THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2014-CP-10-0667

Equivest Financial, LLC,

Respondent,

v.

Mary B. Ravenel and AAA Plumbing, Inc.,

Defendants,

Of whom Mary B. Ravenel is the Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

On November 3, 2008, a tax sale was held whereby Equifunding, Inc. purchased the subject property, known by TMS No. 099-00-00-085. Equifunding, Inc. received a tax deed from the the Delinquent Tax Collector for Charleston County, which was recorded August 11, 2010.

Equivest ("Respondent") received a deed from Equifunding, Inc. recorded October 4, 2010 in the Office of the RMC for Charleston County. (R. p. 14)

Thereafter, a lawsuit ensued whereby Lashanda Ravenel and Henry Lee Ravenel, II, as the grantees of record at the time, brought suit against the Respondent to set aside the tax sale. By Order dated May 30, 2012 and recorded June 5, 2012, the Master-in-Equity for Charleston County found that the the deed transferring the subject property from Mary B. Ravenel ("Appellant") to the Lashanda Ravenel and Henry Lee Ravenel, II, as grantees, was not delivered and not effective, and quieted title in the Respondent. The case was then appealed to this Honorable Court. By Opinion No. 2013-UP-495 filed December 23, 2013, this Honorable Court affirmed the Master's ruling that there was no delivery and the deed was not effective, but it did not rule on the other issues presented on appeal.

Thereafter, on February 3, 2014, Respondent brought an action against the Appellant to quiet title on the subject property.

A Motion for Summary Judgment was heard before the Honorable J.C. Nicholson, Jr. on June 8, 2015. The attorneys were informed that the Motion for Summary Judgment would be denied, but the Order denying the Motion for Summary Judgment was not entered at the time of the filing of this brief.

On June 17, 2015, the case was heard before the Honorable R. Markley Dennis, Jr. By Order dated July 23, 2015 and filed July 27, 2015, the Trial Court quieted title in the name of Respondent.

A Motion to Reconsider was timely filed by the Appellant on August 10, 2015 and an Order denying the Motion to Reconsider was filed on September 29, 2015.

Appellant, by and through her attorney, served the Notice of Appeal dated October 28, 2015 and filed October 29, 2015 on Equivest Financial, LLC.

All documents set forth above will be included in the Record on Appeal.

FACTS

In 2001, Mary B. Ravenel purchased five (5) parcels of land, including the subject property, with monies she received from a settlement. (R. p. 14, 16) On one of said parcels, Mrs. Ravenel later built a home, which serves as her primary residence. The lot which is the subject matter of this appeal is the lot containing Mrs. Ravenel's home. *Id.* By instrument dated and recorded November 6, 2007 in Book H-643 at Page 159 in the RMC for Charleston County, Mrs. Ravenel conveyed the five (5) parcels to her children, Lashanda Ravenel and Henry Lee Ravenel, II. (R. pp. 47-51) The grantees, however, were never made aware of the conveyance. (R. p. 15)

All required statutory notices regarding the delinquent taxes were sent to Lashanda Ravenel and Henry Ravenel, II, as the grantees on the deed, but no such notices were received by them. (R. pp. 52-55, 66-74)

By tax sale on November 3, 2008, the subject property was sold for nonpayment of the 2007 taxes. (R. p. 4) While all five (5) parcels were listed for sale, the only property sold was the one containing Mrs. Ravenel's home.

The property was purchased by Equifunding, Inc., who thereafter conveyed the property to the Respondent. (R. pp. 14, 75) Thereafter, Lashanda Ravenel and Henry Lee Ravenel, II brought suit seeking to set aside the tax sale. (R. p. 13) However, Mrs. Ravenel was not a party to this action.

In the previous action, the Master-in-Equity determined that the deed from Mrs.

Ravenel conveying her five parcels of land to her children, Lashanda Ravenel and Henry Lee Ravenel, II, was never delivered to them, and therefore the deed was not effective. (R. p. 18) Subsequently, the Court of Appeals affirmed the Master's determination that delivery had not occurred. (R. pp. 8-10) Pursuant to these Orders, title to this property never passed to her children and title remained in Mrs. Ravenel's name. *Id.* Therefore, the Respondent instituted this action seeking to quiet title against Mary Ravenel.

As a result of the rulings by the Master-in-Equity and the Court of Appeals, it is undisputed that Mary Ravenel was the true owner at the time of the 2008 tax sale and is the owner of the subject property at the present time.

Additionally, it is also undisputed that as of January 1, 2007, the property was listed in the tax records under the name of Mary Ravenel.

STANDARD ON APPEAL

"An action to set aside a tax sale lies in equity." *Hawkins and Gryphon, Inc. v. Bruno Yacht Sales, Inc.*, 342 S.C. 352, 358, 536 S.E.2d 698 (Ct. App. 2000); *Folk v. Thomas*, 520 S.E.2d 327, 336 S.C. 466 (Ct. App. 1999). In an action in equity, tried by a judge alone, the appellate court has jurisdiction to find facts in accordance with its own view of the preponderance of evidence. *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976); *Doe v. Clark*, 318 S.C. 274, 457 S.E.2d 336 (1995).

ARGUMENTS

I. THE TRIAL COURT ERRED WHEN IT FAILED TO TAKE TESTIMONY WHEN THERE WERE GENUINE ISSUES OF MATERIAL FACT AND WHEN IT MADE FINDINGS OF FACT THAT WERE UNSUPPORTED BY THE RECORD.

The Trial Court failed to take any testimony in this matter even though there were genuine issues of material fact that needed to be addressed and the Trial Court made findings in its Order that were unsupported by any testimony or evidence.

At the hearing, the Trial Court failed to hear any testimony in this matter. (R. pp. 30-46) The reason for the Judge's decision not to hear testimony appeared to be that he did not believe there to be any material issue of fact to be argued before him. (R. p. 37 lines, 16-18; p. 40, lines 8-24; p. 43, lines 19-21) However, a Motion for Summary Judgment had been heard by Judge Nicholson on June 8, 2015, and Judge Nicholson informed the attorneys that the Motion for Summary Judgment would be denied.

Denial of a motion for summary judgment is appropriate where "where further inquiry into the facts of the case is desirable to clarify the application of the law." *Lord v. D&J Enters., Inc.*, 407 S.C. 544, 553, 757 S.E.2d 695, 699 (2014). By denying the Motion for Summary Judgment, Judge Nicholson indicated that further inquiry into the facts of this case were warranted. As such, one of the key material facts, whether the county notified the defaulting taxpayer, Mrs. Ravenel, of the delinquent taxes and tax sale in compliance with S.C. Code Ann. § 12-51-40, should have been addressed. However, Appellant's argument on this issue was never fully heard as is evidenced by the lack of testimony taken and the Judge's statements in the transcript. (See R. p. 40, line 8-p. 41, line 1)

Furthermore, the Trial Court in its Order found that Mrs. Ravenel "intended to defraud her creditors when she conveyed the subject property to her adult children." (R. p. 6) The Supreme Court of this State has found that "on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be *without*

evidence which reasonably supports the judge's findings." *Townes Assoc., Ltd.* at 86 (emphasis added). Here, the record was void of any testimony or evidence presented to support the finding in the Trial Court's Order that Mrs. Ravenel had committed fraud. (R. pp. 30-46) Therefore, the Trial Court erred when it made a finding of fact that Mrs. Ravenel clearly intended to defraud her creditors without any evidence or testimony to support this finding.

II. THE TRIAL COURT ERRED WHEN IT RULED THAT MARY B. RAVENEL WAS BOUND BY THE PREVIOUS COURT ORDER AND THAT JUDICIAL ESTOPPEL APPLIES.

The Trial Court erred when it found that Appellant "is judicially estopped from claiming a position in the instant action, which is different from the position she took in Case No. 2010-CP-10-8732." (R. p. 6) Mrs. Ravenel was not a party to the referenced action and therefore not bound by the action. However, if the Court believes that Mrs. Ravenel was bound by the referenced Order, the Trial Court then erred in finding judicial estoppel applied to Mrs. Ravenel as her position did not change.

A finding of judicial estoppel is appropriate in a case "where a party assumes a certain position in a legal proceeding, and *succeeds* in maintaining that position, . . . [and] thereafter, simply because his interests have changed, assume[s] a contrary position." *Hawkins v. Bruno Yacht Sales*, 353 S.C. 31, 43, 577 S.E.2d 202 (2003) (*quoting Zimmerman v. Central Union Bank*, 194 S.C. 518, 532, 8 S.E.2d 359, 365 (1940)) (emphasis supplied). Here, the factual assertion that Mrs. Ravenel viewed herself as the owner of the property did not change and she does not take a position different from the previous action. The Order from the previous action, *Lashanda Ravenel, et al. v. Equivest Fin., LLC*, Case No. 2010-CP-

10-8732, states, "Ms. Mary Ravenel clearly regarded all of the properties as hers and testified that the property was hers." (R. p. 18, line 7) Based on the foregoing, judicial estoppel does not apply as Mrs. Ravenel's position that the property was hers remained consistent in both actions.

III. BECAUSE THE PROPERTY WAS NEVER LEVIED, ADVERTISED, AND SOLD IN THE NAME OF THE TRUE OWNER, THE TRIAL COURT ERRED WHEN IT FAILED TO FIND THAT THE TAX SALE WAS VOID.

The Trial Court erred when it failed to find that the tax sale was void for failure of the tax collector to levy, advertise, and sell the property in the name of Mary Ravenel. In *Ravenel v. Equivest*, Case No. 2010-CP-10-8732, which was later affirmed by this Honorable Court, the Master-in-Equity for Charleston County found the deed for the subject property was not delivered, and pursuant to case law, that "[a] deed is not legally effective until it has been delivered." *Donnan v. Mariner*, 339 S.C. 621, 626, 529 S.E.2d 754, 757 (Ct. App. 2000). Based on these rulings, it is undisputed in the present case that the true owner of the property at the time of the tax sale was Mrs. Ravenel. Since the tax sale in the instant matter was not levied, advertised, and sold in Mrs. Ravenel's name, the tax sale is void on its face.

The statute and case law in this matter are very clear. In order to comply with the statutory requirements for tax sales, the property "shall be listed, assessed, levied upon, advertised, and sold in the name of the true owner." *Rives v. Bulsa*, 325 S.C. 287, 293, 478 S.E.2d 878, 881 (Ct. App. 1996). It has been repeatedly found and stressed by the courts of this state that all conditions governing tax sales are *mandatory and strictly enforced. Hawkins*, 353 S.C. at 40.

In the case of *Osborne v. Vallentine*, the taxpayer died and devised the property to the respondents in that case. *Osborne v. Vallentine*, 196 S.C. 90, 12 S.E.2d 856, 857 (1941). Thereafter, the taxes became delinquent and the property was assessed, levied, and sold in the name of the deceased taxpayer. *Id.* at 858. The court found that the levy, advertisement, and sale of the property were required to be in the name of the devisees, who were the

owners at the time. *Id.* The court reasoned that the fundamental right of due process of law required the owner to be given notice prior to being deprived of his property. *Id.* In addition, since tax sale statutes require constructive notice, rather than actual notice, to the owner of the property, the court asserted that there must be *strict compliance* with the statute requiring the levying, advertising, and selling of the property in the name of the owner. *Id.*

Likewise, in *Rives v. Bulsa*, the taxpayer died leaving real property to her minor children. *Rives* at 289. For approximately seven (7) years and even after the children became adults, the tax notices were in the name of the deceased taxpayer in care of the children's father and mailed to their father's address. *Id.* at 290. Subsequently, the property was sold at tax sale. *Id.* The Court found that there was no evidence that notice of the tax sale was given to the children; therefore, the tax sale must be set aside because the property was not "assessed, advertised, levied upon or sold in their names." *Id.* at 293.

In *Osborne* and *Rives*, there was nothing that would have put the tax collector on notice that the defaulting taxpayers had died and the properties were owned by other parties. The Courts still held that the tax sales were void because the required notices and the tax sales were not in the names of the true owners. As the subject property in this matter was not levied, sold, and advertised in the name of Mary Ravenel, proper notice was not given and the tax sale is void. The fact that the tax collector could have had no way of knowing that there was deficiency with the deed making it ineffective does not change the strict requirements the law provides for tax sales.

IV. THE TRIAL COURT ERRED WHEN IT FAILED TO FIND THAT THE DELINQUENT TAX COLLECTOR DID NOT COMPLY WITH THE STATUTE BECAUSE APPELLANT DID NOT RECEIVE NOTICE OF THE DELINQUENT

TAXES AS THE DEFAULTING TAXPAYER.

The Trial Court erred when it failed to find that the tax collector did not comply with the statues, S.C. Code Ann. § 12-51-40(a) and § 12-51-40(b), when the defaulting taxpayer, Mary Ravenel, was not provided with notices of the delinquent taxes or notice of the tax sale as required by statute.

It is commonly believed that a tax execution is issued against the property, but it is, in fact, against the defaulting taxpayer. *Taylor v. Jennings,* 233 S.C. 600, 608, 106 S.E.2d 391, 397 (1958). As such, according to S.C. Code Ann. § 12-51-40(a) (1976), a notice of delinquent taxes must be mailed "to the defaulting taxpayer and to a grantee of record." (emphasis added). Likewise, S.C. Code Ann. § 12-51-40(b), states that in the case of real property, in order to take exclusive possession, a notice of delinquent taxes must be mailed "to the defaulting taxpayer and any grantee of record." (emphasis added).

It is undisputed that Mrs. Ravenel was the owner of the subject property on January 1, 2007. Accordingly, notices were required to be sent to Mary Ravenel as the defaulting taxpayer of the property as of January 1, 2007. Further, Mary Ravenel was the taxpayer of record at the time the tax bills were mailed out as she did not transfer the property until November 6, 2007. (R. p. 4, 14) The fact that Mary Ravenel was the defaulting taxpayer is reflected by the inclusion of her name in the subject line on the Execution Notice dated April 7, 2008 and Notice of Levy dated May 22, 2008. (R. pp. 52-55) Furthermore, the Posting Slip posted August 1, 2008 listed Mary Ravenel as the owner of the property. (R. p. 56-58)

Again, the law is clear in the fact that strict compliance must be met when depriving a person of their property. Here, the tax collector failed to follow the statutory requirements

provided under S.C. Code Ann. § 12-51-40(a) and § 12-51-40(b) by not providing notice to the defaulting taxpayer, and based on the foregoing, the tax sale is void.

V. BECAUSE THE STATUTE OF LIMITATIONS DOES NOT APPLY WHEN A TAX SALE IS VOID UPON ITS FACE, THE TRIAL COURT ERRED WHEN IT APPLIED THE TWO (2) YEAR STATUTE OF LIMITATIONS TO THE PRESENT CASE.

The Trial Court erred when it applied the two (2) year statute of limitations in this matter as provided by S.C. Code Ann. § 12-51-160 (1976). The statute states that "[a]n 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." S.C. Code Ann. § 12-51-160 (1976). However, the statute of limitations does not apply in the instant case because Mary Ravenel was not given required notice of the tax sale; therefore, the tax deed is void *ab initio*.

Courts have found that "[f]ailure to give the required notice is a fundamental defect in the tax sale proceedings which renders the proceedings absolutely void." *Rives*, 325 S.C. at 293. Similarly, the Court, quoting *Leysath v. Leysath*, reasoned that there is a "general rule that a short statute of limitation . . . *does not apply* where, by reason of jurisdictional defect, the tax deed is absolutely void upon its face. *Reeping v. JEBBCO, LLC, et al.*, 402 S.C. 195, 201, 740 S.E.2d 504, 507, (2013) (emphasis added). The importance of compliance is evidenced by the Supreme Court's finding that "[e]ven *actual notice* is insufficient to uphold a tax sale absent *strict compliance* with statutory requirements." *Ryan Inv. Co. v. Richland Co., et al.*, 335 S.C. 392, 395, 517 S.E.2d 692, 693 (1999) (emphasis added).

In the hearing, Judge Dennis stated:

THE COURT: Okay. And Ms. Ravenel, there's no question there's testimony that she appeared and tried to negotiate this property's return, because she testified to that?

MR. BERLINSKY: That's correct.

THE COURT: So there's no question she had notice, correct? How could you not - - how could you negotiate if you didn't have notice?

(R. p. 40, lines 17-24) The Trial Court erred when it found the statute of limitations applied based on Mrs. Ravenel having actual knowledge of the impending tax sale. While Mrs. Ravenel did have actual notice of the sale, she was not given constructive notice through the notices required by law. Notices were not sent to Mrs. Ravenel, but instead were mailed to the attention of Lashanda Ravenel and Henry Ravenel, II, who never received them. (R. p. 52-55) Therefore, absent strict compliance with the statutory requirements, the tax sale is void and the two (2) year statute of limitations does not apply.

CONCLUSION

The Trial Court erred when it failed to take testimony or hear arguments on material issues of fact that were before the court. Additionally, there was no testimony taken by the Trial Court to support the Trial Courts findings that Mrs. Ravenel had defrauded her creditors as stated in the Court's Order.

Further, Mary Ravenel was not bound by the previous court Order as she was not a party to the action. However, if the Court believes Mrs. Ravenel was bound by the court Order, then judicial estoppel does not apply since the position of Mrs. Ravenel did not change.

The tax sale is void on its face because the tax collector failed to levy, advertise, or sell the property in the name of the true owner, Mary Ravenel. Further, pursuant to the statutes, Mary Ravenel was entitled to notices of the delinquent taxes as the defaulting taxpayer and lack of strict compliance with the statute renders the sale void.

Finally, the two (2) year statute of limitations does not apply in the instant case because, for the reasons above, the tax sale is void *ab initio*.

For the reasons stated, this Court should reverse the judgment of the Trial Court.

Respectfully submitted,

June ____, 2016

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PROOF OF SERVICE

I, Jessica Reynolds, legal assistant to Bruce A. Berlinsky, Esquire, do hereby certify that I have this date mailed a true and correct copy of the foregoing and **FINAL BRIEF OF APPELLANT**, postage prepaid, and deposited with the United States Postal Service as follows:

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Dated this 9th day of June, 2016.

Jessica Reynolds