been requested present a genuine issue for trial may not, on that ground alone, object to the request; s/he may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why s/he cannot admit or deny it.

DO YOU ADMIT THAT THE FOLLOWING:

1. On or around the 13th day of May 2012 the Tax Collector of Jasper County seized and took "exclusive physical possession of the property" in question (exhibit A of the Complaint)?
2. On or around November 1, 2010 the Tax Collector for Jasper County sold the aforesaid land (Exhibit A of the Complaint) to the Defendant pursuant to South Carolina Code Section § 12-51-50?
3. That the Jasper County Sheriff's Department properly posted the land (TMS# 072-00-02-038)?
4. That the Jasper County Sheriff's Department properly posted the land (TMS# 072-00-02-038) pursuant to South Carolina Code Section § 12-51-40(c)?
5. That the Jasper County Sheriff's Department posted the land (TMS# 072-00-02-038) in accordance with South Carolina Law and took "exclusive possession" of it?

By: 

C. RUSSELL KEEP, III, ESQUIRE

Keep Law Office
Suite 303, WatersEdge
Shelter Cove Harbour
Post Office Drawer 5877
Hilton Head Island, SC 29938
(803) 842-6268
ATTORNEY FOR DEFENDANT

Hilton Head Island, SC
January 10, 2013

000129

00168

**Responses to Request to Admit dated
January 28, 2013 by the Respondent**

000130

00163

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

ROBERT C. SCHIVERA,
Executor of the Estate of
Fred J. Hughes, III,

Plaintiff,

v.

C. RUSSELL KEEP, III, Esquire and
RHONDA MITCHELL, Jasper County
Tax Collector,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 12-CP-27-00760

RESPONSES TO REQUEST TO ADMIT

To: C. RUSSELL KEEP, ESQUIRE, Defendant

1. The Plaintiff, Robert C. Schivera, Executor of the Estate of Fred J. Hughes, III, has no personal knowledge of Request to Admit Number 1, but would submit that the file of the Delinquent Tax Collector for Jasper County, a public document, agrees with the request.

2. The Plaintiff admits Number 2 of the Defendant Request to Admit.

3. The Plaintiff has no personal knowledge of Request to Admit Number 3 but would submit that the records of the Delinquent Tax Collector of Jasper County would indicate that the notice was sent to the incorrect address in violation of the statutes listed as well as other statutes and the common law of the State of South Carolina.

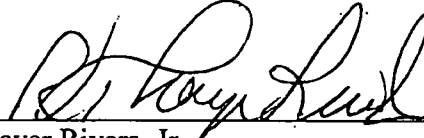
4. The Plaintiff has no personal knowledge of Request to Admit Number 4, but would submit that the records of the Delinquent Tax Collector of Jasper County indicate that the property was posted.

5. The Plaintiff has no personal knowledge of Request to Admit Number 4, but would submit that the records of the Delinquent Tax Collector of Jasper County indicate that the property was posted.

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LAW OFFICE OF R. THAYER RIVERS, JR.



R. Thayer Rivers, Jr.
Post Office Box 668
Ridgeland, SC 29936
843-726-8136

Attorney for the Plaintiff

January 28, 2013.

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

- ☐ depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.
- ☐ handing counsel a copy thereof.
- ☒ by facsimile and depositing in the U.S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 28 day of Jan, 2013
R. THAYER RIVERS, JR.

BY Kathleen Beender

000132

00171

**Third Request to Admit dated
January 15, 2013 by the Appellant**

900133

00172

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THIRD REQUEST TO ADMIT

The Defendant, C. Russell Keep, III, Esquire, above-named, request that you admit to the genuineness of the following documents and to the truth of the following matters within thirty (30) days after service thereof upon you but not before forty-five (45) days after service of the Summons and Complaint pursuant to Rule 36.

- 00173

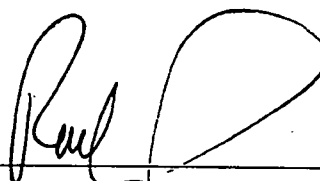
6. An Answering Party may not give lack of information or knowledge as a reason for failure to admit or deny unless s/he states that s/he has made reasonable inquiry and that the information known or readily obtainable by him/her is insufficient to enable him/her to admit or deny.

7. A Party who considers that a matter of which an admission has been requested present a genuine issue for trial may not, on that ground alone, object to the request; s/he may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why s/he cannot admit or deny it.

DO YOU ADMIT THAT THE FOLLOWING:

1. That the attached is an accurate, true copy of the posting of the 21 acres formerly belonging to Fred Hughes, III being tax map # 072-00-02-038 done on 9/28/10 at 6:15 p.m. by Sandy Fowler of Posting Pro?
2. That the posting of TMS# 072-00-02-038 was done in accordance with South Carolina Law?

By: _____



C. RUSSELL KEEP, III, ESQUIRE

Keep Law Office
Suite 303, WatersEdge
Shelter Cove Harbour
Post Office Drawer 5877
Hilton Head Island, SC 29938
(803) 842-6268
ATTORNEY FOR DEFENDANT

Hilton Head Island, SC
January 15, 2013

000135

00174

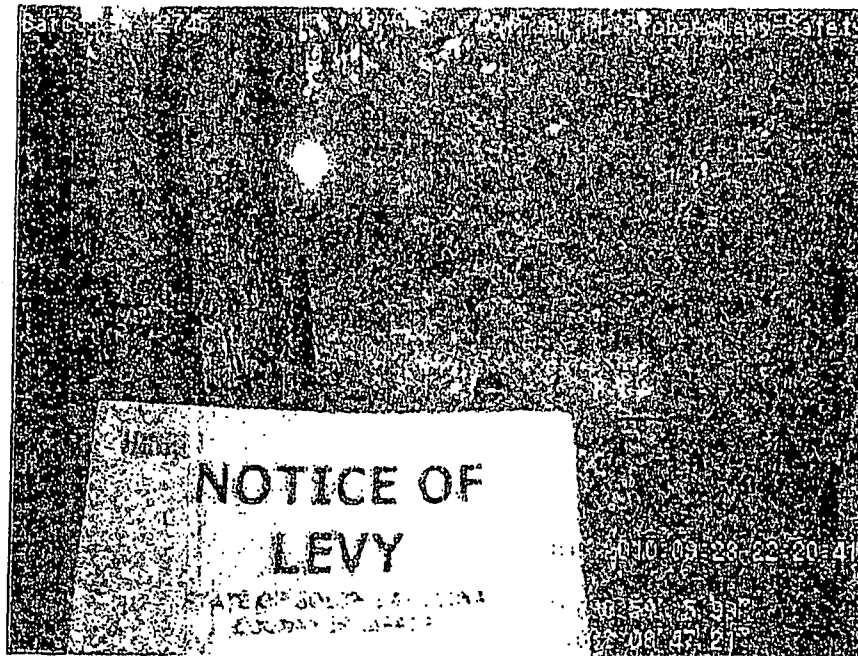
Property ID 442745
 Posting Year 2009
 Tax Map Number 072-00 -02-038
 County Item Number 001121
 Property Type: Residential
 Tax Name: HUGHES FRED J III

Acres: 21
 Lot: 0
 Building: 0

Received Time Stamp: 9/20/2010 7:15:31
 Image Approved: 10/5/2010 10:02:20
 Image Approved by: erinO
 MobileHomeLandMapNo: 072-00 -02-038
 Image Comment PL1 PROBLEM LEVY

Mail Address: 8512 KENT DRIVE
 Mail City: SAVANNAH GA
 Mail Zip: 314060000

Property Description TRACT B BELLINGER HILL



I, Sandy Fowler personally placed the Delinquent Tax Notice on the above referenced property on 9/28/2010 6:15:22 PM.

Sandy Fowler



000136
 00175

**Responses to Third Request to Admit dated
January 28, 2013 by the Respondent**

000137

00176

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

ROBERT C. SCHIVERA,
Executor of the Estate of
Fred J. Hughes, III,

Plaintiff,

v.

C. RUSSELL KEEP, III, Esquire and
RHONDA MITCHELL, Jasper County
Tax Collector,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 12-CP-27-00760

**RESPONSES TO THIRD REQUEST
TO ADMIT**

To: C. RUSSELL KEEP, ESQUIRE, Defendant

1. The Plaintiff, Robert C. Schivera, Executor of the Estate of Fred J. Hughes, III, has no personal knowledge of Request to Admit Number 1, but would submit that the file of the Delinquent Tax Collector for Jasper County, a public document, would bear out the items requested to be admitted.

2. That Request to Admit Number 2 calls for a conclusion of law which the Plaintiff can neither admit or deny but would respectfully submit that records of the Delinquent Tax Collector for Jasper County would show that said posting was done.

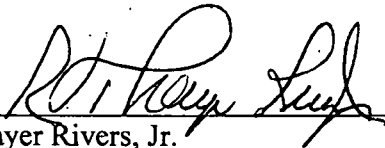
CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

- ☐ depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.
☐ handing counsel a copy thereof.
☒ by facsimile and depositing in the U.S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 28 day of Jan, 2013
R. THAYER RIVERS, JR.

LAW OFFICE OF R. THAYER RIVERS, JR.


R. Thayer Rivers, Jr.
Post Office Box 668
Ridgeland, SC 29936
843-726-8136

Attorney for the Plaintiff

January 28, 2013.

000138
0017

**Request to Admit to Respondent from
Appellant dated March 12, 2013**

000139

00178

IN THE COURT OF COMMON PLEAS
CASE NO. 2012-CP-27-00760
NON JURY

CASE NO. 2012-CP-27-00760

ROBERT C. SCHIVERA,
 Executor of the Estate of
 Fred J. Hughes, III;

REQUEST TO ADMIT

v.

**C. RUSSELL KEEP, III, Esquire
and Rhonda Mitchell,
Jasper County Tax Collector**

Defendant.

TO: TO: THAYER RIVERS, ATTORNEY FOR THE PLAINTIFF, ROBERT C. SCHIVERA, Executor of the Estate of Fred J. Hughes, III:

The Defendant, C. Russell Keep, III, Esquire, above-named, request that you admit to the genuineness of the following documents and to the truth of the following matters within thirty (30) days after service thereof upon you but not before forty-five (45) days after service of the Summons and Complaint pursuant to Rule 36.

1. If you deny any or all of any numbered item below, you must stipulate in what respect and set forth in detail the reasons for your denial.
2. If you fail to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if Defendants prove the genuineness of the document or the truth of the matter, they will apply to the court for an Order requiring Plaintiff to pay Defendants reasonable expenses incurred in making that proof, including reasonable attorneys fees, pursuant to SCRPC Rule 27(c) and 7 Moore is Federal Practice Sec. 37-72 and 37-131 (3d ed).
3. If objection is made, the reasons therefore shall be stated.
4. The Answer shall specifically deny the matter or set forth in detail the reasons why the Answering Party cannot truthfully admit or deny the matter.
5. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a Party qualify his/her Answer or deny only a part of the matter of which an admission is requested, s/he shall specify so much of it as is true and qualify or deny the remainder.

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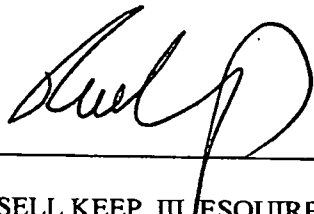
7
6. An Answering Party may not give lack of information or knowledge as a reason for failure to admit or deny unless s/he states that s/he has made reasonable inquiry and that the information known or readily obtainable by him/her is insufficient to enable him/her to admit or deny.

7. A Party who considers that a matter of which an admission has been requested present a genuine issue for trial may not, on that ground alone, object to the request; s/he may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why s/he cannot admit or deny it.

DO YOU ADMIT THAT THE FOLLOWING:

1. Do you admit that every document produced by Mavin Jones, Esq. 07 March 13 pursuant to a FOI request (attached), is a true copy of a genuine document and is admissible at Trial or Motion in this case?

2. Do you admit that the Parties have stipulated the genuineness and admissibility of the Tax Collectors entire file (attached) in this case?

By: 

C. RUSSELL KEEP, III, ESQUIRE
Keep Law Office
Suite 303, WatersEdge
Shelter Cove Harbour
Post Office Drawer 5877
Hilton Head Island, SC 29938
(803) 842-6268
ATTORNEY FOR DEFENDANT

Hilton Head Island, SC
March 12, 2013

000141

00120



OFFICE OF THE JASPER COUNTY ATTORNEY

Post Office Box 420 • 262 Third Avenue
Ridgeland, South Carolina 29936
Telephone 843-726-5403 • Facsimile 843-726-3240

Marvin C. Jones
County Attorney

mjones@jaspercountysc.gov

07 March 2013

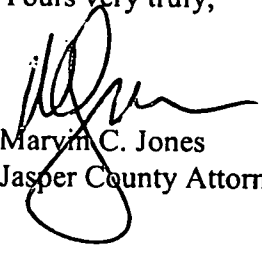
C. Russell Keep, III
PO Drawer 5877
Hilton Head Island, SC 29938

RE: Freedom of Information Request
Jasper County FOIA3-010
TMS#072-00-02-038.

Dear Mr. Keep:

I am enclosing copies received from the Tax Collector, in response to your Freedom of Information Request to the Jasper County.

Yours very truly,


Marvin C. Jones
Jasper County Attorney

MCJ:bl

Enclosures

cc: Andrew Fulghum, Jasper County Administrator
Ronnie K. Malphrus, Director of Administrative Services
Rhonda Mitchell, Tax Collector

000142

00181



Jasper County Tax Collector

P. O. BOX 428, RIDGELAND, S.C. 29936
358 THIRD AVENUE, RIDGELAND, S.C. 29936
PHONE: 843-717-3611
FAX: 843-717-3625

RHONDA R. MITCHELL
TAX COLLECTOR

March 26, 2012

Keep C. Russell, III
P O Drawer 5877
Hilton Head Island SC 29938

RE: TAX SALE - NOVEMBER 1, 2010

Dear Madam/Sir:

I have enclosed your deed to the following property, which you purchased at Jasper County Delinquent Tax sale on November 1, 2010:

Fred J Hughes III

072-00 -02-038

This deed has been properly filed with the county's Register of Deed's office.

Thank you.

Sincerely,

Rhonda R. Mitchell
Rhonda R. Mitchell

/rrm
enclosure

000143

rmitchell@jaspercountysc.gov
www.jaspercountysc.org

00182

IB

J A S P E R C O U N T Y
T A X S A L E R E C E I P T

ITEM # 01121

DATE: 11/01/2010

BIDDER #..0022

TAXPAYER: HUGHES FRED J III

TAX MAP #..072-00 -02-038

KEEP RUSS

P.O. BOX 5877

HILTON HEAD SC

REDEMPTION

BEFORE

315.99 02/02/2011

00002 9938 315.99 05/02/2011

315.99 08/02/2011

315.99 11/02/2011

AMOUNT PAID====> \$6,600.00

LINDA M. MOUZON

JASPER COUNTY TAX COLLECTOR

000144

00183

IB



Jasper County Tax Collector

P. O. BOX 428, RIDGELAND, S.C. 29936
358 THIRD AVENUE, RIDGELAND, S.C. 29936
PHONE: 843-717-3611
FAX: 843-717-3625

RHONDA R. MITCHELL
TAX COLLECTOR

Feb. 29, 2012

Russell Keep
PO Box 5877
Hilton Head Is, SC. 29938

RE: TAX SALE - NOVEMBER 1, 2010

Dear Madam/Sir:

This letter is written to notify you that a tax deed has been prepared deeding property to you. Said property, in the name of Fred. Hughes, defined by map number 072-00-02-038, purchased by you, on November 1, 2010, at the 2009 delinquent tax sale.

Please submit the amounts listed below to complete this transaction.

Deed preparation cost:	\$ <u>60.00</u>
Recording & doc stamp fees:	\$ <u>35.90</u>
Postage/Search fees:	\$ <u>40.45</u>
Total:	\$ <u>136.35</u> - payable to Jasper County Tax Collector
2011 tax notice:	\$ <u>0.00</u> - payable to Jasper County Treasurer

Thank you.

Sincerely,

Rhonda R. Mitchell
Rhonda R. Mitchell

/rrm

JASPER COUNTY TAX COLLECTOR

DATE: 12/7/2011

Please prepare a tax deed using the following information:

Defaulting Taxpayer: Hughes Fred J III

Defaulted Tax Sum of \$ 114.64

Sold for the Year: 2009

Seize Date: May 13, 2010 (Certified Mail)

Seize Date: _____ (Posted by: _____)

Sale Date: November 1 Bid Amount: \$ 6,600.00

Bidder: Keep Russ

Whose Mailing Address is: P. O Box 5877 Hilton Head SC 29938

PROPERTY TO BE CONVEYED:

Location: _____

Tax Map Number: 072-00-02-038

Number of acres: 21.00 ; or

Lot ID & Description: Tract B Bellinger #11

Respectfully submitted,

Rhonda R. Mitchell
Rhonda R. Mitchell
Delinquent Tax Collector
Jasper County

000146

00185

JASPER COUNTY
DELINQUENT TAX OFFICE
P O BOX 428
RIDGELAND, SC 29936-0428

DATE: NOVEMBER 04, 2010

TO: HUGHES FRED J III

8512 KENT DRIVE

SAVANNAH GA 31406

FROM: LINDA M. MOUZON
JASPER COUNTY TAX COLLECTOR

RE: SALE OF PROPERTY FOR DELINQUENT TAXES

MAP # 072-00 -02-038 DISTRICT 01

ITEM# 10-01121

TRACT B BELLINGER HILL

This letter is to advise you that the property listed above was sold at public auction for delinquent taxes on NOVEMBER 01, 2010. Section 12-51-90 of the South Carolina Code of Laws provides that the defaulting taxpayer, any grantee from the owner or any mortgage or judgement creditor may redeem the above property within (12) months from the date of the delinquent tax sale by paying to this office delinquent taxes penalties, and costs together with the appropriate percent of interest on the total bid price at the tax sale. If you wish to redeem the above described property, the redemption amount will be as listed below:

\$ <u>269.61</u>	(03%) due on or before	<u>FEBRUARY 02, 2011</u>
\$ <u>269.61</u>	Redemption Execution	<u>MARCH 18, 2011</u>
\$ <u>315.99</u>	(06%) due on or before	<u>MAY 02, 2011</u>
\$ <u>315.99</u>	(09%) due on or before	<u>AUGUST 02, 2011</u>
\$ <u>315.99</u>	(12%) due on or before	<u>NOVEMBER 02, 2011</u>

FINAL DATE TO REDEEM THE ABOVE PROPERTY IS ON/BEFORE NOVEMBER 02, 2011 !!!

If you fail to redeem the property by said date, a tax deed will be issued to the successful bidder.

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00186

09/04/2012 08:35 FAX 843 726 4401

THAYER RIVERS

001

Law Office
R. THAYER RIVERS, JR.
 COURTHOUSE SQUARE
 252 RUSSELL STREET
 RIDGELAND, SOUTH CAROLINA 29936
 Please reply to:
 POST OFFICE BOX 668
 RIDGELAND, SOUTH CAROLINA 29936

ALSO ADMITTED IN GEORGIA

TELEPHONE (843) 726-8136
 FACSIMILE (843) 726-4401

CERTIFIED IN CIVIL TRIAL ADVOCACY

FACSIMILE COVER SHEET

DATE: Sept. 4, 2012 TIME: 9:05 (A.M./P.M.)

TO: Marvin C. Jones

FAX NO.: 726-3240

FROM: Jessica

RE: Tax sale

NO. PAGES 2 (INCLUDES COVER SHEET)

MESSAGE:

If the transmission is poor, or if there are other problems with the copy you received, please call us at 843/726-8136

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone at 843/726-8136. Thank you.

000148

00187

09/04/2012 08:35 FAX 843 726 4401

THAYER RIVERS

002

LAW OFFICE
R. THAYER RIVERS, JR.

POST OFFICE BOX 688

COURTHOUSE SQUARE

252 RUSSELL STREET

RIDGELAND, SOUTH CAROLINA 29936

Certified in Civil Trial Advocacy

August 30, 2012

R. THAYER RIVERS, JR.
ALSO ADMITTED IN GEORGIA

RECEIVED

SEP 04 2012

TELEPHONE
(843) 726-6136TELECOPIER
(843) 726-4401Marvin C. Jones, Esquire
Jasper County Attorney
P.O. Box 420
Ridgeland SC 29936

RE: Sale of property belonging to Fred J. Hughes, III

Dear Mr. Jones:

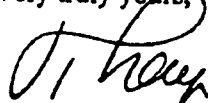
Our law firm represents the Estate of Fred J. Hughes, III. In this regard, I request that, under the Freedom of Information Act, you provide me with the following:

1. All records pertaining to tax map # 072-00-02-038 and its sale to Russell Keep on November 1, 2010.

tax sale

Thank you very much.

Very truly yours,



R. Thayer Rivers, Jr.

RTR/jd

000149

00188

TITLE / MORTGAGE / JUDGMENT SEARCH
FOR DELINQUENT TAX COLLECTOR

TAX MAP # 072-00-02-038

OWNER OF RECORD: FRED J. HUGHES, III
PLEASE ATTACH A COPY OF THE DEED

PROPERTY DESCRIPTION: TRACT B (21 AC+/-) BELLINGER HILL SECTION

DEEDS OUT: NONE

OPEN MORTGAGES: NONE
30 YEAR SEARCH

TAX LIENS: NONE
20 YEAR SEARCH

OPEN JUDGMENTS: NONE
20 YEAR SEARCH

SPECIAL COMMENTS: NONE

SEARCHED FROM: 1976
SEARCHED BY: KAYCEE GOETHE

TO: 10/19/11

000150

00189

DEED BOOK: 0670 PAGE: 274
DATE: 06/11/2008 04:41:28 PM
Hazel Holmes / EM
AUDITOR JASPER COUNTY, SC

200800003129 06/11/2008 AT 10:18 AM
OR Volume 0670 Page 0135 - 0137
Filed for Record in JASPER COUNTY
Deed Fee: \$10.00
State Tax: \$494.00 Local Tax: \$209.00

SPACE ABOVE THIS LINE FOR RECORDING DATA

Return recorded document to:
WEINER, SHEAROUSE, WEITZ, GREENBERG & SHAW, LLP
Attn: Peggy Krelmest
14 East State Street
Savannah, GA 31401

The within instrument has been transferred
on 06/16/2008 09:15:17 AM, and recorded in
the Jasper County Assessor's Office.
Tax Map No.: 072-00-02-038
Transfer No.: 8-27-659
Lisa Malphrus - JASPER COUNTY, SC

STATE OF SOUTH CAROLINA

TITLE TO REAL ESTATE

COUNTY OF JASPER

KNOW ALL MEN BY THESE PRESENTS, that A. Kenneth Williamson, Jr. as Administrator C.T.A. of the estate of Henry Gary Dean and as Executor and Temporary Administrator of the estate of Andrew Roderick Dean, whose address is 8512 KENT DRIVE, SAVANNAH, GEORGIA 31406 (hereinafter the "Grantor"), in consideration of the sum of One Hundred Ninety Thousand and 00/100 (\$190,000.00), to us in hand paid at and before the sealing of these presents by FRED J. HUGHES, III (hereinafter the "Grantee"), of 1320 HIGHWAY 80 WEST, GARDEN CITY, GEORGIA 31408, for which the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee, his heirs and assigns, forever in fee simple, the following described property, to-wit:

All that certain piece, parcel, or tract of land, situate, lying and being in Jasper County, South Carolina, Bellinger Hill Section, being shown as Tract B on that Plat of S.S. Snook, Registered Land Surveyor, dated April 25, 1969, containing 21 acres, more or less, and being bound now or formerly as follows: On the Northeast by lands of Tom Nelson and lands of Edna Crosby; on the Southeast by lands of Alice Larson; on the Southwest by lands of Joe German; and on the Northwest by lands of Samuel Scott.

This being the same property conveyed to Henry Gary Dean and Andrew Roderick Dean on 12/27/76 and recorded in Deed Book 76 at page 1920, in the Register of Deeds of Jasper County, South Carolina and having Tax Map No. 072-00-02-038.

This deed was prepared by the law firm of WEINER, SHEAROUSE, WEITZ, GREENBERG & SHAW, LLP, 14 East State Street, Savannah, Georgia 31401, (912) 233-2251.

TOGETHER with all singular the improvements, tenements, hereditaments, rights and members thereunto belonging or anywise appertaining.

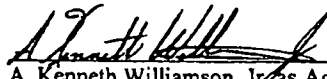
File #: 11459.3.6 - FRED J. HUGHES, III

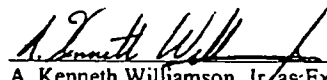
000151

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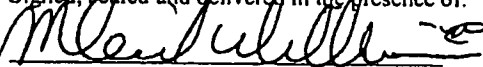
TO HAVE AND TO HOLD the said granted property above described to the only proper use, benefit and behoof of the said Grantee, his heirs and assigns, in fee simple forever.

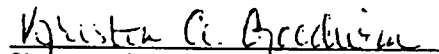
IN WITNESS WHEREOF, the Grantor as Administrator C.T.A. of the estate of Henry Gary Dean and as Executor and Temporary Administrator of the estate of Andrew Roderick Dean, has hereunto set his hand and seal this 9th day of June, 2008.


A. Kenneth Williamson, Jr. as Administrator C.T.A.
of the estate of Henry Gary Dean


A. Kenneth Williamson, Jr. as Executor and
Temporary Administrator of the estate of Andrew
Roderick Dean

Signed, sealed and delivered in the presence of:


Signature of 1st Witness

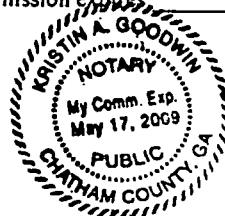

Signature of Notary Public / 2nd Witness

STATE OF GEORGIA)
COUNTY OF CHATHAM) ACKNOWLEDGMENT

I, the undersigned Notary Public do certify that A. Kenneth Williamson, Jr. as Administrator C.T.A. of the estate of Henry Gary Dean and as Executor and Temporary Administrator of the estate of Andrew Roderick Dean,, personally appeared before me this 9th day of June, 2008 and acknowledged the due execution of the foregoing instrument.

Witness my official seal this 9th day of June, 2008.

Kristin A. Goodwin
Notary Public
My Commission expires: _____



File #: 11459.3.6 - FRED J. HUGHES, III

000152

00192

⚠ Attachments can contain viruses that may harm your computer. Attachments may not display correctly.
The sender of this message has requested a read receipt. [Click here to send a receipt.](#)

Rhonda Mitchell

From: KATHY LANGFORD [kathylangford1@embarqmail.com] **Sent:** Fri 10/28/2011 10:44 PM
To: Bonnie W. Lawson; Rhonda Mitchell
Cc:
Subject: Emailing: PB 11 PG 150, 072-00-02-038 TAX SALE SEARCH FOR HUGHES, ORB 670 PG 135 HUGHES
Attachments: [PB 11 PG 150.PDF\(26KB\)](#) [072-00-02-038 TAX SALE SEARCH FOR HUGHES.pdf\(11KB\)](#) [ORB 670 PG 135 HUGHES.pdf\(299KB\)](#)



Your message is ready to be sent with the following file or link attachments:

PB 11 PG 150

072-00-02-038 TAX SALE SEARCH FOR HUGHES

ORB 670 PG 135 HUGHES

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.



[FREE Animations for your email - by IncrediMail!](#)

[Click Here!](#)

000155

00194



Jasper County Register of Deeds

Patsye Greene

P.O. Box 836
224 Second Ave.
Ridgeland, S.C. 29936
843-726-7755

OFFICIAL RECEIPT

03/12/2012 03:41:19 PM

RETURN TO:
RHONDA MITCHELL TAX COLLECTOR

Receipt #: 41731 Transaction #: 125761
Paid By: RHONDA MITCHELL TAX Payment Comment:
COLLECTOR
Collected By: hightower Collected Date: 03/12/2012 04:41:10 PM

Instrument Fees:

<u>Book - Page</u>	<u>Instrument Type</u>	<u>Record Date</u>	<u>Fees</u>
0824 - 0056	Deed	03/12/2012 04:41:10 PM	

RF:Deed	\$10.00
State Tax	\$18.20
Local Tax	\$7.70
	\$35.90

Transaction Fees:

Total Fees: \$35.90

Total Amount Paid: \$35.90

Total Amount Due: \$35.90

Change: \$0.00

<u>Payment Type</u>	<u>Check Number</u>	<u>Amount Paid</u>
Check	908	\$35.90

Hughes Fred J III
Russ keep

000156

00195

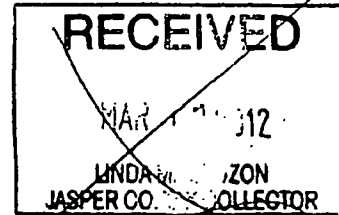


C. Russell Keep, III
Suite 303, WatersEdge
Shelter Cove Harbour
Post Office Drawer 5877
Hilton Head Island, SC 29938

(843) 842-6268
Fax (843) 785-8458
E-mail hhaw@hargray.com

March 7, 2012

Ms. Rhonda Mitchell
Jasper County Tax Collector
Post Office Box 428
Ridgeland, SC 29936



Re: Tax Map # 072-00-02-038

Dear Ms. Mitchell,

I am pleased to enclose a check for \$136.35 as directed. Please send me the deed. Thank you.

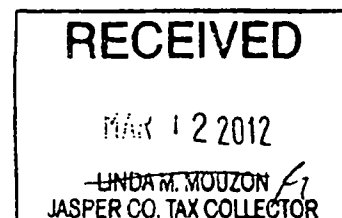
With warmest, personal regards, I remain

Very truly yours,

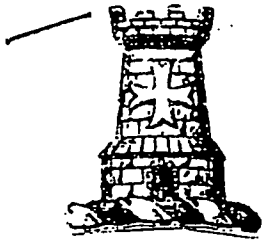
C. RUSSELL KEEP, III

CRK/kmm
enclosure
cc: Paul Martel w/ enclosure

000157



00196



C. Russell Keep, III
Suite 303, WatersEdge
Shelter Cove Harbour
Post Office Drawer 5877
Hilton Head Island, SC 29938

RECEIVED

JAN 02 2013

RHONDA R. MITCHELL
Jasper Co. Tax Collector
Phone (843) 842-6268
Fax (843) 785-8458
E-mail hhaw@hargray.com

December 27, 2012

Ms. Rhonda Mitchell
Jasper County Tax Collector
Post Office Box 428
Ridgeland, SC 29936

Re: Fred J. Hughes, III, Tax Map # 072-00-02-038

Dear Ms. Mitchell,

Under the South Carolina Freedom of Information Act please send me proof that the tax collector took exclusive physical possession of the aforesaid property by posting a notice at one or more conspicuous places on the premises pursuant to Section 12-51-40(C).

With warmest, personal regards, I remain

Very truly yours,

C. RUSS KEEP, III

CRK/kmm

000158

00197



Jasper County Tax Collector

P. O. BOX 428, RIDGELAND, S.C. 29936
358 THIRD AVENUE, RIDGELAND, S.C. 29936
PHONE: 843-717-3611
FAX: 843-717-3625

RHONDA R. MITCHELL
TAX COLLECTOR

October 18, 2012

Hughes Land 2 LLC
1320 Hwy 80 W
Garden City Ga 31408

RE: 072-00-02-038

Dear Taxpayer/s:

It is very unfortunate that your real property (land and/or bldg), as described above, was auctioned for non-payment of 2009 taxes. This property has been deeded to the successful bidder, who bided on the property on November 1, 2010. He/she is now the owner of this property.

You are entitled to any overages from this sale. Therefore, you may request this overage (\$ 51.53) in writing or in person at your convenience. Please provide proof of identification along with your request.

Sincerely,

Rhonda R. Mitchell
Rhonda R. Mitchell

/rrm

Via Certified Mail #: 7012 1010 0001 2657 4735

SENDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.

Addressed to:

Hughes Fred J III
320 Hwy 80W
Garden City GA 31408

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent ☐ Addressee
X *[Signature]*
B. Received by (Printed Name) *Janie S. Neese* C. Date of Delivery *10/23/12*
D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

Article Number 7012 1010 0001 2657 4735
(Transfer from service label)

Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

U.S. Postal ServiceTM
CERTIFIED MAILTM RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage \$ *.45*
Certified Fee *2.95*
Return Receipt Fee (Endorsement Required) *2.35*
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees \$ *5.75*

Postmark
Here

Sent To *Hughes Fred J III*
Street, Apt. No., or PO Box No. *1320 Hwy 80W*
City, State, ZIP+4 *Garden City GA 31408*

PS Form 3800, August 2005 See Reverse for Instructions

000160

00199



Jasper County Tax Collector

P. O. BOX 428, RIDGELAND, S.C. 29936
358 THIRD AVENUE, RIDGELAND, S.C. 29936
PHONE: 843-717-3611
FAX: 843-717-3625

RHONDA R. MITCHELL
TAX COLLECTOR

10-3-, 2011

TO: Hughes Fred J III
8512 Kent Drive
Savannah GA 31406

FROM: Rhonda R. Mitchell, Jasper County Tax Collector

RE: SALE OF PROPERTY FOR DELINQUENT TAXES

MAP # 072-60-02-038 Tract B Bellinger Hill

This letter is to inform you that the property listed above was sold at public auction for delinquent taxes on November 1, 2010. Section 12-51-90 of the South Carolina Code of Laws provides that the defaulting taxpayer, any grantee from the owner or any mortgage or judgment creditor may redeem the above property within twelve (12) months from the date of the delinquent tax sale by paying to this office delinquent taxes, penalties, and costs together with the appropriate percent of interest on the total bid price at the tax sale.

If you wish to redeem the above-described property, the redemption amount is listed below:

\$ 35.99 due on or before November 2, 2011

FINAL DATE TO REDEEM THE ABOVE PROPERTY IS ON OR BEFORE NOVEMBER 2, 2011!!!!!!

If you fail to redeem the property by said date, a tax deed will be issued to the successful bidder.

No Checks!! Money Order, Cashier's Check, or Cash Only.

rmitchell@jaspercountysc.gov
www.jaspercountysc.org

000161
00200

NDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.

A. Addressed to:

Hughes, Fred J III
8512 Kent Drive
Savannah GA 31406

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *J. Williamson*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☒ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

Article Number

7011 0470 0003 1470 5738

(Transfer from service label)

Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

U.S. Postal ServiceTM

CERTIFIED MAILTM RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage \$

Certified Fee

Return Receipt Fee
(Endorsement Required)

Restricted Delivery Fee
(Endorsement Required)

Total Postage & Fees

\$ 5.59

Postmark
Here

Sent To

Hughes, Fred J III
8512 Kent Drive
Savannah GA 31406

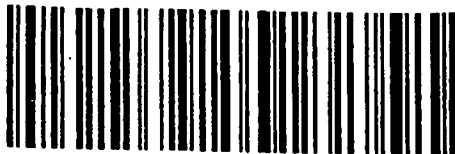
PS Form 3800, August 2006

See Reverse for Instructions

000162

00201

9504-09-3
2-00 -02-038
SPER COUNTY
TAX COLLECTOR
P.O. BOX 428
ROSELAND, SC 29338



7100 5868 2452 7901 6775

RETURN SERVICE REQUESTED

RETURN RECEIPT RI
RESTRICTED DEL

HUGHES FRED J III

AWK

2/4
LN 5-12-

REMOVE STUBS AT BOTH ENDS FIRST
THEN FOLD, CREASE AND REMOVE THIS STUB AT PERFORATION

POSTMAN
STEP 2: DETACH CARD HERE

SENDER: COMPLETE THIS SECTION

- ☐ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- ☐ Print your name and address on the reverse so that we can return the card to you.
- ☐ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

009504-09-3
HUGHES FRED J III
8512 KENT DR
SAVANNAH GA 31406

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

☐ Agent
☐ Addressee

D. Is delivery address different from item 1?
If YES, enter delivery address below:

☐ Yes
☐ No

3. Service Type

- ☒ Certified Mail
- ☐ Registered
- ☐ Insured Mail
- ☐ Express Mail
- ☐ Return Receipt for Merchandise
- ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☒ Yes

POSTMAN
STEP 1: TEAR ALONG PERFORATION

072-00 -02-038

2. Article Number (Copy from service label)

7100 5868 2452 7901 6775

PS Form 3811, July 1999

Domestic Return Receipt

102595-99-M-1789

000163

00202

Jasper County Tax Collector
P.O. Box 428
Ridgeland, S.C. 29936

JASPER COUNTY, S.C.

ACCOUNT NUMBER	VALUATION OF PROPERTY			TAX LEVY IN MILLS	TAXES	- LOST CREDIT	TOTAL TAXES
	TOTAL REAL	TOTAL PERS	TOTAL				
009504-09-3	160			267.0 .0	42.72 .00	- -	3.90 .00
TRACT B BELLINGER AD#10-01121 4% APPR 3920.							
TAX RECEIPT							PENALTY
2009 TAXES							5.82
							TOTAL
							44.64
DIST	Map - Sheet - Block Parcel						
01	HUGHES FRED J III 8512 KENT DRIVE SAVANNAH GA 31406			072-00 -02-038			
				ACRES 21.00	LOTS	70.00	
				VALUE LAND	160	TOTAL COST	
				IMPR		114.64	
				VALUE IMPR.			

PAID 11/06/2010 TS

000164

00203

TAX RECEIPT - KEEP THIS COPY FOR YOUR RECORDS

JASPER COUNTY, S.C.

GARVIN, COUNTY TREASURER

RECEIPT NUMBER	009372-10-3			PROPERTY VALUATION	TAX LEVY	PROPERTY TAX	LESS L.O.S.T.	LESS HOMESTEAD EXEMPTION	NET TAX
JASPER COUNTY				160	276.5	44.24	3.91	.00	40.33
CITY OF					.0				
DISTRICT	NO. ACRES	NO. LOTS	VALUE OF ACRES / LOTS	NO. IMPR.	VALUE OF IMPROVEMENTS	REAL VALUATION	PERSONAL VALUATION		
01	21.00		160			160			
						SCHOOL OPERATIONS	SCHOOL DEBT SERVICE	FIRE DISTRICT	40.33
						21.04	3.04	.00	PENALTY 4.03
						COUNTY OPERATIONS	COUNTY DEBT SERVICE	TOTAL PAID	44.36
						19.68	.48		

HUGHES FRED J III

8512 KENT DRIVE
SAVANNAH GA 31406

PAID DATE 02/02/2011 CL DUP
** NOT FOR VEHICLE TAXES ** 2010

MAP# 072-00 -02-038
TRACT B BELLINGER HILL

4% APPR 3920

RECEIPT NUMBER	009372-10-3			PROPERTY VALUATION	TAX LEVY	PROPERTY TAX	LESS L.O.S.T.	LESS HOMESTEAD EXEMPTION	NET TAX
PER COUNTY				160	276.5	44.24	3.91	.00	40.33
OF					.0				
DISTRICT	NO. ACRES	NO. LOTS	VALUE OF ACRES / LOTS	NO. IMPR.	VALUE OF IMPROVEMENTS	REAL VALUATION	PERSONAL VALUATION		
01	21.00		160			160			
									40.33
									PENALTY 4.03
									TOTAL PAID 44.36

HUGHES FRED J III

8512 KENT DRIVE
SAVANNAH GA 31406

PAID DATE 02/02/2011 CL DUP
** NOT FOR VEHICLE TAXES ** 2010

MAP# 072-00 -02-038
TRACT B BELLINGER HILL

4% APPR 3920

000165

00204

JASPER DELINQUENT CERTIFIED POSTMARK/FILE COPY
DATE 05/06/10
TAX YEAR 2009 - 2009.

PAGE 1,611

RECNO.....009504-09-3

NAME.....HUGHES FRED J III

8512 KENT DRIVE
SAVANNAH GA 31406

MAP REFERENCE NUMBER....072-00 -02-038

ASSESSMENT RATIO %.....4%

DISTRICT/TOWN.....01

ASSESSED VALUE.....160

ORIGINAL TAX..... 38.82

15% PENALTY..... 5.82

COSTS..... 20.00

TOTAL AMOUNT NOW DUE.... 64.64

PROPERTY DESCRIPTION....TRACT B BELLINGER HILL

ACRE = 21.00

OCR NO.....7100 5868 2452 7901 6775

POSTAGE......44

CERTIFIED FEE..... 2.80

RETURN RECEIPT FEE..... 2.30

RESTRICTED DELIVERY FEE. 4.50

TOTAL POSTAGE & FEES... 10.04

POSTMARK BELOW

000166

00206

OFFICE OF TAX COLLECTOR

TO: JASPER COUNTY, S.C. OFFICE OF TAX COLLECTOR

WHEREAS, the party whose name appears below has been duly assessed the sum shown below, the same being School, County and Special taxes and municipal Taxes, if applicable, for the tax year beginning December 31, 2008 the same being not paid.

This Execution commands you in the name of the State to levy by distress and sale on as much of this delinquent taxpayer's property as is sufficient to satisfy the delinquent taxes, assessment, penalties and costs. This EXECUTION is sufficient warrant for a levy by distress and sale.

GIVEN under by hand and seal this 17th day of March, 2010



VERNA L. GARVIN

JASPER COUNTY TREASURER

Receipt: 009504-09-3
TAXPAYER: HUGHES FRED J III
MAP NUMBER: 072-00 -02-038
NET DUE: 49.64

000167

00206



OFFICE OF THE JASPER COUNTY ATTORNEY

Post Office Box 420 • 262 Third Avenue
Ridgeland, South Carolina 29936
Telephone 843-726-5403 • Facsimile 843-726-3240

Marvin C. Jones
County Attorney

mjones@jaspercountysc.gov

09 January 2013

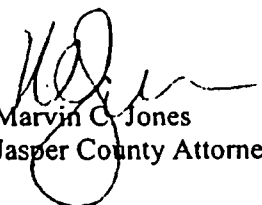
C. Russell Keep, III
PO Drawer 5877
Hilton Head Island, SC 29938

RE: Freedom of Information Request
Jasper County FOIA3-002
TMS#072-00-02-038

Dear Mr. Keep:

I am enclosing an executed copy received from PostingPro dated September 28, 2010, in response to your Freedom of Information Request to the Jasper County Tax Collector.

Yours very truly,


Marvin C. Jones
Jasper County Attorney

MCJ:bl

Enclosure

cc: Andrew Fulghum, Jasper County Administrator
Ronnie K. Malphrus, Director of Administrative Services
Rhonda Mitchell, Tax Collector

000168

00207

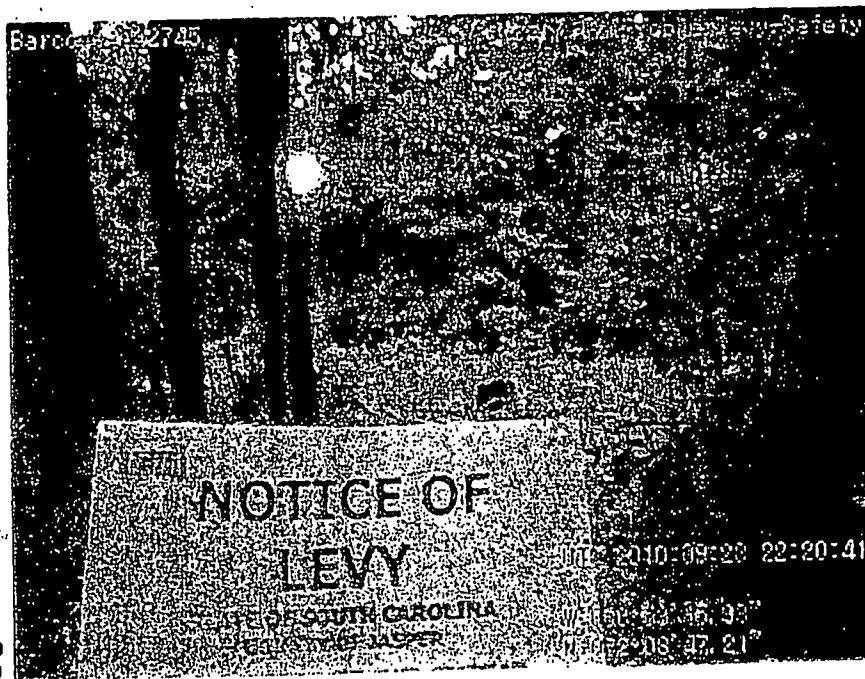
Property ID 442745
 Listing Year 2009
 Map Number 072-00 -02-038
 County Item Number 001121
 Property Type Residential
 Name: HUGHES FRED J III

Acres: 21
 Lot: 0
 Building: 0

Received Time Stamp: 9/20/2010 7:15:31 PM
 Image Approved: 10/5/2010 10:02:20 AM
 Image Approved by: erinO
 MobileHomeLandMapNo: 072-00 -02-038
 Image Comment PL1 PROBLEM LEVY

Address: 8512 KENT DRIVE
 City: SAVANNAH GA
 Zip: 314060000

Property Description TRACT B BELLINGER HILL



Sandy Fowler personally placed the Delinquent Tax Notice on the above referenced property on 9/28/2010 6:15:22 PM.

Sandy G. Fowler

000168
 00203

THE STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

TAX DEED
Sold for the Year 2009

Whereas, by an action of the General Assembly of the State of South Carolina, entitled An act in relation to forfeited lands, delinquent lands and collection of taxes, approved December 24, 1887, and acts amendatory thereof, it is provided that hereafter, immediately upon the expiration of the time allowed by the law for the payment of taxes in any year, the county treasurer of each county, shall and is hereby authorized and directed, to issue in the name of the State a warrant or execution, in duplicate, against each defaulting taxpayer in the county, signed by treasurer in her official capacity, directed to the tax collector of the county or lawful deputy, requiring and commanding the tax collector to levy the same by distress and sale of so much of the defaulting taxpayers estate, real or personal, or both, as may be sufficient to satisfy the taxes, state, school, county and special, of such defaulter specifying therein the aggregate amount of all taxes as well as the amount to each fund; and

Whereas, it is further provided by said act, and amendatory acts, that under and by virtue of said warrant or execution, the tax collector shall seize and take exclusive possession of so much of the defaulting taxpayers estate, real, or personal, or both, as may be necessary, to raise the sum of money mentioned therein, and the charges thereon, and after due advertisement sell at public auction at the courthouse or other convenient place within the county if designated and advertised on a legal sales date during regular hours for legal tender payable in cash, cashiers check, certified check, or money order, give to the purchaser (upon compliance with the terms of the sale) a receipt for the purchase money, but not make title to the purchaser until the expiration of twelve months from the day of the sale, if the property sold not be redeemed as therein provided, and annex said receipt with the duplicate warrant, with the endorsement thereon of his actions, hereunder; and

Whereas, Verna L. Garvin, the County Treasurer of Jasper County, has issued her warrant, directed Linda Mouzon, as Tax Collector for Jasper County, by authority of said act, against FRED J. HUGHES, III, a defaulting taxpayer(s) of said County, strictly charging and commanding Linda Mouzon, as Tax Collector of said County, to levy by distress and sale of personal property, and if sufficient personal property cannot be found, then by distress and sale of land of FRED J. HUGHES, III, defaulter(s), the sum of One Hundred Fourteen and 64/100ths (\$114.64) Dollars, together with Sixty and 00/100ths (\$60.00) Dollars, the charge thereof; and

cases made and provided.

WITNESS my hand and seal this 12th day of March, in the Two Thousand and Twelfth year of our Lord.

Signed, sealed and delivered in the
Presence of us:

Ann Nimmer
Patsy M. Greene

Rhonda R. Mitchell
Rhonda R. Mitchell
Tax Collector
Jasper County, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Rhonda R. Mitchell, Tax Collector for the County of Jasper, sign, seal and as her act and deed deliver the above deed of conveyance and that (s)he with the other witness witnessed the execution thereof.

Ann Nimmer

SWORN to before me this 12 day of

March, 2012.

Patsy M. Greene (L.S.)

Notary Public for South Carolina

My Commission Expires: 4-25-2021

Deed prepared by Marvin C. Jones, County Attorney for Jasper County, South Carolina at the request of the Grantor herein without benefit of a title search or title examination. No certification given against title defects and/or error in chain of title.

**Response to Request to Admit by Respondent
dated April 11, 2013**

• 000172

• 00211

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

ROBERT C. SCHIVERA,
Executor of the Estate of
Fred J. Hughes, III,

Plaintiff,

v.

C. RUSSELL KEEP, III, Esquire and
RHONDA MITCHELL, Jasper County
Tax Collector,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 12-CP-27-00760

RESPONSES TO REQUEST
TO ADMIT DATED
MARCH 12, 2013

To: C. RUSSELL KEEP, ESQUIRE, Defendant

1. The Plaintiff admits Request to Admit Number 1.
2. The Plaintiff admits Request to Admit Number 2.

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

☐ depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

☐ handing counsel a copy thereof.

☒ by facsimile and depositing in the U.S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 11th day of April, 2013
R. THAYER RIVERS, JR.

BY Kathleen E. Bearden

LAW OFFICE OF R. THAYER RIVERS, JR.


R. Thayer Rivers, Jr.
Post Office Box 668
Ridgeland, SC 29936
843-726-8136

Attorney for the Plaintiff

April 11, 2013.

000173

00215

Pursuant to Appellate Rule 210(g), I certify that the Record on Appeal contains all material proposed to be included by any of the Parties and not any other matter.

Respectfully submitted,

September 18, 2014



C. Russell Keep, III, Esq. / SC Bar # 3321
Post Office Box 5877
Hilton Head Island, South Carolina 29938
PH: (843) 842-6268
Fax: (843) 785-8458
Attorney for Appellant

RECEIVED

OCT 02 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

Case No. 2014-000823

RECEIVED

OCT 02 2014

SC Court of Appeals

Robert C. Schivera, Executor of the Estate of Fed J. Hughes, III.....Respondent

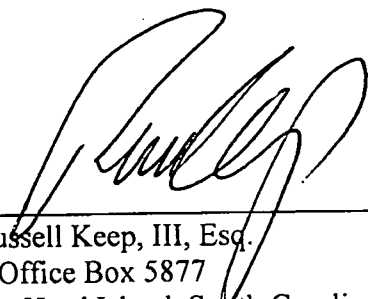
Vs.

C. Russell Keep, III, Esquire and Rhonda Mitchell, Jasper County Tax Collector of which C. Russell Keep, III, Esquire is the.....Appellant.

PROOF OF SERVICE

In accordance with SCRAP 203 (d) (2) (B) (i), I certify that I have served the Record on Appeal on the Respondent and Rhonda Mitchell by depositing a copy of it in the United States Mail, postage prepaid, on September 30, 2014 addressed to their attorney of record, Thayer Rivers, Jr., Esq., Post Office Box 668, Ridgeland, SC 29936 and Marvin Jones, Esq., Post Office Box 420, Ridgeland, SC 29936.

September 30, 2014



C. Russell Keep, III, Esq.
Post Office Box 5877
Hilton Head Island, South Carolina 29938
(843) 842-6268
Attorney for Appellant C. Russell Keep, III, Esq.
SC Bar # 3321

00214

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Robert C. Schivera, Executor of the Estate of Fred J.
Hughes, III, Respondent,

v.

C. Russell Keep, III, Esquire and Rhonda Mitchell,
Jasper County Tax Collector, Defendants,

Of whom C. Russell Keep, III, Esquire is the Appellant.

Appellate Case No. 2014-000823

Appeal From Jasper County
Carmen T. Mullen, Circuit Court Judge

Unpublished Opinion No. 2015-UP-384
Submitted June 1, 2015 – Filed July 29, 2015

AFFIRMED

Charles Russ Keep, III, of Keep Law Office, of Hilton
Head Island, pro se.

R. Thayer Rivers, Jr., of R. Thayer Rivers, Jr. Law
Office, of Ridgeland, for Respondent.

00215

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *Gadson v. Hembree*, 364 S.C. 316, 320, 613 S.E.2d 533, 535 (2005) ("An appellate court reviews the granting of summary judgment under the same standard applied by the trial court."); *id.* ("Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law."); *Donohue v. Ward*, 298 S.C. 75, 83, 378 S.E.2d 261, 265 (Ct. App. 1989) ("[A]ll requirements of the law leading 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 mandatory and are to be strictly enforced."); *Rives v. Bulsa*, 325 S.C. 287, 293, 478 S.E.2d 878, 881 (Ct. App. 1996) ("Failure to give the required notice is a fundamental defect in the tax proceedings which renders the proceedings absolutely void."); S.C. Code Ann. § 12-51-40(a) (2014) (requiring the officer authorized to collect delinquent taxes to mail a notice of delinquent property taxes to the taxpayer at the best address available); *id.* (stating the "best address available" means "either the address shown on the deed conveying the property to [the defaulting taxpayer or a grantee of record], the property address, or other corrected or forwarding address of which the officer authorized to collect delinquent taxes, penalties, and costs has actual knowledge"); *Reeping v. JEBBCO, LLC*, 402 S.C. 195, 200, 202, 740 S.E.2d 504, 506-07 (Ct. App. 2013) (holding the delinquent taxpayer's claim was not barred by the statute of limitations because the tax collector's failure to mail tax notices to the best address available was a fundamental defect, which rendered the tax sale void).

AFFIRMED.¹

SHORT, LOCKEMY, and MCDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

76834

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

Case No. 2014-000823

RECEIVED

AUG 04 2015

SC Court of Appeals

Robert C. Schivera, Executor of the Estate of Fed J. Hughes, III.....Respondent

Vs.

C. Russell Keep, III, Esquire and Rhonda Mitchell, Jasper County Tax Collector of which C. Russell Keep, III,

Esquire is the.....Appellant.

Petition for Rehearing

The Appellant petitions this Court to rehear and/or reconsider, reverse or modify its decision in the appeal of this case. The reasons the Appellant believes this Opinion is in error is because the Court of Appeals has misapprehended, overlooked, or failed to correctly rule on the following:

1. THE TAX SALE WAS IN STRICT COMPLIANCE WITH STATUTORY REQUIREMENTS. THE APPELLATE COURT FAILED TO CONSIDER CASE LAW (*KING V. JAMES*) AND ANY STATUTORY LAW WHATSOEVER.

In *King v. James*.¹, "the certified mail notice was returned undelivered" to King, the tax payer and land owner. The tax deed was set aside in *King* for four (4) reasons which can be distinguished from the case at hand;

¹ 388 S.C. 16, 22, 694 S.E. 2d 35, 38 (Ct. App. 2010)

000217

First: "In the present case, the Master held, and we agree, the County *failed* to establish by a preponderance of the evidence that it took "*exclusive possession*" of the Property by posting, as is required under section § 12-51-40(c) (italics added)"².

Second: Beaufort County in *King* did not take photos of the posting, unlike Co-Defendant Jasper County.

Third: The *King* Court found that the two (2) year statute of limitations of Section § 12-51-160 was inapplicable to King's action because King remained in possession of the property at all times. Unlike the case at hand, King "used the Property as her primary residence."³ The Respondent, Mr. Hughes' property herein is raw land with no building on it.

Fourth: It should be noted that *King* is an Appellant's nightmare;

Moreover, neither of the Appellants has appealed the Master's finding that the tax sale was not conducted in strict compliance with statutory requirements. Therefore, this ruling is the law of the case. See *ML-Lee Holding Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (holding an unappealed ruling, right or wrong, becomes the law of the case). Accordingly, we affirm the Master's finding as to the invalidity of the tax sale and tax deed⁴.

The *King* decision affirms that the Jasper tax sale herein must be sustained because Co-Defendant Jasper County (unlike Beaufort County in *King*) proved it "took exclusive possession" of the property "by posting" as required under code section § 12-51-40(c)." This "exclusive possession by posting" is an "Alternative Procedure" sanctioned by South Carolina Code Chapter 51, Alternative Procedure For Collection Of Property Taxes § 12-51-40(c) "when the exclusive possession taken by mailing" as contemplated by § 12-51-40 fails;

§ 12-51-40(c) Alternative Procedure for Collection of Property Taxes

² *ibid* at S.C. 27, S.E. 2d 40

³ *ibid* at S.C. 21, S.E. 2d 38

⁴ *ibid* at S.C. 25, S.E. 2d 37

If the "certified mail" notice has been returned (italics added), 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 posting of the notice is equivalent to levying by distress, seizing, and taking exclusive possession of it (italics added).

The Respondent waited more than two years to sue after the tax sale. The Co-Defendant Jasper County took "exclusive physical possession of the property" "by posting," when the "certified mail" notice was "returned," so the tax sale is "uncontestable on procedural or other grounds" pursuant to **South Carolina Code Sections;**

§ 12-51-90(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* (italics added).

§ 12-51-160 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* (italics added). 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) .

The Court of Appeals is asked to overrule the Trial Court because, 1. the Co-Defendant Jasper County "took exclusive possession" of the property "by posting" as required under Section § 12-51-40(c)" as an **Alternative Procedure For Collection Of Taxes** 2. the Plaintiff did not use the property as his residence 3. the posting was photographed.

2. THE TAX SALE WAS CONDUCTED IN STRICT COMPLIANCE WITH STATUTORY REQUIREMENTS. THE TREASURER SENDING THE TAX NOTICE IN THE NAME OF "ANDREW R. DEEN AND HENRY G. DEEN C/O FRED J. HUGHES, III" WAS A MERE IRREGULARITY.

This is one of a pair of "mere irregularities"⁵ - as is the wrong street address (which will be addressed next in part 3). In *Leysath*, the taxpayer owner challenged the validity of the tax sale on several grounds including that the tax collector or rather assistant tax collector "did not seize and take exclusive possession of the property"⁶. The *Leysath* court found the defects;

were serious enough to have required the court to set aside the tax deed in an action seasonally begun, we do not think that they can be properly classified as jurisdictional defects ... but rather are among the irregularities which the Statute in question was framed to cover and set at rest⁷.

It is important to note that a tax sale may be overturned for "mere irregularities," however, a lawsuit to do so must be brought within the two year statute of limitations⁸.

This was not done. It is uncontested that the Respondent waited more than 2 years from the tax sale to sue. The Court of Appeals is asked to address whether a "c/o" placed in front of a tax payer's name is a "mere irregularity" after two years of inaction in light of *Leysath*.

3. A LANDOWNER IS ONLY REQUIRED TO GET CONSTRUCTIVE NOTICE, NOT ACTUAL NOTICE.

The Code has an "Alternative" cure for tax notices that are returned "undelivered" - it is called "posting" which is constructive notice. The issue of the wrong address on the tax notice (causing it to be returned "undelivered") is a red herring. "constructive notice by the levy, advertisement and sale in the owners' name is deemed sufficient," *Dibble v. Bryant*⁹. The Court in *Dibble* stated that actual notice to the tax payer is not required, only constructive notice;

In *Osborne v. Vallentine*¹⁰, *supra*, and most recently in *Aldridge v. Rutledge*¹¹, *supra*, non-compliance by failure to levy and sell the property in the name of the real owner demanded invalidation of tax deeds. In *Osborne*, we stated;

It is a well-established principle that due process of law requires some sort of notice to a landowner before he is deprived of his property. *It is an anomalous situation that the statutes of this State require actual notice to a mortgagee of*

⁵ *Leysath v. Leysath*, 209 S.C. 342, 40 S.E. 2d 233, 236 (SC Sup. Ct. 1946)

⁶ *ibid* at S.C. 343 S.E. 2d 234

⁷ *ibid* at S.C. 344 S.E. 2d 235

⁸ Hayes, Tax Sales of Real Property and Mobile Homes in South Carolina, SC Bar publication, Page 29

⁹ 265 S.E. 2d 675, 274 S.C. 481 (SC Sup. Ct. 1980)

¹⁰ 196 S.C. 90, 12 S.E. 2d 856 (SC Sup. Ct. 1941)

¹¹ 269 S.C. 475, 238 S.E. 2d 165 (SC Sup. Ct. 1977)

land about to be sold for taxes, and make no such requirement for actual notice to the owner. It would appear that the constructive notice provided by the levy, advertisement and sale in the owner's name is deemed sufficient. Such notice to the owner, as required by the tax sale statutes, being constructive rather than actual, the court requires strict compliance therewith (italics added) Dibble, supra, Note 10.

Sending the tax notice to the wrong address is not a "jurisdictional defect," *Leysath, supra* (unless the tax notice is sent to the mortgagee, who must get actual notice). In fact, **Chapter 51, Alternative Procedure for Collection of Property Taxes** (please note the word "Alternative") § 12-51-90(c), 160 and 120 anticipates tax notices will be mailed to the wrong address and provides the defaulter with ample protection;

1. Posting (as an "alternative" to taking "possession by mailing," which was done in the case herein).
2. "constructive notice by levy, advertisement and sale in the owner's name," *Dibble, supra*, which occurred in the case herein.
3. The tax payer is given a full 2 years to discover the sale and take appropriate action, which he did not herein.

The Statutory Law is very clear;

§ 12-51-120 Alternative Procedure for the Collection of Property Taxes;

* * * *

Pursuant to this chapter, the return of the certified mail "undelivered" is not grounds for a tax title to be withheld or be found defective and ordered set aside or canceled of record (italics added).

Indeed, *Tax Sales, supra*, at page 29, elaborates;

Section § 12-51-120 states: "Pursuant to this chapter, the return of the certified mail "undeliverable" is not grounds for a tax title to be withheld or be found defective and ordered set aside or canceled of record." This language seems to create a presumption that a sale won't be voided on the grounds the certified mail is returned "undelivered." *Tax Sales, supra* note 8 at page 28.

In short, under the "Alternative Procedure" of Chapter 51 of the Code, "the return receipt of the certified mail notice is equivalent to levying by distress" (§ 12-51-40(b)) "if exclusive possession is (NOT) taken by mailing" (§ 12-51-40(b)) and if the "certified mail has been returned" the County may "take exclusive physical possession of the property" "by posting" (§ 12-51-40(c)) "the posting of the notice is equivalent to levying by distress, seizing and taking exclusive possession" (§ 12-51-40(c)) and "constructive notice by the levy, advertisement and sale in the owner's name is deemed sufficient," *Dibble, supra*. The Court of Appeals is asked to overrule the trial Court because the constructive notice by the posting levy, advertisement and sale in the owner's name is sufficient when the certified mail was returned undeliverable.

4. THE TAX SALE WAS CONDUCTED IN STRICT COMPLIANCE WITH STATUTORY REQUIREMENTS. THE APPELLATE COURT RELIED ON A MISREADING OF *RIVES V. BULSA*.

*Rives v. Bulsa*¹² states;

In both *Osborne* and *Aldridge*, our Supreme Court held that noncompliance by failure to levy and sell the property in the name of the real owner demanded the invalidation of tax deeds.

... this cannot circumvent the requirement that *the levy, advertisement and sale must be made in the name of the true owner*. Without strict compliance with the statutory requirements, a tax sale may not be upheld.

It is clear from the record that no notice of the tax sale was given to Brian and Karen Rives, the true owners of the property. It is also evidence that the property was *not assessed, advertised, levied upon or sold* in their names. Accordingly, we hold the tax collector failed to comply with the strict statutory requirement of a tax sale. The order of the master setting aside the tax deed is therefore affirmed (*italics added*).

The land herein was "assessed, advertised, levied upon and sold," *Rives, supra*, in the name of Fred J. Hughes, III. There is a presumption in the absence of proof to the contrary that

¹² 325 S.C. 287, 291, 487 S.E. 2d. 878, 880 (Ct. App. 1996)

public officers have properly discharged the duties of their office,¹³.

In *Wilson v. Cantrell*, 40 S.C. 114, 18 S. E. 517, 525, the court had under consideration a tax deed. The plaintiff was the purchaser at the tax sale. The court stated: "**** the sheriff's deed is only prima facie evidence of the regularity of the tax proceedings prior to its execution, and may be attacked. But, while this is so, the burden is upon the defendant to prove that one or more of the essential requirements of the law have not been complied with, and that the tax proceedings have not been regular, which the defendant in this case has failed to do¹⁴."

The Order(s) Appealed also states;

All of the requisite notices required by statute (1. the original tax notice; 2. the notice of delinquency; 3. the notice of tax sale; 4. the notice of the redemption period; 5. the notice of the expiration of time to redeem the property from the tax sale; and 6. the notice that the tax sale had become final) were all sent to the address of the former owner of the property and not the Plaintiff.

This may be all true but it has no significance. These are all a "mere irregularities,"

Leysath, supra and for which the Statute provides an Alternative procedure.

§ 12-51-120, Notice of Approaching End of Redemption Period, states;

* * * *

Pursuant to this chapter, the return of the certified mail "undeliverable" is *not* grounds for a tax sale to be withheld and found to be defective and ordered set aside or cancelled or returned (*italics added*).

Likewise an error in;

1. the original tax notice;
2. the notice of delinquency;
3. the notice of the tax sale;

are all cured by levying, advertising and by posting. Actual notice by mail is not required;

"*constructive notice* by the levy, advertisement and sale in the owners' name is deemed sufficient

(*italics added*)," *Dibble, supra*. This was all done in Fred J. Hughes, III's name.

Fred J. Hughes, III, was given sufficient "constructive notice" by levying, advertising and posting and that, pursuant to *Rives*, "the levy, advertisement and sale were made in the name of the true owner" - Fred J. Hughes, III. The Appellate Court erred when it ruled that the tax sale

¹³ *Fisher v. Bennett*, 202 S.C. 541, 25 S.E. 2d 746 (SC Sup. Ct. 1943) see also revised § 12-51-160 which states "in all cases of tax sale the deed of conveyance is prima facie evidence of a good title in the name of the holder."

¹⁴ Quoted with approval in *Osbourne v. Valentine*, 196 S.C. 90, 12 S.E. 2d 856 (SC Sup. Ct. 1941)

was not conducted in strict compliance with the statutory requirements including § 12-51-40(C) and §12-51-90(C).

5. *REEPING V. JEBBCO, LLC*, IS NOT APPLICABLE TO THE FACTS OF THIS CASE.

*Reeping*¹⁵ is not applicable to all of the facts of this case. The Issue of levying, advertising and posting ("equivalent to levying by distress, seizing, and taking exclusive possession of it"¹⁶) was not before the *Reeping* court. The *Reeping* decision does not address the issue of whether the County took the corrective action of taking "exclusive possession of it" by posting, pursuant to **South Carolina Code Section § 12-51-40 (c)** after the "certified mail notice" was "returned."

Reeping, supra, is in conflict with the South Carolina Supreme Court's prior decisions¹⁷ wherein the South Carolina Supreme Court declared "[O]nce two years have passed after the sale, the sale is not a cloud on the property's title." This argument will be further developed in part 8.

6. THE APPELLATE COURT IGNORED LEGISLATIVE INTENT AND REVISED STATUTORY LAW.

To determine the application of the revised (in 2006) § 12-51-160 and §12-51-90(C) on the present case, the Court must apply the rules of statutory construction. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature"¹⁸. "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it reasonably can be discovered in the language used, and the language must be construed in the

¹⁵ 402 S.C. 195, 740 S.E. 2d 504 (Ct. App. 2013)

¹⁶ S.C. Code Ann. § 12-51-40(c)

¹⁷ Federal Finacial Company v. Hartley 380 S.C. 65, 66, 688 S.E. 2d 410, 411, Wilson v. Mosley, 327 S.C. 144, 145, 488, S.E. 2d 862, 863 (SC Sup. Ct. 1997)

¹⁸ Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003)

light of the intended purpose of the statute¹⁹.” “Statutes, as a whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy of lawmakers²⁰.”

Tax Sales, *supra*, at note 8, at page 27, 28, states;

In two cases, the South Carolina Supreme Court has narrowly construed the application of this statute of limitations and has permitted the defaulting taxpayer to maintain the action even though the action was brought after two years from the date of sale. However, it should be noted that these cases were decided before the 1985 revisions to the Code. After the 1985 revisions, the Court of Appeals, in *Corbin v. Carlin*²¹, held that an action to quiet title and set aside a tax sale and tax deed fell outside the provisions of Section § 12-51-160. There was some confusion in *Corbin* regarding the descriptions and locations of the real property, and the Court determined there was nothing to put *Corbin*, the delinquent taxpayer, on notice of the delinquency.

The Corbin decision was filed on October 3, 2005. Less than six months later, on March 15, 2006, revisions to Sections § 12-51-160 took effect, and these revisions appear to make it more difficult to avoid the bar of the two-year statute of limitations. Section § 12-51-90 was revised to include a paragraph (C), which states: "If the defaulting taxpayer, grantee from the owner, or mortgage or judgment creditor fails to redeem the item of real estate sold at 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." Section § 12-51-160 was revised to add the reference to Section § 12-51-90(C) in the statement: "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)." There have been no recorded cases construing these revised statutes (italics added).

Since publication of this excellent book by Mr. Hayes, Esq., *King, supra*, note 1, was decided by the Court of Appeals on April 20, 2010. The Court of Appeals found the time started to run from the date when the county or the tax sale purchaser took “possession” of the property.

¹⁹ City of Sumter Police Dep't v. One (1) 1992 Blue Mazda Truck
(VIN # JM2UF1132N0294812) 330 S.C. 371, 375, 498 S.E.2d 894, 896 (Ct. App. 1998)

²⁰ TNS Mills, Inc. v. South Carolina Dep't of Revenue, 331 S.C. 611, 624, 503 S.E.2d 471, 478 (SC Sup. Ct. 1998).

²¹ 366 S.C. 187, 620 S.E. 2d. 745 (2005)

"Possession" is a term of art. The Court of Appeals found the County can "take exclusive possession" "by making" the notice required by § 12-51-40(b), and if that tax notice is returned "undelivered," by "posting" the property as required by § 12-51-40(c). In King, the Court of Appeals ruled the County failed to prove it posted the property (Beaufort County did not take a picture of postings at that time unlike Co-Defendant Jasper County), therefore the statute did not start to run.

The legislature, in the wake of the *Corbin* decision (October 3, 2005), revised § 12-51-160 and § 12-51-90(C), taking effect March 15, 2006.

Revised SC Code Section § 12-51-160;

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) (italics added).

Revised SC Code Section § 12-51-90(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* (italics added).

A tax deed, after two years from the tax sale, is "uncontestable on procedural or other grounds."²² The Revised § 12-51-90(c), 160 evidenced an intent by the legislature to bar recovery of the land after two (2) years of inaction on the part of the Respondent.

²² South Carolina Code Ann. § 12-51-90(C).

7. THERE ARE "DIVERGENT DECISIONS" REGARDING IF AND WHEN THE STATUTE OF LIMITATIONS BEGINS TO RUN AND THE APPELLATE COURT CHOSE THE WRONG DIVERGENT DECISION.

The Court in *King*, *supra* note 1 at S.C. 26, S.E. 2d 39, found that;

This court has held the purpose of the statute of limitations as set forth in section 12-51-160 is "to create a time limit during which one who lost title to property through a tax sale, after proper notice, may attempt to regain title." *Corbin v. Carlin*, 366 S.C. 187, 194, 620 S.E.2d 745, 749 (Ct.App.2005). *A review of case law in this area reveals somewhat divergent decisions (bold added) regarding if and when the statute of limitations begins to run in situations such as this (italics added).*

On the one hand, we find case law that says when notice to the homeowner is not in strict compliance with the statute, such a defect is "jurisdictional," and the statute of limitations does not run at all (italics added). See Donohue v. Ward²³, 298 S.C. 75, 82, 378 S.E.2d 261, 265 (1989) (holding where a defect in notice is jurisdictional, such a defect "invalidates the tax proceeding and prevents the running of the limitations statute"); Good v. Kennedy²⁴, 291 S.C. 204, 207, 352 S.E.2d 708, 711 (1987) (holding "the general law is that where a statute requires as a condition precedent to foreclosing a taxpayer's rights in property sold for taxes that he be given notice of his right to redeem, such a requirement is generally regarded as jurisdictional") (internal quotations omitted).

On the other hand, we also find case law in which our courts interpreted previous versions of section § 12-51-160 as saying even if the notice is defective, the statute of limitations still applies, but only begins to run when the purchaser comes into possession (italics added). See Dibble v. Bryant, 274 S.C. 481, 487, 265 S.E.2d 673, 677 (1980) (holding previous version of section 12-51-160 "was intended to bar a defaulting and ousted taxpayer from maintaining an action to defeat the title of the tax sale purchaser and recover the land if brought more than two years from the date the purchaser came into possession") (emphasis added); Glymph v. Smith, 180 S.C. 382, 384, 185 S.E. 911, 914 (1936) (holding even though the plaintiff brought the action six years after the tax sale, the two-year statute of limitations never began to run because the sheriff never took possession of the subject property, and the purchaser was never put into possession following the execution of the tax deed) (italics added); Gardner v. Reedy, 62 S.C. 503, 503, 40 S.E. 947, 947 (1902) (holding the two-year statute of limitations would only

²³ In Donohue, the property was not listed, assessed, levied upon, advertised and sold in the name of the true owner, unlike the case herein.

²⁴ In Good, the issue of posting was not before the Court unlike the case herein. It should also be noted that both Donohue and Good were decided before 2005 when § 12-51-160, 90 were revised - "these revisions appear to make it more difficult to avoid the bar of the two year statute of limitations." *Tax Sales*, *supra* note 8, at page 28.

begin to run if and when the purchaser took possession)²⁵.

Since there are "divergent decisions" (according to *King, supra*) the Appellate Court erred when it sided with the irrelevant *Good* (posting issue not before the court) and *Donohue* (property not listed, assessed, levied upon, advertised and sold in the name of the true owner) and not *Dibble / Glymph / Gardner* especially as it is uncontested that the Appellant, the purchaser, was put into possession of the land.

8. **REVISED (2006) § 12-51-160, 90(c) ARE STATUTES OF REPOSE.**

The revised (2006) § 12-51-160 and § 12-51-90(c) are Statutes of Repose depriving the Court of jurisdiction to hear this case.

As previously noted, Respondent's suit is a statutory cause of action to set aside a tax deed. The rights asserted in this cause of action were created in **Code of Laws of South Carolina § 12-51-160 and § 12-51-90(C)**, each of which provide as follows:

§ 12-51-160 Deed as evidence of good title; statute of limitations.

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 holder, that all proceedings have been regular and that all legal requirements have been complied with. *An action for 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) (emphasis supplied).*

²⁵ It should be noted that *King* is a tax purchaser's procedural nightmare; "Moreover, neither of the Appellants has appealed the Master's finding that the tax sale was not conducted in strict compliance with statutory requirements. Therefore, this ruling is the law of the case. See *ML-Lee Holding Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (holding an unappealed ruling, right or wrong, becomes the law of the case). Accordingly, we affirm the Master's finding as to the invalidity of the tax sale and tax deed."

§ 12-51-90 Redemption of real property; assignment of purchaser's interest.

* * * *

(C) If the defaulting taxpayer, grantee from the owner, or mortgages or judgment creditor fails to redeem the item of real estate sold at the delinquent tax sale within 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* (emphasis supplied).

The italicized language reflects the intention of the Legislature that as of the specified date (that is to say, two (2) years after the sale), "the tax deed issued is incontestable on procedural or other grounds" and no action "for the recovery of land sold" may be maintained. The language creates a jurisdictional limitation rather than a statute of limitations. The difference is that "a true statute of limitations extinguishes only the right to enforce the remedy and not the substantive right itself, [while] the limitation of time for commencing an action under a statute creating a new right enters into and becomes a part of the right of action itself and is a limitation, not only of the remedy, but of the right also²⁶;".

Considering the language of revised § 12-51-90(C), the South Carolina Supreme Court has ruled in 2008 that "[o]nce two years have passed after the sale, the sale is not a cloud on the property's title" *Federa, supra* note 17. It is hard to overemphasize the importance of this South Carolina Supreme Court decision. If a tax sale is not a cloud on the property's title, then a Quiet Title Action is no longer needed because the tax deed is "uncontestable," as it is in the case before this Court. Appellant is not entitled to judgment pursuant to *Federal, supra*. In as much as on November 1, 2012, no pleadings had been served on Co-Defendant Jasper County and/or the Appellant, the statutory rights asserted in this action to raise questions of title were dissolved and

²⁶ See generally 51 Am. Jur. 2nd (Limitation of Actions) § 30 (footnotes omitted)

ceased to exist and the tax deed issued on November 1, 2010, no longer had a cloud on it and it became and is "incontestable. " In fact, our SC Supreme Court has referred to the two year period for tax deeds as a "Statute of Repose" for over 60 years, in *Leysath, supra* note 5 at S.C. 345, S.E. 2d 235;

If the two year limitation does not apply to defects of the character now under consideration, what purpose does it serve? If it only applies where the tax proceedings are regular in every respect, the purchaser would have no need of this protection which this limitation was designed to give. A **Statute of Repose** is not needed in favor of purchasers at valid tax sales. The very purpose of such Statute is to shut off inquiry into such defects as are now complained of, and confirm the tax deed in spite of them, and unless it does this it is nugatory (bold added).

Ninety Two (92) years ago, our SC Supreme Court ruled;

Another consideration moves us to sustain in the appeal in this case. The revenue of a municipal corporation is its lifeblood. The assurance of securing this revenue is in the efficiency of the ultimate remedy. This efficiency is strengthened by the presumption of regularly regularity created by section 474 and by the limitation of two years within which an action to recover must be brought. Even if the remedy provided by this section be not exclusive, it is clear to permit an action such as the one at bar, after the lapse of more than three years, the purchaser in the meantime being in possession, would be to practically annul the limitation provided herein²⁷.

§ 12-51-160 and 90 are Statutes of Repose, which utterly deny Respondent of any Right of Action.

The Legislature passed Section § 12-51-90 and § 12-51-160 as an absolute bar to recovery after two whole years. The medical malpractice six year absolute bar to recovery is analogous. South Carolina Code § 15-3-545 **Actions for Medical Malpractice** evidences the Legislature's impatience with those who sleep on their rights. The language concerning notice or lack thereof in the malpractice statute of limitations is similar to the revised § 12-51-90, 160; "three years from the date of discovery or when it is reasonably ought to have been discovered, *not to exceed six years from the date of occurrence...*"

²⁷ Wilson v. Dove, 118 S.C. 256, 257, 110 S.E. 390, 391 (SC Sup. Ct. 1922)

It is clear that the legislature and the South Carolina Supreme Court in *Federal, supra*, meant for the two year time bar in § 12-51-90(c), 160 to be absolute.

Conclusion

This Court should rehear, reconsider and reverse its initial opinion, vacate the judgment, and enter judgment for the Defendant/Appellant.

July 31st, 2015

Respectfully submitted,



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Attorney for Appellant

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

Case No. 2014-000823

RECEIVED

AUG 04 2015

SC Court of Appeals

Robert C. Schivera, Executor of the Estate of Fed J. Hughes, III.....Respondent

Vs.

C. Russell Keep, III, Esquire and Rhonda Mitchell, Jasper County Tax Collector of which C. Russell Keep, III, Esquire is the.....Appellant.

PROOF OF SERVICE

In accordance with SCRAP 203 (d) (2) (B) (i), I certify that I have served the Petition for Rehearing on the Respondent and Rhonda Mitchell by depositing a copy of it in the United States Mail, postage prepaid, on July 31, 2015 addressed to their attorney of record, Thayer Rivers, Jr., Esq., Post Office Box 668, Ridgeland, SC 29936 and Marvin Jones, Esq., Post Office Box 420, Ridgeland, SC 29936.

July 31, 2015



Kim Muggeo, Paralegal to

C. Russell Keep, III, Esq.

Post Office Box 5877

Hilton Head Island, South Carolina 29938

(843) 842-6268

Attorney for Appellant C. Russell Keep, III, Esq.

SC Bar # 3321

00237

The South Carolina Court of Appeals

Robert C. Schivera, Executor of the Estate of Fred J.
Hughes, III, Respondent,

v.

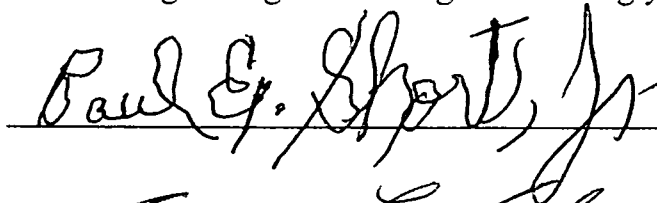
C. Russell Keep, III, Esquire and Rhonda Mitchell,
Jasper County Tax Collector, Defendants,

Of Whom C. Russell Keep, III, Esquire is the Appellant.

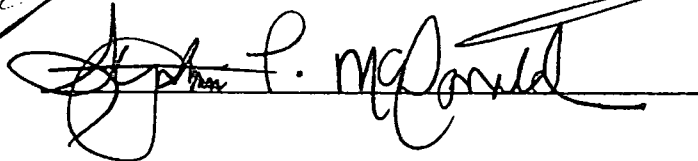
Appellate Case No. 2014-000823

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.

 J.

 J.

Columbia, South Carolina

FILED

August 20, 2015

00233

cc:

Charles Russ Keep, III, Esquire

R. Thayer Rivers, Jr., Esquire

The Honorable Carmen T. Mullen