

EXHIBIT

I

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.

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.

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

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SPARTANBURG COUNTY
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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, Hazel 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), SCRCP.

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 Illa 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 Illa Mitchell, and according to the Application for Informal Probate of Will and Appointment of Personal Representative dated May 13, 1997, Illa A. Mitchell was the sole devisee of the Estate of James E. Mitchell. Consequently, Illa 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- page 988, Illa A. Mitchell a/k/a Illa A. Mitchell conveyed the Property to Hazel. By virtue of the

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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.

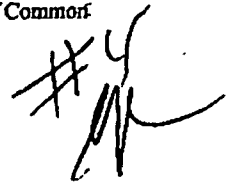
Plaintiff named John Doe and Mary Roe as fictitious defendants to represent the interests of any unknown persons or entities claiming any right, title, interest, estate in, or lien upon the Property, but Plaintiff elected not to proceed against the unknown defendants. Accordingly, the unknown defendants 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 a

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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;

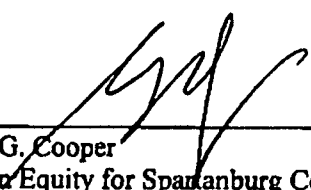
b. Not less than ____ days after said posting or service, the Sheriff shall be authorized to enter upon the Property, by force if necessary, and to seize the Property and to any persons occupying the Property from the Property, together with all of his/her/their personal property and possessions, and 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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EXHIBIT

II

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.

**Action to Quiet Tax Title
Non-Jury**

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.

SUMMONS

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint on the subscriber at his office, Haynsworth Sinkler Boyd, P.A., 1201 Main Street, 22nd Floor (29201), Post Office Box 11889, Columbia, South Carolina (29211-1889), within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in this Complaint.

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HAYNSWORTH SINKLER BOYD, P.A.

By: A. Parker Barnes III
A. Parker Barnes III

1201 Main Street, 22nd Floor (29201-3226)
Post Office Box 11889 (29211-1889)
Columbia, South Carolina
(803) 779-3080

Attorneys for Plaintiff

June 2, 2015

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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.

**Action to Quiet Tax Title
Non-Jury**

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.

COMPLAINT

ATCF REO HOLDINGS LLC ("Plaintiff"), complaining of the defendants herein, would respectfully allege and show unto this Court as follows:

1. Pursuant to S.C. Code Ann. §§ 12-61-10 to -60, and 15-67-10 to -100, Plaintiff asserts its Complaint against the defendants for the purpose of confirming its tax title to real property commonly known as 517 Wildwood Drive, Spartanburg County, South Carolina, tax map number 6-21-11-106.00 (the "Property"), which is herein below more specifically described and identified. Plaintiff acquired the Property through a tax deed resulting from a tax sale conducted by Spartanburg County pursuant to statute and through a subsequent quitclaim deed.

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The Property

2. The Property conveyed by the tax deed is more particularly described as follows:

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.

Parties

3. Plaintiff is informed and believes that by deed dated November 2, 1946, and recorded on November 4, 1946, in Office of the Register of Deeds for Spartanburg County (the "ROD") in Book13-H, page 155, J. A. Belue conveyed the Property to James E. Mitchell and Ila A. Mitchell.

4. James E. Mitchell subsequently 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).

5. 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

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Mitchell, and according to the Application for Informal Probate of Will and Appointment of Personal Representative dated May 13, 1997, Illa A. Mitchell was the sole devisee of the Estate of James E. Mitchell.

6. Consequently, Plaintiff is informed and believes that Illa A. Mitchell acquired sole ownership of 100% of fee simple title to the Property upon the death of James E. Mitchell.

7. By deed dated June 16, 2004, and recorded on June 28, 2004, in the ROD in Book 80-Q, page 988, Illa A. Mitchell a/k/a Illa A. Mitchell conveyed the Property to James K. Hazel, Jr. ("Hazel").

8. By virtue of the foregoing deed, Plaintiff is informed and believes that Hazel owned 100% of fee simple title to the Property prior to the tax sale, and that at the time of the tax sale, Hazel was the defaulting taxpayer and record title owner of the Property. Therefore, Plaintiff is informed and believes that Hazel may attempt to assert an interest in the Property.

9. Plaintiff is informed and believes that Defendant Prime Asset Fund III, LLC ("Prime") may attempt to assert an interest in the Property by virtue of the following:

a. Mortgage to Mortgage Electronic Registration Systems, Inc. as nominee for EquiFirst Corporation from Hazel 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;

b. Assignment of Mortgage to U.S. Bank National Association as Trustee under the Pooling and Servicing Agreement with Pooling ID #40087 and distribution #2005-RS6, dated July 1, 2005, and recorded on October 2, 2008, in the ROD in Book 4141, page 748;

c. Assignment of Mortgage to Prime dated July 22, 2011, recorded on October 12, 2011, in the ROD in Book 4506, page 557; and

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d. Corrective Corporate Assignment of Mortgage to Prime dated April 11, 2014, and recorded on May 21, 2014, in the ROD in Book 4856 at Page 239 (collectively, the "Prime Mortgage").

10. Plaintiff is also informed and believes that 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 currently stayed.

11. Accordingly, Plaintiff has named Prime as a party to extinguish and eliminate any and all interests that Prime may have or claim to have in, to, or upon the Property, including, but not limited to, the Prime Mortgage.

12. Defendant John Doe and Defendant Mary Roe and the other unknown defendants (collectively the "Unknown Defendants") represent and include all unknown persons or entities having or claiming any right, title, or interest in or to, or lien upon, the Property.

13. The parties hereto, and the subject matter hereof, are within the jurisdiction of this Court.

**FIRST CAUSE OF ACTION
(Action to Quiet Tax Title)**

14. Plaintiff re-alleges and incorporates herein by reference all of the above allegations.

15. MTAG, as Custodian for ATCF II South Carolina LLC ("MTAG") purchased the Property for \$38,000.00 at the Spartanburg County tax sale conducted on November 18, 2013, and Spartanburg County conveyed title to MTAG by tax deed dated and recorded on March 24, 2015, in the ROD in Deed Book 108-N, page 652.

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16. MTAG 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.

17. This Complaint is made for the purpose of clearing title to the Property against any and all claims, if any, as have been or may be raised by Hazel, Prime, and the Unknown Defendants adverse to the title and ownership interests of Plaintiff acquired by the referenced tax sale proceedings, tax deed, and quitclaim deed.

18. In support of the status of Plaintiff's title and in support of this action to clear title by determination of Plaintiff's interests superior to other interests, specifically including any and all interests of Hazel, Prime, and the Unknown Defendants, Plaintiff alleges as follows:

a. On or about November 18, 2013, the Property was sold to MTAG at a tax sale conducted by the taxing authorities for Spartanburg County for unpaid ad valorem taxes.

b. Upon information and belief, the tax sale conducted by the taxing authorities for Spartanburg County was prosecuted pursuant to the controlling tax sale statutes, S.C. Code Ann. §§ 12-51-40 to -170, including all requisite notices to the owner of record, mortgagees of record, and any other parties in interest to the Property.

c. MTAG was the successful bidder and purchaser of the Property at the referenced tax sale and complied with its purchase bid by full payment of the advertised taxes pursuant to the notice of tax sale and otherwise in accordance with the statutory proceedings.

d. None of the defendants or any other person or entity took any action in response to the notices or otherwise to redeem the Property, and the hereinabove referenced tax deed was, in fact, delivered by Spartanburg County to MTAG after being recorded on March 24, 2015, in the ROD in Deed Book 108-N, page 652.

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Spartanburg County, South Carolina

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paid by Plaintiff, a refund of all costs justly chargeable against the Property, and interest at the statutory rate of 12% on the Tax Sale bid from the date of the Tax Sale until paid, as provided in S.C. Code Ann. §§ 12-51-90, -100, together with pre-judgment interest.

23. South Carolina law provides that, when a tax sale is set aside through litigation, the courts must treat it as the ultimate redemption and that the provisions of S.C. Code Ann. § 12-51-100 apply.

24. Pursuant to S.C. Code Ann. § 12-51-100, Plaintiff is statutorily entitled to a refund of the Tax Sale bid and the interest required by S.C. Code Ann. § 12-51-90. As the redemption period expired on November 18, 2014, Plaintiff is entitled to interest on the Tax Sale bid at the statutory rate of 12% from the date of Tax Sale as provided in S.C. Code Ann. § 12-51-90.

25. Plaintiff is also entitled to a refund of all property taxes that it has paid and all costs that they have paid that are justly chargeable against the Property.

26. As the amount of the Tax Sale bid, paid property taxes, costs justly chargeable against the Property, and legal interest are sums that are certain or are capable of being reduced to certainty, Plaintiff is further entitled to receive and seek to recover pre-judgment interest.

27. Therefore, if the Court sets aside the Tax Sale of the Property, Plaintiff seeks judgment against the party challenging the tax sale of the Property for the amount of the tax sale bid, paid property taxes, costs justly chargeable against the Property, and legal interest at the rate of 12% on the tax sale bid from the date of the Tax Sale until paid, together with pre-judgment interest.

WHEREFORE, for the reasons set forth above, Plaintiff prays for the following relief:

1. With respect to Plaintiff's First Cause of Action, Plaintiff prays that judgment be entered in its favor against Hazel, Prime, and the Unknown Defendants with a finding by the Court that any right, title, claim, interest, or lien in or to the Property arising from the interests of Hazel,

THIS JUDGMENT
WAS ENTERED
ON 06/11/14
AT 9:31 AM
BY CLERK
HOLLY B. HOLEY

Prime, and the Unknown Defendants in the Property that they now claim or may claim in the future, be found to be junior or subsequent to Plaintiff's title, and that Plaintiff be provided a final and complete adjudication of the nature and extent of its title to the Property so that it may own, possess, and transfer clear title to the Property; that judgment be entered in Plaintiff's favor against Hazel, Prime, and the Unknown Defendants, and any other tenants or parties in possession of the Property with a finding by the Court that Plaintiff is entitled to immediate possession of the Property and ordering the Spartanburg County Sheriff to evict and remove any tenants or parties in possession of the Property from the Property within a reasonable time as determined by the Court.

2. With respect to Plaintiff's First Alternative Cause of Action, and only in the event that the Tax Sale of the Property is set aside or declared void, Plaintiff prays that judgment be entered in its favor against the party challenging the tax sale with a finding by the Court that Plaintiff is entitled to a refund of the tax sale bid, all Property taxes paid by the Plaintiff, all costs justly chargeable against the Property, and legal interest on the tax sale Bid at the rate of 12% from the date of the tax sale on November 18, 2013, until paid, as provided in S.C. Code Ann. §§ 12-51-90, -100, together with pre-judgment interest, and that the Court order the party challenging the tax sale of the Property to refund these amounts to Plaintiff.

3. Plaintiff further prays that the Court award it such other and further relief as the Court may deem just and proper.

[Continued on Next Page]

2015 JUN -4 AM 9:31
M. HOPE SLACKLEY

HAYNSWORTH SINKLER BOYD, P.A.

By: 
A. Parker Barnes III

1201 Main Street, 22nd Floor (29201-3226)
Post Office Box 11889 (29211-1889)
Columbia, South Carolina
(803) 779-3080

Attorneys for Plaintiff

June 2, 2015

2015 JUN -4 AM 9:31
M. HOPE BLACKLEY

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.

**Action to Quiet Tax Title
Non-Jury**

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.

SUMMONS

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint on the subscriber at his office, Haynsworth Sinkler Boyd, P.A., 1201 Main Street, 22nd Floor (29201), Post Office Box 11889, Columbia, South Carolina (29211-1889), within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in this Complaint.

2015 JUN -4 AM 9:31
CLERK OF COURT
SOUTH CAROLINA

HAYNSWORTH SINKLER BOYD, P.A.

By: A. Parker Barnes III
A. Parker Barnes III

1201 Main Street, 22nd Floor (29201-3226)
Post Office Box 11889 (29211-1889)
Columbia, South Carolina
(803) 779-3080

Attorneys for Plaintiff

June 2, 2015

2015 JUN -4 AM 9:31
H. HOPE BLACKLEY

EXHIBIT

III

CHAPTER 67
Recovery of Real Property

ARTICLE 1
General Provisions

SECTION 15-67-10. Persons who may bring action to determine adverse claim.

Any person in possession of real property, by himself or his tenant, or any person having or claiming title to vacant or unoccupied real property may bring an action against any person who claims or who may or could claim an estate or interest therein or a lien thereon adverse to him for the purpose of determining such adverse claim and the rights of the parties, respectively.

HISTORY: 1962 Code Section 10-2401; 1952 Code Section 10-2401; 1942 Code Section 878; 1932 Code Section 878; Civ. P. '22 Section 826; 1916 (29) 928.

SECTION 15-67-20. Plaintiff limited to one action for recovery of real property.

The plaintiff in actions for recovery of real property or the recovery of the possession of real property is limited to one action for recovery.

HISTORY: 1962 Code Section 10-2402; 1952 Code Section 10-2402; 1942 Code Section 374; 1932 Code Section 374; Civ. P. '22 Section 317; Civ. P. '12 Section 123; Civ. P. '02 Section 98; 1879 (17) 76; 1913 (27) 36; 1988 Act No. 553, Section 2.

SECTION 15-67-30. Propriety of service by publication; personal service out of State shall be sufficient.

When any action is commenced to determine adverse claims, publication of the summons may be made and service upon parties outside of the State and unknown claimants obtained in the following manner. When the sheriff of the county in which the action is brought shall have duly determined that the defendant cannot be found therein, and an affidavit of the plaintiff or his attorney shall have been filed with the clerk stating that a cause of action exists to determine adverse claims to certain property within the county, and that he believes the defendant or defendants, naming them, is not a resident of the State or cannot be found therein and either (a) that he has mailed a copy of the summons, by registered mail, to the defendant at his place of residence or (b) that such residence is not known to him, service of the summons may be made upon the defendant by three weeks' public notice thereof in the manner provided by law for publication of summons in civil actions. Personal service of such summons without the State, made after order for publication, proved by the affidavit of the person making such service made before an authorized officer having a seal, shall have the same effect as the publication of the summons herein provided.

HISTORY: 1962 Code Section 10-2403; 1952 Code Section 10-2403; 1942 Code Section 879; 1932 Code Section 879; Civ. P. '22 Section 827; 1916 (29) 928.

SECTION 15-67-40. Service on unknown parties; notice of lis pendens.

In any action brought to determine adverse claims to real property within this State the plaintiff may insert in the title thereof, in addition to the names of such persons as are known or appear of record to have some right, title, interest, estate or lien in or on the real property in controversy, the following: "Also all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the complaint herein." Service of the summons may be had upon all such unknown persons defendant by publication in the same manner as against nonresident defendants, upon the filing of an affidavit of the plaintiff, his agent or attorney, stating the existence of a cause of action to try adverse claims within this State. The plaintiff shall before commencement of such publication file with the clerk

of the court a notice of the pendency of the action, a copy of which shall be published in the same newspaper with and immediately following the summons.

HISTORY: 1962 Code Section 10-2404; 1952 Code Section 10-2404; 1942 Code Section 880; 1932 Code Section 880; Civ. P. '22 Section 828; 1916 (29) 929.

SECTION 15-67-50. Appearance of unknown parties; subsequent defense by minors.

All such unknown persons so served shall have the same right to appear and defend before and after judgment as would named defendants upon whom service is made by publication, and any order or judgment in the action shall be binding upon those who have been served or who shall appear and defend, whether they be of age or minors, and, if they be minors when judgment is rendered, they may be allowed to defend at any time within three years after coming of age.

HISTORY: 1962 Code Section 10-2405; 1952 Code Section 10-2405; 1942 Code Section 880; 1932 Code Section 880; Civ. P. '22 Section 828; 1916 (29) 929.

SECTION 15-67-60. Reference to master; determining claims of nonresidents or minors.

In all actions brought under this article the court, or a judge thereof, shall refer the action to a master or special referee to take the testimony as to the plaintiff's claim or title and as to all the facts and circumstances unless the testimony shall be taken in open court and carefully inquire as to the existence of claim by and residence of all nonresidents. If it shall appear to the court or judge that there probably exists a bona fide claim or lien on the part of any such nonresident or minor, whose name and whereabouts can be ascertained, no decree adjudicating the rights of such minor or affecting or quieting the title as against him or her shall be rendered unless personal service upon him or her outside of the State after order for publication shall first be made and proved as provided in Section 15-67-30.

HISTORY: 1962 Code Section 10-2406; 1952 Code Section 10-2406; 1942 Code Section 880; 1932 Code Section 880; Civ. P. '22 Section 828; 1916 (29) 929.

SECTION 15-67-70. Effect of judgment; persons bound.

Any judgment entered in an action to try adverse claims shall be binding upon all of the defendants joined in the action. When unknown owners and claimants are joined as defendants it shall be binding upon any and all persons or parties having or claiming, or who might or could claim, an interest in or lien upon the property adverse to the plaintiff who have been served or who shall appear and defend, whether residents of this State or nonresidents.

HISTORY: 1962 Code Section 10-2407; 1952 Code Section 10-2407; 1942 Code Section 882; 1932 Code Section 882; Civ. P. '22 Section 830; 1916 (29) 930.

SECTION 15-67-80. Costs.

If the defendant in his answer disclaim any interest in the property or suffer judgment to be taken against him without answer the plaintiff cannot recover costs. But if the summons has been served upon the defendant personally and it is made to appear that, after the accrual of the cause of action and before commencement thereof, the plaintiff demanded in writing of the defendant and the defendant neglected to execute within a reasonable time thereafter a good and sufficient quitclaim deed of the property described in the complaint, upon tender of such deed ready for execution, the plaintiff shall nevertheless recover his costs.

HISTORY: 1962 Code Section 10-2408; 1952 Code Section 10-2408; 1942 Code Section 881; 1932 Code Section 881; Civ. P. '22 Section 829; 1916 (29) 930.

SECTION 15-67-90. Time limitation upon reopening matter.

No judgment or decree quieting title to land or determining the title thereto, or adverse claims therein, shall be adjudged invalid or set aside for any reason, unless the action or proceeding to vacate or set aside such judgment or decree shall be commenced or application for leave to defend be made within three years from the time of filing for record a certified copy of such judgment or decree in the office of the clerk of court of the county in which the lands affected by such judgment or decree are situated or, in case of minors, within three years after coming of age.

HISTORY: 1962 Code Section 10-2409; 1952 Code Section 10-2409; 1942 Code Section 883; 1932 Code Section 883; Civ. P. '22 Section 831; 1916 (29) 930.

SECTION 15-67-100. Right to jury trial unchanged.

Nothing in this article shall be construed or held to change the existing law in reference to trials by jury in all actions of trespass to try titles, trespass quare clausum fregit or ejectment or other action to recover possession of real estate.

HISTORY: 1962 Code Section 10-2411; 1952 Code Section 10-2411; 1942 Code Section 884; 1932 Code Section 884; Civ. P. '22 Section 832; 1916 (29) 930.

ARTICLE 3

Possession and Adverse Possession

SECTION 15-67-210. Presumption of possession; when occupation deemed under legal title.

In every action for the recovery of real property or the possession thereof the person establishing a legal title to the premises shall be presumed to have been possessed thereof within the time required by law. The occupation of such premises by any other person shall be deemed to have been under and in subordination to the legal title unless it appear that such premises have been held and possessed adversely to such legal title for ten years before the commencement of such action.

HISTORY: 1962 Code Section 10-2421; 1952 Code Section 10-2421; 1942 Code Section 377; 1932 Code Section 377; Civ. C. '22 Section 320; Civ. P. '12 Section 126; Civ. P. '02 Section 101; 1870 (14) 445 Section 104; 1873 (15) 496.

SECTION 15-67-220. Effect of occupation under written instrument or court decree or judgment.

Whenever it shall appear (a) that the occupant or those under whom he claims entered into the possession of premises under claim of title, exclusive of any other right, founding such claim upon a written instrument as being a conveyance of the premises in question or upon the decree or judgment of a competent court and (b) that there has been a continued occupation and possession of the premises, or of some part of such premises, included in such instrument, decree or judgment under such claim for ten years, the premises so included shall be deemed to have been held adversely, except that when the premises so included consist of a tract divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract.

HISTORY: 1962 Code Section 10-2422; 1952 Code Section 10-2422; 1942 Code Section 378; 1932 Code Section 378; Civ. P. '22 Section 321; Civ. P. '12 Section 127; Civ. P. '02 Section 102; 1870 (14) 445 Section 105; 1873 (15) 496.

SECTION 15-67-230. What constitutes adverse possession under written instrument or court decree or judgment.

CHAPTER 61 Suits to Clear Tax Titles

SECTION 12-61-10. Persons who may institute action to clear tax title.

Any county of this State, the forfeited land commission or other similar authority of any such county, any person or the executors, administrators, successors, assigns or grantees thereof, which has purchased at or acquired through a tax sale and obtained title to any real or personal property, may bring an action in the court of common pleas of such county for the purpose of barring all other claims thereto.

HISTORY: 1962 Code Section 65-3301; 1952 Code Section 65-3301; 1942 Code Section 2170-1; 1934 (38) 1563; 1941 (42) 58.

SECTION 12-61-20. Procedure; defendants.

Such action shall be commenced, conducted and concluded by decree as are similar actions in such court and there may be made defendants to the action the former owner of such property, his heirs, executors, administrators, successors or assigns and any other person or legal entity who has or claims any right, title, claim, interest or lien in or to such property, to the end that such rights, titles, interests, claims or liens may be adjudicated in such action and forever barred by the judgment and decree of the court if such are found to be junior or subsequent to the title of the county or any person purchasing at or acquiring title to property through a tax sale.

HISTORY: 1962 Code Section 65-3302; 1952 Code Section 65-3302; 1942 Code Section 2170-1; 1934 (38) 1563; 1941 (42) 58.

SECTION 12-61-30. Laws applicable to proceedings.

The proceeding authorized in this chapter shall be subject to the rules and laws governing the procedure and conduct of similar proceedings, including the laws governing service of process and the publication thereof against absent or unknown defendants.

HISTORY: 1962 Code Section 65-3303; 1952 Code Section 65-3303; 1942 Code Section 2170-1; 1934 (38) 1563; 1941 (42) 58.

SECTION 12-61-40. Judgment for defendant may be conditioned on payment of taxes.

In any decree or judgment of the court in an action brought by the county, the forfeited land commission or other similar authority wherein it may be found that a person has a superior title to that of the county, the forfeited land commission or other similar authority, the judgment in favor of such person shall be upon condition that the taxes and penalties thereupon on account of which the property was sold and all taxes which have accrued since such sale and the penalties thereupon be paid in full within sixty days after the date of such judgment and the court shall order the sale of the property in the manner of other judicial sales in default of such payment. From the proceeds of such sale such taxes, costs and penalties shall be first paid.

HISTORY: 1962 Code Section 65-3304; 1952 Code Section 65-3304; 1942 Code Section 2170-1; 1934 (38) 1563; 1941 (42) 58.

SECTION 12-61-50. Costs when property was purchased for less than one thousand dollars.

Whenever an action shall be brought under the provisions of this chapter relating to property for which the plaintiff paid less than the sum of one thousand dollars, all costs due shall be only one half of those ordinarily allowed.

HISTORY: 1962 Code Section 65-3305; 1952 Code Section 65-3305; 1942 Code Section 2170-1; 1934 (38) 1563; 1941 (42) 58.

SECTION 12-61-60. Construction.

This chapter shall be liberally construed to the end that it shall afford a complete remedy to any plaintiff claiming property by forfeiture unto him for nonpayment of taxes or by acquisition at or through a tax sale, so that he can under this chapter obtain a final and complete adjudication of the nature and extent of the title thereto and, in any event, procure a valid sale of the property from the proceeds of which the unpaid taxes shall be paid.

HISTORY: 1962 Code Section 65-3306; 1952 Code Section 65-3306; 1942 Code Section 2170-1; 1934 (38) 1563; 1941 (42) 58.

EXHIBIT

IV

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)))

IN THE COURT OF
COMMON PLEAS FOR THE
SEVENTH JUDICIAL CIRCUIT

ATCF REO HOLDINGS, LLC)
Plaintiff,)

CASE # 2015-CP-42-2482

vs.)))

ANSWER

JAMES K. HAZEL JR.,)
Defendant, *Pro Se.*)

CLERK OF COURT
SPARTANBURG COUNTY
2015 AUG 14 AM 9:27
M. HOPE BLACKLEY

NOW COMES THE DEFENDANT, James K. Hazel Jr., proceeding *Pro Se*, Answering
the Complaint of the Plaintiff, would respectfully show the Court:

- 1) That he denies each allegation not admitted;
- 2) That he has no knowledge of this Plaintiff and denies any relationship with it;
- 3) That he has no knowledge of, and was not informed that any taxes were due on the property located at 517 Wildwood Drive, Spartanburg SC, 29306;
- 4) That if there is any data as to the amount of taxes owed by him on the property and/or paid by the Plaintiff, then such is demanded by strict proof;
- 5) That pursuant to SC Code of Laws §12-49-1120 and §12-49-1130, Spartanburg County did not send any notice, did not post any notice, or contact him with information about a tax sale and if there is any, then such is demanded by strict

proof; It is well known that equity follows the law. C & S Nat'l Bank v. Modern Homes Constr. Co., 248 S.C. 130, 133, 149 S.E.2d 326, 327 (1966). In South Carolina, "all requirements of the law leading up to tax sales which are intended for the protection of the taxpayer against surprise or the sacrifice of his property are to be regarded mandatory and are to be strictly enforced." Donohue v. Ward, 298 S.C. 75, 83, 378 S.E.2d 261, 265 (Ct.App.1989) (internal citations and quotations omitted). Additionally, the failure to give the required statutory notice renders the tax sale invalid. Rives, 325 S.C. at 293, 478 S.E.2d at 881

- 6) That pursuant to SC Code of Laws §12-51-40 Spartanburg County did not send any notice, did not post any notice, or contact him with information about tax owed on the property and if there is any, then such is demanded by strict proof; The sale of a defaulting taxpayer's real property is strictly governed by statute. F.C. Enters., Inc. v. Dibble, 335 S.C. 260, 263, 516 S.E.2d 459, 461 (Ct.App.1999). The proper procedure for notifying a taxpayer of delinquent taxes before conducting a tax sale is set out in section 12-51-40 of the South Carolina Code (Supp.2006). Section 12-51-40(b) authorizes the Tax Office to "take exclusive possession of the property necessary to satisfy the payment of the taxes." Among the acceptable means the Tax Office can employ to take possession, and the most relevant to this case, is by "posting a notice at one or more conspicuous places on the premises." § 12-51-40(c).

The rationale behind posting such a notice is to notify the defaulting taxpayer that delinquent property taxes are due. § 12-51-40. The failure to give the required

statutory notice renders the tax sale invalid. Rives v. Bulsa, 325 S.C. 287, 293, 478 S.E.2d 878, 881 (Ct.App.1996)

- 7) That pursuant to SC Code of Laws §12-51-60, §12-51-120 and SC Rules of Civ. Proc., Rule 5(d), the Plaintiff did not inform him of any legal action and if there is any, then such is demanded by strict proof. Defendant only learned of the current legal action for Quiet Tax Title due research on a similar case search, which gave occasion to file a Motion for Enlargement of Time which was granted by this court;
- 8) That the Plaintiff's complaint acknowledges and provides proof that the Defendant's title to the property is superior to the Plaintiff's title;

WHEREFORE, having answered the Complaint of the Plaintiff, the Defendant moves the Court to:

- 1) Dismiss the Complaint, as against him;
- 2) Allow the Defendant to pay any tax that was in arrears since no notice was provided;
- 3) Defendant re-alleges and incorporates herein by reference all prior paragraphs of its Complaint;
- 4) Set aside or declare void the tax sale and allow Plaintiff only to recover the actual tax payment made as SC Code of Laws §12-51-90 only requires refund of the monies paid and not interest;

CLERK OF COURT
SPARTANBURG COUNTY
2015 AUG 14 AM 9:27
M. HOPE BLACKLEY

- 5) Find that the Plaintiff deliberately made an effort to obscure the payment of taxes and at no time inform the Defendant as required by SC Code of Laws §12-51-60, §12-51-120 and SC Rules of Civ. Proc., Rule 5(d);
- 6) That it is become necessary for the Defendant to lose compensation from Work to defend against this action and that the reasonable value of such loss shall be determined at the time of the hearing not to exceed Two Thousand and 00/100 (\$2,000.00) Dollars;
- 7) Such other relief available to bring this matter to a mutually favorable conclusion for both parties of interest in this matter and as the Court deems just and proper.

Respectfully Submitted,


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

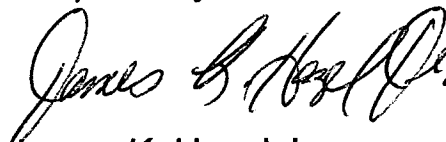
CLERK OF COURT
SPARTANBURG COUNTY
2015 AUG 14 AM 9:27
MADE BLACKLEY

CERTIFICATE OF SERVICE BY MAIL

I, James K. Hazel Jr., a person, do hereby affirm that *Answer to Complaint*, CASE # 2015-CP-42-2482 was placed into the United States Mail with the First Class Postage duly affixed and a return address clearly indicated on the envelope, for deposit in the United States Mail, addressed to the following person:

HAYNSWORTH SINKLER BOYD, P.A.
A. Parker Barnes III, Attorney for Plaintiff
1201 Main Street, 22nd Floor
Columbia, SC 29201

Respectfully Submitted,



James K. Hazel Jr.
517 Wildwood Drive
Spartanburg, S.C. 29306

CLERK OF COURT
SPARTANBURG COUNTY
2015 AUG 14 AM 9:27
M. HOPE BLACKLEY

E X H I B I T

V

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF
COMMON PLEAS FOR THE
SEVENTH JUDICIAL CIRCUIT

ATCF REO HOLDINGS, LLC)
)
Plaintiff,)
)
)
vs.)
)
)
JAMES K. HAZEL JR.,)
)
Defendant, *Pro Se.*)
)
_____)

CASE # 2015-CP-42-2482

MOTION TO

DISMISS

NOW COMES THE DEFENDANT, James K. Hazel Jr., pursuant to S.C. Rules Civ. Proc., Rule 12(b)(6); respectfully requesting that this honorable court dismiss the claim of the Plaintiff for failure to state facts sufficient to constitute a cause of action. The Defendant is preceding pro se without legal counsel and requests the indulgence of the Court with respect to the form of this motion.

1) That pursuant to SC Code of Laws §12-49-1120 and §12-49-1130, Spartanburg County did not

send any notice, did not post any notice, or contact him with information about a tax sale;

2) That pursuant to SC Code of Laws §12-51-40 Spartanburg County did not send any notice, did not post any notice, or contact him with information about tax owed on the property;

3) That pursuant to SC Code of Laws §12-51-60, §12-51-120 and SC Rules of Civ. Proc., Rule 5(d), the Plaintiff did not inform him of any legal action. Defendant only learned of the current legal action for Quiet Tax Title due research on a similar case search, which gave occasion to file a Motion for Enlargement of Time which was granted by this court;

Relief Requested

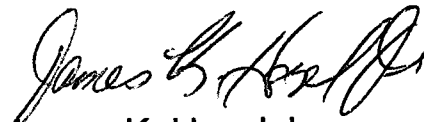
WHEREFORE, Defendant respectfully requests that this court grant Defendant's Motion to Dismiss and prays judgment as follows:

- 1) Dismiss the Complaint, as against him;
- 2) Allow the Defendant to pay any tax that was in arrears since no notice was provided;
- 3) Set aside or declare void the tax sale and allow Plaintiff only to recover the actual tax payment made as SC Code of Laws §12-51-90 only requires refund of the monies paid and not interest;
- 4) Find that the Plaintiff deliberately made an effort to obscure the payment of taxes and at no time inform the Defendant as required by SC Code of Laws §12-51-60, §12-51-120 and SC Rules of Civ. Proc., Rule 5(d);

CLERK OF COURT,
SPARTANBURG COUNTY
2015 AUG 13 AM 9:41
M. HOPE BLACKLEY

- 5) That it is become necessary for the Defendant to lose compensation from Work to defend against this action and that the reasonable value of such loss shall be determined at the time of the hearing not to exceed Two Thousand and 00/100 (\$2,000.00) Dollars;
- 6) Such other relief available to bring this matter to a mutually favorable conclusion for both parties of interest in this matter and as the Court deems just and proper.

Respectfully Submitted,



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

M. HOPE BLACKLEY

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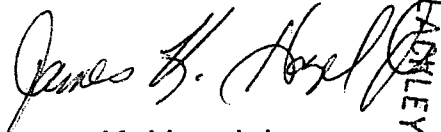
CLERK OF COURT
SPARTANBURG COUNTY

CERTIFICATE OF SERVICE BY MAIL

I, James K. Hazel Jr., a person, do hereby affirm that *Motion to Dismiss*, CASE # 2015-CP-42-2482 was placed into the United States Mail with the First Class Postage duly affixed and a return address clearly indicated on the envelope, for deposit in the United States Mail, addressed to the following person:

HAYNSWORTH SINKLER BOYD, P.A.
A. Parker Barnes III, Attorney for Plaintiff
1201 Main Street, 22nd Floor
Columbia, SC 29201

Respectfully Submitted,



James K. Hazel Jr.
517 Wildwood Drive
Spartanburg, S.C. 29306

CLERMONT COUNTY
SPARTANBURG COUNTY
2015 AUG 13 AM 9:41
M. HOPE BRADLEY

EXHIBIT

VI

292 S.C. 51
Supreme Court of South Carolina.

Stephen L. and Glenda JOHNSON, Appellants,
v.
SOUTH CAROLINA NATIONAL BANK,
Respondent.

No. 22700.

Submitted Jan. 21, 1987.

Filed April 13, 1987.

Following remand, 285 S.C. 80, 328 S.E.2d 75, guarantors refiled their complaint, seeking rescission of guaranty agreement, and bank filed compulsory, legal counterclaim for damages under the guaranty agreement. The Common Pleas Court, Sumter County, James M. Morris, J., struck guarantors' demand for jury trial of the counterclaim, and guarantors appealed. The Supreme Court held that both guarantors had right to jury trial of issues raised in compulsory, legal counterclaim.

Reversed and remanded.

West Headnotes (3)

[1] **Jury**

Legal defense, set-off, or counterclaim

Both plaintiffs and defendants had right to jury trial of issues raised in compulsory, legal counterclaim interposed in equitable action; declining to follow *Gulesian v. Newton Trust Co.*, 302 Mass. 369, 19 N.E.2d 312. Rules Civ.Proc., Rules 13, 38, 42; U.S.C.A. Const.Amend. 6.

16 Cases that cite this headnote

[2] **Jury**

Legal defense, set-off, or counterclaim

Trial judge, in case in which complaint is equitable and counterclaim is legal and compulsory, may either order separate trials or may order claims tried in single proceeding; in making such determination, caution should be taken to assure that, under the circumstances of

the case, joint trial will not deprive party of his right to full jury trial of legal issues; modifying *C & S Real Estate Services v. Massengale*, 290 S.C. 299, 350 S.E.2d 191. Rules Civ.Proc., Rules 42, 42(b).

18 Cases that cite this headnote

[3] **Trial**

Order of trial of separate issues

Legal issues are to be determined first, and findings of jury are binding on sitting judge, as trier of equitable claims, where issues common to both legal and equitable claims are to be tried in a single proceeding. Rules Civ.Proc., Rule 42.

7 Cases that cite this headnote

Attorneys and Law Firms

****895 *52** David W. Goldman and Kelly J. Golden of Bryan, Bahnmuller, King, Goldman & McElveen, Sumter, for appellants.

Manton M. Grier and Elizabeth A. Carpentier of Boyd, Knowlton, Tate & Finlay, P.A. and L. Henry McKellar, Associate Gen. Counsel of South Carolina Nat. Bank, Columbia, for respondent.

Opinion

PER CURIAM:

The Circuit Court denied appellants' (the Johnsons') motion to transfer this case to the jury roster.

We reverse and remand.

FACTS

This is the second appeal in this litigation. The Johnsons brought suit against respondent South Carolina National Bank (SCN) to rescind a guaranty agreement on the ground of fraud. In the same complaint, the Johnsons also sought money damages in causes of action for outrage, invasion of legal rights and breach of fiduciary duty. SCN

answered and moved to require the Johnsons to elect to proceed "in equity or at law." The Johnsons elected to proceed on the equitable theory of rescission. The trial judge ruled, however, that the Johnsons' other causes of action could be maintained in the same complaint.

*53 SCN then moved for an order transferring the case to the non-jury roster on the ground the Johnsons had elected to pursue an equitable remedy. The motion was granted and the Johnsons appealed. This **896 Court affirmed, holding that the "main purpose" of the action was rescission, an equitable remedy for which there is no right to a jury trial. See *Johnson v. South Carolina National Bank*, 285 S.C. 80, 328 S.E.2d 75 (1985).

The case was remanded and placed on the non-jury roster for an August 1985 term of court. Both parties joined in a request that the case be continued to an October 1985 term, but the presiding judge struck the case from the roster pursuant to Rule 40(c)(3), SCRCP.

Thereafter, the Johnsons refiled their complaint, captioned "Non-jury." SCN's answer included a compulsory, legal counterclaim for damages under the guaranty agreement. See Rule 13(a), SCRCP. The Johnsons replied and demanded a jury trial of the counterclaim. See Rule 38(b), SCRCP. SCN moved to strike the demand. The Circuit Court granted the motion, holding the Johnsons had no right to a jury trial on the counterclaim.

ISSUE

Where the plaintiff's complaint is equitable and the defendant's counterclaim is legal and compulsory, does the *plaintiff* have a right to a jury trial on the counterclaim?

DISCUSSION

In *C & S Real Estate Services v. Massengale*, 290 S.C. 299, 350 S.E.2d 191 (1986), this Court issued an order clarifying the procedure to be followed under Rules 13, 38 and 42, SCRCP, when a complaint is equitable and a counterclaim is legal and compulsory:

(4) If the complaint is equitable and the counterclaim legal and compulsory, the *defendant* has the right to a jury trial on the counterclaim. In that case, the proper procedure is as follows:

(a) The trial judge should, pursuant to Rule 42(b), order separate trials of the legal and equitable claims ... [Emphasis supplied].

*54 290 S.C. at 302, 350 S.E.2d at 193.

SCN contends the *C & S* order is not applicable here because the *plaintiff's*, not the *defendant's*, rights are at issue. It argues that the Johnsons waived any right to a jury trial on the counterclaim when they voluntarily filed a complaint seeking an equitable remedy. This position has some support in case law. See, e.g., *Gulesian v. Newton Trust Co.*, 302 Mass. 369, 19 N.E.2d 312 (1939).

Other courts, however, have held that a defendant or a *plaintiff* has a right to a jury trial of issues raised in a compulsory legal counterclaim interposed in an equitable action. In *Landers v. Goetz*, 264 N.W.2d 459 (N.D.1978), the court construed Rules 13(a) and 38(b), N.D.R.Civ.P., which are identical to Rules 13(a) and 38(b), SCRCP, as to this issue. The plaintiff in *Landers* brought an equitable action for the determination of title to real estate. The defendant counterclaimed for money damages, a legal remedy, but did not request a jury trial. The plaintiff replied, requesting a jury trial of the counterclaim. The court held *either* party may demand a jury trial of a compulsory legal counterclaim. See also *Forrest v. Fuchs*, 126 Misc.2d 8, 481 N.Y.S.2d 250 (1984) [right to jury trial of legal counterclaim interposed in equitable action belongs to both defendants and to plaintiffs]; *Noto v. Headley*, 28 Misc.2d 294, 213 N.Y.S.2d 936 (1961) [plaintiff entitled to jury trial as of right on legal counterclaim]; *Annot.*, 17 A.L.R.3d 1321.

[¹¹] We agree and hold that both plaintiffs and defendants have a right to a jury trial of issues raised in a compulsory legal counterclaim interposed in an equitable action.

Additionally, we make the following amendments to our order in *C & S*. As noted above, subsection (4)(a) of the order provides: "The trial judge should, pursuant to Rule 42(b), order separate trials of the legal and equitable claims." In formulating this provision, it was not our intention to deprive the trial judge of the option of trying legal and equitable claims in a single proceeding when convenience so directs.

Federal courts, in construing Fed.R.Civ.P. 42, have held that legal and equitable **897 issues may be tried in a single *55 proceeding. In *DePinto v. Provident Sec. Life Ins. Co.*, 323 F.2d 826 (9th Cir.1963), *cert. denied sub nom. Gorsuch v. DePinto*, 376 U.S. 950, 84 S.Ct. 965, 11 L.Ed.2d 969 (1964), the court held that legal and equitable claims may be tried side by side in the same action with the jury rendering a verdict on the legal issues and the court rendering a decision on equitable issues. See also *Ross v. Bernhard*, 396 U.S. 531, 90 S.Ct. 733, 24 L.Ed.2d 729 (1970); *Fanchon & Marco, Inc. v. Paramount Pictures*, 202 F.2d 731 (2d Cir.1953); *General Inv. Co. of Conn. v. Ackerman*, 37 F.R.D. 38 (D.C.N.Y.1964).

[¹²] We agree and hold that where a complaint is equitable

and the counterclaim is legal and compulsory, the trial judge has two options. He may either order separate trials pursuant to Rule 42(b) or may order the claims tried in a single proceeding. In making this determination, caution should be taken to assure that, under the circumstances of the case, a joint trial will not deprive a party of his right to a full jury trial of legal issues. Cf. *Commercial Iron & Metal Co. v. Bache Halsey Stuart, Inc.*, 581 F.2d 246 (10th Cir.1978), *cert. denied*, 440 U.S. 914, 99 S.Ct. 1229, 59 L.Ed.2d 463 (1979).

[³] Moreover, when issues common to both legal and equitable claims are to be tried in a single proceeding, legal issues are to be determined first, and the findings of the jury are binding on the sitting judge, as trier of the equitable claims. See *GTE Sylvania, Inc. v. Continental T.V., Inc.*, 537 F.2d 980 (9th Cir.1976), *cert. granted*, 429 U.S. 893, 97 S.Ct. 252, 50 L.Ed.2d 176, *affirmed*, 433 U.S. 36, 97 S.Ct. 2549, 53 L.Ed.2d 568 (1977); *Roscello v. Southwest Airlines Co.*, 726 F.2d 217, *reh'g denied*, 732 F.2d 941 (5th Cir.1984).

Accordingly, our order in *C & S* is modified. We summarize here the proper analysis for determining the trial of legal and equitable issues in complaints and counterclaims.

(1) If both the complaint and the counterclaim are in equity, the entire matter is triable by the court.

(2) If both are at law, the issues are triable by a jury.

(3) If the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial.

*56 (4) If the complaint is equitable and the counterclaim legal and compulsory, the plaintiff or

the defendant has a right to a jury trial on the counterclaim. In that case, the proper procedure is as follows:

(a) The trial judge may, pursuant to Rule 42(b), order separate trials of the legal and equitable claims, or may order the claims tried in a single proceeding.

(b) If separate trials are ordered, the judge must determine which issues are to be tried first. If there are factual issues common to both claims, absent the "most imperative circumstances," *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 79 S.Ct. 948, 3 L.Ed.2d 988 (1959), the "at law" claim must be tried first. If there are no common factual issues, it is within the trial judge's discretion which claim will be tried first.¹

(c) If the claims are to be tried in a single proceeding and there are factual issues common to both claims, the jury shall first determine the legal issues. The court may then determine the equitable claims, but the jury's determination of common factual issues shall be binding upon the court.

REVERSED AND REMANDED.

NESS, C.J., not participating.

All Citations

292 S.C. 51, 354 S.E.2d 895

Footnotes

¹ Note that the provision in *C & S* that "[t]he clerk of court must immediately place the 'at law' action at the top of the trial roster" is intentionally omitted in this version.

EXHIBIT

VII



Spartanburg County Assessor's Office

366 North Church Street, Suite 800
Spartanburg, South Carolina 29303
Phone: 596-2544

Search Sales In Area Search Sales In Neighborhood	Previous Parcel	Next Parcel	Return to Main Search Page	Assessor Home
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Owner and Parcel Information

Owner Name	ATCF REO HOLDINGS LLC	Today's Date	July 16, 2016
Mailing Address	1801 S FEDERAL HWY 2ND FL	Parcel Number	6-21-11-106.00 (Account#:117576)
	BOCA RATON, FL 33432	Millage Group	540Z - SD6/SPARTANBURG SANITARY SEWER/City of Spartanburg
Location Address	517 WILDWOOD DR, SPARTANBURG 29306	Neighborhood	4880 (4880)
Property Usage	Non-Qualified Regular Residential Improved (6RGR)	Land Size	0 AC
Homestead	No	Parcel Map	Show Parcel Map
Utilities	PUBLIC WATER PUBLIC SEWER	Fire District	
Legal Description	LOTS 14 15 & 16 J A BELUE SUB	Site Conditions	SEMI-IMPROVED

Value Information

Year	Market Land Value	Taxable Land Value	Agricultural Credit	Assessed Land Value	Market Improvement Value	Taxable Imp Value	Assessed Imp Value	Total Market Value	Total Taxable Value	Total Assessed Value
2015	\$ 15,000	\$ 13,381	\$ 0	\$ 535	\$ 56,900	\$ 50,760	\$ 2,030	\$ 71,900	\$ 64,141	\$ 2,565
2014	\$ 15,000	\$ 13,381	\$ 0	\$ 535	\$ 56,900	\$ 50,760	\$ 2,030	\$ 71,900	\$ 64,141	\$ 2,565
2013	\$ 15,000	\$ 15,000	\$ 0	\$ 600	\$ 56,900	\$ 49,141	\$ 1,966	\$ 71,900	\$ 64,141	\$ 2,566
2012	\$ 15,000	\$ 14,950	\$ 0	\$ 598	\$ 54,900	\$ 40,825	\$ 1,633	\$ 69,900	\$ 55,775	\$ 2,231
2011	\$ 15,000	\$ 14,950	\$ 0	\$ 598	\$ 54,900	\$ 40,825	\$ 1,633	\$ 69,900	\$ 55,775	\$ 2,231
2010	\$ 15,000	\$ 14,950	\$ 0	\$ 598	\$ 54,900	\$ 40,825	\$ 1,633	\$ 69,900	\$ 55,775	\$ 2,231

Fees

Assessment	Units	Amount
Residential Service Charge Fee (Landfill)	1	\$52.00
City of Spartanburg Fee Total	1	\$138.00
City of Spartanburg Fee Total	1	\$138.00

Land Information

Land Use	Land Code	Number Units	Unit Type	Land Type	Frontage	Depth	Notes
Non-Qualified Regular Residential Improved (6RGR)	RESIDENTIAL - SINGLE FAMILY	1	LOT	LOT			100x251x1R

Building Information

Style	Gross Sq Ft	Finished Sq Ft	Stories	Interior Walls	Exterior Walls	Year Built	Garage	Photo
Single Family	1,574	1,478	1 Story	PLASTER	VINYL	1945	Garage Detached	NA
Foundation	Roof Type	Roof Coverage	Flooring Type	Heating Type	Bathrooms	Grade	Number Fire Pl	Sketch
BLOCK	GABLE	COMP SHINGLE	PINE	CENTRAL HEAT	2.0	D	1	Sketch Building 1

Special Feature/Yard Item Information

Building Type	Quantity	Units	Year Built
Garage Detached (GD)	1	20	1983
Carport (Detached) (CD)	1	21	1960
Dock (Covered) (DC)	1	21	1960

Sales Information								
<u>OR Book/Page</u>	<u>Sale Date</u>	<u>Sale Price</u>	<u>Instrument</u>	<u>Instrument Number</u>	<u>Qualification</u>	<u>Vacant/Improved</u>	<u>Grantor</u>	<u>Grantee</u>
108Z/456	2015-04-20	\$ 5		<u>DEE-2015-19932</u>	OTHER (9)	Improved	MTAG,	
108N/652	2015-03-24	\$ 38,000			COUNTY DELINQUENT TAX SALE (9TS)	Improved	HAZEL JAMES K JR ,	
80Q/988	2004-06-01	\$ 77,000		<u>DEE-2004-33001</u>	VALID SALE (0)	Improved	MITCHELL ILLA A	
W97/662	1997-04-01	\$ 1			PROBATE (9W)	Improved	MITCHELL J E	
13H/155	1946-11-01	\$ 0			()	Improved		

Search Sales In Area	Previous Parcel	Next Parcel	Return to Main Search Page	Assessor Home
To check the status of your tax bill, click here to query the Treasurer's Office Information				
The Spartanburg County Tax Assessor's Office makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. All assessment information is subject to change before the next certified tax roll. Website Updated: July 16, 2016				

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EXHIBIT

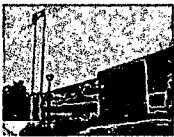
VIII



Spartanburg County

Seventh Judicial Circuit

Public Index



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JAMES

Middle

K

Suffix

Party Type

Defendant

Action Type

All Actions

Date Type

Actions Filed

Beginning

12/31/2007

Ending

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Through

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☐ Judgment For

☐ Judgment Against

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☐ Contains

Name	Party Type	Case Number	Filed Date	Case Status	Disposition Date	Type	Subtype	Judgment #	Court Agency
Hazel, James K	Defendant	2014CP4202358	06/16/2014	Dismissed	06/24/2016	Common Pleas	Foreclosure 420		Common Pleas
Hazel, James K	Defendant	2014LP4200521	06/16/2014	Pending		Lis Pendens	Foreclosure		Common Pleas
Hazel Jr, James K	Defendant	2011CP4203891	09/09/2011	Dismissed	05/09/2013	Common Pleas	Foreclosure 420		Common Pleas
Hazel Jr, James K	Defendant	2011LP4201266	09/09/2011	Pending		Lis Pendens	Lis Pendens		Common Pleas
Hazel Jr, James K	Defendant	2013CP4201497	03/26/2013	Dismissed	04/14/2014	Common Pleas	Foreclosure 420		Common Pleas
Hazel Jr, James K	Defendant	2013LP4200394	03/26/2013	Pending		Lis Pendens	Lis Pendens		Common Pleas
Hazel Jr, James K	Defendant	2015CP4202482	06/04/2015	Ended	04/19/2016	Common Pleas	Real Prop/Other 499		Common Pleas
Hazel Jr, James K	Defendant	2015CP4202482	01/05/2016	Disposed	04/15/2016	Common Pleas	Real Prop/Other 499		Master In Equity
Hazel Jr, James K	Defendant	2015LP4200487	06/04/2015	Cancelled	04/19/2016	Lis Pendens	Lis Pendens		Common Pleas
Hazel Jr., James K.	Defendant	2008CP4203753	07/18/2008	Dismissed	03/23/2009	Common Pleas	Foreclosure 420		Common Pleas
Hazel Jr., James K.	Defendant	2008LP4216822	07/18/2008	Pending		Lis Pendens	Lis Pendens		Common Pleas

EXHIBIT

IX

388 S.C. 16
Court of Appeals of South Carolina.

Sheila KING, Respondent,

v.

Margaret JAMES, Beaufort County, a political
subdivision of the State of South Carolina and Joy
Logan, in her capacity as Treasurer for Beaufort
County, South Carolina, Appellants.

No. 4676.

Heard Dec. 10, 2009.

Decided April 20, 2010.

Synopsis

Background: Taxpayer brought action against county and tax sale purchaser to set aside tax sale of land. The Circuit Court, Beaufort County, Marvin H. Dukes, Master-in-Equity, set aside the tax sale. County and purchaser appealed.

Holdings: The Court of Appeals, Williams, J., held that:

^[1] tax sale was invalid for lack of strict compliance with statutory notice requirements;

^[2] statute of limitations did not bar taxpayer's cause of action even assuming its applicability;

^[3] laches and stale demand defenses were inapplicable; and

^[4] waiver defense was inapplicable.

Affirmed.

West Headnotes (25)

^[1]

Taxation

⚡Grounds, conditions precedent, and time for proceedings

Action to set aside a tax sale of land lies in

equity.

1 Cases that cite this headnote

^[2]

Appeal and Error

⚡Authority to find facts

Appellate court's scope of review for a case heard by a master permits it to determine facts in accordance with its own view of the preponderance of the evidence.

1 Cases that cite this headnote

^[3]

Appeal and Error

⚡Conclusiveness in general

Appellate court's scope of review of a master-in-equity's decision does not require the court to disregard the master's factual findings because the master saw and heard the witnesses and was, therefore, in a better position to judge the witnesses' credibility and demeanor.

1 Cases that cite this headnote

^[4]

Taxation

⚡Demand of payment and default of owner

Tax sale of land by county was invalid for failure to strictly comply with all statutory requirements, where delinquent tax notices were stamped with payment deadlines that were before the actual date of sale. Code 1976, § 12-51-40.

Cases that cite this headnote

^[5]

Taxation

⚡ Mode of sale

Tax sales of land must be conducted in strict compliance with statutory requirements. Code 1976, § 12-51-40.

Cases that cite this headnote

⚡ Proceedings, relief granted, and review

Master-in-equity's ruling that county's tax sale was not conducted in strict compliance with statutory requirements was the law of the case, where neither county nor tax sale purchaser appealed that ruling. Code 1976, § 12-51-40(d).

Cases that cite this headnote

[6]

Taxation

⚡ Mode of sale

All requirements of the law leading up to tax sales which are intended for the protection of the taxpayer against surprise or the sacrifice of his property are to be regarded as mandatory and are to be strictly enforced. Code 1976, § 12-51-40.

Cases that cite this headnote

[10]

Taxation

⚡ Grounds, conditions precedent, and time for proceedings

Assuming that two-year statute of limitations for contesting a tax sale could act to bar claim challenging tax sale in case in which statutory notice to taxpayer was defective, tax sale purchaser withheld possession of property from taxpayer, and therefore taxpayer's cause of action accrued when purchaser had property surveyed and informed taxpayer of her ownership. Code 1976, §§ 12-51-40(a, b), 12-51-160.

Cases that cite this headnote

[7]

Taxation

⚡ Personal notice to owner or occupant

Even actual notice is insufficient to uphold a tax sale of land absent strict compliance with statutory requirements. Code 1976, § 12-51-40.

Cases that cite this headnote

[11]

Limitation of Actions

⚡ Nature of statutory limitation

One purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his or her rights.

Cases that cite this headnote

[8]

Taxation

⚡ Necessity

Failure to give the required notice of a tax sale of land is a fundamental defect in the tax sale proceedings which renders the proceedings absolutely void. Code 1976, § 12-51-40.

Cases that cite this headnote

[12]

Limitation of Actions

⚡ Causes of action in general

A statute of limitations begins to run at the time the cause of action accrues.

[9]

Taxation

Cases that cite this headnote

- [13] **Limitation of Actions**
⚡Causes of action in general

In analyzing a limitations defense, the fundamental test for determining whether a cause of action has accrued is whether the party asserting the claim can maintain an action to enforce it.

Cases that cite this headnote

- [14] **Limitation of Actions**
⚡Causes of action in general

A particular cause of action accrues for limitations purposes at the moment when the plaintiff has a legal right to sue on it.

Cases that cite this headnote

- [15] **Taxation**
⚡Grounds, conditions precedent, and time for proceedings

Equitable defenses of laches and stale demand did not bar taxpayer's action to set aside tax sale of land, even though reasonableness of taxpayer's failure to further investigate problem with her property taxes was questionable, where lapse of time between tax sale purchaser's assertion of ownership and taxpayer's filing of action the next year was not of an unreasonable length, taxpayer had been advised by her attorney that her name was still on the property, there was no evidence showing purchaser had entered into any obligation or changed position based on taxpayer's delay, and only injury claimed by county would be by operation of statute which it had failed to comply with prior to tax sale. Code 1976, § 12-51-130.

1 Cases that cite this headnote

- [16] **Equity**
⚡Nature and elements in general

Under doctrine of "laches," if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights.

1 Cases that cite this headnote

- [17] **Equity**
⚡Prejudice from Delay in General

Party seeking to establish laches must show: (1) a delay, (2) that was unreasonable under the circumstances, and (3) prejudice.

1 Cases that cite this headnote

- [18] **Appeal and Error**
⚡Allowance of remedy and matters of procedure in general

When a master declines to make a finding of laches, as would have prevented enforcement of rights in equity, that decision will not be disturbed by the appellate court absent an abuse of discretion.

1 Cases that cite this headnote

- [19] **Equity**
⚡Nature and elements in general

A "stale demand" is a claim in equity that has

for a long time remained unasserted; one that is first asserted after an unexplained delay of such great length as to render it difficult or impossible for the court to ascertain the truth of the matters in controversy and to do justice between the parties, or as to create a presumption against the existence or validity of the claim, or a presumption that it has been abandoned or satisfied.

Cases that cite this headnote

[20]

Equity

⚡Nature and elements in general

There are some points of distinction between the equitable defenses of “laches” and staleness of demand; “stale demand” implies greater lapse of time than is necessary to laches, and laches generally involve such change in conditions as would render inequitable the enforcement of a claim, while no such change is necessary in order to create staleness of demand.

Cases that cite this headnote

[21]

Equity

⚡Nature and elements in general

Although there are some distinctions between the equitable defenses of laches and staleness of demand, both fall within the same general principles of equity, and the distinctions are of little practical importance.

Cases that cite this headnote

[22]

Taxation

⚡Setting Aside Sale or Certificate

Taxpayer did not waive or abandon any rights in her property by entering into lease with tax sale purchaser, and therefore taxpayer could bring action challenging the tax sale, where taxpayer

did so on advice of counsel to prevent sale of property to third party, and upon learning of purchaser’s interest in the property, taxpayer took immediate action to maintain use of the property and challenge purchaser’s ownership of it.

Cases that cite this headnote

[23]

Estoppel

⚡Nature and elements of waiver

“Waiver” is a voluntary and intentional abandonment or relinquishment of a known right.

4 Cases that cite this headnote

[24]

Estoppel

⚡Nature and elements of waiver

In order for a party to waive a right, the party must have known of the right and known that the right was being abandoned.

3 Cases that cite this headnote

[25]

Estoppel

⚡Questions for jury

The determination of whether one’s actions constitute waiver is a question of fact.

1 Cases that cite this headnote

Attorneys and Law Firms

****37** Mary B. Lohr, of Beaufort, for Primary Appellants;
J. Thomas Mikell, of Beaufort, for Secondary Appellants.

Alysoun M. Eversole, of Beaufort, for Respondent.

Opinion

WILLIAMS, J.

*21 In this case, Beaufort County (the County) argues the Master erred in finding the two-year statute of limitations in South Carolina Code section 12-51-160 (Supp.2008) did not apply to Sheila King's (King) action to set aside the 1999 tax sale of her property even though the action was brought in 2006. The **38 County also contends the Master erred in finding the defenses of laches, estoppel, abandonment, acquiescence, and stale demand were inapplicable in this case. We affirm.

FACTS AND PROCEDURAL HISTORY

This case involves a parcel of real property located in Hilton Head Island, South Carolina (the Property). King acquired title to the Property by deed from her brother-in-law in 1976 and has used the Property as her primary residence since that time. When King first acquired the Property, the address was Route 2, Box 328. At some point thereafter, the address changed to 92A Gumtree Lane. In the late 1990s, the address changed once again to 9 Holmes Lane, which is King's current address. King testified before the Master that the changes in the Property's address have occasionally caused her mail to arrive late or not at all.

King lived with her husband and daughter, Salina, on the Property. Because King does not drive, she always paid her property taxes by traveling with her husband to the courthouse and paying in cash. However, King's husband died in 1997 after a prolonged battle with lung cancer. According to the County's tax records, King failed to pay taxes on the Property for 1998. As a result, on October 4, 1999, the County sold the Property to Margaret James (James) for \$2,100.¹

Beaufort County Deputy Treasurer Herschel Evans (Evans) testified that leading up to the tax sale, the County sent tax *22 delinquency notices to King in accordance with all statutory requirements. Pursuant to South Carolina Code section 12-51-40(a) (Supp.2008), the County first sent notice to King on or about April 1, 1999, that she had not paid her 1998 property taxes. After the taxes remained unpaid for thirty days, the County sent King another tax bill via certified mail pursuant to section 12-51-40(b). The certified mail notice was returned

undelivered. In response to the return of the certified mail notice, Evans claimed the County took exclusive possession of the Property by posting the Property pursuant to section 12-51-40(c). Although Evans did not personally post the Property, he supported his assertion that it was posted by noting the County's tax records, which indicated Walter Mack, an agent of the County, posted the Property on August 6, 1999.² Evans testified that the County followed all statutory mandates leading up to the tax sale of the Property; however, the County concedes on appeal the notices to King were defective under *Hawkins v. Bruno Yacht Sales*, 353 S.C. 31, 577 S.E.2d 202 (2003).³ Thereafter, pursuant to section 12-51-40(d), the County advertised the Property and sold it at a tax sale to James in 1999.

Although the Property was very close to James' home, she testified she had only a rough idea of the Property's location until she had it surveyed in March 2005. In fact, James believed she had purchased the land adjacent to the Property. After the survey showed James was the owner of the Property, James visited the Property and spoke with King and Salina. James first offered to sell the Property back to King for \$50,000. However, the sale never materialized. Subsequently, James offered to lease the Property to King and Salina for \$500 per month, and they entered into a lease agreement from September 2005 until September 2006.

*23 In April 2006, King brought an action against James and the County to set aside the tax sale. James and the County answered, asserting as defenses the two-year statute of limitations under section 12-51-160, laches, estoppel, waiver, abandonment, acquiescence, and stale demand. The case was tried in Beaufort County before Master-in-Equity Marvin H. Dukes (the Master) in 2008.

**39 King and Salina testified at the hearing before the Master they had never received any notice from the County that the taxes on the Property were delinquent, nor had they seen any posting by the County on the Property. King testified when she attempted to pay taxes on the Property in 2000 at the Beaufort County courthouse, an employee told her the County would not accept her money, that there was an unspecified "problem" with her property taxes, and she should contact an attorney. King hired an attorney, Doug MacNielle, in 2001. According to King, MacNielle informed her he had "run a survey," and it showed her name "was still on the [Property]." When asked whether she thought to ask anybody else at the treasurer's office why she was not receiving any tax bills for the Property after 2000, she responded, "Honestly, no."

The Master held the statute of limitations in section 12-51-160⁴ was inapplicable to King's action because King remained in possession of the Property at all times and, to the extent the execution of the lease in 2005 constituted an "ouster," King brought her action to set aside the tax sale within two years of the ouster. In reaching this conclusion, the Master relied on *Dibble v. Bryant*, in which our supreme court held the earlier version of section 12-51-160⁵ "was intended to bar a defaulting and ousted taxpayer from maintaining an action *24 to defeat the title of the tax sale purchaser and recover the land if brought more than two years from the date the purchaser came into possession." 274 S.C. 481, 487, 265 S.E.2d 673, 677 (1980).

As to the actual tax sale, the Master noted: "[T]ax sales must be conducted in strict compliance with statutory requirements." *Hawkins*, 353 S.C. at 36, 577 S.E.2d at 205. In light of the County's stipulation that notice was improper under *Hawkins*, the Master found the County failed to meet the "strict compliance" standard, and therefore, the tax deed was void and of no effect. The Master further held the County had failed to prove by a preponderance of evidence that King ever received any delinquent tax notices. Finally, the Master found "[n]o competent evidence was presented that [the Property] was properly posted," because Evans-the County's only witness-had no personal knowledge of the posting other than what was in the County's records, and both King and Salina testified they never saw a posting on the Property.⁶ This appeal followed.

STANDARD OF REVIEW

[1] [2] [3] An action to set aside a tax sale lies in equity. *Smith v. Barr*, 375 S.C. 157, 160, 650 S.E.2d 486, 488 (Ct.App.2007). Our scope of review for a case heard by a Master permits us to determine facts in accordance with our own view of the preponderance of the evidence. *Id.* However, this scope of review does not require this court to disregard the Master's factual findings because the Master saw and heard the witnesses and was, therefore, in a better position to judge the witnesses' credibility and demeanor. *Id.*

LAW/ANALYSIS

1. Tax Sale

[4] King argues the tax sale and resulting tax deed are invalid because the County failed to strictly comply with statutory notice requirements leading up to the tax sale. We agree.

*25 [5] [6] [7] [8] "Tax sales must be conducted in strict compliance with statutory requirements." *In Re Ryan Investment Co.*, 335 S.C. 392, 395, 517 S.E.2d 692, 693 (1999) (citing *Dibble*, 274 S.C. at 483, 265 S.E.2d at 675). "[A]ll requirements of the law leading **40 up to tax sales which are intended for the protection of the taxpayer against surprise or the sacrifice of his property are to be regarded [as] mandatory and are to be strictly enforced." *Donohue v. Ward*, 298 S.C. 75, 83, 378 S.E.2d 261, 265 (Ct.App.1989) (citing *Osborne v. Vallentine*, 196 S.C. 90, 94, 12 S.E.2d 856, 858 (1941)). "Even actual notice is insufficient to uphold a tax sale absent strict compliance with statutory requirements." *Ryan Inv. Co.*, 335 S.C. at 395, 517 S.E.2d at 693. "Failure to give the required notice [of a tax sale] is a fundamental defect in the tax sale proceedings which renders the proceedings absolutely void." *Rives v. Bulsa*, 325 S.C. 287, 293, 478 S.E.2d 878, 881 (Ct.App.1996).

[9] Appellants have conceded the tax sale was not proper under *Hawkins* due to the defective stamp in the notices to King. Moreover, neither of the Appellants has appealed the Master's finding that the tax sale was not conducted in strict compliance with statutory requirements. Therefore, this ruling is the law of the case. *See ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (holding an unappealed ruling, right or wrong, becomes the law of the case). Accordingly, we affirm the Master's finding as to the invalidity of the tax sale and tax deed.

2. Statute of Limitations

[10] Appellants argue even if the tax sale was improper under *Hawkins* due to the defective notice, the Master nevertheless erred in failing to apply the two-year statute of limitations from section 12-51-160 to bar King's claim because (1) section 12-51-160 clearly states the statute begins to run "from the date of the [tax] sale," and (2) alternatively, even if King did not have actual knowledge of the sale, the statute began to run against her in 2000 when an employee of the treasurer's office told her there was a "problem" with her taxes. We disagree.

[11] [12] [13] [14] One purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a plaintiff *26 has slept on his or her rights. *McKinney v. CSX Transp., Inc.*, 298 S.C. 47, 49-50, 378 S.E.2d 69, 70 (Ct.App.1989). The statute of limitations

begins to run at the time the cause of action accrues. *Harvey v. S.C. Dep't. of Corr.*, 338 S.C. 500, 508, 527 S.E.2d 765, 769 (Ct.App.2000) (citing *Matthews v. City of Greenwood*, 305 S.C. 267, 269, 407 S.E.2d 668, 669 (Ct.App.1991)). In analyzing a limitations defense, “[t]he fundamental test for determining whether a cause of action has accrued is whether the party asserting the claim can maintain an action to enforce it.” *Id.* (quoting *Matthews*, 305 S.C. at 269, 407 S.E.2d at 669). Thus, a particular cause of action accrues “at the moment when the plaintiff has a legal right to sue on it.” *Id.*

This court has held the purpose of the statute of limitations as set forth in section 12-51-160 is “to create a time limit during which one who lost title to property through a tax sale, after proper notice, may attempt to regain title.” *Corbin v. Carlin*, 366 S.C. 187, 194, 620 S.E.2d 745, 749 (Ct.App.2005). A review of case law in this area reveals somewhat divergent decisions regarding if and when the statute of limitations begins to run in situations such as this.

On the one hand, we find case law that says when notice to the homeowner is not in strict compliance with the statute, such a defect is “jurisdictional,” and the statute of limitations does not run at all. *See Donohue v. Ward*, 298 S.C. 75, 82, 378 S.E.2d 261, 265 (1989) (holding where a defect in notice is jurisdictional, such a defect “invalidates the tax proceeding and prevents the running of the limitations statute”); *Good v. Kennedy*, 291 S.C. 204, 207, 352 S.E.2d 708, 711 (1987) (holding “the general law is that where a statute requires as a condition precedent to foreclosing a taxpayer’s rights in property sold for taxes that he be given notice of his right to redeem, such a requirement is generally regarded as jurisdictional”) (internal quotations omitted).

On the other hand, we also find case law in which our courts interpreted previous versions of section 12-51-160 as saying even if the notice is defective, the statute of limitations still applies, but only begins to run when the purchaser comes into possession. *See Dibble v. Bryant*, 274 S.C. 481, 487, 265 S.E.2d 673, 677 (1980) (holding previous version **41 of section 12-51-160 “was intended to bar a defaulting and ousted taxpayer *27 from maintaining an action to defeat the title of the tax sale purchaser and recover the land if brought more than two years from the date the purchaser came into possession”) (emphasis added); *Glymph v. Smith*, 180 S.C. 382, 384, 185 S.E. 911, 914 (1936) (holding even though the plaintiff brought the action six years after the tax sale, the two-year statute of limitations never began to run because the sheriff never took possession of the subject property, and the purchaser was never put into possession following

the execution of the tax deed); *Gardner v. Reedy*, 62 S.C. 503, 503, 40 S.E. 947, 947 (1902) (holding the two-year statute of limitations would only begin to run if and when the purchaser took possession).

Regardless of which of the two above interpretations is correct, Appellant’s argument as to the statute of limitations necessarily fails because King brought her action within two years of the buyer coming into possession. In the present case, the Master held, and we agree, the County failed to establish by a preponderance of the evidence that it took “exclusive possession” of the Property by posting, as is required under section 12-51-40(c). Moreover, James could not reasonably be said to have withheld possession of the Property from King until 2005, when she had the Property surveyed and informed King of her ownership. Then and only then would the purchaser have come “into possession” under *Dibble*, such that the statute would begin to run. 274 S.C. at 487, 265 S.E.2d at 677; *see also Scott v. Boyle*, 271 S.C. 252, 256, 246 S.E.2d 887, 889 (1978) (holding section 12-49-570 did not bar an action to set aside a tax deed brought six years after the sale because there was insufficient evidence the purchaser ever obtained possession, and therefore, the statute never began to run); *Leysath v. Leysath*, 209 S.C. 342, 344, 40 S.E.2d 233, 236 (1946) (holding the two-year statute of limitations in section 12-49-570 “does not begin to run until the purchaser is put into possession”).

Accordingly, we affirm the Master’s holding that the two-year statute of limitations of section 12-51-160 does not bar King’s action to set aside the tax sale in this case.

3. Other Defenses

The Master also held the Appellants’ additional defenses of laches, estoppel, waiver, abandonment, acquiescence, and stale demand were likewise inapplicable. We agree.

*28 a. Laches and Stale Demand

^[15] Appellants argue laches and stale demand should apply to bar King’s claims. We disagree.

^[16] ^[17] ^[18] Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights. *Chambers of S.C., Inc. v. County Council for Lee County*, 315 S.C. 418, 421, 434 S.E.2d 279, 280 (1993). The party seeking to establish laches must show: (1) a delay, (2) that was unreasonable under the circumstances, and (3) prejudice.

Hallums v. Hallums, 296 S.C. 195, 199, 371 S.E.2d 525, 528 (1988). When a Master declines to make a finding of laches, that decision will not be disturbed absent an abuse of discretion. *Brown v. Butler*, 347 S.C. 259, 265, 554 S.E.2d 431, 434 (Ct.App.2001); *Premium Inv. Corp. v. Green*, 283 S.C. 464, 473, 324 S.E.2d 72, 78 (Ct.App.1984).

^[19] A stale demand, on the other hand, is

[O]ne that has for a long time remained unasserted; one that is first asserted after an unexplained delay of such great length as to render it difficult or impossible for the court to ascertain the truth of the matters in controversy and to do justice between the parties, or as to create a presumption against the existence or validity of the claim, or a presumption that it has been abandoned or satisfied.

All Saints Parish, Waccamaw v. The Protestant Episcopal Church in the Diocese of S.C., 358 S.C. 209, 236, 595 S.E.2d 253, 268 (Ct.App.2004).

****42** ^[20] ^[21] Strictly speaking, there are some points of distinction between laches and staleness of demand. *Bell v. Mackey*, 191 S.C. 105, 109, 3 S.E.2d 816, 824 (1939). For instance, a stale demand implies a greater lapse of time than is necessary to laches. *Id.* Moreover, laches generally involves such change in conditions as would render inequitable the enforcement of a claim, while no such change is necessary in order to create staleness of demand. *Id.* However, they both fall ***29** within the same general principles of equity, and the distinctions are of little practical importance. *Id.*⁷

We find laches and stale demand to be inapplicable for two reasons. First, the lapse of time between James' assertion of ownership in 2005 and King's filing in 2006 was not of an unreasonable length. Although King was told there was an unspecified "problem" with her taxes in 2000, her attorney advised her in early 2001 that her name was still on the property. Under the circumstances, we find it was not unreasonable for King to decline to investigate the matter further in reliance on the advice of counsel.⁸

Second, neither James nor the County has shown sufficient prejudice resulting from King's delay such that affirming the Master would lead to an inequitable result. James testified she did not even know she owned the

Property until 2005, and there is no evidence showing she has entered into any obligation or changed any position based on King's delay. James' only expense on the Property has been the ongoing property tax, which is not an expense caused by delay. The only injury the County has claimed is its inability to refund the purchase price to James because the unclaimed overage from the tax sale has escheated to the County's general fund pursuant to section 12-51-130 of the South Carolina Code (Supp.2009).⁹ ***30** We find it would be inequitable to allow the County to claim the automatic operation of the statute as its source of prejudice in a case where it was the County's admitted failure to strictly comply with statutory requirements that led to an invalid tax sale.

Accordingly, we affirm the Master's findings as to the Appellants' laches and stale demand claims.

b. Waiver/Abandonment/Acquiescence/Estoppel

^[22] Appellants argue the defenses of waiver, abandonment, acquiescence, and estoppel should apply because King and Salina waived their rights and/or acquiesced in James' rights to the Property by entering into a lease with James to rent the Property. We disagree.

^[23] ^[24] ^[25] A waiver is a voluntary and intentional abandonment or relinquishment of a known right. *Eason v. Eason*, 384 S.C. 473, 480, 682 S.E.2d 804, 807 (2009). In order for a party to waive a right, the party must have known of the right and known that the right was being abandoned. *Id.* The determination of whether one's actions constitute waiver is a question of fact. *Laser Supply & Servs., Inc. v. Orchard Park Assocs.*, 382 S.C. 326, 337, 676 S.E.2d 139, 145 (Ct.App.2009).

In this case, we do not believe King or Salina waived or abandoned any rights in the Property by entering into the lease with James. Salina testified they entered into the ****43** lease on advice of counsel as a means of preventing James from selling the property to a third party. Immediately upon learning of James' ownership interest in the Property, Salina and King took action to maintain the use of the property and challenge James' ownership of it. At all times after the survey in 2005, Salina and King were pursuing legal counsel, and we believe the execution of the lease was more in the nature of a strategic maneuver made in anticipation of litigation than an abandonment of their rights in the Property.

Accordingly, we affirm the Master's finding that waiver is inapplicable.

3. Laches, stale demand, waiver, estoppel, acquiescence, and abandonment do not apply to King's action.

CONCLUSION

AFFIRMED.

Based on the foregoing, we affirm the finding of the Master that:

- *31 1. The tax sale was invalid pursuant to *Hawkins*;
2. Because the statute of limitations did not begin to run until the purchaser came into possession, King's action was timely; and

All Citations

388 S.C. 16, 694 S.E.2d 35

Footnotes

- 1 The tax sale produced an overage of \$1,458.68.
- 2 Although Mack was present at the trial, Mack was never called to testify.
- 3 In *Hawkins*, the supreme court held delinquent tax notices stamped with payment deadlines that were weeks before the actual date of sale were not in strict compliance with statutory requirements, and therefore, the supreme court set aside the resulting tax sale. 353 S.C. at 38, 577 S.E.2d at 206. The County conceded it did not correct its notices pursuant to *Hawkins* until 2003. Therefore, these defective stamps were in the notices sent to King.
- 4 Pursuant to South Carolina Code section 12-51-160 (2006 & Supp.2008), "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 the sale* as provided in Section 12-51-90(C)." (emphasis added).
- 5 The applicable statutory procedure for the sale of a delinquent taxpayer's property at the time *Dibble* was decided was set forth in sections 12-49-410 to -570, but was effectively repealed on January 1, 1986. See 1985 Act No. 166, § 17. The applicable code sections governing tax sales, such as King's, are now designated in sections 12-51-40 to -170.
- 6 Evans testified in 2003 the County began keeping photographic records of postings as evidence of postings.
- 7 We also note some courts have declined to recognize stale demand as anything more than a laches defense. See, e.g., *U.S. v. Admin. Enters.*, 46 F.3d 670, 672 (7th Cir.1995) ("There is no defense of 'staleness,' despite a dictum in *United States v. Gimbel*, 782 F.2d 89, 93 (7th Cir.1986), on which the appellants rely. Laches is a legal doctrine; it has structure; 'staleness' is an epithet."). Nonetheless, any such distinction would not be dispositive of this issue.
- 8 We do note that although King's attorney advised her in 2001 the Property was still titled in her name, King was arguably still on inquiry notice of the tax sale because despite the reassurance from her attorney, King did not receive any subsequent tax bills for the Property. The fact that King paid taxes every year since 1974 implies that she knew property taxes must be paid annually. Thus, the reasonableness of her failure to further investigate the "problem" is questionable. However, we believe laches is nevertheless inapplicable due to the Appellants' failure to show sufficient prejudice.
- 9 Section 12-51-130 provides in relevant part that overages produced at tax sales automatically escheat to the County's general fund if not claimed within five years from the date of the sale.

EXHIBIT

X

Prepared By:
 Haynsworth Sinkler Boyd, PA
 Post Office Box 11889
 Columbia, South Carolina 29211

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

**QUITCLAIM
 DEED OF REAL PROPERTY**

THIS QUITCLAIM DEED, executed as of the 20th day of April, 2015, by MTAG, as Custodian for ATCF II South Carolina LLC ("Grantor") to ATCF REO HOLDINGS LLC ("Grantee"), whose mailing address is 1801 South Federal Highway, 2nd Floor, Boca Raton, Florida 33432.

WITNESSETH:

IN CONSIDERATION of the sum of FIVE Dollars (\$5.00), the receipt and sufficiency of which is acknowledged by Grantor, Grantor has quitclaimed, granted, bargained, sold and released, and by this Deed quitclaims, grants, bargains, sells and releases to Grantee, its successors and assigns, all right, title and interest, if any, in the following real property:

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 Illa 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.

Block Map #: 6-21-11-106.00

TOGETHER with all and singular rights, members, hereditaments, and appurtenances belonging or in any way incident or appertaining thereto;

TO HAVE AND TO HOLD all and singular said property unto Grantee, its successors and

DEE-2015-19932
 Recorded 3 Pages on 5/14/2015 10:58:13 AM
 Recording Fee: \$10.00 Documentary Stamps: \$0.00
 Office of Register of Deeds, Spartanburg, S.C.
 Dorothy Earle, Register



assigns forever.

IN WITNESS WHEREOF, Grantor has caused this Quitclaim Deed to be executed as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

MTAG, as Custodian for ATCF II South
Carolina LLC

Witness [Signature]
Yana Liu

By: [Signature]
Name: ALBERT FRIEDMAN
Title: Manager

Witness [Signature]
John M de German

STATE OF Florida)
COUNTY OF Palm Beach)

ACKNOWLEDGEMENT

I, the undersigned Notary Public for the State of Florida, do hereby
certify that ALBERT FRIEDMAN, the Manager of MTAG, as
Custodian for ATCF II South Carolina LLC personally appeared before me this day and
acknowledged the due execution of the foregoing instrument.

Subscribed to and sworn before me this 20th day of April, 2015.

[Signature]
Notary Public for the State of Florida
My Commission Expires: 2/6/18

[NOTARY SEAL]



SUSAN FRIEDERWITZER
MY COMMISSION # FF 000591
EXPIRES: February 6, 2018
Bonded thru Budget Notary Services

STATE OF Florida)
COUNTY OF Palm Beach)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property is being transferred by MTAG, as Custodian for ATCF II South Carolina LLC to ATCF REO Holdings LLC on _____, 2015.
3. Check one of the following: The DEED is
 - (a) subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
 - (c) X EXEMPT from the deed recording fee because this is a corrective quitclaim deed for the proper grantee.
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - (a) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$
 - (b) The fee is computed on the fair market value of the realty which is \$
 - (c) The fee is computed on the fair market value of the realty as established for property tax purposes which is \$
5. Check YES or NO X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is \$_____.
6. The DEED Recording Fee is computed as follows:
 - (a) \$_____ the amount listed in item 4 above.
 - (b) \$_____ the amount listed in item 5 above (if no amount, place zero).
 - (c) \$_____ Subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as:
8. Check if Property other than Real Property is being transferred on this Deed.
 - (a) _____ Mobile Home
 - (b) _____ Other
9. DEED OF DISTRIBUTION - ATTORNEY'S AFFIDAVIT: Estate of _____ deceased CASE NUMBER _____. Personally appeared before me the undersigned attorney who, being duly sworn, certified that (s)he is licensed to practice law in the State of South Carolina; that (s)he has prepared the deed of Distribution for the Personal Rep. in the Estate of _____, deceased and that the grantee(s) therein are correct and conform to the estate file for the above name decedent.
10. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

MTAG, as Custodian for ATCF II South Carolina LLC

By: _____

Its: _____

Sworn to before me this 20th
day of April, 2015.

Notary Public for the State of Florida
My Commission Expires: July



SUSAN FRIEDERWITZER
MY COMMISSION # FF 000591
EXPIRES: February 6, 2016
Bonded Thru Budget Notary Services

EXHIBIT

XI

SECTION 12-51-130. Execution and delivery of tax title; costs and fees; overages.

Upon failure of the defaulting taxpayer, a grantee from the owner, a mortgagee, a judgment creditor, or a lessee of the property to redeem realty within the time period allowed for redemption, the person officially charged with the collection of delinquent taxes, within thirty days or as soon after that as possible, shall make a tax title to the purchaser or the purchaser's assignee. Delivery of the tax title to the clerk of court or register of deeds is considered "putting the purchaser, or assignee, in possession". The tax title must include, among other things, the name of the defaulting taxpayer, the name of any grantee of record of the property, the date of execution, the date the realty was posted and by whom, and the dates each certified notice was mailed to the party or parties of interest, to whom mailed and whether or not received by the addressee. The successful purchaser, or assignee, is responsible for the actual cost of preparing the tax title plus documentary stamps necessary to be affixed and recording fees. The successful purchaser, or assignee, shall pay the amounts to the person officially charged with the collection of delinquent taxes before delivery of the tax title to the clerk of court or register of deeds and, upon payment, the person officially charged with the collection of delinquent taxes is responsible for promptly transmitting the tax title to the clerk of court or register of deeds for recording and remitting the recording fee and documentary stamps cost. If the tax sale of an item produced more cash than the full amount due in taxes, assessments, penalties, and costs, the overage must be applied to any outstanding municipal tax liens on the property. Any remaining overage belongs to the owner of record immediately before the end of the redemption period to be claimed or assigned according to law. These sums are payable ninety days after execution of the deed unless a judicial action is instituted during that time by another claimant. If neither claimed nor assigned within five years of date of public auction tax sale, the overage shall escheat to the general fund of the governing body. Before the escheat date unclaimed overages must be kept in a separate account and must be invested so as not to be idle and the governing body of the political subdivision is entitled to the earnings for keeping the overage. On escheat date the overage must be transferred to the general funds of the governing body.

HISTORY: 1962 Code Section 65-2815.12; 1971 (57) 499; 1985 Act No. 166, Section 13; 2000 Act No. 399, Section 3(X)(8), eff January 1, 2001; 2005 Act No. 145, Section 52, eff June 7, 2005; 2006 Act No. 238, Section 2, eff March 15, 2006; 2006 Act No. 386, Sections 44, 49.C, eff June 14, 2006.

Code Commissioner's Note

1997 Act No. 34, Section 1, directed the Code Commissioner to change all references to "Register of Mesne Conveyances" to "Register of Deeds" wherever appearing in the 1976 Code of Laws.

EXHIBIT

XII

305 S.C. 296
Supreme Court of South Carolina.

FIRST-CITIZENS BANK AND TRUST COMPANY
OF SOUTH CAROLINA, as Trustee under the Will
of W. Jennings Hucks, deceased, Plaintiff,

v.

Rudene HUCKS, Jenny Hucks Thompson, Ted J.
Hucks, Dennis Hucks and First-Citizens Bank and
Trust Company of South Carolina as Executor
under the Will of W. Jennings Hucks, deceased,
Of Whom First-Citizens Bank and Trust Company
of South Carolina, as Trustee under the Will of W.
Jennings Hucks, deceased, and as Executor under
the Will of W. Jennings Hucks, deceased, Rudene
Hucks and Jenny Hucks Thompson are

Respondents
and

Ted J. Hucks and Dennis Hucks are Appellants.
Appeal of Ted J. HUCKS and Dennis Hucks.

No. 23436.

Submitted Dec. 14, 1990.

Decided July 22, 1991.

Trustee brought declaratory judgment action, and
defendants filed counterclaim for monetary damages. The
Circuit Court, Horry County, Sidney T. Floyd, J., referred
matter to master for trial, and appeal was taken. The
Supreme Court, Finney, J., held that equitable action, with
compulsory counterclaims asserting legal issues, could
not be referred to master-in-equity for jury trial on legal
issues.

Reversed and remanded.

West Headnotes (5)

[1] **Jury**
☞ Form and Sufficiency of Waiver

Party does not waive its rights to jury trial on
counterclaim asserted in equity action if
counterclaim is legal and compulsory in nature.
U.S.C.A. Const.Amend. 6.

6 Cases that cite this headnote

[2] **Set-Off and Counterclaim**
☞ Effect of Failure to Assert or Claim;
Compulsory Counterclaim

Test for determining if counterclaims are
permissible or compulsory is whether there is
logical relationship between claim and
counterclaim. Rules Civ.Proc., Rule 13(a).

9 Cases that cite this headnote

[3] **Set-Off and Counterclaim**
☞ Effect of Failure to Assert or Claim;
Compulsory Counterclaim

Allegation that trustee had breached its
contractual agreement and fiduciary duty was
compulsory counterclaim in trustee's equity
action seeking declaration of rights arising in
administration of trust. Rules Civ.Proc., Rule
13(a).

5 Cases that cite this headnote

[4] **Reference**
☞ Matters Subject to Reference in General

Master-in-equity lacked jurisdiction to conduct
jury trial of legal issues.

Cases that cite this headnote

[5] **Reference**
☞ Matters Subject to Reference in General

Equitable action, with compulsory
counterclaims asserting legal issues, could not

be referred to master-in-equity for jury trial on legal issues; where issues are complicated, case could be referred to master for limited purpose of making factual findings to be received by circuit court as evidence only.

1 Cases that cite this headnote

Attorneys and Law Firms

****222 *297** Clifford H. Tall, of Leiter & Tall, Myrtle Beach, for appellants.

Steven M. Anastasion, of Callison, Tighe, Robinson & Anastasion, Columbia, for respondent First-Citizens Bank and Trust Co. of South Carolina.

John P. Henry, of Thompson, Henry, Gwin, Brittain & Stevens, P.A., Conway, for respondent Rudene Hucks.

Opinion

FINNEY, Justice:

Appellants Ted J. Hucks and Dennis Hucks appeal from a circuit court order referring to the master-in-equity for final adjudication by jury trial their counterclaim which involves legal issues. We reverse and remand.

This action commenced when Respondent First-Citizens Bank and Trust Company of South Carolina (First-Citizens) initiated suit for Declaratory Judgment against appellants. The appellants filed counterclaims alleging breach of contract and ****223** breach of fiduciary duties and requested a jury trial on all legal issues. The circuit court referred all issues to the master with the direction that the claims for equitable relief be tried by the master and the claims which are legal in nature be tried by jury. The order provided further that any appeal from the final judgment of the court or verdict of the jury shall be directly to the South Carolina Supreme Court. First-Citizens consented to the order of reference.

The sole issue on appeal is whether the circuit court erred in referring to a master-in-equity legal issues for trial by jury. First-Citizens' complaint seeks equitable relief. Appellants' counterclaim involves legal claims and seeks monetary damages. Appellants contend the master lacks jurisdiction to conduct jury trials. We agree.

***298** ^[1] A party does not waive its rights to a jury trial on a counterclaim asserted in an equity action if the counterclaim is legal and compulsory in nature. *North Carolina Federal S & L v. DAV Corp.*, 298 S.C. 514, 381 S.E.2d 903 (1989). "If the complaint is equitable and the counterclaim legal and compulsory, the defendant has the right to a jury trial on the counterclaim." *Johnson v. South Carolina Nat. Bank*, 292 S.C. 51, 52, 354 S.E.2d 895, 896 (1987). This Court set forth in *Johnson* the procedure to be followed in suits such as the case at bar.

... [W]here a complaint is equitable and the counterclaim is legal and compulsory, the trial judge has two options. He may either order separate trials pursuant to Rule 42(b) or may order the claims tried in a single proceeding. In making this determination, caution should be taken to assure that, under the circumstances of the case, a joint trial will not deprive a party of his right to a full jury trial of legal issues.

Johnson, 354 S.E.2d at 897.

^[2] It is undisputed that appellants' counterclaim is legal in nature. Thus, the crucial question is whether the counterclaim is compulsory or permissive. By definition, a counterclaim is compulsory only if it arises out of the same transaction or occurrence as the opposing party's claim. SCRCP Rule 13(a). In *North Carolina Federal S & L v. DAV Corp.*, *supra*, this Court held that the test for determining if counterclaims are permissive or compulsory is whether there is a logical relationship between the claim and the counterclaim.

^[3] In the instant case, the trustee's equity action seeks a declaration of rights arising in the administration of a trust. The legal counterclaim alleges that the trustee has breached its contractual agreement and fiduciary duty. We find that there is a logical relationship between the counterclaim and the claim. Hence the counterclaim is compulsory, and appellants are entitled to a jury trial on their counterclaim.

^[4] ^[5] The master is without jurisdiction to conduct jury trials. Thus, the legal issues in this case should not have been referred to the master for final adjudication. ***299** Where the issues are complicated, a case may be referred to a master for the limited purpose of making factual findings to be received by the circuit court as evidence only. See *First Palmetto State Bank and Trust Co. v.*

**First-Citizens Bank and Trust Co. of South Carolina v. Hucks, 305 S.C. 296 (1991)
408 S.E.2d 222**

Boyles, 394 S.E.2d 313 (S.C.Sup.Ct.1990). For the
foregoing reasons, this case is reversed and remanded.

TOAL, JJ., concur.

REVERSED AND REMANDED.

All Citations

305 S.C. 296, 408 S.E.2d 222

GREGORY, C.J., and HARWELL, CHANDLER and

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E X H I B I T

X I I I

RULE 53**MASTERS AND SPECIAL REFEREES**

(a) Master and Special Referee Defined. The term "master" means the master-in-equity for the county. The term "special referee" means a member of the South Carolina Bar to whom a matter has been referred under S.C. Code Ann. § 14-11-60.

(b) References. In an action where the parties consent, in a default case, or an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court. In all other actions, the circuit court may, upon application of any party or upon its own motion, direct a reference of some or all of the causes of action in a case. Any party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury and, upon the filing of a jury demand, the matter shall be returned to the circuit court. A case shall not be referred to a master or special referee for the purpose of making a report to the circuit court. The clerk shall promptly provide the master or special referee with a copy of the order of reference.

(c) Powers. Once referred, the master or special referee shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter.

(d) Compensation of Special Referees. The compensation of the special referee shall be paid by the parties in such amount as shall be set by the special referee, subject to review by the circuit court upon objection by any party within ten (10) days of receipt of the order.

(e) Appeals. When a matter has been referred, any appeal from any order or judgment issued by the master or special referee shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Note:

This Rule 53 follows the Federal Rule as to form but is considerably modified to conform to State practice and needs. References in Federal Courts are rare, but absolutely necessary in State Courts, particularly to handle a large volume of State litigation such as foreclosures, partitions, and other equity matters. The State practice allowing judgment to be entered on the master's report in appropriate cases is preserved, as is the allowance of 10 days to file exceptions to the report. Other post-trial motions, such as a motion to amend judgment under Rule 52(b), would apply when the order of reference directs that judgment be entered on the master's report, just as they apply in actions tried by the court.

Note to 1986 Amendment:

Rule 53(c) is amended to make clear that the master has the same powers as a court sitting without a jury unless the order of reference limits his authority. Changes in that paragraph as well as Rule 53(d) leave the scheduling of the time and place of the hearings to the master. Rule 53(e)(1) is amended to remove the need for filing the transcript of proceedings if one has not been prepared, but Rule 53(e)(2) allows any party to obtain the transcript of proceedings before any hearing on exceptions to the master's report. Rule 53(e)(5) now authorizes the master to request briefs or proposed orders from counsel.

Note to 1994 Amendment:

This Rule 53(b) amendment clarifies the authority of the clerk of court to issue orders of reference in default cases and where all the parties consent.

Note to 1999 Amendment:

This amendment substantially revises this rule. It eliminates the practice of referring a matter for the purpose of making a report to the circuit court. Under the revised rule, the master or special referee will enter final judgment on any matter which is referred and any appeal from a decision of the master or special referee is to the Court of Appeals or the Supreme Court as provided by the South Carolina Appellate Court Rules. The detailed discussion of the powers of masters and special referees, and the procedure to be followed in matters pending before them, has been eliminated as unnecessary since the master or special referee has all the powers that a circuit court judge sitting without a jury would have in the matter and the procedure is that provided by the South Carolina Rules of Civil Procedure.

Rule 53(d) is amended to provide that fees for special referees are set by the special referee subject to review by the circuit court if a party timely objects.

Note to 2002 Amendment

The 2002 amendment permits referral of foreclosure cases to the master-in-equity by order of the clerk of court. If there are counterclaims requiring a jury trial, any party may file a demand for a jury under Rule 38 and the case will be returned to the circuit court.

Last Amended by Order effective September 1, 2002.

E X H I B I T

X I V

410 S.C. 184

Court of Appeals of South Carolina.

Loretta **KATZBURG**, Respondent,

v.

Peter **KATZBURG**, Appellant.

Appellate Case No. 2013-000171.

No. 5255.

Heard May 8, 2014.

Decided July 30, 2014.

Rehearing Denied Sept. 18, 2014.

Synopsis

Background: Former wife filed rule to show cause why husband should not be held in contempt for violating New York judgment of divorce, which wife had registered in South Carolina. The Family Court, Berkeley County, Jack A. Landis, J., held husband in contempt and awarded wife attorney fees. Husband appealed.

[Holding:] The Court of Appeals, Cureton, A.J., held that Family Court lacked subject matter jurisdiction over rule to show cause.

Vacated.

West Headnotes (11)

[1] Courts

☞ Jurisdiction of Cause of Action

"Subject matter jurisdiction" refers to the court's power to hear and determine cases of the general class to which the proceedings in question belong.

Cases that cite this headnote

[2] Courts

☞ In general; nature and source of judicial authority

The jurisdiction of a court is determined by the sovereign creating it, and thus the question of the specific court in which an action is to be brought is determined in the first instance by reference to local law.

Cases that cite this headnote

[3] Courts

☞ In general; nature and source of judicial authority

A court of competent jurisdiction must be competent not only under the law of its own sovereign, but also by virtue of subject matter jurisdiction under the law of the forum in which the law is being applied.

Cases that cite this headnote

[4] Courts

☞ In general; nature and source of judicial authority

Although the court may utilize the law of another state in deciding a case, it cannot use another state's law to confer subject matter jurisdiction upon a South Carolina court which, under the laws of South Carolina, the court does not have.

Cases that cite this headnote

[5] Judgment

☞ Jurisdiction of the person and subject-matter

Judgment

☞ Want of Jurisdiction

A judgment of a court without subject matter jurisdiction is void and constitutes grounds for the court to vacate the judgment. Rules Civ.Proc., Rule 60(b)(4).

Cases that cite this headnote

[6] Judgment

☞ Effect of Invalidity

A “void” judgment is one that, from its inception, is a complete nullity and is without legal effect.

Cases that cite this headnote

[7] **Courts**

☞ Acts and proceedings without jurisdiction

A court, lacking subject matter jurisdiction, cannot enforce its own decrees.

Cases that cite this headnote

[8] **Courts**

☞ Suits for divorce

Once former wife registered in circuit court, under Uniform Enforcement of Foreign Judgments Act (UEFJA), New York divorce judgment, pursuant to which husband was ordered to pay wife alimony of \$3,200 per month and to pay her \$662,770.50 for her equitable share of marital assets, and initiated action resulting in supplemental proceedings to discover husband's assets, family court lacked subject matter jurisdiction to find husband in contempt for noncompliance with judgment. Code 1976, § 15–35–910 et seq.

Cases that cite this headnote

[9] **Courts**

☞ Jurisdiction

The family court is a statutory court created by the legislature and, therefore, is of limited jurisdiction; its jurisdiction is limited to that expressly or by necessary implication conferred by statute. Code 1976, § 63–3–530(A)(1, 2).

Cases that cite this headnote

[10] **Execution**

☞ Property or Rights Which May Be Reached

In addition to their discovery functions, supplementary proceedings to discover a judgment debtor's assets furnish a means of reaching, in aid of the judgment, property beyond the reach of an ordinary execution, such as choses in action. Code 1976, § 15–39–310.

Cases that cite this headnote

[11] **Contempt**

☞ Demand and refusal of payment of money as adjudged

Divorce

☞ Contempt

Execution

☞ Nature and form

The enforcement of an alimony decree in South Carolina differs radically from the enforcement of an ordinary money judgment: in the latter case, subject to some exceptions, enforcement may be had by execution against property only, and not by attachment for contempt, but, in the case of a decree for alimony, a defaulting husband may be imprisoned if he fails to make payment in accordance with the terms of the decree. Code 1976, § 15–35–180.

Cases that cite this headnote

Attorneys and Law Firms

****4** Gregory Samuel Forman, of Gregory S. Forman, PC, of Charleston, for Appellant.

Mark Thomas Rainsford, of Pierce, Hearn, Sloan & Wilson, LLC, of Charleston, for Respondent.

Opinion

CURETON, A.J.

***187** Peter **Katzburg** (Husband) appeals family court orders holding him in contempt, refusing to consider evidence, and requiring him to pay Loretta **Katzburg** (Wife) \$704,861.76 pursuant to a foreign judgment registered in South Carolina. Husband argues the family court: (1) lacked subject matter jurisdiction to enforce the foreign judgment; (2) denied him due process; (3) erred in holding him in contempt; and (4) erred in refusing to consider an affidavit in his motion to reconsider. Additionally, Husband argues to the extent this court reverses the family court order, the award of attorneys' fees should be reversed as well. We vacate the family court's orders.

[1] [2] [3] [4] “Subject matter jurisdiction refers to the matters which come within the provisions of the” Uniform court’s ‘power to hear and determine cases of the general class to which the proceedings in question belong.’ ” *Watson v. Watson*, 319 S.C. 92, 93, 460 S.E.2d 394, 395 (1995) (quoting *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 442 S.E.2d 598 (1994)). “The jurisdiction of a court is determined by the sovereign creating it, and thus the question of the specific court in which an action is to be brought is determined in the first instance by reference to local law.” *Peterson v. Peterson*, 333 S.C. 538, 548, 510 S.E.2d 426, 431 (Ct.App.1998) (quotation marks and citation omitted). “A ‘court of competent jurisdiction’ must be ‘competent’ not only under the law of its own sovereign, but also by virtue of subject matter jurisdiction under the law of the forum in which New York law is being applied.” *Id.* (quoting *Barry E. v. Ingraham*, 43 N.Y.2d 87, 400 N.Y.S.2d 772, 371 N.E.2d 492 (1977)). “Although we may utilize the law of another state in deciding a **5 case, we cannot use another state’s law to confer subject matter jurisdiction upon a South Carolina court which, under the laws of this State, the court does not have.” *Id.*

[5] [6] [7] “A judgment of a court without subject matter jurisdiction is void and constitutes grounds for the court to vacate the judgment under Rule 60(b)(4) [, SCRCP].” *Gainey v. Gainey*, 382 S.C. 414, 424, 675 S.E.2d 792, 797 (Ct.App.2009). “A void judgment is one that, from its inception, is a complete nullity and is without legal effect....” *Id.* (quotation marks and citation omitted).

A court, lacking subject matter jurisdiction, cannot enforce its own decrees. It would serve no useful purposes to *188 determine issues submitted to the court since the jurisdiction as to subject matter can be raised at any time, and if the case were remanded to the family court, it would have no authority to carry out its previously ordered mandate.

Hallums v. Bowens, 318 S.C. 1, 3, 428 S.E.2d 894, 895 (Ct.App.1993).

[8] [9] “The family court is a statutory court created by the legislature and, therefore, is of limited jurisdiction. Its jurisdiction is limited to that expressly or by necessary implication conferred by statute.” *State v. Graham*, 340 S.C. 352, 354, 532 S.E.2d 262, 263 (2000). Section 63–3–530(A) (1) and (2) of the South Carolina Code (2010) grants the family court the exclusive jurisdiction: “to hear and determine

Interstate Family Support Act (UIFSA) and

to hear and determine actions for divorce a vinculo matrimonii, separate support and maintenance, legal separation, and in other marital litigation between the parties, and for settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage and attorney’s fees, if requested by either party in the pleadings.

South Carolina’s Uniform Enforcement of Foreign Judgments Act (UEFJA) provides the mechanism for the filing and enforcement of foreign judgments in South Carolina. S.C.Code Ann. §§ 15–35–910 to –960 (2005 and Supp. 2013). The UEFJA generally permits the filing and enforcement of judgments, decrees, and orders of the courts of the United States or of other states to the extent mandated by the United States Constitution. *See* § 15–35–910(1). Once docketed in accordance with the UEFJA, a foreign judgment has the same effect and is subject to the same defenses as a judgment rendered in South Carolina and must be enforced or satisfied in like manner. *See* § 15–35–920(C). Excluded from the UEFJA are judgments subject to the UIFSA and the Uniform Child Custody Jurisdiction and Enforcement Act, each of which provides special procedures for foreign orders related to its subject matter. *See* §§ 15–35–910, 63–15–300 to –394, and 63–17–2900 to –3390.

[10] [11] In South Carolina, money judgments generally are enforced by way of writs of execution issued to the sheriff. *189 *See* S.C.Code Ann. § 15–35–180 (2005 and Supp. 2013) (providing that judgments requiring the payment of money or the delivery of real or personal property “may be enforced in those respects by execution as provided in this Title”); S.C.Code Ann. § 15–39–80 (2005) (setting forth the requirements for the contents of the execution, including that it be directed to the sheriff and intelligibly refer to the judgment by stating the court, the county in which the judgment roll or transcript is filed, and the amount of the judgment). When an otherwise money judgment requires the doing of an act other than the payment of money, it may be enforced by contempt upon refusal of judgment debtor to comply with the mandates of the judgment. *See* § 15–35–180. If a judgment is unsatisfied, the judgment creditor may institute supplementary proceedings

in circuit court to discover assets. *See* S.C.Code Ann. § 15-39-310 (2005). In addition to their discovery functions, supplementary proceedings “furnish a means of reaching, in aid of the judgment, property beyond the reach of an ordinary execution, such as choses in action.” *Lynn v. Int’l Bhd. of Firemen & Oilers*, 228 S.C. 357, 362, 90 S.E.2d 204, 206 (1955). The master-in-equity is considered a division of the circuit court and obtains jurisdiction through an order of reference from the circuit **6 court. *See* S.C.Code Ann. § 14-11-15 (Supp. 2013); Rule 53(b), SCRCP.

It should be borne in mind that the enforcement of an alimony decree in this State, as in other states, differs radically from the enforcement of an ordinary money judgment. In the latter case, subject to some exceptions ..., enforcement may be had by execution against property only, and not by attachment for contempt. But in the case of a decree for alimony a defaulting husband may be imprisoned if he fails to make payment in accordance with the terms of the decree.

Johnson v. Johnson, 196 S.C. 474, 478, 13 S.E.2d 593, 595 (1941). “We are unable to find any logical reason to distinguish money judgments which are enrolled ... as the result of an equitable distribution award from money judgments awarded in legal actions.” *Casey v. Casey*, 311 S.C. 243, 245, 428 S.E.2d 714, 716 (1993).

Here, Husband and Wife married in September 1979 and divorced in July 2003. On July 14, 2003, after a thirty-four *190 day trial in a New York supreme court, Judge John C. Bivona issued a judgment of divorce (divorce decree). The divorce decree ordered, in pertinent part: (1) Husband pay Wife support and maintenance of \$3,200 per month commencing October 1, 2001, and terminating September 30, 2005; (2) Husband pay Wife \$662,770.50 for 50% equitable distribution of the marital assets; and (3) Husband transfer certain shares of stock to Wife.

During the divorce proceedings, Husband made several attempts to delay the divorce or avoid paying Wife. For example, Husband filed a competing divorce action in the State of Washington and a meritless bankruptcy petition in South Carolina. On March 3, 2008, after Husband failed to pay the full amounts owed to Wife under the divorce decree,

Judge Bivona issued an additional judgment (2008 order), indicating Wife had received \$504,539.36 from Husband, and requiring Husband pay Wife “the sum of \$395,346.37 with interest thereon from May 25, 2005[, in the] amount of \$98,747.24 for a total of 494,093.61.”¹

On October 6, 2008, a few months after Wife received the 2008 order, she registered it in South Carolina pursuant to the UEFJA and initiated an action in circuit court that resulted in supplemental proceedings in Berkeley County and Charleston County. After proceeding in circuit court for two years, on October 4, 2010, Wife sought to register the same New York orders in a South Carolina family court.² On April 20, 2012, Wife served Husband with an amended notice of hearing for supplemental proceedings before the Berkeley County master-in-equity scheduled for June 5, 2012. On June 15, 2012, Wife filed a Rule to Show Cause asking a South Carolina family court to find Husband in contempt for violating the registered court orders. Thereafter, the parties proceeded to a contempt hearing in family court and the family court held Husband in contempt for failing to comply with the New York orders.

*191 Although we are sympathetic to Wife's difficulties in securing money owed by Husband, in light of the fact that Wife filed the 2008 order as a money judgment pursuant to the UEFJA and proceeded in circuit court, we are constrained to vacate the family court's orders. While this action was originally brought in circuit court, Husband was ultimately held in contempt in family court after Wife again registered the same New York orders in family court in 2010. We think it is clear the family court did not oust the circuit court of subject matter jurisdiction and the jurisdiction of the family court did not extend to this money judgment. We therefore hold the family court's orders at issue are void for lack of subject matter jurisdiction.³ *See* **7 *Simmons v. Simmons*, 370 S.C. 109, 116, 634 S.E.2d 1, 4 (Ct.App.2006) (“It is axiomatic that an order entered by a court without subject matter jurisdiction is utterly void.”).

Accordingly, the family court's orders are hereby

VACATED.

HUFF and THOMAS, JJ., concur.

All Citations

410 S.C. 184, 764 S.E.2d 3

Footnotes

- 1 The order indicates Wife sought it as a money judgment.
- 2 The family court appears to have incorporated the 2008 order into the divorce decree and registered both orders as a single, foreign divorce decree. However, only language from the 2008 order appears in the family court's order entitled "Order for Registration of Foreign Divorce Decree." The order does not indicate the statutory authority for its registration.
- 3 Because we find the family court lacked subject matter jurisdiction over this case, we do not address Husband's remaining issues on appeal.

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E X H I B I T

X V

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Case No. 2015-CP-42-2482

ATCF REO HOLDINGS LLC,

Plaintiff,

vs.

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.

ORDER OF DEFAULT
(As to Only Prime Asset Fund III, LLC)
and
MANDATORY ORDER OF REFERENCE

2016 FEB 12 AM 9:05

VOID CLOCKED IN ERROR

IT APPEARING from the Affidavit of A. Parker Barnes III, attorney for the Plaintiff, that Defendant Prime Asset Fund III, LLC has been duly served with the Notice of Lis Pendens, Civil Action Coversheet, Summons, and Complaint, and that more than thirty (30) days have elapsed during which no responsive pleadings were filed or served by this defendant; and

IT FURTHER APPEARING that this matter is before the Court on the Plaintiff's motion, pursuant to Rule 53(b), SCRPC, referring this action to the Honorable Gordon G. Cooper, Master in Equity for Spartanburg County; and

IT FURTHER APPEARING that the Plaintiff commenced this action in equity to quiet its tax title to certain real property located in Spartanburg County, South Carolina, and that this is

Masters Cost Paid
Date 12-30-15
\$ 100.00

a proper matter to be referred to a Master in Equity pursuant to Rule 53, SCRPC, for the purpose of making appropriate findings of facts and conclusions of law with the authority to enter a final judgment in this case and with any appeal from the final judgment in this case directly to the South Carolina Court of Appeals;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant Prime Asset Fund III, LLC is in default and a judgment to be determined at a hearing to be held shall be filed in favor of the Plaintiff; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this action is referred to the Honorable Gordon G. Cooper, Master in Equity for Spartanburg County, to take testimony arising under the pleadings, to make findings of fact and conclusions of law, with authority to dispose of any and all issues, and enter a final judgment in the case, pursuant to Rule 53, SCRPC. Any appeal from the final judgment entered by the Master in Equity shall be made directly to the South Carolina Court of Appeals.

AND IT IS SO ORDERED.

February 12, 2014

M Hope Blackley / Clerk of Court
Presiding Judge
M. HOPE BLACKLEY, CLERK OF COURT

2016 FEB 12 AM 9:15
CLERK OF COURT

Miller, Alexzandra

From: Shaffer, Carol [cshaffer@hsblawfirm.com]
Sent: Thursday, February 11, 2016 2:59 PM
To: Miller, Alexzandra
Subject: Voicemail

I got your voicemail today and I realized that I forgot to send you the email authorizing the entry of default. I believe you were calling on two cases and you are authorized to enter the "entry of default" for both of them. If you need anything else, please let me know.

Thanks
Carol

**Haynsworth
Sinkler Boyd, P.A.**

ATTORNEYS AND COUNSELORS AT LAW

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EXHIBIT

XVI

270 S.C. 553
Supreme Court of South Carolina.

NORTH GREENVILLE COLLEGE, formerly North
Greenville Junior College, Appellant,

v.

SHERMAN CONSTRUCTION CO., INC. and the
Aetna Casualty and Surety Company,
Respondents.

No. 20661.

|
April 11, 1978.

College brought suit against construction company for breach of a construction contract. The Common Pleas Court, Greenville County, Frank Eppes, J., entered judgment on a verdict in favor of the construction company on its counterclaim, and the college appealed. The Supreme Court, Ness, J., held that: (1) where the construction company grounded its defense largely on the fact that the college's own architects had approved the construction, the college was entitled to introduce evidence that it had commenced arbitration proceedings against the architect for failure to properly inspect and supervise construction, and (2) the trial court erred in refusing to permit counsel for the college to cross-examine employees of the architect who testified as experts for the construction company as to any possible bias that might have arisen by reason of the prior arbitration.

Reversed and remanded.

West Headnotes (5)

[1]

Education

⚡ Rights and remedies of institution

Where, prior to bringing suit against construction company for breach of construction contract, college had sought arbitration to determine whether architect had violated its contract with the college by failing to properly inspect and supervise the construction and where arbitrators had granted damages to the college, the college was entitled to introduce evidence of its dispute with the architect in

subsequent suit against construction company wherein the construction company grounded its defense largely on the fact that the college's architect had approved the construction.

1 Cases that cite this headnote

[2]

Witnesses

⚡ Inquiry as to particular acts or facts tending to show interest or bias

In suit by college against construction company for breach of a construction contract wherein the construction company grounded its defense largely on the fact that the college's own architects had approved the construction and had issued certificates for payment of full contract price, it was critical for college to question three witnesses from the architect who testified as experts for the construction company as to any possible bias they might have by reason of the fact that college had previously sought arbitration to determine whether the architect had violated its contract with the college; therefore, trial court erred in refusing to permit counsel for the college to cross-examine the witnesses on the prior arbitration.

4 Cases that cite this headnote

[3]

Witnesses

⚡ Cross-Examination to Show Interest or Bias

Considerable latitude is generally allowed in the cross-examination of an adverse witness for possible bias.

3 Cases that cite this headnote

[4]

Witnesses

⚡ Competency of Impeaching Evidence

Evidence of past or pending litigation between witness and party against whom witness is testifying is commonly admissible to demonstrate bias.

2 Cases that cite this headnote

[5]

Appeal and Error

⚡ Reception of Evidence

Appeal and Error

⚡ Cross-examination

Evidence

⚡ Relevancy in general

Witnesses

⚡ Control and discretion of court

While trial court has broad discretion in controlling cross-examination of witnesses and admission of evidence, such discretion is not unbridled and an abuse of discretion amounting to an error of law warrants intervention by reviewing court.

2 Cases that cite this headnote

Attorneys and Law Firms

****441 *555** James C. Parham, Jr. of Wyche, Burgess, Freeman & Parham, Greenville, for appellant.

W. H. Arnold of Love, Thornton, Arnold & Thomason, Greenville, for respondent Sherman Construction Co., Inc.

Andrew B. Marion of Haynsworth, Perry, Bryant, Marion & Johnstone, Greenville, for respondent The Aetna Cas. and Sur. Co.

Opinion

****442** NESS, Justice:

Appellant North Greenville College brought suit against Sherman Construction Company, Inc. for breach of a construction contract. This appeal is from a jury verdict in

favor of respondent Sherman on its counterclaim. We reverse.

Appellant contracted with Sherman to construct a library building at the College. Respondent was dismissed due to alleged improper construction, and the College retained \$86,899.00 of the total contract price of \$679,960.50. Appellant claimed the cost of the corrective work performed by Ralph Lee Construction Corporation and the diminution in value of the library resulted in damages to the College of \$100,000.00 over the retainage.

By way of counterclaim, Sherman alleged it was entitled to the \$86,899.00 retained by appellant, plus interest. The jury returned a verdict for Sherman for half that amount.

[1] Appellant asserts the trial court erred, inter alia, in excluding evidence of previous arbitration proceedings by the College against the architect, Piedmont Engineers. We agree.

Prior to suit, appellant sought arbitration to determine whether Piedmont had violated its contract with the College in, among other things, failing to properly inspect and supervise the construction. Despite numerous alleged construction *556 defects, Piedmont issued certificates for payment of the full contract price to Sherman less a retainage of only \$5,000.00 by the College. The award of arbitrators granted damages to the appellant. We believe the College was entitled to introduce evidence of its dispute with Piedmont.

[2] Sherman grounded its defense largely on the fact that the College's own architects approved the construction. The "Certificate of Completion" issued by Piedmont was alleged in respondent's pleadings and referred to repeatedly at trial. Additionally, three men from Piedmont testified as experts in Sherman's behalf.

In order to impeach these witnesses, it was critical for the College to question them regarding any possible bias. We conclude the trial court erred in refusing to permit counsel to cross-examine the Piedmont witnesses on the prior arbitration or to introduce documentary evidence of the proceedings.

[3] Considerable latitude is generally allowed in the cross-examination of an adverse witness for possible bias. *Martin v. Dunlap*, 266 S.C. 230, 222 S.E.2d 8 (1976); *State v. Collins*, 235 S.C. 65, 110 S.E.2d 270 (1959); *State v. Thompson*, 118 S.C. 191, 110 S.E. 133 (1921). As noted by McCormick:

"The law recognizes the slanting effect upon human testimony of the emotions or feelings of the witness toward the parties or the self-interest of the witness in the outcome of the case. Partiality, or any acts, relationships

or motives reasonably likely to produce it, may be proved to impeach credibility.” McCormick on Evidence, s 40, p. 78 (1972).

[4] Evidence of past or pending litigation between the witness and the party against whom the witness is testifying is thus commonly admissible to demonstrate bias. 81 Am.Jur.2d, Witnesses, s 561, p. 565; IIIA Wigmore, Evidence (Chadbourn Rev. 1970) s 949, p. 788. As we stated in the recent case of In The Matter of *557 Edna Smith, 268 S.C. 259, 264-65, 233 S.E.2d 301 (1977):
“ ‘Respondent properly takes the position that evidence is particularly suspect when it is procured by a party who is acting adversely to the respondent in other litigation.’ ”

[5] While we recognize the broad discretion of a trial judge in the cross-examination of witnesses and the admission of evidence, that discretion is not unbridled. An abuse of discretion amounting to an error of law warrants this

Court’s intervention. Kirven v. Kirven, 162 S.C. 162, 160 S.E. 432 (1931); Wright v. Public Savings Life Ins. Co., 262 S.C. 285, 204 S.E.2d 57 (1974).

We reverse and remand for a new trial, concluding it was error to exclude evidence **443 vital to the College’s attempts to discredit the Piedmont witnesses.

REVERSED.

LEWIS, C. J., and LITTLEJOHN, RHODES and GREGORY, JJ., concur.

All Citations

270 S.C. 553, 243 S.E.2d 441

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EXHIBIT

XVII

311 S.C. 140
Supreme Court of South Carolina.

Barbara H. ROSENBAUM, Respondent,

v.

S-M-S 32, a Georgia General
Partnership, Appellant.

No. 23820.

|
Heard May 18, 1992.

|
Decided March 15, 1993.

|
Rehearing Denied April 6, 1993.

Purchaser of condominium at tax sale brought action to clear title. Prior owner counterclaimed for trespass to try title and demanded jury trial. The Court of Common Pleas, Beaufort County, Thomas Kemmerlin, Jr., Special Circuit Judge, dismissed counterclaim. Prior owner appealed. The Supreme Court, Finney, J., held that prior owner could not bring counterclaim for trespass to try title and was not entitled to jury trial.

Affirmed.

West Headnotes (5)

[1] **Jury**

⇒ Legal defense, set-off, or counterclaim

Prior owner could not assert counterclaim for trespass to try title and thereby obtain right to jury trial in action to clear title in favor of purchaser of the real estate at tax sale. U.S.C.A. Const.Amend. 6; Code 1976, §§ 12-61-10, 12-61-20, 12-61-60.

Cases that cite this headnote

[2] **Quieting Title**

⇒ Form of remedy

Action to clear title to real property is action in equity.

Cases that cite this headnote

[3] **Trespass to Try Title**

⇒ Nature and scope of remedy

Trespass to try title involves determination of title to real property and resulting rightful possession of property, but focus of suit for trespass is rightful possession of the property at issue.

Cases that cite this headnote

[4] **Statutes**

⇒ Intent

Elementary and cardinal rule of statutory construction is that courts must ascertain and effectuate actual intent of legislature.

1 Cases that cite this headnote

[5] **Statutes**

⇒ Reason, reasonableness, and rationality

Statutes

⇒ Wisdom, practicality, and common sense

Statutes

⇒ Policy behind or supporting statute

Statute as whole must receive practical, reasonable, and fair interpretation consonant with purpose, design, and policy of lawmakers.

7 Cases that cite this headnote

Attorneys and Law Firms

****897 *141** Mark H. Lund, III, of Novit & Scarminach, P.A., Hilton Head Island, for appellant.

J. Ray Westmoreland, Hilton Head Island, for respondent.

Opinion

FINNEY, Justice:

[1] In this action to clear title, the circuit court struck from Appellant S-M-S 32's counterclaim, *inter alia*, the assertion

of an Action of Trespass to Try Title and denied appellant's motion for a jury trial. We affirm.

Respondent Barbara H. Rosenbaum bought the subject real estate, a condominium formerly owned by the appellant, at a Beaufort County tax sale in October, 1989. In December of 1990, respondent instituted this action pursuant to S.C.Code Ann. § 12-61-10, *et seq.* (1976), seeking a declaration of clear title. *See* S.C.Code Ann. § 12-61-20 (1976).

Appellant answered by way of general denial and counterclaimed asserting a cause of action for trespass to try title, seeking damages for trespass following its alleged unlawful ouster, and demanded a jury trial. Appellant's counterclaim was based on its contention that the failure of the Beaufort County taxing authorities to follow proper procedures for the levy and sale renders respondent's tax deed invalid.

The circuit judge struck appellant's counterclaim and denied its motion for a jury trial holding that, in an action to set aside a tax deed under Section 12-61-10, *et seq.*, a defendant *142 cannot "earn" the right to a jury trial by asserting a counterclaim for trespass to try title.

On appeal, the appellant alleges the circuit court erred in striking its counterclaim, thereby depriving appellant of its right to a jury trial, recoupment of damages, recovery of possession and clear title to its real property. Appellant argues that its counterclaim did not merely seek cancellation of **898 the tax deed but asserted an action for trespass to try title, an action at law. Citing the holding of this Court in *Johnson v. South Carolina Nat'l Bank*, 292 S.C. 51, 354 S.E.2d 895 (1987), appellant contends it is entitled to a jury trial on a counterclaim that is legal in nature.

At issue in *Johnson v. SCN, supra*, was the rescission of a guaranty agreement on the ground of fraud. The plaintiffs sought money damages in causes of action for outrage, invasion of legal rights and breach of fiduciary duty. Pursuant to a defense motion requiring them to elect to proceed "in equity or at law," the plaintiffs elected to proceed on the equitable theory of rescission. The trial judge permitted the remaining causes of action to be maintained in the same complaint and granted a defense motion to transfer the case to the non-jury roster. In summarizing the analysis to determine the appropriate procedure governing such cases, the *Johnson* court held:

If the complaint is equitable and the counterclaim legal and compulsory, the Plaintiff or the Defendant has a right to a jury trial on the counterclaim.

Id., 354 S.E.2d at 897.

[2] [3] An action to clear title to real property is an action in equity. *Van Every v. Chinquapin Hollow, Inc.*, 265 S.C. 474, 219 S.E.2d 909 (1975); *Bryan v. Freeman*, 253 S.C. 50, 168 S.E.2d 793 (1969). Trespass to try title involves a determination of title to real property and the resulting rightful possession of such property. Whereas, in a suit for trespass, the focus of the action is the rightful possession of the property at issue. *Little v. Little*, 223 S.C. 332, 75 S.E.2d 871 (1953).

It is to be noted in the case under consideration that the respondents were proceeding under a specific remedy created by the legislature. Section 12-61-10 provides in pertinent part:

*143 ... [A]ny ... person ... which has purchased at or acquired through a tax sale and obtained title to any real or personal property, may bring an action in the Court of Common Pleas of such county for the purpose of barring all other claims thereto.

The procedure to be followed in a suit to clear tax title is promulgated in Section 12-61-20, which provides that "[s]uch action shall be commenced, conducted and concluded by decree as are similar actions in such court ..."

[4] [5] The elementary and cardinal rule of statutory construction is that courts must ascertain and effectuate actual intent of the legislature. *Horn v. Davis Electrical Constructors, Inc.*, 307 S.C. 559, 416 S.E.2d 634, *reh'g denied* (1992). The statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design and policy of lawmakers. *Browning v. Hartvigsen*, 307 S.C. 122, 414 S.E.2d 115 (1992).

In our view, the legislative intent supporting S.C.Code Ann. Chapter 61 (1976) is that purchasers of property at tax sales in South Carolina be provided an efficient, unencumbered method of clearing those titles. Moreover, the issue of construction is addressed thusly: "This chapter shall be

liberally construed to the end that it shall afford a complete remedy to any plaintiff claiming property by forfeiture ...” S.C.Code Ann. § 12-61-60 (1976).

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.

Accordingly, we affirm the order of the circuit court denying appellant's motion to transfer this case to the jury roster

and striking from the counterclaim appellant's allegations of trespass and the prayer for damages.

AFFIRMED.

HARWELL, C.J., and CHANDLER, TOAL and MOORE, JJ., concur.

All Citations

311 S.C. 140, 427 S.E.2d 897

A P P E N D I X

A

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF SPARTANBURG

3 ATCF REO HOLDINGS LLC,

4 PLAINTIFF,

5 -VS-

TRANSCRIPT OF TESTIMONY

6 JAMES K. HAZEL, JR., PRIME ASSET FUND
7 III, LLC, JOHN DOE AND MARY ROE,
8 REPRESENTING ALL UNKNOWN PERSONS
9 HAVING OR CLAIMING TO HAVE ANY
10 RIGHT, TITLE, OR INTEREST IN OR TO, OR
11 LIEN UPON, THE REAL ESTATE DESCRIBED
12 AS 517 WILDWOOD DRIVE, SPARTANBURG
13 COUNTY, SC, THEIR HEIRS AND ASSIGNS,
14 AND ALL OTHER PERSONS, FIRMS, OR
15 CORPORATIONS ENTITLED TO CLAIM
16 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,

(2015CP42-02482)

Spartanburg, South Carolina

DEFENDANTS.

17 REFERENCE HELD:

April 12, 2016.

18 B E F O R E:

HONORABLE **GORDON G. COOPER**,
MASTER-IN-EQUITY FOR SPARTANBURG COUNTY.

19 A P P E A R A N C E S:

20 HAYNSWORTH SINKLER BOYD, P.A.
21 BY: **A. PARKER BARNES, III**, ESQUIRE
Attorneys for the Plaintiff.

22 BY: **JOHN H. HARRIS**, ESQUIRE
23 Attorney for Spartanburg County.

24 Defendant **James K. Hazel, Jr.**, pro se

25 Sarah Hollis, Court Reporter

1 THE COURT: We go on the record in the case of ATCF REO Holdings, LLC, versus James K.
2 Hazel, Jr., Prime Asset Fund III, etc. This is 2015-2482.
3 MR. BARNES: Your Honor, Mr. Hazel, the Defendant, is present in the courtroom today.
4 THE COURT: All right. Counsel if you are prepared to proceed.
5 MR. BARNES: All right. Your Honor if I may, I would like to bring a preliminary issue to the
6 Court's attention. That is last week Mr. Hazel filed a Motion for a jury trial. This is an action
7 to quiet a tax title and I think that issue or motion needs to be decided before we move forward
8 with the merits.
9 THE COURT: All right. I do not have that.
10 MR. BARNES: Your Honor, if I may approach.
11 THE COURT: All right.
12 MR. BARNES: This is a copy of that motion by Mr. Hazel for a trial by jury and our response.
13 THE COURT: All right.
14 MR. BARNES: Your Honor, I do have copies of the cases we cited.
15 THE COURT: If you have a copy of that case, counsel if you would hand it up.
16 MR. BARNES: Yes sir. And Mr. Hazel I do have a copy I can show you of what I am handing
17 up to the Court.
18 MR. HAZEL: Yes sir.
19 THE COURT: All right. Lets take the issue then of the Motion for a Jury Trial filed by Mr.
20 Hazel.
21 MR. HAZEL: Yes sir.
22 THE COURT: All right.
23 MR. HAZEL: I recognize what the case is that the Plaintiff has presented but, however, I would
24 ask respectfully if you would hold off on your ruling on my Motion until I present my case
25 because the errors that took place which caused the tax title sale to occur are I think pretty

1 complicated and I will be able to show that the sale took place wrongly and that is why I am
2 asking for a jury trial in the sense that I feel that I can present that evidence successfully. I am
3 just asking if you will hold your judgment on my Motion until after the case. I think the
4 statutory information that I present will show that I do have a right to a jury trial based on the
5 statute.

6 THE COURT: All right.

7 MR. HAZEL: If that is all right.

8 THE COURT: Counsel?

9 MR. BARNES: I certainly would have no objections. I would just point out in response to the
10 Motion that there are cases controlling of this issue. It certainly suits me for Mr. Hazel to
11 present his case in theory as part of the Court's determination of this Motion but I would also
12 assert that the Motion Right to Jury Trial is mute and he has waived that right by claiming and
13 receiving the overage proceeds generated by the tax sale.

14 THE COURT: All right. Well Mr. Hazel the case that counsel has handed up is controlling has
15 not been overturned or overruled and that is that the case such as the one being brought here for
16 the quiet title from a tax sale is an action where there is not an entitlement to a jury trial.
17 Therefore, I am denying the Motion for the Jury Trial but will proceed with the case and you are
18 entitled to present your case in response to the Plaintiff's case.

19 MR. HAZEL: All right.

20 THE COURT: So that is the way that we are going to proceed. So the request for the jury trial
21 is denied based on the case presented or handed up by counsel. And it will proceed at this point
22 with the Plaintiff's case and they, of course, have to prove that they are entitled to a quiet title
23 and that the Spartanburg County Tax Collector's office proceeded correctly in this action. So
24 that is the next step. All right counsel.

25 MR. BARNES: Thank you, Your Honor. And just by way of background. This is an action

1 to quiet tax title. The property involved is known as 517 Wildwood Drive, Spartanburg County.
2 Mr. Hazel acquired title to the property in 2004. This property was sold at the November 18,
3 2013 tax sale to MTAG, as custodian for ARTCF II South Carolina, LLC, purchased the property
4 at the tax sale for \$38,000.00. The tax deed was dated and was recorded on March 24, 2015 and
5 I have a copy of the tax deed that I would like to introduces as Exhibit A.

6 THE COURT: Give me the address of this parcel again counsel?

7 MR. BARNES: It is 517 Wildwood Drive. Is that correct Mr. Hazel?

8 MR. HAZEL: Yes sir.

9 THE COURT: All right. Exhibit A will be the tax deed.

10 **MR. BARNES INTRODUCES INTO EVIDENCE A COPY OF THE TAX DEED**
11 **RECORDED IN DEED BOOK 108-N AT PAGE 652, MARKED AS PLAINTIFF'S**
12 **EXHIBIT NUMBER A.**

13 THE COURT: All right.

14 MR. BARNES: Your Honor, after the tax deed was issued. The grantee of the tax deed
15 conveyed the property to the Plaintiff through a quitclaim deed dated April 20, 2015 and
16 recorded on May 14, 2015. And I would like to introduces a copy of that quitclaim deed as
17 Exhibit B.

18 THE COURT: All right. B is the quitclaim deed from the successful tax deed purchaser to the
19 Plaintiff herein.

20 **MR. BARNES INTRODUCES INTO EVIDENCE A COPY OF THE QUITCLAIM DEED**
21 **RECORDED IN DEED BOOK 108-Z AT PAGE 456, MARKED AS PLAINTIFF'S**
22 **EXHIBIT B.**

23 THE COURT: All right. Counsel.

24 MR. BARNES: And just a little more background on how Mr. Hazel acquired title to the
25 property. Our title search revealed that James E. Mitchell and Illa A. Mitchell acquired title to

1 the property by deed recorded on November 4, 1946 and I have a copy of that I would like to
2 introduce as Exhibit C. And I will go from Exhibit C to Exhibit F. And at that point I would
3 like to approach the bench, Your Honor.

4 THE COURT: All right.

5 MR. BARNES: Preferably at one time.

6 THE COURT: All right.

7 MR. BARNES: James Mitchell died on April 20, 1997 and his estate was probated in the
8 Spartanburg County Probate Court and pursuant to Item II of his Last Will and Testament, James
9 E. Mitchell devised all of his real and personal property to his wife, Illa Mitchell. And I have a
10 recorded copy of his Last Will and Testament that I have marked as Exhibit D.

11 THE COURT: All right.

12 MR. BARNES: And according to the Application for Informal Probate of Will and
13 Appointment of Personal Representative dated May 13, 1997, Illa A. Mitchell was the sole
14 devisee of the Estate of James E. Mitchell. I have a copy of that application that I have marked
15 as Exhibit E. And then Illa A. Mitchell conveyed the property to Mr. Hazel by a deed recorded
16 on June 28, 2004. The copy of which I have marked as Exhibit F. And Mr. Hazel's address in
17 the deed conveying the property to him is the property address of 517 Wildwood Drive. And at
18 this time I would like to present Exhibits C through F.

19 THE COURT: All right. Those are all public records.

20 MR. BARNES: Yes, Your Honor.

21 THE COURT: All right.

22 **MR. BARNES INTRODUCES INTO EVIDENCE A COPY OF THE DEED RECORDED**
23 **IN DEED BOOK 13-H, PAGE 155, MARKED AS PLAINTIFF'S EXHIBIT C.**

24 **MR. BARNES INTRODUCES INTO EVIDENCE A COPY OF THE LAST WILL AND**
25 **TESTAMENT OF JAMES E. MITCHELL, MARKED AS PLAINTIFF'S EXHIBIT D.**

1 **MR. BARNES INTRODUCES INTO EVIDENCE A COPY OF THE APPLICATION**
2 **FOR INFORMAL PROBATE OF WILL AND APPOINTMENT OF PERSONAL**
3 **REPRESENTATIVE, DATED MAY 13, 1997, MARKED AS PLAINTIFF'S EXHIBIT E.**
4 **MR. BARNES INTRODUCES INTO EVIDENCE A COPY OF A DEED RECORDED IN**
5 **DEED BOOK 80-Q, PAGE 988, MARKED AS PLAINTIFF'S EXHIBIT F.**

6 THE COURT: All right.

7 MR. BARNES: And the only other interest of record our title search found was a mortgage
8 from Mr. Hazel to Mortgage Electronic Registration Systems, Inc., as nominee for EquiFirst
9 Corporation which was in the original amount of \$81,500.00, and recorded on April 1, 2005.
10 That mortgage was ultimately assigned to Prime Asset Fund III. There are two (2) assignments
11 that I have collectively marked as Exhibit G. I am sorry, of the mortgage those two assignments
12 are both Exhibit G.

13 THE COURT: All right.

14 **MR. BARNES INTRODUCES INTO EVIDENCE COPIES OF TWO ASSIGNMENTS,**
15 **ABOVE IDENTIFIED, MARKED AS PLAINTIFF'S EXHIBIT G.**

16 THE COURT: All right.

17 MR. BARNES: And the Plaintiff is also informed and believes that on June 12, 2014, Prime
18 Asset Fund III, filed an action to foreclose that mortgage in the Spartanburg County Court of
19 Common Pleas. And we believe that action is currently stayed. I have that case number if Your
20 Honor would like that. The case number is 2014CP42-02358.

21 THE COURT: Okay.

22 MR. BARNES: And from the public index the review that I performed this morning it appears
23 that Mr. Hazel had filed a Motion to Enlarge Time, a Motion to Dismiss and then an Answer and
24 the Motion to Dismiss was on the grounds of under Rule 12(b)6 and that Motion was denied and
25 it was appealed and the case has been, The South Carolina Court of Appeals has issued a

1 Remittitur back to the trial court and I think that is where the case is now. It looks like the
2 mortgage's company attorney needed to be relieved as counsel but I will refer to Mr. Hazel as to
3 the status of that case.

4 THE COURT: All right. The last thing in the file is this right here. That consent order to be
5 relieved of the counsel.

6 MR. BARNES: I believe that was filed on November 16, 2015.

7 THE COURT: It looks like that is the last thing happening in the file.

8 MR. BARNES: And that is why we had named Prime Asset Fund III as a part of this case.

9 THE COURT: All right.

10 MR. BARNES: Due to their mortgage interest in the assignment and their pending foreclosure
11 action.

12 THE COURT: All right. Presently that looks like that is on a non-jury docket downstairs.

13 MR. BARNES: Yes, Your Honor.

14 THE COURT: I see several rosters right there. And there is your appeal with the Remittitur.
15 The Defendant's Motion to Dismiss was denied and that was when the appeal came. All right.

16 MR. BARNES: And for purposes of this action the Plaintiff personally served the Registered
17 Agent of Prime Asset Fund on October 7, 2015. The Affidavit of Service was filed on
18 November 30, 2015 and Prime did not appear in this action. So they are in default. An Order
19 of Default was filed as to Prime on February 12, 2016. Mr. Hazel was personally served at the
20 property address on June 19, 2015. And the Affidavit of Service was filed on July 20, 2015.
21 He filed a Motion for Enlargement of Time that was filed on June 26, 2015. The Plaintiff
22 consented to that Motion and filed a consent. Mr. Hazel also filed a Motion to Dismiss on
23 August 13, 2015 and that was denied. An Order filed on November 3, 2015, Mr. Hazel kindly
24 filed an Answer on August 14, 2015. And although he did not assert a counterclaim, the Answer
25 contends that he was not informed that the taxes were due. He has timely appeared in this

1 action. At this point we would like to call Mr. Metts to the stand.

2 THE COURT: All right. Mr. Metts. And Mr. Metts has handed up a copy of the Tax
3 Collector's file in this case which will be Plaintiff's Exhibit H.

4 MR. BARNES: Yes, Your Honor.

5 THE COURT: All right.

6 **MR. BARNES INTRODUCES INTO EVIDENCE A COPY OF THE TAX**
7 **COLLECTOR'S FILE FOR 517 WILDWOOD DRIVE, SPARTANBURG, SOUTH**
8 **CAROLINA, MARKED AS PLAINTIFF'S EXHIBIT H.**

9 THE COURT: Mr. Metts.

10 **ROBERT E. METTS, JR., BEING DULY**
11 **SWORN, TESTIFIES AS FOLLOWS:**

12 THE COURT: All right. State your full name and present position with Spartanburg County.

13 A. Robert Edward Metts, Jr., Spartanburg County Tax Collector.

14 THE COURT: All right. Counsel when you are ready.

15 MR. BARNES: Thank you, Your Honor.

16 **DIRECT EXAMINATION BY MR. BARNES.**

17 Q. Mr. Metts are you familiar with the tax sale process?

18 A. I am.

19 Q. And do you have a knowledge of the tax sale process in Spartanburg County?

20 A. Yes.

21 Q. Is your Office responsible for seizing and selling real property in satisfaction of the lien of
22 taxes?

23 A. We are.

24 Q. And is your Office responsible for issuing all delinquent notices in connection with the
25 tax sale of a particular piece of property?

1 A. Yes.

2 Q. And now I am referring to the records that you presented as Exhibit H, the Tax sale file,
3 and are those records made at or near the time that the originals were sent by a person
4 with knowledge of the correspondence?

5 A. Yes sir.

6 Q. Are these records kept in the course of regular business of your Office?

7 A. They are.

8 Q. Is it the usual practice of your Office to make and keep those records?

9 A. It is.

10 Q. And those records reflect the activities of your Office in regards to the tax sale of the
11 property that we are here to discuss today?

12 A. Yes.

13 Q. And the property address is 517 Wildwood Drive, Spartanburg County, South Carolina, is
14 that correct?

15 A. That is correct.

16 Q. And do these records reflect your Office's duties in conducting the tax sale of that
17 property?

18 A. Yes.

19 Q. What is the first notice that your Office issued in conducting tax sales of parcels of
20 property?

21 A. The first notice that we send is the execution notice and that was sent on April 15, 2013
22 to James K. Hazel, Jr., at 517 Wildwood Drive, Spartanburg.

23 Q. Is that the property address?

24 A. That is.

25 Q. So your Office mailed the first tax sale notice to Mr. Hazel at the property address?

1 A. That is correct.

2 Q. And do the notices specify the taxes, penalties, assessments, and call for the property to
3 be sold at a subsequent tax sale?

4 A. Yes.

5 Q. And do you have any reason to believe that your Office did not mail that notice?

6 A. I do not.

7 Q. Was the envelope in which that notice was mailed ever returned to your Office?

8 A. It was not.

9 Q. In the practice of conducting tax sales in your Office if a notice is returned is it your
10 Office's normal procedure to keep a copy of the current notice in the file for that
11 property?

12 A. That is correct.

13 Q. And does the file for the tax sale of this property contain any notices that were returned?

14 A. Some of the subsequent notices, yes.

15 Q. Okay. But what about the first notice?

16 A. No.

17 Q. Okay. And what is the next notice that your Office issued?

18 A. The next notice that we sent was our final notice and this was sent certified mail return
19 receipt requested restricted delivery and that was sent on July 11, 2013 and that was also
20 sent to Mr. Hazel at 517 Wildwood Drive in Spartanburg and that was returned to us
21 unclaimed.

22 Q. All right. And so from the post office it was marked unclaimed and it was returned?

23 A. Correct.

24 Q. And Exhibit H is that a true and accurate copy of the first tax sale notice that your Office
25 mailed?

1 A. Yes.

2 Q. Okay. And is that a true and accurate copy of this final tax notice?

3 A. Yes.

4 Q. And how does your Office mail that notice, the first and final tax notice mailing?

5 A. Certified mail return receipt requested restricted delivery.

6 Q. All right. And that notice was returned marked unclaimed, correct?

7 A. Correct.

8 Q. And what did your Office do next?

9 A. We posted the property on September 17, 2013.

10 Q. And what records do you maintain to show that your Office posted the property?

11 A. We have a copy in our file of a picture of the posting and a copy of the letter.

12 Q. And does Exhibit H, the tax sale file contain a true and accurate copy of the notice of levy

13 and a photograph of the notice that was posted on the property?

14 A. Yes.

15 Q. And what is the next notice or step that your Office has to take in conducting a tax sale?

16 A. We place an ad in the paper which we placed it with the Spartanburg Herald Journal and

17 three weeks prior to the sale it runs. It ran on October 28, November 4 and November

18 11, 2013.

19 Q. And from your records of the tax sale of this property does it contain a true and accurate

20 copy of the proof of publication?

21 A. It does.

22 Q. Do your records reflect that the property was advertised for sell at public auction once a

23 week for three consecutive weeks prior to the tax sale?

24 A. Correct.

25 Q. And who purchased the property at the tax sale?

1 A. MTAG , as Custodian for ATCF II South Carolina LLC.

2 Q. And what was the amount of the tax sale?

3 A. Thirty eight thousand & no/100 (\$38,000.00) dollars.

4 Q. And did that bid produce an overage?

5 A. It did.

6 Q. And what is the next notice that your Office is required to send in conducting a tax sale

7 after the tax sale occurs?

8 A. The end of redemption notice.

9 Q. And when must your Office send that notice?

10 A. We send that no more than forty five (45) days and no less than twenty (20) days before

11 the end of redemption.

12 Q. And did your Office issue a redemption notice as to the sale of this piece of property?

13 A. We did.

14 Q. And did your Office issue a redemption notice to Mr. Hazel?

15 A. We did.

16 Q. And what address was the redemption notice to Mr. Hazel sent?

17 A. To 517 Wildwood Drive, Spartanburg.

18 Q. And that is the same address that your Office used for the first tax sale notice and the

19 second tax notice that was mailed, correct?

20 A. That is correct.

21 Q. Did Mr. Hazel receive the redemption notice mailed to that address?

22 A. The green card was returned to us signed James Hazel.

23 Q. All right. And does the tax sale file marked as Exhibit H contain a true and accurate

24 copy of the redemption notice to Mr. Hazel and a signed receipt card?

25 A. Yes, it does.

1 Q. And when did your Office send the redemption notice to Mr. Hazel?
2 A. On October 24, 2014.
3 Q. And when was it received?
4 A. It was 10-7-2014
5 Q. And did your Office issue any other redemption notices in connection with the tax sale of
6 the property?
7 A. Yes. We sent an end of redemption notice to MERS at P. O. Box 2026, Flint, Michigan
8 and the green card was returned to us signed by William E. Barr and we sent another end
9 of redemption notice to Prime Asset Fund III, LLC, and that went to 222 West Las
10 Colinas Boulevard in Irving, Texas, and that was returned to us insufficient address.
11 Q. Did your Office send a notice to MERS and to Prime Asset Fund based on the mortgage
12 that MERS was nominee for?
13 A. Yes.
14 Q. Okay. The assignee was Prime Asset?
15 A. Yes.
16 Q. Okay. And what is the next notice that your Office issues in conducting a tax sale?
17 A. Well after the end of redemption if it is not redeemed we will issue and we construe the
18 tax sale to be a good sale we issue the tax deed.
19 Q. Okay. And in this case did your Office issue any notices that were not statutory required
20 to have been sent?
21 A. We did send a redemption notice. We call it our courtesy notice and we sent that on
22 December 11, 2013.
23 Q. And who did you send that to?
24 A. James Hazel at 517 Wildwood Drive, Spartanburg.
25 Q. And was that notice returned to your Office?

- 1 A. No.
- 2 Q. Was any notice other than the final tax notice, which was the second notice that your
3 Office issued returned?
- 4 A. Well the end of redemption notices were returned.
- 5 Q. The end of redemption notice sent to Mr. Hazel was returned?
- 6 A. Well the green card was returned.
- 7 Q. Right. Well was any of them returned unclaimed or not received, I am sorry?
- 8 A. No.
- 9 Q. You said the first notice that was issued was not returned to your Office?
- 10 A. Correct.
- 11 Q. The second notice that was sent certified mail return receipt requested with restricted
12 delivery prior to the tax sale was returned marked unclaimed?
- 13 A. Correct.
- 14 Q. And then your Office posted the property, is that correct?
- 15 A. Correct.
- 16 Q. Then your Office advertised the property for sale at public auction for three (3)
17 consecutive weeks prior to the tax sale is that correct?
- 18 A. Correct.
- 19 Q. And then your Office issued a redemption notice to Mr. Hazel at the same address that
20 was previously used that was signed James Hazel is that correct?
- 21 A. Correct.
- 22 Q. So the only tax sale notice that is returned not received was the final tax notice, the
23 second notice actually?
- 24 A. Yes.
- 25 Q. And did your Office provide Mr. Hazel with a notice of overage?

1 A. We did. We sent that on April 1, 2015.

2 Q. And what was the amount of the overage generated by the tax sale?

3 A. It was Thirty six thousand three hundred twenty four & 87/100 (\$36,324.87) dollars.

4 Q. And does the tax sale file marked as Exhibit H contain a copy of the notice of overage to

5 Mr. Hazel?

6 A. Yes.

7 Q. And does the tax sale file marked as Exhibit H contain a true and accurate copy of the

8 courtesy notice and the other notices that we have discussed today?

9 A. Yes, it does.

10 Q. Has the overage been claimed?

11 A. It has.

12 Q. And could you walk me through the process of how it was claimed, when it was claimed,

13 and how your Office paid it out?

14 A. Yes. There was a claim submitted in the name of James K. Hazel, Jr., with the mailing

15 address of Platt Associates in Murdoch, Florida. And we received that claim on July 8,

16 2015.

17 Q. And what did your Office do after receiving that claim?

18 A. Well after reviewing the application we issued the overage check on December 4, 2015 to

19 James K. Hazel, Jr. And it was mailed to Platt Associates.

20 Q. What took so long for the claim from July 28 to December 1?

21 A. Well there was an outstanding mortgage on this property so we waited until after the two

22 (2) year statute had run to pay the overage.

23 Q. Okay. And how was the check made payable?

24 A. James K. Hazel, Jr.

25 Q. Was any litigation commenced or threatened in connection with the overage?

1 A. I believe there was.

2 Q. What is your understanding of that?

3 A. I believe that Platt Associates filed a lawsuit for the overage, to claim the overage.

4 Q. Okay. And to what address did your Office mail the overage check?

5 A. Platt Associates, P. O. Box 380921, Murdoch, Florida. Let me look at something first.

6 Q. All right.

7 A. On this case I actually delivered the check to the County Attorney's office and they

8 delivered it.

9 Q. To whom was the check made payable?

10 A. To James K. Hazel, Jr.

11 Q. And do you know whether that check has been cashed?

12 A. Yes, it has.

13 Q. And who endorsed the check? What signature appears on that?

14 A. The signature is James K. Hazel, Jr., and under that it says paid to Platt Associates, LLC,

15 for deposit only.

16 Q. And based on your experience of conducting tax sales as part of your official duties, is it

17 your opinion that the tax sale was proper and strictly complied with the tax sale statute?

18 A. Yes. I believe that it was.

19 MR. BARNES: I have no further questions at this time, Your Honor.

20 THE COURT: Mr. Hazel do you have questions of the tax collector?

21 MR. HAZEL: Yes sir.

22 THE COURT: All right.

23 **CROSS EXAMINATION BY MR. HAZEL.**

24 Q. Mr. Metts the first tax notice what was the date on that first tax notice?

25 A. It was sent April 15, 2013.

1 Q. So the first tax notice stating that the taxes were in the arrears was sent out on April 15,
2 2013?

3 A. Correct. That is the date of the notice.

4 Q. And that is the first one that was sent?

5 A. Yes.

6 Q. Was it sent certified mail?

7 A. No that was sent first class.

8 Q. Okay. So it wasn't sent certified mail?

9 A. Correct.

10 Q. Okay. And the last notice that was sent what date was that? You said it was returned, I
11 think you said?

12 A. The end of redemption notice.

13 Q. No. The last notice?

14 A. The final notice.

15 Q. Yes sir.

16 A. The final notice was sent July 11, 2013.

17 Q. Okay. And the property was posted for I guess auction in September?

18 A. September 17, 2013.

19 Q. Okay. And the redemption notice, when did you say that was sent? That was sent
20 certified also, correct?

21 A. That is correct. That was sent on October 24, 2014.

22 Q. Could you tell me what the redemption price was? Do you know?

23 A. Let me see. It was Three thousand four hundred sixty & 77/100 (\$3,460.77) dollars.

24 MR. HAZEL: Your Honor, at this time I would like to present the Statute of Section 12-45-75,
25 which details redemption payment. I have one for you also.

1 THE COURT: Mr. Hazel before we go much further with this I want to ask you some questions.
2 MR. HAZEL: Yes sir.
3 THE COURT: The check for Thirty six thousand three hundred twenty four & 87/100
4 (\$36,324.87) dollars, did you receive those funds?
5 MR. HAZEL: Not the entire funds but I received a portion of it, yes sir.
6 THE COURT: Well let me ask you this. Did Plankton Associates file a claim for you?
7 MR. HAZEL: I don't know if they filed a claim but they approached me and told me that there
8 was money, an overage.
9 THE COURT: Right. So they acted on your behalf?
10 MR. HAZEL: Yes sir.
11 THE COURT: And contacted Spartanburg County to obtain the overage?
12 MR. HAZEL: I assume that is what they did, yes sir.
13 THE COURT: And you received those funds?
14 MR. HAZEL: Yes sir.
15 THE COURT: Minus their commission or whatever they charged?
16 MR. HAZEL: Yes sir.
17 THE COURT: Okay. And also you received this notice of redemption which is signed for by
18 you. The one that you are speaking of right now that says the amount to redeem the property?
19 MR. HAZEL: That is not the one that I was talking about actually. But I just wanted to present
20 this evidence to show - - my basic argument here really is and I am trying to put it in a nutshell
21 but the statute allows the County, the tax payers, it allows me to redeem.
22 THE COURT: Right.
23 MR. HAZEL: I could have redeemed it?
24 THE COURT: Right. You could have.
25 MR. HAZEL: But I didn't even know that it was going up and I can show through my

1 documents that I have here that I didn't know.

2 THE COURT: Well let me - - -

3 MR. HAZEL: And by the time that I found out - - -

4 THE COURT: Let me guide us through this.

5 MR. HAZEL: Okay.

6 THE COURT: Because there are some things that have happened in this file that are very
7 significant. One is, that the property was posted after you did not sign for the certified mail, the
8 original notice. The property was posted. A sign was put in the yard. There is a picture in this
9 file that it was posted. Taxes were not paid. It was going to be sold. After the sale there is a
10 period of time called the period of redemption where a letter was sent to you dated October 24,
11 2014 saying you have got the right to redeem the property paying this much money and if you
12 don't your rights to the property are forfeited. Now following that this Company that you
13 directed to contact the County claimed the amount of the overage for you and you then cashed
14 the check. Now you can not now come in here saying the tax sale is not right because you took
15 the money. That is the way this works. You signed for the notification for the redemption
16 notice. This is your signature here. You haven't said that it wasn't. And also the money from
17 the tax sale you cashed it. You have accepted that and you have accepted the fact that the tax
18 sale went through. That is the problem that I am having with where you are and that is the
19 notice was placed on the property. You didn't sign for the certified mail, the original certified
20 mail but the property had to be posted. The picture is in the file. The property was sold. The
21 right of redemption was properly sent to you and you signed for that. You did not go in and
22 redeem the property. In other words, pay the amount that is set out in that notice. Then the sale
23 was final. Your right to redemption was then over and then you applied for the overage and took
24 the money and now you want to say that the tax sale is bad. Now tell me how that works? How
25 does your position stand when you have taken the money and you received the notification?

1 MR. HAZEL: Well first - - -

2 THE COURT: I mean do you want to give back the money?

3 MR. HAZEL: I would to redeem the property, of course.

4 THE COURT: All of it?

5 MR. HAZEL: Yes sir. It is just - - and that is what I was saying initially and that is why I was

6 directing you to that statute because when you pay the mortgage company as we all know your

7 money goes into escrow.

8 THE COURT: Well we don't know that you had a PITI mortgage.

9 MR. HAZEL: I can show that. I have the documents to show that.

10 THE COURT: Okay.

11 MR. HAZEL: And I can also show that the mortgage company informed me in March of 2012

12 that they were no longer going to pay the property taxes.

13 THE COURT: Okay.

14 MR. HAZEL: Okay. So they paid them up until 2012.

15 THE COURT: Okay.

16 MR. HAZEL: Well when I went to try to pay the property taxes the next year because you pay

17 them every year it was Three thousand & no/100 (\$3,000.00) dollars.

18 THE COURT: Right.

19 MR. HAZEL: I didn't have Three thousand & no/100 (\$3,000.00) dollars. By that time he said

20 that they had sent me the first notice on April 13, which I didn't receive because I am a

21 contractor. I work out of town all the time.

22 THE COURT: And that is the reason that the property was posted.

23 MR. HAZEL: That is my fault but well I am just saying if the mortgage company had been

24 paying the escrow as they detailed as they were supposed to and I have got the document

25 showing it and that was our dispute with Prime anyway, it was the escrow account. That is what

1 we are disputing but since they are not here I can't go into it with them. But I can show through
2 documentation that I only received notice from the mortgage company that they were not going
3 to continue to pay the escrow or the taxes on March 12, 2012. Well the property went on sale in
4 2013. That is not even the required amount of time. By the time they sent me the redemption
5 notice of Three thousand & no/100 (\$3,000.00) dollars, I didn't have that kind of money. That
6 is why at the last hearing I approached the guy, the lawyer who attended the last hearing and I
7 said hey can you work something out because I had rather, of course, redeem the property than
8 have the money. I mean - - -

9 THE COURT: I understand where you are coming from.

10 MR. HAZEL: I mean the only reason that I couldn't pay was because the Section here says the
11 governing body of a county may by ordinance allow each taxpayer owning a parcel of taxable
12 real property within the county the option to pay property taxes in installments as provided in this
13 section. An installment election is now allowed for taxes paid through an escrow account. So
14 when I approached the County to pay the Three thousand & no/100 (\$3,000.00) dollars to try to
15 get installments I couldn't get installments because it was being paid through an escrow account
16 through the mortgage company. I had to pay the Three thousand & no/100 (\$3,000.00) dollars
17 all up front.

18 THE COURT: Right.

19 MR. HAZEL: Of course, if I could have made installments I would have been able to pay it off
20 but I didn't have Three thousand & no/100 (\$3,000.00) dollars and some change in my pocket. I
21 didn't have it.

22 THE COURT: Well lets get down to the end of this.

23 MR. HAZEL: In the end I took the money.

24 THE COURT: Okay. Why?

25 MR. HAZEL: So at some point I hope to regain the property later on. I mean I put the money

1 in the bank. I didn't spend it. So at least it is just through a series of dealings because I had so
2 many mortgage companies but I can show that the mortgage I mean if they paid it up until 2012
3 there wouldn't even have been a tax sale in 2013. So obviously they were taking the money and
4 not paying it. And I can document that they stop paying in 2012. That is what they told me.
5 THE COURT: But Mr. Hazel the problem with that is that is between you and your lender.
6 MR. HAZEL: I understand.
7 THE COURT: Not between you and the County.
8 MR. HAZEL: I understand that.
9 THE COURT: Right.
10 MR. HAZEL: But all I am trying to say is I wouldn't have let the taxes lapse if I knew that they
11 weren't paying them. I mean the taxes aren't that high on that particular piece of property.
12 THE COURT: And I understand that but when you got the notice of the redemption it was
13 Three thousand & no/100 (\$3,000.00) dollars to redeem it.
14 MR. HAZEL: And I couldn't redeem it for Three thousand & no/100 (\$3,000.00) dollars.
15 THE COURT: Well there is the issue.
16 MR. HAZEL: If I had that kind of money I wouldn't be standing here myself.
17 THE COURT: Well I understand that but here is the issue. You were given notice that the
18 amount to redeem the taxes was that amount.
19 MR. HAZEL: Right.
20 THE COURT: And you didn't redeem it.
21 MR. HAZEL: I couldn't.
22 THE COURT: And it was properly noticed to you.
23 MR. HAZEL: Well I am saying that I didn't receive proper notice because I only received
24 notice in 2012 that the mortgage company had stop paying the escrow at that time. That is
25 March.

1 THE COURT: I understand.

2 MR. HAZEL: So that means if they paid the taxes in 2012. So it wouldn't have been no reason
3 for the property to be sold in 2013 for taxes. It would have been no reason for it to be a Three
4 thousand & no/100 (\$3,000.00) dollar amount in the arrears.

5 THE COURT: Well the - - -

6 MR. HAZEL: The mortgage company is Prime Asset. I mean if you would just take a look at
7 my evidence is all that I am asking.

8 THE COURT: Well I understand where you are coming from. I understand where you are
9 coming from and I appreciate what you are saying but the issue here is number one you said that
10 the County did not properly notice you. It did not go through the proper procedures to go
11 through with the tax sale.

12 MR. HAZEL: In June they did.

13 THE COURT: They posted the property when you could not be located or you did not sign for
14 the certified mail. So they did comply with that requirement. Then after the sale they sent you
15 a notice of right of redemption and that was October 24 and it was around Three thousand &
16 no/100 (\$3,000.00) dollars to redeem it. And you have already said that you got the notice. You
17 knew that it was Three thousand & no/100 (\$3,000.00) dollars but you didn't have the money to
18 redeem it.

19 MR. HAZEL: Right.

20 THE COURT: Okay. At that point they have done everything that is required by statute. At
21 the end of it the property was sold. There was an overage of Thirty six or Thirty eight thousand
22 dollars and the County was contacted by this company out of Florida who does this type of thing.
23 They go through and search tax sales to see overages and contact a person like yourself and see
24 if you want it and they coordinate and make the claim and for a percentage they go through the
25 paperwork and get your money.

1 MR. HAZEL: Right.

2 THE COURT: You got your money?

3 MR. HAZEL: Right.

4 THE COURT: And you cashed it?

5 MR. HAZEL: Right. I am not disputing that.

6 THE COURT: Therein is the - - I mean the County has complied with everything and you have

7 received all of the proper notices. You didn't redeem it. Even if everything was not right up to

8 that point the fact that they sent you the notice of redemption with the amount to pay you didn't

9 pay it to redeem it from the tax sale. No matter what Prime did you could have filed suit against

10 Prime or taken them - - but you didn't do it.

11 MR. HAZEL: Well I did file with them and that was through the process of litigation that we

12 were going through in the process. That is what I am saying. But in the process the land was

13 sold out from under me without my knowledge is all that I am saying.

14 THE COURT: Well I am - - -

15 MR. HAZEL: The taxes were paid supposedly up to 2012.

16 THE COURT: Mr. Hazel you are saying without your knowledge but the file refutes that.

17 MR. HAZEL: Okay. In the end by the time I found out that I was in the arrears in taxes the

18 amount that I was in the arrears was far more than I could possibly pay.

19 THE COURT: I understand what you are saying.

20 MR. HAZEL: That is all that I was saying.

21 THE COURT: Yes.

22 MR. HAZEL: And I realize that maybe I should have been more knowledgeable about the

23 situation but when you pay the mortgage company you assume that they are doing what they are

24 supposed to be doing with your escrow account.

25 THE COURT: Well I understand what you are saying on that end.

1 MR. HAZEL: But now I found out in 2013 that they didn't pay the taxes for the last two years.
2 THE COURT: But you did receive the notice.
3 MR. HAZEL: Now I am in the situation where I have got to - - right, I received notice.
4 THE COURT: And that is the whole point of the statutes that you are citing.
5 MR. HAZEL: I understand.
6 THE COURT: Notification, you got it.
7 MR. HAZEL: Right.
8 THE COURT: And at the end of the day you received notice that there was money in there by
9 virtue of this company in Florida.
10 MR. HAZEL: Right.
11 THE COURT: They filed your claim. In fact, threatened litigation over the claim.
12 MR. HAZEL: Well see I didn't know what they did.
13 THE COURT: And then they got the money and you cashed it.
14 MR. HAZEL: Right. I understand that. But by that time I had already lost the case on the tax
15 end.
16 THE COURT: Well I don't know that because I haven't been given that opportunity. I am
17 already reading the documents that happened. Already happened. It is right here.
18 MR. HAZEL: Right.
19 THE COURT: So you can't come into here, into this Court claiming these things when the
20 documents are completely different. You have waived everything. You cashed the check.
21 You have made the decision that you didn't have the money when you got the notice for the
22 redemption right.
23 MR. HAZEL: Right. So I want to use that money to try to redeem it.
24 THE COURT: So if there is an issue - - you still are apparently according to the case you are
25 still in court with Prime. It hasn't been dismissed yet. So you may still have your right of

1 action against Prime there but you don't here because you have waived your rights because you
2 did not redeem it when you were notified and you took the overage and cashed it. And that is
3 what the case law says.

4 MR. HAZEL: Okay. Well I was just trying to say that the amount of taxes that were owed the
5 reason I couldn't redeem it was because it got beyond my ability to pay it.

6 THE COURT: And I totally appreciate that.

7 MR. HAZEL: And the reason that it was beyond my ability to pay because the mortgage
8 company - - -

9 THE COURT: Didn't pay it.

10 MR. HAZEL: Didn't pay it like they agreed to do.

11 THE COURT: And that is part of that case that you have got pending in the other case, the
12 PrimeLending case or Prime whatever that company is. All right. And that Mr. Hazel,
13 unfortunately that is going to be my ruling that your rights, you have waived your rights by the
14 cashing of the check and your failure to redeem when the County sent out notice. Mr. Harris
15 anything from the County?

16 MR. HARRIS: No, Your Honor. The position that has been discussed this afternoon is the
17 County's position. That Mr. Hazel claimed the overage and failed to redeem the property and
18 the tax sale was conducted properly.

19 THE COURT: All right. All right counsel would you prepare an Order reflecting the points
20 that I have discussed.

21 MR. BARNES: Yes, Your Honor.

22 THE COURT: And the facts of Mr. Hazel's position. And all of those matters that relate to the
23 tax sale and the County's conduct of the sale.

24 MR. BARNES: Yes, Your Honor.

25 THE COURT: All right. And if you would send Mr. Hazel a copy of the proposed Order that

1 you send in. I don't know if he has got an email address where you can send it to him but
2 confirm his address so you can send him the Order.
3 MR. BARNES: Do you have an email address?
4 MR. HAZEL: Yes.
5 MR. BARNES: Do you mind sharing that with me.
6 THE COURT: If you want to write it down so it is not on the record, either way you want to do
7 that.
8 MR. HAZEL: All right. I will write it down.
9 MR. BARNES: Your Honor I will send a copy electronically in Word or do you prefer PDF?
10 THE COURT: No. Send it in Word.
11 MR. BARNES: I will send it in Word. Copy Mr. Hazel and I will also - - -
12 THE COURT: Yes.
13 MR. BARNES: Would you like for me to send a hard copy as well or just email it?
14 THE COURT: No, no. There is no reason to do that. And here is the email address. I know I
15 have given it to you before counsel.
16 MR. BARNES: Yes sir.
17 THE COURT: All right Mr. Hazel. Good luck to you.
18 MR. HAZEL: All right. Thank you.

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1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS

3 COUNTY OF SPARTANBURG

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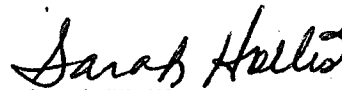
JUL 18 2016

5 CERTIFICATE

SC Court of Appeals

7 I, the undersigned Sarah Hollis, Court Reporter for the Master-In-Equity for the County
8 of Spartanburg, State of South Carolina, do hereby certify that the foregoing is a true and
9 accurate Transcript of Testimony of the proceedings had at the hearing of the captioned case,
10 before the Honorable Gordon G. Cooper, Master-In-Equity for Spartanburg County, South
11 Carolina, on the 12TH day of April, 2016.

12 I do further certify that I am neither of kin, counsel nor interest to any party hereto.

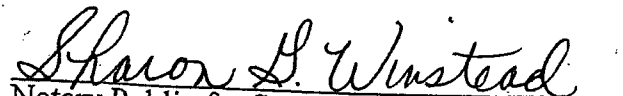
14 
15 Sarah Hollis

16 Court Reporter

17 SWORN to before me this

18 13th day of June, 2016.

19 Spartanburg, South Carolina.

21 
22 Notary Public for South Carolina
23 My Commission Expires: September 7, 2016.

MASTER-IN-EQUITY

SPARTANBURG COUNTY JUDICIAL CENTER
180 MAGNOLIA STREET
POST OFFICE BOX 5666
SPARTANBURG, SOUTH CAROLINA 29304

GORDON G. COOPER
Judge

Telephone (864) 596-2501
Fax (864) 596-2078

June 15, 2016

Mr. James K. Hazel, Jr.
517 Wildwood Drive
Spartanburg, South Carolina 29306

Re: ATCF REO HOLDINGS LLC, v. James K. Hazel, Jr., et al.
Case Numbers: 2015-CP-42-2482.

Dear Mr. Hazel:

Enclosed you will find the Transcript from the hearing held in this office on April 12, 2016 in the above matter, per your request. The cost for the transcript is Seventy five & no/100 (\$75.00) dollars. Please make your check payable to Sarah Hollis and remit same to me at the above address.

Thank you,

Very truly yours,

Sarah Hollis
Sarah Hollis
Court Reporter

RECEIPT

Date

June 17, 2016

Received from

James K. Hazel, Jr.

Seventy-five & 00/100

Dollars

Re:

Transcript from Sarah Hollis

\$ 75.00

Rehntinger

RECEIPT

Date June 17, 2016
Received from James H. Hazel, Jr.
Seventy-five & 00/100 Dollars
Re: Transcript from Sarah Hollis
\$ 75.00 Huntington