

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Equivest Financial, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 Mary B. Ravenel; AAA Plumbing, Inc.,)
)
 Defendants,)
)

IN THE COURT OF COMMON PLEAS
 C/A No.: 2014-CP-10-0667

ORDER

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 JULIE J. ARMSTRONG
 CLERK OF COURT

This matter came before me on June 17, 2015. This is a tax sale action in which the Plaintiff seeks to quiet the title of the subject property. The Plaintiff was represented by S.R. Anderson and the Defendant, Mary B. Ravenel, was represented by Bruce Berlinsky.

HISTORY

The subject property was sold to the Plaintiff at the 2008 sale for the non-payment of the 2007 real estate taxes.

In an action captioned Lashanda Ravenel & Henry Lee Ravenel, II v. Equivest Financial, LLC, 2010-CP-10-8732, the Plaintiffs sought to set aside the tax sale and void the tax deed. The Plaintiffs in that action were the adult children of Mary Ravenel. Mrs. Ravenel testified at the trial of the case. The children were conveyed the subject property by their mother in accordance with a deed dated and recorded on November 6, 2007. The stated consideration was \$5, love and affection. Mother filed for bankruptcy on November 7, 2007.

That case, 2010-CP-10-8732, was tried before the Charleston County Master-In-Equity, who found that the tax sale was valid and that there was no delivery of the deed by Mother to the Children. The Master-In-Equity found that the deed was void and of no effect.

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The children appealed the case to the South Carolina Court of Appeals, which upheld the Master's Order upon the grounds that there was no delivery of the deed by Mother to the Children. Thereafter, the Plaintiff instituted the present action to quiet the title as to Mary Ravenel.

Section 12-51-160 provides that an action to recover real property sold at a tax sale must be brought within two (2) years from the date of the sale. As noted above, the Defendant in the present matter brought no action to set aside the tax sale and void the tax deed within the two year statute of limitations. After the elapse of two years, the tax sale and deed becomes incontestable on procedural or other grounds.

The Defendant asserts that the sale of property should have been conducted in her name, as she was the defaulting taxpayer.

The Defendant further asserts that she has remained in possession of the property since the tax sale and deed to the Plaintiff. Section 12-51-160 does not speak to the Defendant's occupancy of the property, only that the tax sale is incontestable two years after the sale.

Lastly, the Defendant contends that the defaulting taxpayer is entitled to the requisite notices under 12-51-40(b). The notices required by 12-51-40 *et seq.* are sent out after April 1st or as soon as practical thereafter. The defaulting taxpayers were the Defendant's children since they were granted the property in November of 2007. When the taxes were not paid by December 31, 2007, they, as the owners, were the defaulting taxpayers and only they were entitled to the 12-51-40(b) notice. The Court reviewed the file in this matter to include the Plaintiff's and Defendant's Memorandums of Authority, the Master's Order, and the ruling by the Court of Appeals appropriate statutes.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the testimony and pleadings, the Court finds, concludes and ORDERS as follows:

1. This Court has personal and subject matter jurisdiction over this matter.

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2. The Defendant has been hoisted by her own petard. It is clear that the Defendant intended to defraud her creditors when she conveyed the subject property to her adult children. The consideration was \$5, love, and affection; the Defendant recorded the deed, but never delivered it to them, never told them about the deed, continued to live in the home, and testified that it was her property.

The Defendant, who conveyed the property to her children, cannot now come to Court and contend that since the deed was set aside and void, she was the true owner of record and thus entitled to the statutory notices.

In Haynes Federal Credit Union v. Bailey, 327 S.C. 242, 489 S.E.2d 472 (1977), the Court judicially estopped a Defendant from taking a position opposite from the one taken at an earlier trial. In that action, the Defendant testified at trial that he had no interest in certain real property. At a second trial, the same Defendant asserted that he owned the subject real property.

In a bankruptcy proceeding, the debtor failed to include a malpractice claim against its lawyers. When the same debtor thereafter sued the same lawyers for malpractice, the Court dismissed the case as the debtor had not listed the potential claim against its lawyers in its bankruptcy filings. Southmark Corp. v. Trotter, 422 S.E.2d 265 (1994).

The Defendant is judicially estopped from claiming a position in the instant action, which is different from the position she took in 2010-CP-10-8732.

3. S.C. Code Section 12-51-160 is clear. An action to set aside a tax sale must be brought two (2) years after the tax sale. There is no requirement that the Plaintiff be in possession of the property, although the recording of a tax deed would evidence possession of the property in the Plaintiff.

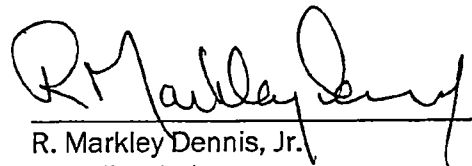
4. As title never passed to the Defendant's children, the property remained in her name. There is nothing of record which would have alerted the tax collecting officials that the Defendant had not delivered the deed to her children. It is the Defendant who supplied the

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address on the deed to the children. She cannot be heard to complain that the notices went to an incorrect address or that the true owner of the property was not provided with the notices.

5. The tax sale and resulting tax deed are valid; title is quieted in the Plaintiff to the exclusion of the Defendants, Mary B. Ravenel and AAA Plumbing, Inc., who shall hereafter have no right, title, or interest in said property.

AND IT IS SO ORDERED



R. Markley Dennis, Jr.
Presiding Judge
Court of Common Pleas for the
Ninth Judicial Circuit

July 23, 2015
Moncks Corner, South Carolina

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