

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Coochtek Properties, LLC)
 Plaintiff,)
)
 vs.)
)
 Butcher Boys, LLC)
 Defendant)

IN THE COURT OF COMMON PLEAS
 CASE NO. 2016-CP-23-00316
 ORDER QUIETING TITLE

RECEIVED
 JUL 11 2016
 SC Court of Appeals

ELECTRONICALLY FILED - 2016-07-11 09:43 AM - GREENVILLE - COMMON PLEAS - CASE#2016CP2300316

Pursuant to Rule 53, *South Carolina Rules of Civil Procedure*, the above-captioned matter was referred by Order of Reference filed on March 30, 2016, to make appropriate findings of fact and conclusions of law with authority to make final decisions and enter final judgment with respect to all matters raised in this action, including, without limitation, to hear and determine any post-judgment proceedings. Any appeal from this Order shall be directly to the South Carolina Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Pursuant to the Order of Reference, a hearing was held on May 18, 2016, and attended by the attorneys of record, testimony was taken, which is reported herewith, and from the testimony and evidence, I find, conclude and order as follows:

FINDINGS OF FACT

1. A Summons and Complaint were filed on January 21, 2016, in the Office of the Clerk of Court for Greenville County, South Carolina.
2. Service was made on Butcher Boys, LLC, on March 15, 2016, as evidenced by Affidavit of Service filed March 16, 2016.
3. This is an action to clear and quiet tax title from tax sale, the title of said real estate

being located in Greenville County, in the name of the Plaintiff, being more particularly described as follows:

ALL that certain piece, parcel or lot of land, situate, lying and being in City of Greenville, County of Greenville, State of South Carolina, containing 3.424 acres, more or less, and being more particularly shown and described on a plat by John R. Long, SC PLS #6270, dated April 26, 2010, recorded in the Register of Deeds Office for Greenville County in Plat Book 1103 at Page 48. Reference is hereby made to said plat for a more detailed description. LESS, however, any portion previously conveyed and subject to restrictions of record.

TMS#WG02030101704

4. The subject property was sold by the Greenville County Delinquent Tax Collector, and purchased by Plaintiff, on the regular tax sale date of November 3, 2014.
5. Thereafter, on or about December 15, 2015, the Greenville County Tax Collector issued a deed to the subject property in the name of Plaintiff, the same being recorded in the Register of Deeds Office for Greenville Country, South Carolina on December 29, 2015 in Deed Book 2479, Page 3239.
6. Based upon a review of the evidence and the records on file with the Register of Deeds of Greenville County, South Carolina, I find that the Greenville County Delinquent Tax Collector failed to comply with all applicable statutory requirements related to tax sales and in issuing the tax deed to Plaintiff. Admittedly, the case presents a “close call” relating to the findings of facts and the Court appreciates the quality and the high volume of work done by the Tax Collector. However, in light of the fact that the Court is required to strictly construe the applicable statutes in favor of the defaulting taxpayer (see, *King v. James* 694 SE2d 35 (SC App. 2010)) and that the statutes were not created to punish a defaulting taxpayer who fails to pay taxes

because of legitimate mistake or error (see, *Johnson v. Arbabi* 553 SE2d 453 (SC App. 2001; rev'd other grounds 584 SE2d 113 (SC 2003)), the Court, under the unique facts of this case, is compelled to set aside the tax sale.

7. Specifically, I find that based upon the change of address form sent by Butcher Boys on another parcel, the Greenville County Tax Collector had actual knowledge of the best address available for Butcher Boys, LLC, which was P.O. Box 4025, Anderson, SC 29622, and failed to send the required notice to the best address available.¹
8. While the Court is troubled by Butcher Boys, LLC's neglect in failing to realize that it was not receiving the statutory tax notices on this particular parcel in dispute, this does not relieve the Tax Collector from strict compliance with the statutory requirements, as set forth under South Carolina Code § 12-51-40 et seq.
9. I find that less than two (2) years have elapsed since the date of the aforementioned tax deed and the filing of the present action.

¹ Butcher Boys, LLC purchased two tracts of land from Watson Place, LLC, which were both transferred under a single deed dated September 7, 2010 and recorded in the office for the Register of Deeds for Greenville County, South Carolina on September 23, 2010. The deed was recorded in Book DE 2378 at pages 2094-2098. Both tracts of land were identified per the deed as having TMS # WG02.03-01-017.00. Taxes were paid in full on both properties in 2010, 2011 and 2012. On December 5, 2013 the Greenville County Tax Collector acknowledged an address change by Butcher Boys, LLC and sent an "Address Correction Confirmation" to its new address at PO Box 4025, Anderson, SC 29622. The "Address Correction Confirmation" noted the name of the Defendant Butcher Boys, LLC and listed the tax map number WG02.01-01-006.00, which referred to only one of the tracts transferred in the 2010 deed to Butcher Boys, LLC.

Thereafter, all notices related to one of the parcels, (WG02.01-01-006.00), transferred under the 2010 deed were sent to the updated address for Butcher Boys, LLC, PO Box 4025, Anderson, SC 29622, while all notices related to the other parcel (WG02.03-01-017.00, the parcel in dispute) were sent to the old Butcher Boys, LLC address, PO Box 4193, Anderson, SC 29622. Accordingly, all subsequent notices sent from the Tax Collector's Office that were sent to PO Box 4193, Anderson, SC 29622 were returned. All taxes in 2013, 2014 and 2015 related to Map Number WG02.01-01-006.00 were paid. Taxes related to WG02.03-01-017.00 were not paid in 2013. Accordingly, WG02.03-01-017.00 was sold at the tax sale in November of 2014 to the Plaintiff.

CONCLUSIONS OF LAW

Based upon the foregoing finding of fact, I, therefore, conclude as follows:

1. This being an action to quiet and clear tax title and confirm tax sale related to the subject property located in Greenville County, this Court has jurisdiction over the parties and the subject matter raised in this action.
2. Insofar as less than two (2) years have elapsed since the date of the tax deed related to the subject property, pursuant to *S. C. Code Ann.* §12-51-160., as amended, the named Defendant is not prohibited from making claims for possession or recovery of the subject property.
3. I conclude, under the unique facts of this case, that the Greenville County Tax Collector failed to comply with S.C. Code §12-51-40 et. seq., as amended, as relates to the particular parcel in dispute.
4. The Greenville County Tax Collector did not send notice to the best address for the parcel in dispute to Defendant Butcher Boys, LLC, for which it had actual knowledge. Specifically, the tax collector was on notice that Defendant Butcher Boys, LLC changed its address from Post Office Box 4193, Anderson, SC 29622 to Post Office Box 4025, Anderson, SC 29622.
5. I hereby find that because the tax sale violated S.C. Code §12-51-40 et. seq., as amended. Accordingly, said tax sale is null and void as to the subject property.
6. Defendant Butcher Boys, LLC is required to pay all taxes due and owing on the subject property or, in the alternative, pay unto the Plaintiff any due and owing interest, penalties, taxes previously paid on this parcel by Plaintiff, as are allowable by law.

This shall be accomplished within 35 days of this Order being served on the parties.

7. Such payment shall be made to the Greenville County Tax Collector and/or Coochtek Properties, LLC, as appropriate.
8. Plaintiff shall be refunded the \$11,000.00 it paid for the subject property at the November 3, 2014 tax sale, together with statutory interest from that time until full payment is made by Defendant to Plaintiff or Greenville County, whichever the case may be.
9. The tax deed dated December 29, 2015, recorded in book DE2479, at page 3239 and 3240 is hereby declared null and void and henceforth the subject property should be vested in Defendant Butcher Boys, LLC, as is evidenced by the deed of Watson Place, LLC conveying the subject property to Butcher Boys, LLC, recorded in deed book 2378 at page 2094 on September 23, 2010 in the Register of Deeds office for Greenville County, South Carolina. The Greenville ROD shall note the same on its records.
10. Butcher Boys, LLC shall pay interest at the rate of twelve percent (12%) on \$11,000.00 from the November 3, 2014 through the date of full payment unto the Plaintiff or Greenville County. This amount comes to one thousand three hundred twenty dollars and 0/100 (\$1,320.00), plus interim interest at the statutory rate.
11. Butcher Boys, LLC shall, within 35 days, pay the taxes due and owing to the Greenville County Tax Collector or Plaintiff (in the event it has already paid them) for the years 2013 and 2014, along with any penalties and interest due.
12. Butcher Boys shall reimburse the Plaintiff for his payment of the 2015 taxes, which

have already been paid by the Plaintiff Coochtek Properties, LLC.

Based upon the foregoing findings of fact and conclusions of law,

IT IS, THEREFORE ORDERED, ADJUDGED AND DECREED that title to the subject property is quieted and confirmed in Defendant and that Plaintiffs, or anyone claiming through them, shall have no further right, title or interest in the subject property.

IT IS FURTHER ORDERED that the Sheriff of Greenville County is ordered and directed to eject or remove from the premises the occupants of the subject property, if any, together with all personal property located thereon, if any, and put Defendant in full, quiet and peaceable possession of said subject property without delay, and to keep Defendant or his assigns, in such peaceable possession.

IT IS SO ORDERED.

Judge Charles B. Simmons, Jr.

JUDGE'S ELECTRONIC SIGNATURE ON FOLLOWING PAGE



Greenville Common Pleas

Case Caption: Coochtek Properties LLC vs. Butcher Boys LLC
Case Number: 2016CP2300316
Type: Master/Order for Quiet Title

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)