

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM SPARTANBURG COUNTY
Gordon G. Cooper, Master In Equity

Appellate Case No. 2016-001014

RECEIVED

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SC Court of Appeals

ATCF REO HOLDINGS LLC, Respondent,

v.

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,

Of Whom James K. Hazel, Jr. is the Appellant.

RECORD ON APPEAL

James K. Hazel, Jr.
201 Powell Mill Rd.
Apartment L205
Spartanburg SC 29301
Appellant Pro-Se

Mr. A. Parker Barnes, III, Esquire
1201 Main Street, 22nd Floor
Columbia SC 29201
Attorney for Respondent

Ms. Sarah Patrick Spruill, Esquire
Post Office Box 2048
Greenville SC 29602
Attorney for Respondent

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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.

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

Defendants.

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M. HOPE BLACKLEY

ORDER DENYING MOTION TO DISMISS COMPLAINT

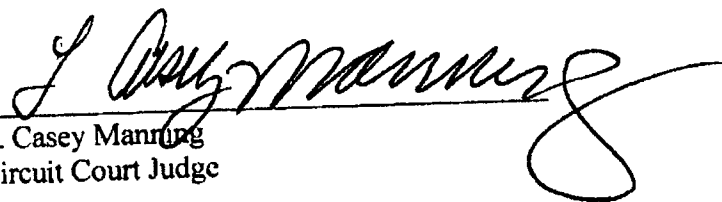
Plaintiff ATCF REO HOLDINGS LLC ("Plaintiff") filed this action to quiet its tax title to real property known as 517 Wildwood Drive, Spartanburg County, South Carolina, tax map number 6-21-11-106.00 (the "Property"). In response to Plaintiff's Complaint, Defendant James K. Hazel, Jr. ("Hazel") filed a Motion to Dismiss, pursuant to Rule 12(b)(6), SCRCPP, on August 13, 2015, and he also filed an Answer on August 14, 2015. A hearing on Hazel's Motion to Dismiss was held on October 27, 2015. Present at the hearing were Denny P. Major, on behalf of Plaintiff, and Defendant Hazel, appearing pro se. Hazel's Motion to Dismiss is based on the grounds that Spartanburg County did not provide him with the required notices of the tax sale and that Plaintiff

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did not inform Hazel of any legal action. (See Motion to Dismiss ¶¶ 1-3.) In its Complaint, Plaintiff alleges, among other things, that it seeks to confirm its tax title to the Property, that the tax sale of the Property was conducted properly including all requisite notices to the owner of record, and that Plaintiff is the current owner of the Property. (See Complaint ¶¶ 1, 17-18.) Accordingly, Plaintiff's Complaint alleges facts sufficient to constitute a cause of action to quiet tax title to the Property.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Hazel's Motion to Dismiss Plaintiff's Complaint is DENIED.

Nov 2, 2015
Columbia, SC



L. Casey Manning
Circuit Court Judge

2015 NOV -3 AM 9:15
M. HOPE BLACKLEY

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

FILED
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), SCRCF, 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

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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 2015

M Hope Blackley / Angela M. Miller
~~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

Carol A. Shaffer | Paralegal | Haynsworth Sinkler Boyd, P.A.

1201 Main Street, 22nd Floor (29201) | Post Office Box 11889 (29211) | Columbia, South Carolina
Phone: 803.779.3080 | Fax: 803.765.1243 | Direct: 803.540.7848

[website](#) | [map](#) | [email](#)

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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M. HOPE BLACKLEY

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

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

By deed dated June 16, 2004, and recorded on June 28, 2004, in the ROD in Book 80-C, page 988, Ila A. Mitchell a/k/a Ila 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 last address for him, that the Property was posted with notice of the Tax Sale, and that he received and signed for the notice of approaching end of redemption period. Hazel also acknowledged that he did not

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

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

CONCLUSIONS OF LAW

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

1. Any finding of fact stated above that is also a conclusion of law is incorporated herein by reference.

2. Hazel's Motion for a Trial by Jury is denied under the controlling precedent set forth in *Rosenbaum v. S-M-S* 32, 311 S.C. 140, 427 S.E.2d 897 (1993).

3. This matter is properly before the Court. Notice of the Hearing was properly given to all defendants, and the Court has personal jurisdiction over all defendants. Further, this matter is within the subject matter jurisdiction of this Court, having been properly referred for the purpose of taking testimony, receiving evidence, and making findings of fact and conclusions of law with respect to all issues with the authority and power to enter a final judgment in this cause with any appeal to the Court of Appeals of South Carolina.

4. Prior to the Tax Sale of the Property, Hazel was the record owner of the Property, and held good, fee simple title to the Property. No other person or entity held any ownership interest of record in the Property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

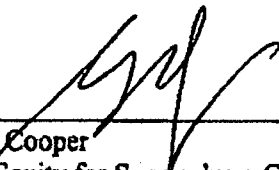
b. Not less than _____ days after said posting or service, the Sheriff shall be authorized to enter upon the Property, by force if necessary, and to seize the Property and to any persons occupying the Property from the Property, together with all of his/her/their personal property and possessions, and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

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

AND IT IS SO ORDERED.

April 15, 2016
Spartanburg, South Carolina



Gordon G. Cooper
Master in Equity for Spartanburg County

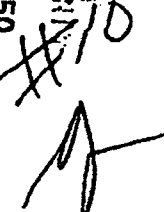
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EXHIBIT A TO FINAL ORDER

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

PROPERTY DESCRIPTION

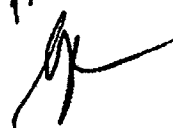
All that certain piece, parcel or tract of land in the State of South Carolina, County of Spartanburg, known as Lots No. Fourteen (14), Fifteen (15), and Sixteen (16) as shown on plat of the lands of J.A. Belue by Gooch and Taylor, Surveyors, dated October 7, 1946 and recorded in Plat Book 20, at Pages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

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

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

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

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M. HOPE BLACKLEY

#11


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.

**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
J. HOE BLAUGHTY

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
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.

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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2015 JUN -4 AM 9:31
CLERK OF COURT

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 Book 13-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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 M. HOPKINS
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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

2016 JUN -4 AM 9:31
M. JEFFREY BLANCHETT

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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MICHELE BLACKLEY

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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CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA
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e. Thereafter, MTAG conveyed its tax title to Plaintiff through the Quitclaim Deed of Real Property dated April 26, 2015, and recorded in the ROD on May 24, 2015, in Book 108-Z, page 456.

19. Plaintiff is informed and believes that by reason of the tax deed conveyed to MTAG by Spartanburg County, in strict compliance with the controlling tax sale statutes, and the subsequent quitclaim deed to Plaintiff, Plaintiff is the owner of marketable fee simple title to the Property without regard to any outstanding or adverse claims of interest of Hazel, Prime, and the Unknown Defendants, and that Plaintiff is entitled to an order of this Court declaring and confirming that its title is free and clear of such adverse lien interests and encumbrances or other claims to the Property, if any, as are or may be claimed or asserted by Hazel, Prime, and the Unknown Defendants.

20. Plaintiff is further informed and believes that upon the Court's issuance of its order declaring and confirming that Plaintiff's title is free and clear of such adverse interests and encumbrances or other claims to the Property, if any, as are or may be claimed or asserted by any of the defendants, Plaintiff is entitled to immediate possession of the Property, and that any tenants or parties in possession of the Property, must be evicted from and vacate the Property within a reasonable time to be determined by this Court.

FIRST ALTERNATIVE CAUSE OF ACTION
(Action to Recover Amounts Due)

21. Plaintiff re-alleges and incorporates herein by reference all prior paragraphs of its Complaint.

22. Only in the event that the Tax Sale of the Property is set aside or declared void, Plaintiff seeks to recover the amounts that the controlling authority requires be refunded and tendered to the Plaintiff, which includes a refund of the tax sale bid, a refund of all Property taxes

**DECLARED,
REFUNDED AND
PROPERTY TAXES**

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 06/15/15
AT 9:31 AM
BY CLERK
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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
H. HOPE BLACKLEY

AFFIDAVIT OF SERVICE

State of South Carolina
County of SPARTANBURG
Court of Common Pleas

Civil Action No.: 2015-CP-42-2482

Plaintiff: **ATCF REO HOLDINGS, LLC**

vs.

Defendant: **James K. Hazel, Jr., et al.**

PERSONALLY APPEARED before me, **Cody Cook** duly sworn, says that he / she served the following:

Civil Action Coversheet, Summons and Complaint, Notice of Lis Pendens, Action to Quiet Tax Title (Non-Jury)

in this action on **James K. Hazel, Jr.**, by personally handing the **Civil Action Coversheet, Summons and Complaint, Notice of Lis Pendens, Action to Quiet Tax Title (Non-Jury)** to **James K. Hazel, Jr.** at **517 Wildwood, Dr., Spartanburg, SC 29306** on **June 19, 2015** at **07:40 PM**.

Recipient Description:

Black, Male, 5' 9", 180 - 190 lbs, Gray hair, Brown eyes, 55 - 60 years.

Server Comments:


Cody Cook

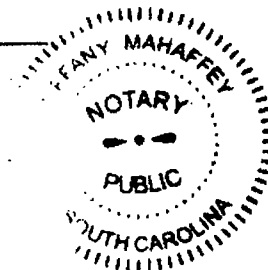
Palmetto Legal Gophers
PO Box 6108
Columbia, SC 29260

Your File/Reference Number: **34209.0091**

Notary Section

Subscribed and affirmed, or sworn to before me this 24 day of June, 2015.

Notary Public: 
Commission Expires: 6/29/22



2015 JUL 20 AM 10:23
M. HOPE BLACKLEY

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.)
_____)

CASE # 2015-CP-42-2482

MOTION FOR
ENLARGEMENT OF TIME

2015 JUN 26 AM 9:30
M. HOPE B. GRIFFIN

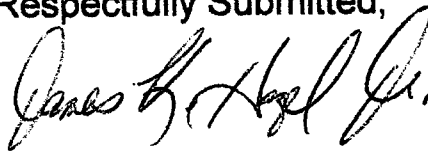
NOW COMES THE DEFENDANT, James K. Hazel Jr., pursuant to S.C. Rules Civ. Proc., Rule 6(b); respectfully requesting that this honorable court grant to the defendant an enlargement of time for defendant to file a response to the plaintiff's complaint in the above-captioned case until August 14, 2015, for the cause shown in the affidavit below:

1. Defendant is unable to afford legal counsel and is proceeding pro-se in this matter;

2. For the above reason, Defendant requests that the court grant until August 14, 2015 to allow time for legal research and respond to the Plaintiff's Complaint in order to protect Defendants' rights and interests in this action.

WHEREFORE, Defendant respectfully requests that this court enlarge the time for filing a response to the plaintiff's complaint until August 14, 2015.

Respectfully Submitted,



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

2015 JUN 26 AM 9:30
H. HOPE BLAOMLEY

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.

2015 JUL 10 PM 9:25

CONSENT TO MOTION TO ENLARGE TIME

Plaintiff ATCF REO HOLDINGS LLC ("Plaintiff") hereby consents to the motion of Defendant James K. Hazel, Jr. to enlarge the time for him to answer until August 14, 2015, which motion was filed on June 26, 2015. Accordingly, Plaintiff understands that Defendant James K. Hazel, Jr. will serve his Answer on or before August 14, 2015, and due to this consent, Plaintiff will not attend the hearing on the motion to enlarge time scheduled for July 14, 2015, and will consider this motion resolved.

WORLDWIDE ELECTRONIC JOURNAL OF LAW & TECHNOLOGY

g

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

July 1, 2015

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M. HOPE BLACKLETT
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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 of 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

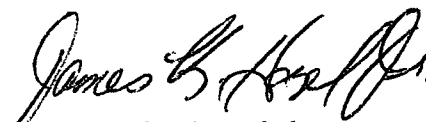
WHEREFORE, Defendant respectfully requests that this court grant Defendant's Motion to Dismiss and prays judgment as follows:

- 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

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 BLACKBURN

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. Balsa, 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;

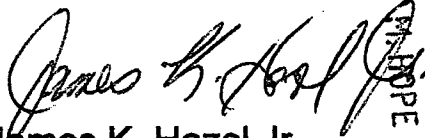
WHEREFORE, having answered the Complaint of the Plaintiff, the Defendant moves the Court to:

- 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
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M. HOPE BLACKLE

- 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
MAI HOPE BLACKLEY

- 41
- 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
EMILY BLACKLEY

42

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

ATCF REO HOLDINGS LLC,

☒ Plaintiff

v.

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

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2015-CP-42-2482

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
A. Parker Barnes III, Bar No. 68359
Haynsworth Sinkler Boyd, P.A.
Post Office Box 11889
Columbia, SC 29211-1889
phone: 803-779-3080 fax: 803-765-1243
e-mail: pbarnes@hsblawfirm.com

Defendant's Attorney:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

A. Parker Barnes III
Signature of Attorney for ☒ Plaintiff / ☐ Defendant

December 9, 2015
Date submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: \$25.00
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

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.

MOTION FOR MANDATORY ORDER OF REFERENCE

Plaintiff commenced this action in equity to quiet its tax title to certain real property located in Spartanburg County, South Carolina, and hereby moves this Court, pursuant to Rule 53(b), SCRCF, to issue an Order of Reference referring this equitable action to quiet tax title to Gordon G. Cooper, Master in Equity for Spartanburg County, for the purpose of receiving evidence and with all appeals to be made directly to the South Carolina Court of Appeals.

[signature on following page]

2016 JAN -5 AM 8:52
CLERK OF COURT

44

HAYNSWORTH SINKLER BOYD, P.A.

By: 
A. Parker Barnes III

Post Office Box 11889
Columbia, South Carolina 29211-1889
(803) 779.3080 Tel
(803) 765.1243 Fax

December 9, 2015

Attorney for Plaintiff

2016 JAN -5 PM 8:52

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.

2016 FEB 12 AM 9:15
CLERK OF COURT

**AFFIDAVIT OF DEFAULT AND
MOTION FOR ORDER OF DEFAULT**
(As to Only Prime Asset Fund III, LLC)

PERSONALLY APPEARED before me, A. Parker Barnes III, who, being duly sworn, deposes and says:

1. He is an attorney with Haynsworth Sinkler Boyd, P.A., attorneys for Plaintiff ATCF REO HOLDINGS LLC ("Plaintiff").
2. On June 4, 2015, Plaintiff filed its Notice of Lis Pendens, Civil Action Coversheet, Summons, and Complaint (collectively the "Pleadings") with the Clerk of Court for Spartanburg County, and this case was assigned Case Number 2015-CP-42-2482.

3. Plaintiff personally served the Pleadings upon the registered agent for Defendant Prime Asset Fund III, LLC on October 7, 2015, as evidenced by the Affidavit of Service filed on November 30, 2015.

4. More than thirty (30) days have elapsed since the legal service of the Pleadings upon Defendant Prime Asset Fund III, LLC, and no answer, notice of appearance, motion, or other pleading has been filed or served by or on behalf of this defendant, and this defendant is in default.

5. Upon information and belief, Defendant Prime Asset Fund III, LLC is not an individual entitled to protection under the Servicemembers Civil Relief Act, 50 USCS Appx. §§ 501 *et seq.* (2004).

THEREFORE, Plaintiff moves for an Order judging Defendant Prime Asset Fund III, LLC to be in default for want of appearance in this action, and after a due hearing pursuant to the provisions of Rule 55, SCRCP, for a judgment for Plaintiff against Defendant Prime Asset Fund III, LLC in such an amount as may be properly found due.

Further Affiant sayeth not.

HAYNSWORTH SINKLER BOYD, P.A.

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

Post Office Box 11889
Columbia, South Carolina 29211-1889
(803) 779.3080 Tel
(803) 765.1243 Fax
Attorneys for Plaintiff

SWORN to and subscribed before me
on this 9 day of December, 2015

Carol A. Shaffer
Carol A. Shaffer – Notary Public
State of South Carolina

My commission expires: October 31, 2024

2016 FEB 12 AM 9:15
H. HENRY

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.

NOTICE OF HEARING

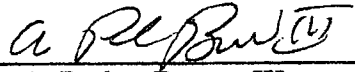
TO ALL ABOVE-NAMED DEFENDANTS:

NOTICE IS HEREBY GIVEN that the final hearing in the above-referenced action to quiet tax title to the real property described in the Complaint will be held before The Honorable Gordon G. Cooper, Master in Equity for Spartanburg County, on **Tuesday, April 12, 2016, at 2:30 P.M.**, at the Spartanburg County Courthouse located at 180 Magnolia Street, Spartanburg, South Carolina.

You are requested to notify attorney A. Parker Barnes III at telephone number (803) 779-3080 of your intention to appear.

You are invited to attend as you see fit.

HAYNSWORTH SINKLER BOYD, P.A.

By: 
A. Parker Barnes III

1201 Main Street, Suite 2200
Post Office Drawer 11889 (29211-1889)
Columbia, South Carolina 29201
(803) 779.3080 Tel
(803) 765.1243 Fax

Attorneys for Plaintiff

March 22 2016

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.)

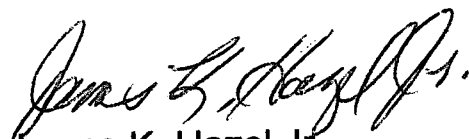
MOTION FOR
TRIAL BY JURY

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

NOW COMES THE DEFENDANT, James K. Hazel Jr., proceeding *Pro Se*, pursuant to
the South Carolina Constitution, Article I, Section 3 and Section 14 and SCRCPL Rule
38 (a) and (b), demands trial by jury in the above referenced case.

FILED
CLERK OF COURT
SPARTANBURG, S.C.
2016 MAR 31 PM 3:46
J. HOPE BLACKLEY

Respectfully Submitted,



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

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.

PLAINTIFF'S RESPONSE IN OPPOSITION TO MOTION FOR TRIAL BY JURY

Plaintiff ATCF REO HOLDINGS LLC ("Plaintiff") submits this response in opposition to the motion of Defendant James K. Hazel, Jr. for a trial by jury. For the reasons set forth herein, the motion should be denied.

This matter is governed by *Rosenbaum v. S-M-S* 32, 311 S.C. 140, 427 S.E.2d 897 (1993), which held that an action to quiet a tax title is an action in equity and that a defendant in such an action is not entitled to a jury trial, even if the defendant asserts a counterclaim stating a cause of action at law. *See id.* at 143, 427 S.E.2d at 898 ("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, Defendant Hazel is clearly not entitled to a jury trial in this case.

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

April 6, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

MAY 23 2016

SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master In Equity

Appellate Case No. 2016-001014

ATCF REO HOLDINGS LLC,

Respondent,

v.

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,

Of Whom James K. Hazel Jr. is the Appellant.

AMENDED NOTICE OF APPEAL

James K. Hazel Jr. appeals the Judgment of the Honorable Gordon G. Cooper, dated April 15, 2016. Appellant received written notice of entry of this Judgment on April 18, 2016. This Amended Notice Of Appeal, as directed by the Honorable Jenny Abbott Kitchings, Clerk of the South Carolina Court of Appeals, is filed to correct calendar errors in the original Notice Of Appeal filed on May 13, 2016.

May 23, 2016


James K. Hazel Jr.
517 Wildwood Drive
Spartanburg, South Carolina 29306
(864) 278-0551
Appellant

Other Counsel of Record:
HAYNSWORTH SINKLER BOYD, P.A.
A. Parker Barnes III, Attorney for Respondent
1201 Main Street, 22nd Floor
Columbia, South Carolina 29201

RECEIVED

MAY 23 2016

SC Court of Appeals

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,
REPRESENTING ALL UNKNOWN PERSONS
8 HAVING OR CLAIMING TO HAVE ANY
RIGHT, TITLE, OR INTEREST IN OR TO, OR
9 LIEN UPON, THE REAL ESTATE DESCRIBED
AS 517 WILDWOOD DRIVE, SPARTANBURG
10 COUNTY, SC, THEIR HEIRS AND ASSIGNS,
AND ALL OTHER PERSONS, FIRMS, OR
11 CORPORATIONS ENTITLED TO CLAIM
UNDER, BY OR THROUGH THE ABOVE-
12 NAMED DEFENDANT(S), AND ALL OTHER
PERSONS OR ENTITIES UNKNOWN
13 CLAIMING ANY RIGHT, TITLE, INTEREST,
ESTATE IN, OR LIEN UPON, THE REAL
14 ESTATE DESCRIBED AS 517 WILDWOOD
DRIVE, SPARTANBURG COUNTY, SC,

(2015CP42-02482)

Spartanburg, South Carolina

15 DEFENDANTS.
16

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.
BY: **A. PARKER BARNES, III**, ESQUIRE
21 Attorneys for the Plaintiff.

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

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

24 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: Al 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 dues. 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.

19 -----END OF TRANSCRIPT OF RECORD-----

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1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS

3 COUNTY OF SPARTANBURG

RECEIVED

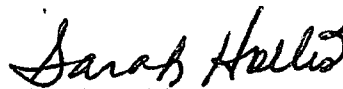
JUL 18 2016

4
5 CERTIFICATE

SC Court of Appeals

6
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.

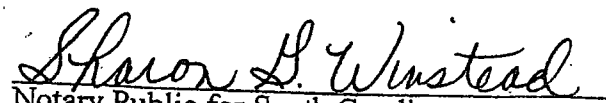
13
14 
15 Sarah Hollis

16 Court Reporter

17 SWORN to before me this

18 13th day of June, 2016.

19 Spartanburg, South Carolina.

20
21 
22 Notary Public for South Carolina
23 My Commission Expires: September 7, 2016.

83

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:

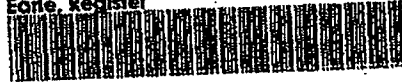
Transcript from Sarah Hollis

\$ 75.00

A. Hunter

DEED 10-8 N PG 652

84
DEE-2015-12290
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Recording Fee: \$10.00 Documentary Stamps: \$140.60
Office of Register of Deeds, Spartanburg, S.C.
Dorothy Earle, Register



TAX DEED

MAP REFERENCE #: 6-21-11-106.00
ITEM #: 13-25432

GRANTEE'S ADDRESS:
P.O. Box 54292
New Orleans, LA 70154-4292

DEED ONLY, NO TITLE EXAMINATION

Owner of Record / Defaulting Taxpayer:
James K. Hazel, Jr.

ALL WHOM THESE PRESENTS MAY CONCERN that Robert E. Metts, Jr., the Delinquent Tax Collector for Spartanburg County (hereinafter "Tax Collector"), acting pursuant to the acts of the General Assembly of South Carolina and the statute laws for said state, after an execution was issued by the county treasurer on March 18, 2013, did on July 11, 2013 mail via "Certified Mail, Return Receipt Requested, Restricted Delivery" a notice of delinquent property taxes, penalties and costs owed in the amount of \$828.38 for the year 2012 to James K Hazel Jr with such notice being marked "Return to Sender, Unclaimed, Unable to Forward" on August 11, 2013.

WHEREAS Sandy Fowler did on September 17, 2013 post said property against which said taxes were assessed and levied as hereinafter described; and

WHEREAS on sales day, November 18, 2013 the Tax Collector did during the usual hours of sale, after due advertisement in the Spartanburg Herald Journal as item number 25432 sell the said property of the said defaulting taxpayer(s): James K. Hazel, Jr., to MTAG, as Custodian for ATCF II South Carolina LLC, purchaser hereinafter known as "Grantee" and the highest bidder at such sale for the sum of \$38,000.00 and gave receipt of the total amount of said purchase money to the Grantee; and

WHEREAS more than twelve months have elapsed since the date of said sale and the defaulting taxpayers, any grantee from the owner or any mortgage or judgment creditor have failed to redeem said land so sold for taxes; and

WHEREAS, the Tax Collector of Spartanburg County did on October 24, 2014 mail via "Certified Mail, Return Receipt Requested, Restricted Delivery" a notice of end of redemption to James K Hazel Jr with such notice being signed for and received by James Hazel on October 27, 2014; and

Exhibit
I

DEED 108 N PG 653

WHEREAS, the Tax Collector of Spartanburg County did on **October 27, 2014** mail via "Certified Mail, Return Receipt Requested, Restricted Delivery" a notice of end of redemption to **MERS** with such notice being signed for and received by **William E. Barr** on or about **October 30, 2014**; and

WHEREAS, the Tax Collector of Spartanburg County did on **October 27, 2014** mail via "Certified Mail, Return Receipt Requested, Restricted Delivery" a notice of end of redemption to **Prime Asset Fund III LLC** with such notice being marked "**Return to Sender, Insufficient Address, Unable to Forward**" on or about **November 1, 2014**; and

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the Tax Collector of and for the County and State aforesaid, in consideration of the premises and **\$38,000.00** has granted, bargained, sold and released, and by these presents does grant, sell and bargain unto **MTAG**, as **Custodian for ATCF II South Carolina LLC** and assigns:

Please refer to
Exhibit A

South Carolina Code of Laws §12-51-160 Deed of evidence of good title; statute of limitations. In all cases of tax sale the deed of conveyance, whether executed to a private person, a corporation, or a forfeited land commission, must be held and taken as prima facie evidence of a good title in the holder, that all proceedings have been regular and that all legal requirements have been complied with. No action for the recovery of land sold under the provisions of this chapter or for the recovery of the possession may be maintained unless brought within two years from the date of sale.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO have and to hold all and singular the premises hereby granted, with the appurtenances, unto the said grantee his heirs forever, according to the form in force and effect of the laws and usages of the State of South Carolina and in such cases made and provided.

WITNESS my hand and seal this 24th day of March, 2015.

Robert E. Metts, Jr.
Robert E. Metts, Jr.
Delinquent Tax Collector for Spartanburg County

Signed, sealed and delivered in the presence of:

Mandi D. Patten
[Signature]

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

The foregoing instrument was acknowledged before me this 24th day of March, 2015
by Robert E. Metts, Jr., Delinquent Tax Collector for Spartanburg County.

Mandi D. Patten
Notary Public for South Carolina
My commission expires: November 30, 2022

Exhibit A

Legal 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 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 Ila 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.

Block Map #: 6-21-11-106.00

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 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.

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



Exhibit
 II

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: [Signature]
 Its: Manager

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

Notary Public for the State of Florida
 My Commission Expires: 2018



SUSAN FRIEDERWITZER
 MY COMMISSION # FF 000501
 EXPIRES: February 6, 2018
 Reach Thru Budget Notary Services

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 Guzman

STATE OF FLORIDA)
)
COUNTY OF DADE)

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 000001
EXPIRES: February 6, 2018
Bonded Time Budget Notary Services

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

Exhibit
III

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.

Exhibit
IV

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.

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
✓

SECTION 12-45-75. Installment payments of property tax.

(A)(1) The governing body of a county may by ordinance allow each taxpayer owning a parcel of taxable real property within the county the option to pay property taxes in installments as provided in this section. An installment election is not allowed for taxes paid through an escrow account.

(2) A taxpayer electing to pay ad valorem taxes in installments or electing to opt out of paying in installments, must notify the county treasurer in writing no later than January fifteenth of the tax year for which the installment payments are applicable, and no earlier than December first of the preceding tax year. If the treasurer does not receive written notification from December first to January fifteenth, the taxpayer must pay ad valorem taxes in the same manner as the previous taxable year.

(3) The treasurer must notify the county auditor and county assessor of each taxpayer electing the installment payment option or electing to opt out of paying in installments. If the county assessor determines the property has diminished in value, an estimated property tax obligation must be adjusted to reflect the reduced value. Upon being notified of an adjustment for reduced value from the assessor, the county treasurer must notify the property owner of the adjusted estimated property tax obligation.

(B) An installment payment is based on the total property tax due for the previous property tax year, after applying all applicable credits and adjustments reflecting reduced value as determined by the county assessor. An amount equal to sixteen and two-thirds percent of the estimated property tax obligation must be paid to the county treasurer in each of five installments according to the following schedule:

In the case of the following estimates, the due date is on or before:

First	February 15
Second	April 15
Third	June 15
Fourth	August 15
Fifth	October 15

The remaining balance is due on or before January fifteenth of the following taxable year in accordance with Section 12-45-70. The treasurer must notify the county auditor of the amount of a property owner's payments received no earlier than October fifteenth and no later than November fifteenth. A notice of the remaining tax due and other authorized charges and information must then be prepared and mailed to the property owner.

(C) If a taxpayer electing to pay in installments does not timely make each payment pursuant to the schedule in subsection (B), the county may refuse to accept all other installment payments. If the county refuses to accept other installment payments, the remaining balance is due in accordance with Section 12-45-70.

(D) Estimated property taxes paid in installments during a property tax year are a credit against the total property tax due on the real property for the property tax year. The estimated property taxes paid in installments during a property tax year must be deposited by the county treasurer in an interest bearing account. The interest is to be retained by the treasurer to offset the administrative expenses of installment payments. Once final payment is made, and no later than January fifteenth of the following taxable year, the installment payments must be credited to the accounts of property taxing entities in the county in the same proportion that millage was imposed by such entities in the previous tax year with the necessary adjustments made to reflect current tax year millage impositions when property taxes for the current year are paid.

(E) If the credit allowed for estimated property tax paid during the property tax year results in an overpayment of property tax, the overpayment must be refunded to the taxpayer together with the actual interest earned by the county treasurer, running from the later of the due date of the installment resulting in the overpayment, without regard to additional amounts paid, or the actual date the overpayment was received by the county treasurer, to the date the refund is issued. Except that if the overpayment is issued

Exhibit
VI

to the taxpayer within forty-five days of the installment payment that resulted in the overpayment, the treasurer may retain the interest earned.

(F) Every tax notice for real property, for which the installment payment option has been elected, must contain a calculation of any estimated property tax due and a payment schedule and return envelopes for these payments.

(G) The payment of estimated property tax as provided in this section and the credit allowed arising from these payments in no way alters the due date, penalty schedule, and enforced collection of property taxes as provided by law.

HISTORY: 1994 Act No. 443, Section 1; 1995 Act No. 145, Part II, Section 119D; 2005 Act No. 136, Section 1, eff June 7, 2005; 2006 Act No. 388, Pt V, Section 3.A, eff June 10, 2006.

Editor's Note

2006 Act No. 388, Pt V Section 3.B, provides as follows:

"Each county treasurer shall report to the General Assembly on the impact and implementation of the provisions of this section no later than sixty days after January 15, 2009. The report shall include, but is not limited to, the costs incurred, the interest retained, and the number of individuals electing to pay ad valorem taxes in installments."

RULE 53
MASTERS AND SPECIAL REFEREES

99

(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.

Exhibit VII

100
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.

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Spartanburg County Assessor's Office

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

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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 BOCA RATON, FL 33432	Parcel Number	6-21-11-106.00 (Account#:117576)
Location Address	517 WILDWOOD DR, SPARTANBURG 29306	Millage Group	540Z - SD6/SPARTANBURG SANITARY SEWER/City of Spartanburg
Property Usage	Non-Qualified Regular Residential Improved (6RGR)	Neighborhood	4880 (4880)
Homestead	No	Land Size	0 AC
Utilities	PUBLIC WATER PUBLIC SEWER	Parcel Map	Show Parcel Map
Legal Description	LOTS 14 15 & 16 J A BLUE SUB	Fire District	
		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			100x251xIR

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

Exhibit
VII

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Sales Information

<u>OR</u> <u>Book/Page</u>	<u>Sale Date</u>	<u>Sale</u> <u>Price</u>	<u>Instrument</u>	<u>Instrument</u> <u>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		

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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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Spartanburg County Seventh Judicial Circuit Public Index



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Case SubType All Case Sub-Types

Last Name/Business HAZEL

First JAMES

Middle K

Suffix

Party Type

Defendant

Action Type All Actions

Date Type Actions Filed

Beginning 12/31/2007

Ending 07/14/2016

Tax Map# From

Through

Only for Civil Cases... Index Search

☒ All☐ Lis Pendens☐ Judgments

Cross Index Search

☐ All

Judgment For

Judgment Against

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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

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Exhibit IX

259 S.C. 256
Supreme Court of South Carolina.

The STATE, Respondent,
v.
Hurley Alfred FUNDERBURK, Jr., Appellant.

No. 19480.
|
Sept. 11, 1972.

Defendant was convicted before the Court of General Sessions of Chesterfield County, J. A. Spruill, Jr., J., of grand larceny, and he appealed. The Supreme Court, Bussey, J., held that where demand for preliminary hearing, following arrest on two warrants issued by magistrate charging offenses of grand larceny and receiving stolen goods, was made ten days before convening of next term of Court of General Sessions but such hearing was not held until after indictment was submitted to grand jury and true bill returned, the Court was without jurisdiction and, the jurisdiction of the grand jury being coextensive with the criminal jurisdiction of the Court, the indictment was a nullity and conviction was required to be vacated.

Reversed.

West Headnotes (6)

- [1] **Criminal Law**
Loss or divestiture of jurisdiction
Indictment and Information
Organization and constitution of grand jury

Where demand for preliminary hearing, following arrest on two warrants issued by magistrate charging offenses of grand larceny and receiving stolen goods, was made ten days before convening of next term of Court of General Sessions but such hearing was not held until after indictment was submitted to grand jury and true bill returned, the Court was without jurisdiction and, the jurisdiction of the grand jury being coextensive with the criminal jurisdiction of the Court, the indictment was a nullity and conviction was required to be vacated. Code 1962, § 43-232; Const. art. 1, §

11.

3 Cases that cite this headnote

- [2] **Courts**
Acts and proceedings without jurisdiction

Acts of a court with respect to a matter as to which it has no jurisdiction are void.

8 Cases that cite this headnote

- [3] **Grand Jury**
Powers and Duties

The jurisdiction of a grand jury is coextensive with the criminal jurisdiction of the court in which it is impaneled and for which it is to make inquiry.

1 Cases that cite this headnote

- [4] **Criminal Law**
Jurisdiction

Lack of jurisdiction of the cause or subject matter can be raised at any time, including for the first time on appeal to the Supreme Court.

13 Cases that cite this headnote

- [5] **Criminal Law**
Jurisdiction

Contention that conviction before the Court of General Sessions was void in that court did not have jurisdiction because magistrate issuing warrant had not conducted preliminary hearing, on defendant's request, until after case had been

transmitted to the Court could properly be raised for first time on appeal from conviction; failure to appeal from denial of prior motions to dismiss or quash indictment or subsequent intermediate ruling again denying such motion on grounds of res judicata was no bar. Code 1962, § 43-232.

5 Cases that cite this headnote

[6]

Criminal Law

☛In Preliminary Proceedings

Where the state did not contend below that the phrase "at least ten days," in statute providing that request for preliminary hearing be made at least ten days before convening of next Court of General Sessions, contemplated ten clear days, excluding both day of service and convening day of Court and, therefore, that request exactly ten days before convening of next term was untimely, such issue was not mentioned in defendant's brief and was not passed on by courts below, contention was not properly before the Supreme Court for decision. Code 1962, § 43-232.

Cases that cite this headnote

Attorneys and Law Firms

***257 **521** Edward M. Leppard, of Leppard & Leppard, Chesterfield, for appellant.

***258** Solicitor Marion H. Kinon, Dillon, for respondent.

Opinion

***259** BUSSEY, Justice:

The defendant Funderburk appeals from his conviction on a charge of grand larceny at the May 1971 term of the Court of General Sessions for Chesterfield County. On May 4, 1970, he was arrested on two warrants issued by Magistrate Horton, charging him with the offenses of grand larceny and receiving stolen goods. He was

thereafter released on bail and on May 8th retained counsel who immediately served and filed with the magistrate a written demand for a preliminary hearing, which hearing was not held until October 2, 1970. In the meantime, the May term of court had commenced on May 18, 1970, and on that date an indictment based upon the aforesaid warrants was submitted to the grand jury and a true bill returned. The defendant was tried upon said indictment at a trial which commenced on October 12, 1970, and ended in a mistrial. Prior thereto, the defendant made a motion to dismiss and/or quash the indictment on the ground, inter alia, that under the facts and provisions of Code Section 43—232 the Court of General Sessions and the grand jury had no jurisdiction of the case at the time of the indictment and that ***260** such was accordingly void. Judge Baker, the presiding judge, denied the motion and ruled that 'This court now has jurisdiction and it can be tried even though the indictment was returned at the May term and the preliminary hearing was held thereafter.'

****522** The cause came on again for trial on February 1, 1971, before Judge Weatherford and a jury and again resulted in a mistrial. Prior thereto defendant renewed his motion to quash which had been denied by Judge Baker. Judge Weatherford denied such motion, inter alia, for the reason that there had been no appeal from Judge Baker's holding, stating, 'I hold that it is now res judicata. I cannot grant the motion in the retrial of a mistried case * * *.'

The case came on for trial again at the May 1971 term before Judge Spruill with the motion to quash again being renewed. Again the motion was denied, Judge Spruill pointing out the absence of any appeal or notice of intention to appeal from Judge Baker's ruling and saying, 'I am inclined to think that is the law of the case and I deny your motion on that ground.' The trial which ensued resulted in a conviction of the defendant on the grand larceny charge.

Section 43—232 of the Code reads as follows:

'When and how defendant may demand preliminary examination.

'Any magistrate who issues a warrant charging crime beyond his jurisdiction shall grant and hold a preliminary investigation of it upon the demand in writing of the defendant made at least ten days before the convening of the next court of general sessions, at which investigation the defendant may cross-examine the State's witnesses in person or by counsel, have the reply in argument if there be counsel for the State, and be heard in argument in person or by counsel as to whether a probable case has been made out and as to whether the case ought to be

dismissed by the magistrate and the defendant discharged without delay. When such a hearing has been so demanded the case shall not be transmitted to *261 the court of general sessions or submitted to the grand jury until the preliminary hearing shall have been had, the magistrate to retain jurisdiction and the court of general sessions not to acquire jurisdiction until after such preliminary hearing.'

[1] It will be noted that the demand for a preliminary hearing in this case was noticed exactly ten days before the convening of the next term of the Court of General Sessions. The record does not reflect any contention on the part of the State below that the demand for a preliminary hearing was not timely noticed and for the purpose of this appeal we treat the demand as having been timely made. Such being the case, it is quite clear that under the literal terms of the statute the Court of General Sessions had no jurisdiction of the case at the time of the indictment, to-wit: May 18, 1970. *State v. Flintroy*, 178 S.C. 89, 182 S.E. 311; *State v. Adcock*, 194 S.C. 234, 9 S.E.2d 730; *State v. Nesmith*, 213 S.C. 60, 48 S.E.2d 595; *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784; *State v. Sanders*, 251 S.C. 431, 163 S.E.2d 220.

[2] [3] We think it elementary, with no need for citation of authority, that the acts of a court with respect to a matter as to which it has no jurisdiction are void. The jurisdiction of a grand jury is co-extensive with the criminal jurisdiction of the court in which it is impaneled and for which it is to make inquiry. 42 C.J.S. *Indictments and Informations* s 17, page 855; 38 C.J.S. *Grand Juries* s 34b, page 1029. The court being without jurisdiction, the indictment in this case was a nullity.

[4] [5] It is elementary that lack of jurisdiction of the cause or subject matter can be raised at any time, including for the first time on appeal in this Court. *State v. Castleman*, 219 S.C. 136, 64 S.E.2d 250; *State v. Adams*, 73 S.C. 435, 53 S.E. 538. Accordingly, it is immaterial that the defendant failed to appeal from the earlier **523 ruling of Judge Baker or the intermediate ruling of Judge *262 Weatherford, even if it be assumed that he had the right to do so.

[6] In its brief the State apparently concedes the invalidity

of the indictment for lack of jurisdiction if the demand for a preliminary hearing was timely made in accordance with the provisions of Code Sec. 43—232. It argues, however, that the language 'at least ten days', contained in the statute, contemplated ten clear days, excluding both the day of service, May 8, and May 18th, the convening day of the court, and that, hence, the demand was not timely served. As previously noted, the record does not reflect that this contention was made or relied upon below; it is not mentioned in appellant's brief and appears for the first time in the brief for the State. It is well settled that where a particular question or issue has not been raised below and has not in anywise been passed upon by the lower court, it is not properly before us for decision. See numerous cases collected in *West's South Carolina Digest, Appeal and Error*,

§169, and *Criminal Law*,

§1028. Such contention not being properly before us, we refrain from passing thereupon and intimate no opinion as to any possible merit such contention might have if timely made.

Having concluded that the defendant was tried and convicted upon an indictment which was a nullity, it follows that he was convicted in violation of Article I, Section 17 of the Constitution, as amended, now Article I, Section 11. His conviction is accordingly vacated.

The foregoing conclusions make it unnecessary to pass upon the other questions raised, none of which will necessarily arise again should the defendant hereafter be tried upon a valid indictment.

Reversed.

MOSS, C.J., and LEWIS, BRAILSFORD and LITTLEJOHN, JJ., concur.

All Citations

259 S.C. 256, 191 S.E.2d 520

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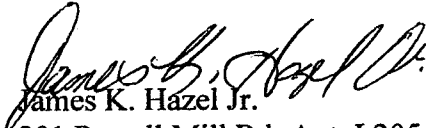
NOV 04 2016

SC Court of Appeals

Certificate of Counsel

The undersigned hereby certifies that the Record On Appeal contains all material proposed to be included by any of the parties and not any other material.

October 17, 2016


James K. Hazel Jr.
201 Powell Mill Rd. Apt. L205
Spartanburg, South Carolina 29301
(864) 278-0551
Appellant