

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-42-2482

ATCF REO HOLDINGS LLC,

James K. Hazel, Jr., et al.,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: A. Parker Barnes III

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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SC Court of Appeals
2016 MAY 15 11:22

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

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

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : Quiet Title

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$

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

Lots 14, 15, and 16, Plat Book 20 at Pages 510-511, TMS# 6-21-11-106.00, Property Address: 517 Wildwood Drive, Spartanburg County, SC

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

Master in Equity

Judge Code

3065

Date

4-15-2016

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this day of _____, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

A. Parker Barnes III, Esq.
PO Box 11889
Columbia, SC 29211-1889

James K. Hazel, Jr.
517 Wildwood Drive
Spartanburg, SC 29306

Prime Asset Fund III, LLC
12425 Race Track Road
Tampa, FL 33626

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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CLERK OF COURT

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Case No. 2015-CP-42-2482

ATCF REO HOLDINGS LLC,

Plaintiff,

vs.

FINAL ORDER
(Action to Quiet Tax Title)
(Reference with Finality)

James K. Hazel, Jr., Prime Asset Fund III, LLC, John Doe and Mary Roe, representing all unknown persons having or claiming to have any right, title, or interest in or to, or lien upon, the real estate described as 517 Wildwood Drive, Spartanburg County, SC, their heirs and assigns, and all other persons, firms, or corporations entitled to claim under, by or through the above-named Defendant(s), and all other persons or entities unknown claiming any right, title, interest, estate in, or lien upon, the real estate described as 517 Wildwood Drive, Spartanburg County, SC,

Defendants.

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SC Court of Appeals

THIS MATTER comes before me pursuant to the Order of Default and Mandatory Order of Reference filed on February 12, 2016, for a merits hearing upon the action of Plaintiff ATCF REO HOLDINGS LLC ("Plaintiff") to quiet its tax title to real property and seeking an order of the Court confirming marketable, fee simple title.

The hearing occurred on April 12, 2016. Plaintiff appeared through its attorney, A. Parker Barnes III, Esq. Robert E. Metts, Jr., the Spartanburg County Tax Collector (the "Tax Collector"), appeared as a witness and was represented by John H. Harris, Esq., County Attorney for Spartanburg County. Defendant James K. Hazel, Jr. ("Hazel") appeared at the hearing and represented himself *pro se*.

PRELIMINARY MOTION

On March 31, 2016, Hazed filed a Motion for Trial by Jury, and the Court first addressed this motion. In his motion, Hazel sought a jury trial pursuant to Article 1, §§ 3, 14 of the South Carolina Constitutions, and Rules 38(a) and (b), SCRPC.

Plaintiff served a Response in Opposition to Hazel's Motion for a Jury Trial on April 6, 2016, which was filed on April 11, 2016. In its response, Plaintiff cited *Rosenbaum v. S-M-S* 32, 311 S.C. 140, 427 S.E.2d 897 (1993) for the proposition that a party challenging a tax sale is not entitled to a jury trial, even if that party asserts a counterclaim stating a cause of action at law. In *Rosenbaum*, the South Carolina Supreme Court ruled,

Considering the unique circumstances existing in a tax forfeiture acquisition, and the prevailing statutory provisions governing suits to clear tax titles, we conclude that the appellant may not evade the intent of the legislature and obtain the right to a jury trial by interposing a counterclaim designed to thwart the reasonable and practical implication of Chapter 61.

Id. at 143, 427 S.E.2d at 898.

The South Carolina Supreme Court's opinion in *Rosenbaum* controls this issue, and Mr. Hazel has no right to a jury trial. Accordingly, the Court denied Hazel's Motion for Trial by Jury and proceeded to hear the merits of this case.

FINDINGS OF FACT

The real property that is the subject of this action is known as 517 Wildwood Drive, Spartanburg County, South Carolina, tax map number 6-21-11-106.00 (the "Property"), as is more fully described in Plaintiff's Notice of Lis Pendens and in Exhibit A attached hereto and incorporated herein by reference.

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The Tax Sale and Tax Deed

MTAG, as Custodian for ATCF II South Carolina LLC ("MTAG"), purchased the Property at the Spartanburg County tax sale conducted on November 18, 2013 (the "Tax Sale") with a bid of \$38,000.00. Spartanburg County conveyed title to MTAG by tax deed dated and recorded on March 24, 2015, in the Spartanburg County Register of Deeds Office (the "ROD") in Deed Book 108-N, page 652. MTAG subsequently conveyed the Property to Plaintiff by Quitclaim Deed of Real Property dated April 20, 2015, and recorded in the ROD on May 14, 2015, in Book 108-Z, page 456.

Procedural History and Relevant Title History

On June 4, 2015, Plaintiff commenced this action by filing its Civil Action Cover Sheet, Summons, Complaint, and Notice of Lis Pendens (collectively, the "Pleadings").

James E. Mitchell and Ila A. Mitchell acquired title to the Property by deed dated November 2, 1946, and recorded on November 4, 1946, in the ROD in Book 13-H, page 155. James E. Mitchell died on April 20, 1997, and his estate was probated in the Spartanburg County Probate Court, *In the Matter of James E. Mitchell* (Case No. 97-ES4200662).

Pursuant to Item II of his Last Will and Testament filed in the Spartanburg County Probate Court on May 6, 1997, James E. Mitchell devised all of his real and personal property to Ila Mitchell, and according to the Application for Informal Probate of Will and Appointment of Personal Representative dated May 13, 1997, Ila A. Mitchell was the sole devisee of the Estate of James E. Mitchell. Consequently, Ila A. Mitchell acquired sole ownership of 100% of fee simple title to the Property upon the death of James E. Mitchell.

By deed dated June 16, 2004, and recorded on June 28, 2004, in the ROD in Book 80-Q, page 988, Ila A. Mitchell a/k/a Ila A. Mitchell conveyed the Property to Hazel. By virtue of the



foregoing, Hazel owned 100% of fee simple title to the Property, but through this action, Plaintiff has eliminated all of Hazel's interests in the Property.

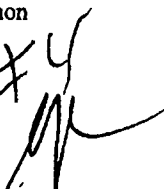
Plaintiff named Prime Asset Fund III, LLC ("Prime") because it held the following mortgage on the Property by assignment: Mortgage from Hazel to Mortgage Electronic Registration Systems, Inc. as nominee for EquiFirst Corporation in the original amount of \$81,500.00 dated March 28, 2005, and recorded on April 1, 2005, in the ROD in Book 3415, page 159; assigned to U.S. Bank National Association as Trustee under the Pooling and Servicing Agreement with Pooling ID #40087 and distribution #2005-RS6, through an Assignment of Mortgage dated July 1, 2005, and recorded on October 2, 2008, in the ROD in Book 4141, page 748; and assigned to Prime through an Assignment of Mortgage dated July 22, 2011, recorded on October 12, 2011, in the ROD in Book 4506, page 557, and a Corrective Corporate Assignment of Mortgage dated April 11, 2014, and recorded on May 21, 2014, in the ROD in Book 4856 at Page 239 (collectively, the "Prime Mortgage").¹ Through this action, Plaintiff has eliminated the Prime Mortgage as a lien upon the Property, as well as all other interests that Prime may have or claim to have in, to, or upon the Property.

Plaintiff named John Doe and Mary Roe as fictitious defendants to represent the interests of any unknown persons or entities claiming any right, title, interest, estate in, or lien upon the Property, but Plaintiff elected not to proceed against the unknown defendants. Accordingly, the unknown defendants are dismissed as parties to this action without prejudice.

Service of the Pleadings and Status of the Defendants

Plaintiff personally served the Pleadings upon Hazel on June 19, 2015, as evidenced by the Affidavit of Service filed on July 20, 2015. On June 26, 2015, Hazel filed a Motion for

¹ On June 12, 2014, Prime filed an action to foreclose the Prime Mortgage in the Spartanburg County Court of Common Pleas (Case No. 2014-CP-42-2358), which action is still pending.

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Enlargement of Time, and Plaintiff consented to this motion through a Consent to Motion to Enlarge Time filed on July 10, 2015. Hazel timely served a Motion to Dismiss, which was filed on August 13, 2015, and timely served an Answer, which was filed on August 14, 2015. The court denied the Motion to Dismiss through an Order filed on November 3, 2015. In his Answer, Hazel contends that he was not informed that any taxes were due on the Property and sought to set aside the Tax Sale of the Property.

Plaintiff personally served the Pleadings upon Prime's registered agent on October 7, 2015, as evidenced by the Affidavit of Service filed on November 30, 2015. Prime did not serve or file any response to the Pleadings, and an Order of Default was filed against Prime on February 12, 2016.

On March 22, 2016, Plaintiff served Notice of the Hearing upon all named defendants, and the Notice of Hearing was filed on March 25, 2016.

Evidence Presented at the Hearing

Robert E. Metts, Jr., the Tax Collector, testified, without objection from any party, that all notices of delinquent taxes, the execution, levy, posting, advertisements, tax sale, and notices of the approaching end of redemption period sent to the interested parties entitled to notice were performed in accordance with the usual procedures of his office and were in strict conformity with all statutory requirements. The Tax Collector also testified that the overage proceeds generated by the Tax Sale bid had been claimed on Hazel's behalf and that his office had paid the overage proceeds to Hazel.

Hazel acknowledged that the Tax Collector sent the Tax Sale notices to the best address for him, that the Property was posted with notice of the Tax Sale, and that he received and signed for the notice of approaching end of redemption period. Hazel also acknowledged that he did not

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redeem the Property, and that he had claimed and received the overage proceeds through a third-party service provider, a portion of which funds he still retains.

No other witnesses were called to testify by Plaintiff or Hazel, and none appeared on behalf of any other interested party.

CONCLUSIONS OF LAW

Based upon the pleadings, motions, and orders filed, the testimony and evidence presented, and the arguments of counsel at the merits hearing, I make the following conclusions of law:

1. Any finding of fact stated above that is also a conclusion of law is incorporated herein by reference.
2. Hazel's Motion for a Trial by Jury is denied under the controlling precedent set forth in *Rosenbaum v. S-M-S* 32, 311 S.C. 140, 427 S.E.2d 897 (1993).
3. This matter is properly before the Court. Notice of the Hearing was properly given to all defendants, and the Court has personal jurisdiction over all defendants. Further, this matter is within the subject matter jurisdiction of this Court, having been properly referred for the purpose of taking testimony, receiving evidence, and making findings of fact and conclusions of law with respect to all issues with the authority and power to enter a final judgment in this cause with any appeal to the Court of Appeals of South Carolina.
4. Prior to the Tax Sale of the Property, Hazel was the record owner of the Property, and held good, fee simple title to the Property. No other person or entity held any ownership interest of record in the Property.

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5. In strict accordance with all statutory requirements, the Tax Collector provided all required notices to all interested parties entitled to notice, properly executed, levied upon, and posted the Property, and thereafter properly advertised and sold the Property at the Tax Sale.

6. After providing the statutorily required notice of the approaching end of the redemption period to all interested parties entitled to notice in strict compliance with S.C. Code Ann. § 12-51-120, the Tax Collector issued to MTAG a tax deed to the Property dated and recorded on March 24, 2015, in the ROD in Deed Book 105-N, page 652. MTAG subsequently conveyed its tax title to the Property to Plaintiff by Quitclaim Deed of Real Property dated April 20, 2015, and recorded in the ROD on May 14, 2015, in Book 108-Z, page 456.

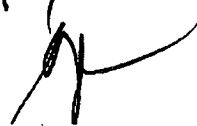
7. Plaintiff timely and properly served the Pleadings upon the defendants, as evidenced by the Affidavits of Service filed herein.

8. Prime failed to answer and therefore defaulted to the Complaint, as evidenced by the Order of Default filed herein.

9. At all times concerned, the provisions of Chapter 51 of Title 12 of the South Carolina Code of Laws entitled, "Alternative Procedure for Collection of Property Taxes," controlled.

10. As acknowledged by Hazel at the hearing, the Tax Collector posted notice of the Tax Sale on the Property, Hazel received the notice of approaching end of redemption period but failed to redeem the Property, and Hazel subsequently claimed and received the overage proceeds remaining from the Tax Sale bid. Accordingly, Hazel waived all rights to challenge the Tax Sale of the Property, and no issues were raised concerning the actions of the Tax Collector. Based upon the testimony of Robert E. Metts, Jr. and the other evidenced received, I find that all

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requirements of the South Carolina Code of Laws with regard to the Tax Sale of the Property were properly followed and were in strict compliance therewith.

11. Because the Tax Sale of the Property was conducted in strict compliance with the statutory requirements pertaining to tax sales, all rights, titles, claims, interests, estates, liens, mortgages, judgments, and any other creditors' claims of the defendants in, to, or upon the Property were extinguished by the Tax Sale. Accordingly, all rights, titles, claims, interests, estates, liens, mortgages, judgments, and any other creditors' claims that the defendants had or claim to have in, to, or upon the Property are hereby extinguished, and all rights, titles, claims, interests, estates, liens, mortgages, judgments, and any other creditors' claims of any person or entity claiming under, by, or through any of the defendants in, to, or upon the Property are hereby extinguished. Thus, all adverse claims to the Property are forever barred, and Plaintiff's marketable, fee simple title to the Property is certain and free from all reasonable doubt.

12. Because the Tax Sale of the Property was conducted in strict compliance with the statutory requirements pertaining to tax sales, any person occupying the Property must vacate the Property and remove all items of personal property as set forth below, and any person occupying the Property shall maintain the condition of the Property without causing any harm or damage to the Property.

NOW, THEREFORE, based upon the foregoing, it is hereby ordered as follows:

1. All claims, rights, titles, interests, estates, liens, mortgages, judgments, and any other creditors' claims of the defendants in, to, or upon the Property are forever barred, including, but not limited to, Hazel's prior ownership interest and the Prime Mortgage.

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2. All claims, rights, titles, interests, estates, liens, mortgages, judgments, and any other creditors' claims of any other person or entity claiming under, by, or through the defendants in, to, or upon the Property are forever barred.

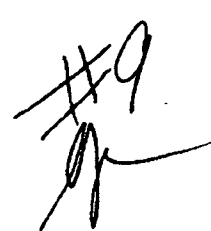
3. The Tax Sale extinguished all rights, titles, claims, interests, estates, liens, mortgages, judgments, and other creditors' claims in, to, or upon the Property, and all claims to the Property adverse to Plaintiff are forever barred.

4. This Court hereby quiets and confirms marketable, fee simple title to the Property in Plaintiff, ATCF REO HOLDINGS LLC, and the marketable, fee simple title of Plaintiff, ATCF REO HOLDINGS LLC, to the Property is certain and free from all reasonable doubt.

5. In the event that any party is occupying the Property, Plaintiff shall provide a copy of this Final Order to the Spartanburg County Sheriff or his authorized deputies (collectively the "Sheriff"), and upon receipt of a copy of this Final Order, the Sheriff is hereby ordered to perform as follows:

a. The Sheriff is hereby ordered, directed, and authorized to post a copy of this Final Order and/or to serve a copy of this Final Order upon any persons occupying the Property;

b. Not less than _____ days after said posting or service, the Sheriff shall be authorized to enter upon the Property, by force if necessary, and to seize the Property and to any persons occupying the Property from the Property, together with all of his/her/their personal property and possessions, and to put Plaintiff in full, peaceful and quiet possession of the Property without delay, and thereafter, within ten (10) days, make due Return to the Clerk of Court for Spartanburg County, South Carolina, showing how this Final Order has been executed; and

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c. The Sheriff shall have discretion to extend the date of seizure, but not more than 30 days from the date of said service or posting, absent a further Order.

AND IT IS SO ORDERED.

April 15, 2016
Spartanburg, South Carolina



Gordon G. Cooper
Master in Equity for Spartanburg County

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EXHIBIT A TO FINAL ORDER

(Action to Quiet Tax Title)
(Reference with Finality)

PROPERTY DESCRIPTION

All that certain piece, parcel or tract of land in the State of South Carolina, County of Spartanburg, known as Lots No. Fourteen (14), Fifteen (15), and Sixteen (16) as shown on plat of the lands of J.A. Belue by Gooch and Taylor, Surveyors, dated October 7, 1946 and recorded in Plat Book 20, at Pages 510-511, in the Office of the Register of Deeds for Spartanburg County, South Carolina.

This being the same property conveyed to James K. Hazel, Jr. from Ila A. Mitchell a/k/a Illa A. Mitchell, by that certain deed dated June 16, 2004 and recorded on June 28, 2004, in Deed Book 80-Q at Page 988, in the Office of Register of Deeds for Spartanburg County, South Carolina; and being the same property conveyed to MTAG, as Custodian for ATCF II South Carolina LLC by Tax Deed dated and recorded on March 24, 2015, in Deed Book 108-N at Page 652, in the Office of the Register of Deeds for Spartanburg County, South Carolina; and being the same property conveyed to ATCF REO HOLDINGS LLC by Quitclaim Deed of Real Property dated April 26, 2015 and recorded on May 14, 2015, in the Office of the Clerk of Court for Spartanburg County, South Carolina in Book 108Z, page 456.

Property Address: 517 Wildwood Drive, Spartanburg County, South Carolina

Tax Map No. 6-21-11-106.00.

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M. HARRIS

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