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

Appellate Case No. 2015-002257

Equivest Financial, LLC, ... Respondent,

v.

Mary B. Ravenel and AAA Plumbing, Inc., ... Defendants,

Of Whom Mary B. Ravenel is the ..... Appellant.

FINAL BRIEF OF RESPONDENT

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COUNTERSTATEMENT OF THE CASE

This is the second quiet title action concerning the subject property, a house and lot in Charleston County. The first action, Case No. 2010-CP-10-8732 ("the 2010 case"), resulted in a Final Order Quieting Title entered by the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County, on June 5, 2012. The plaintiffs in the 2010 case were Lashanda Ravenel and Henry Lee Ravenel, II, the children of Mary Ravenel, who deeded the subject property to them by deed recorded November 6, 2007. The chief defendant was Equivest Financial, LLC, as grantee from the purchaser at a tax sale held on November 3, 2008.

In the Final Order entered in the 2010 case [R. 13], the court found that Mary Ravenel's conveyance to her children was in violation of the Statute of Elizabeth because it was intended to defraud her creditors, and hence was void; that moreover the deed was not delivered to Mrs. Ravenel's children and so did not take effect, in any event; that Mrs. Ravenel's children were straw owners and became complicit in their mother's fraudulent conduct by commencing the 2010 case, and that they were in privity with their mother, in whose behalf they sued; that no irregularities occurred in the tax sale process; and that the plaintiffs came to court with unclean hands, having themselves received nominal title to the property from their mother's unclean hands. Title was quieted in favor of Equivest.

The children of Mrs. Ravenel appealed. The Court of Appeals affirmed on the ground that the deed into the children never took effect, having not been delivered. [Unpublished Opinion No. 2013-UP-495, filed 12/23/13.] The Court therefore declined to reach any of the other issues presented by the appellants.

Since Mary Ravenel was not a named party to the 2010 case, Equivest, the respondent herein, brought this second quiet title action, Case No. 2014-CP-10-0667 ("the 2014 case"), against Mary Ravenel, the appellant herein. The case was tried before the Honorable R. Markley Dennis, Jr., Presiding Judge of the Ninth Judicial

Circuit, on June 27, 2015. Judge Dennis entered a Final Order on July 27, 2015 [R. 4], finding as follows:

> 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.

The defendant's motion to alter or amend was denied by order entered on September 29, 2015 [R. 1], and this appeal followed.

STATEMENT OF FACTS

Property taxes on Mary Ravenel's home in Hollywood, South Carolina, became delinquent for the year 2007, as had happened in the previous two years. [Record on Appeal in the 2010 case, Appellate Case No. 2012-212772,[1] pp. 84; 106-07.] The Delinquent Tax Collector for Charleston County ("DTC") addressed successive notices in the collection process to the owners of record of the property, the children of Mrs. Ravenel, who were the grantees in a deed from their mother recorded November 6, 2007, the day before the first meeting of creditors in Mrs. Ravenel's bankruptcy proceeding. [R-2012, pp. 122-24; 132; 136.] The notices were addressed to Mrs. Ravenel's children at the address given for them in the deed, prepared at Mrs. Ravenel's direction, a post office box in Hollywood, South Carolina — P. O. Box 455. In accordance with Section 12-51-40, the notices were sent to the best available address, defined by statute to be "either [1] the address shown on the deed conveying the property to [the defaulting taxpayer], [or (2)] the property address, or [3] other corrected or forwarding address of which the [DTC] has actual knowledge." S.C. Code Ann. § 12-51-40(a). The deed to Mrs. Ravenel's children was recorded months before the first notice was mailed, making this the best available address according to Mrs. Ravenel herself.

The first notice was sent by regular mail, as provided by statute.

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[1] Hereafter, "R-2012". The Court may take judicial notice of its own cases. *See* Rule 201, SCRE.

The second and third notices were sent by certified mail, return receipt requested, restricted delivery, again as provided by statute.

The first of the certified mailings — the notice of levy — was returned to the DTC marked "Return to Sender, Unable to Forward" on May 24, 2008. [Pl. Exh. 4, R-2012, p. 178.] The property was then posted in accordance with the statute.

The second of the certified mailings — Final Notice of Property Redemption — was sent in three mailings: one to each of the children and one to them jointly. They were all returned on October 26, 2009 marked "Return to Sender/Ravenel, PO Box 263, Hollywood, SC 29449-0263". [R-2012, p. 85.] The statutory deadline for mailing this notice by certified mail having passed [R-2012, p. 104], the DTC immediately sent a courtesy copy of the notice by regular mail to the address shown on the returned mailings, P. O. Box 263, Hollywood, South Carolina.

Although Henry Ravenel Jr. did not know that his mother had deeded her house to him, Henry Jr. heard from a third party in early October 2009 that back taxes were due. [R-2012, p. 141.] He called the office of the DTC on October 2, 2009 and learned the amount due upon his mother's house. [R-2012, p. 83; Pl. Ex. 9, R-2012, p. 182.] When Mary Ravenel received the courtesy copy of the redemption notice soon after it was mailed on October 27, 2009 [R-2012, p. 103], she also communicated with the DTC and learned the amount due. Mrs. Ravenel was unable to pay the taxes of about $27,000, and the property was deeded to the high bidder for $130,000.

In the 2010 quiet title action brought by the Ravenel children to set aside the tax deed, the court found that Mary Ravenel's conveyance to her children was in violation of the Statute of Elizabeth because it was intended to defraud her creditors, and hence was void; that Mrs. Ravenel's children were straw owners and became complicit in their mother's fraudulent conduct by commencing the 2010 case in her behalf, and that they were in privity with their mother; that no irregularities occurred in the tax sale process; and that the plaintiffs came to court with unclean hands, having themselves received

nominal title to the property from their mother's unclean hands. Moreover, the deed, even if valid, was not delivered to Mrs. Ravenel's children and so did not take effect, in any event. Title was quieted in favor of Equivest.

In the appeal of the Ravenel children, the Court of Appeals chose not to reach the issues presented when it affirmed the judgment on the ground that the children were never the owners of the property.

ARGUMENT

I.

The trial court asked whether the parties wished to supplement the record with further evidence. The appellant did not respond. The only fact which the appellant now claims required testimony was in the record and undisputed. The only factual finding which she contends is unsupported was found in the 2010 case.

At trial, Judge Dennis saw no material issue of fact not resolved in the record of the 2010 case and in the thirteen exhibits offered into evidence in this case. The following colloquy took place:

THE COURT: Mr. Berlinsky, if there's anything that you need to add to protect your record, you let me know and I will be glad to do that. Because I really think the record in this case — I don't think we need to have testimony and put you all through that.

MR. BERLINSKY: Right, because we've agreed on the joint exhibits, so the exhibits are the exhibits. They say what they say.

THE COURT: All the exhibits are admitted and are now part of the record fully, as is your memorandum.

(Whereupon, Joint Exh. 1 through 13 are received in evidence.)

[R. 43/17-24.]

The heading of appellant's Argument I assigns error to the failure to take testimony. Mrs. Ravenel identifies a single material fact which she says "should have been addressed." [Appellant's Brief at 5.] This is the fact that the delinquent tax collector did not send her the Section 12-51-40 notices. This fact was undisputed. The

record of the 2010 case shows that Mrs. Ravenel was sent no notices because she had recorded a deed purporting to show that she no longer owned the property.

Mrs. Ravenel contends that there is no evidence of her fraud. The Final Order in the 2010 case is replete with factual findings of fraud. [R-2010, pp. 22-31. *And see* R. 33/4-6.] The invalidity of Mrs. Ravenel's deed to her children as a fraud upon her creditors was one basis for the judgment (but not the only one). The order of judgment was separately offered in evidence here as an exhibit [R. 13], but the entire file of the 2010 case was before Judge Dennis and was reviewed by him without objection.

There was no need for testimony; none was offered; and all factual findings are supported.

II.

The delinquent tax collector did not treat Mrs. Ravenel as the statutory "true owner" because she recorded a fraudulent deed in favor of her children, misleading the DTC into believing that her children were now the true owners. Even if the court were to allow her "true owner" argument in the face of her unclean hands, Mrs. Ravenel is collaterally estopped to make it.

A. Mrs. Ravenel's unclean hands preclude her "true owner" argument.

Mrs. Ravenel argues that property must be "levied upon, advertised, and sold in the name of the true owner," citing *Rives v. Bulsa*, 325 S.C. 287, 293, 478 S.E.2d 878, 881 (Ct. App. 1996). The delinquent tax collector thought that Mrs. Ravenel's children were the true owners because Mrs. Ravenel recorded a deed conveying the property to them. But, says Mrs. Ravenel, the deed was void under the Statute of Elizabeth because she recorded it in order to defraud her creditors and did not deliver the deed. Mrs. Ravenel remained the "true owner" after all. Therefore, there was a "jurisdictional defect" in the tax sale. QED.

Mrs. Ravenel begins her argument of her Question II by contending that she did not mislead the court in the earlier action because she was not a party. Not only was she in privity with her children, the plaintiffs in the earlier action, but they were straw

plaintiffs acting solely in their mother's interest, as the trial court found in the 2010 case. Mrs. Ravenel was as much a party to the earlier action as if her name appeared in the caption.

> The term "privy," when applied to a judgment or decree, means one so identified in interest with another that he represents the same legal right. One in privity is one whose legal interests were litigated in the former proceeding. *H.G. Hall Construction Co., Inc. v. J. E. P. Enterprises,* 283 S.C. 196, 321 S.E.2d 267 (Ct. App.1984). "Privity" as used in the context of collateral estoppel, does not embrace relationships between persons or entities, but, rather deals with a person's relationship to the subject matter of the litigation.

Roberts v. Recovery Bureau, Inc., 316 S.C. 492, 450 S.E.2d 616, 619 (Ct. App. 1994).

Having attempted through her straw plaintiffs to persuade the court in the earlier action that the conveyance to the children was good and that they were the true owners, she now says that she was the true owner all along. Mrs. Ravenel always considered herself the owner of the property, but she did what she could to mislead the world, including the DTC and the Court of Common Pleas in the earlier action, into believing that her children became the true owners. Her children acted as their mother's agent in attempting to void the tax sale in the earlier case. It was only on cross-examination in the 2010 case that the invalidity of the conveyance to the children came to light. [*See* Order of 5/30/12, R-2012, p. 3, in Case No. 2010-CP-10-8732, also found at R. 15 in the present Record.] Mrs. Ravenel had every intention of misleading the court into believing that her conveyance to the children was valid.

Even if she is not judicially estopped from now taking the position that she was the true owner, the equity court should not grant relief to one whose hands are unclean, and the trial court did not. *Wachovia Bank, N.A. v. Coffey,* 389 S.C. 68, 698 S.E.2d 244, 247 (Ct. App. 2010) ("'The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant.' *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct. App.1998)."); *Hiott v. Cochran,* 213 S.C. 207, 48 S.E.2d

803, 807 (1948) (a case may be imagined where a taxpayer is estopped to challenge a tax sale because of the taxpayer's conduct).

B. Mrs. Ravenel was in privity with the plaintiffs in the earlier action, who were straw parties acting solely for her. She is collaterally estopped from making any contention which could have been made in the previous action but was not. Mrs. Ravenel's "true owner" contention could have been made in the 2010 case but was not, and hence is barred.

Collateral estoppel precludes parties and those in privity with them from raising any issue which could have been raised in an earlier action which went to judgment. The earlier judgment here is not the remittitur of the Court of Appeals but rather the judgment of the Court of Common Pleas. The appellants in the first appeal chose to appeal some factual findings and legal conclusions of the Court of Common Pleas but not others. The Court of Appeals affirmed. The appellants' petition for a writ of *certiorari* was denied. The Court of Appeals sent down the remittitur. *Res judicata* applies to *all* issues decided by the Court of Common Pleas in its judgment, and to all those issues not decided but which could have been raised.

In Pye v. Aycock, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997), the Court identified the elements of *res judicata:*

> Our Supreme Court in *Bagwell v. Hinton,* 205 S.C. 377, 400, 32 S.E.2d 147, 156 (1944), held that the following elements must be shown in order to establish the plea of res judicata:
>
> > (1) The parties must be the same or their privies; (2) the subject matter must be the same; and (3) while generally the precise point must be ruled, yet where the parties are the same or are in privity the judgment is an absolute bar not only of what was decided but of what might have been decided.

480 S.E.2d at 458.

In the 2010 case, the trial court rejected each argument of the plaintiffs that the tax sale was invalid because of irregularities in the various notices. [*See* Final Order Quieting Title, R-2012, pp. 26-27, also found at R. 18-19 in the present Record.] Mrs. Ravenel's children brought the 2010 case as her agents, proxies, privies, and straw

plaintiffs. The judgment in the 2010 case binds Mrs. Ravenel as fully as though she were a named party. In *Smith v. Melton,* 7 S.C. 209, 219 (1876), the court recognized this principle of agency:

> [W]hen the master undertakes to control the suit of his servant, and thus becomes a substantial party, it may be considered that he is brought into a relation of privity with the judgment, and is both bound by it and may use it for his advantage.

In the 2010 case, Mrs. Ravenel challenged the validity of the tax deed on account of every alleged defect of notice in the sale process which she chose to advance. The plaintiffs in the 2010 case — who were Mrs. Ravenel's agents, proxies, and privies — were bound to raise every ground upon which the tax sale might be challenged. They could have contended that the tax sale was invalid because Mrs. Ravenel was not given notice as the true owner. They chose not to do so. Mrs. Ravenel is therefore collaterally estopped from raising this issue now.

This principle was at heart of Judge Dennis's reaction to this case, as shown by his Honor's remarks at the argument,[2] although the phrase "collateral estoppel" is not found in the written order.[3] *See I'ON, LLC v. Town of Mt. Pleasant,* 338 S.C. 406, 526 S.E.2d 716 (2000) (court may affirm on any ground of record).

The "true owner" contention comes too late since it could have been raised by Mrs. Ravenel's agents in the previous action.

III.

The contention that the tax sale is invalid because Mrs. Ravenel did not receive notice as the defaulting taxpayer could have been raised in the previous action but was not. She is collaterally estopped to raise it now.

Mrs. Ravenel contends that she was entitled to notice in her capacity as the

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[2] *See* Tr. 6/17/15, pp. 10/21 - 11/4, R. 39/21 - 40/4.]

[3] Mrs. Ravenel acknowledges that Judge Dennis held that she "was bound by the previous court order . . . ." [Appellant's Brief, p. 1, Statement of Issues on Appeal, Issue II.]

"defaulting taxpayer," regardless of whether she was the "true owner".

This new contention is barred by collateral estoppel in the same way that her "true owner" argument is barred. This ground could have been advanced in the 2010 case but was not. The court cannot allow a litigant to present a succession of suits on the same cause of action. *Pye v. Aycock,* 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997); *Smith v. Melton,* 7 S.C. 209, 219 (1876).

IV.

The statute of limitations runs in due course except where the tax deed is void *on its face*. The class of tax deeds facially void is very small. A tax deed voidable for irregularity is not void on its face. In any case, Mrs. Ravenel through her privies sought to invalidate the tax sale in a timely manner in the previous action, and failed. Collateral estoppel precludes a second effort.

The Court has sometimes said that a tax deed which shows "a jurisdictional defect" ***on its face*** is "absolutely void" and not merely voidable. Jurisdiction is a concept which describes the authority of a court. Courts are not involved in tax sales, but the word can sometimes be used in a colloquial way to describe the extent of an executive officer or agency's scope of authority. For example, it may be said that the Beaufort County Delinquent Tax Collector has no "jurisdiction" to sell property located in Oconee County to satisfy delinquent Beaufort County taxes. A deed from the Beaufort DTC purporting to convey title to Oconee County property might be said to be "void on its face" and therefore "absolutely void" rather than voidable. It is hard to think of other instances where a tax collector's deed might be seen to be "void on its face," although no doubt other examples could be imagined.

The idea that a tax deed may be "absolutely void" on account of irregularities of notice in the conduct of the sale is insupportable. Such a deed may well be voidable on timely application, but this is very different from absolute invalidity. At the heart of our recording system is the principle that a properly executed deed which is entitled to recordation is notice upon which the world may rely, unless and until a court declares

the deed void.[4] Even then, purchasers in good faith may acquire good title until a court has rendered such a judgment. To hold that a facially valid tax deed may be "absolutely void" — and hence support no title to anyone, ***ever*** — because of some irregularity unknown to and unknowable by the world is a startling idea.

Our Supreme Court first used the term "absolutely void" to describe a tax deed suffering from a "jurisdictional defect" in the case of *Leysath v. Leysath,* 209 S.C. 342, 40 S.E.2d 233, 236 (1946). The court identified only one earlier case where a tax deed was void rather than voidable:

> Illustrative of a jurisdictional defect is the case of *Smith v. Cox*, 83 S.C. 1, 65 S.E. 222. In that case there was a duplicate assessment of the property. The owner paid the taxes assessed against him. Nevertheless, a tax execution was issued on the other assessment, which was in the name of one not the true owner, and the property sold. In an action by the owner to recover possession from the purchaser at the tax sale, the Court held that our statute [of limitations] did not apply. As stated in 51 AM.JUR. page 995, it seems to be generally held that "all defects, irregularities, informalities, errors, and omissions in the antecedent proceedings of assessment, taxation, and sale, which are not jurisdictional, however grave and fatal to the validity of the tax deed in an action seasonably begun, are cured and foreclosed when the special statute has run the prescribed length of time."

Thus, a tax sale in the name of a person who never owned the property resulted in a void — not merely voidable — deed. Such a deed, when recorded, would not lie in the chain of title and would mislead no one.

Not until the case of *Donohue v. Ward,* 298 S.C. 75, 378 S.E.2d 261 (Ct. App. 1989), did a South Carolina court describe as "absolutely void" a tax deed issued without the statutorily-required 20-day notice to the delinquent taxpayer. The actual holding of the Court was not that the deed was void as though it never existed, but only

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[4] In all cases of tax sale the deed of conveyance . . . 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.

S.C. Code Ann. § 12-51-160.

that such an irregularity prevents the running of the statute of limitations. Later cases in the line of *Donohue* either use the epithet in the same way, simply to prevent the running of the limitations statute, or even when the irregularity in the tax proceedings renders the tax deed merely voidable on timely application. Except to overcome the statute of limitations, in no reported decision has our Court held that a tax deed is void in the sense that the tax deed never existed — except where the tax deed was void *on its face. Cf. Thomas & Howard Co. v. T.W. Graham and Co.,* 318 S.C. 286, 457 S.E.2d 340, 344 (1995) (court occasionally has described a judgment as "void" when it meant "voidable").

The tax deed to Equivest was not rendered "absolutely void" for lack of notice to Mrs. Ravenel as the true owner where she did everything she could to mislead the taxing authorities into believing that her children were the true owners.

In any event, the "absolutely void" argument, like the "true owner" argument and the "defaulting taxpayer" argument, was a ground of challenge to the tax deed which could have been raised by Mrs. Ravenel in the earlier action but it was not. It is barred by collateral estoppel/*res judicata.*

Even a claim of *lack of jurisdiction by a court* cannot be re-litigated, once the claim has been brought and rejected — or could have been brought but was not. The rules of collateral estoppel/*res judicata* apply to a claim of lack of jurisdiction as to any other claim.

> A party that has had the opportunity to litigate the question of subject-matter jurisdiction may not . . . reopen that question in a collateral attack upon an adverse judgment. It has long been the rule that principles of res judicata apply to jurisdictional determinations — both subject matter and personal. See *Chicot County Drainage Dist. v. Baxter State Bank,* 308 U.S. 371, 60 S.Ct. 317, 84 L.Ed. 329 (1940); *Stoll v. Gottlieb,* 305 U.S. 165, 59 S.Ct. 134, 83 L.Ed. 104 (1938).

Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702 n.9, 102 S.Ct. 2099,72 L.Ed.2d 492 (1982). *Accord: Ware v. Ware,* 404 S.C. 1,

743 S.E.2d 817, 825-26 (2013) (*citing Insurance Corp. of Ireland, supra*).

Since Mrs. Ravenel is precluded from contending that the tax sale was absolutely void on account of a "jurisdictional defect," the statute of limitations, S.C. Code Ann. § 12-51-160,[5] ran against her second effort to contest the validity of the tax sale.

CONCLUSION

The claims that the tax deed was invalid because notice of sale was not mailed to Mrs. Ravenel as the true owner and as the defaulting taxpayer could have been but were not raised in the 2010 case by her children, who were her agents and with whom she was in privity. The equity court will not hear her "true owner" contention because her hands are unclean, and she is collaterally estopped to raise this claim or the "defaulting taxpayer" claim now. Moreover, the statute of limitations has run.

For these reasons, the respondent asks the Court to affirm the judgment.

Respectfully submitted,

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July 1, 2016.

[5] "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)."

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CERTIFICATE OF SERVICE

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