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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2015-002257

Equivest Financial, LLC,.....Respondent,

v.

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

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

APPELLANT'S
PETITION FOR REHEARING

The Appellant Mary B. Ravenel by and through her counsel G. Thomas Hill hereby petitions the Court of Appeals to grant a rehearing of court's opinion in the above referenced case filed on February 14, 2018. The rehearing is necessary because

- I. Opinion No. Op. 5536 of the Court of Appeals in the case at hand misapprehended the facts regarding Due Process rights of the Appellant as it relates to statutory notice requirements by mail pursuant to South Carolina Code § 12-51-40 (b)¹ which directs**

¹ South Carolina Code § 12-51-40 (b), If the taxes remain unpaid after thirty days from the date of mailing of the delinquent notice, or as soon thereafter as practicable, take exclusive possession of the property necessary to satisfy the payment of the taxes, assessments, penalties, and costs. In the case of real property, exclusive possession is taken by mailing a notice of delinquent property taxes, assessments, penalties, and costs to the defaulting taxpayer and any grantee of record of the property at the address shown

that the notice(s) shall be sent via "certified mail, return receipt requested-restricted delivery".

The Court of Appeals in the subject opinion heavily relies on the fact that the mail from the DTC addressed to the children of the Appellant was sent to the mail box owned by Appellant Mary B. Ravenel averring the sufficiency thereof, that Mary B. Ravenel received notice of the tax delinquency and tax sale procedures. However, in the real world Mary B. Ravenel could not open the notices due to the fact that pursuant to the USPS Rules and Regulations she would not have been allowed to open "certified mail, return receipt requested-restricted delivery" addressed to her children. A Postmaster is prohibited from divulging to a "non-addressee" who the sender is, and most certainly will not allow a third person to even touch the envelope sent by "certified mail, return receipt requested-restricted delivery".² If an

on the tax receipt or to an address of which the officer has actual knowledge, by "***certified mail, return receipt requested-restricted delivery***" pursuant to the United States Postal Service "Domestic Mail Manual Section S912". If the addressee is an entity instead of an individual, the notice must be mailed to its last known post office address by certified mail, return receipt requested, as described in Section S912. In the case of personal property, exclusive possession is taken by mailing the notice of delinquent property taxes, assessments, penalties, and costs to the person at the address shown on the tax receipt or to an address of which the officer has actual knowledge. All delinquent notices shall specify that if the taxes, assessments, penalties, and costs are not paid before a subsequent sales date, the property must be duly advertised and sold for delinquent property taxes, assessments, penalties, and costs. The return receipt of the "certified mail" notice is equivalent to "levying by distress".

² USPS Rules 508 Recipient Services 1.1.8 Additional Delivery Standards for Restricted Delivery In addition to the standards described under 1.1.7, ***mail marked "Restricted Delivery" is delivered only to the addressee or to the person authorized in writing as the addressee's agent (the USPS may require proof of identification from the addressee (or agent) to receive the mail,***

- a. Mail for famous personalities and executives of large organizations is normally delivered to an agent authorized to sign for such mail.
- b. Mail for officials of executive, legislative, and judicial branches of the government of the United States or of the states and possessions and their political subdivisions, or to members of the diplomatic corps, may be delivered to a person authorized by the addressee or by regulations or procedures of the agency or organization to receive the addressee's mail.

addressee is never given the opportunity to see who the sender is because inevitably the addressee will refuse to sign for undesirable mail. Only the children of Mary B. Ravenel would have been allowed access to the envelope mailed to them, respectively, and that's after their identification has been established and the green card has been signed by the addressee.³ Mary B. Ravenel was not the addressee nor was she the agent of her children. Neither the notice of delinquent property taxes, assessments, penalties, and costs to the defaulting taxpayer nor the notice of redemption also was not mailed to appellant by as required by South Carolina Code § 12-51-60 by "certified mail, return receipt requested-restricted delivery" and should was not availed to the notices sent to her children.⁴ It does not matter if the mail was sent to her

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- c. Mail for the commander or other officials of military organizations by name and title, is delivered to the unit mail clerk, mail orderly, postal clerk, assistant postal clerk, or postal finance clerk, when such individuals are designated on DD (Department of Defense) Form 285 to receipt for all mail addressed to the units for which they are designated. If the person accepting mail is designated on DD Form 285 to receipt for ordinary mail only, then restricted delivery mail addressed to the commander, or other official by name and title, is delivered to the mail clerk only if authorized by the addressee.
 - d. Mail for an inmate of a city, state, or federal penal institution, in cases where a personal signature cannot be obtained, is delivered to the warden or designee.
 - e. Mail for minors or persons under guardianship may be delivered to their parents or guardians.
 - f. An addressee who regularly receives restricted delivery mail may authorize an agent on Form 3801 or by letter to the Postmaster and must include the notation "this authorization is extended to include restricted delivery (or Adult Signature Restricted Delivery) mail". Form 3849 also may be used for the authorization, if the Post Office has no standing delivery order or letter on file, when the addressee enters the name of the agent on the back of Form 3849 in the space provided and signs the form. The agent must sign for receipt of the article on the back of the form.
 - g. When mail is addressed to two or more persons jointly, all addressees or their agents must be present to accept delivery together. The delivery receipt obtained and the return receipt, if any, must be signed by all joint addressees or their agents. The mail may then be delivered to any of the addressees or their agents unless one or more addressees or their agents object, in which case delivery is not made until all the addressees or their agents sign a statement designating who is to receive the mail. Either person may sign for mail addressed to one person in care of another (i.e. "In Care Of"). 1.1.8.

³ USPS Rules 508 Recipient Services 1.1.5 Addressee Identification *-If a person claiming to be the addressee of certain mail is unknown to the delivery employee, the mail may be withheld pending identification of the claimant.*

⁴ South Carolina Code § 12-51-60. Payment by successful bidder; receipt; disposition of

mail box, the mailed notices were not addressed to her. Mary B. Ravenel did not receive proper notice thus her constitutional right to due process has been infringed upon. The order by the trial judge and the ratification of said order by the subject opinion amounts to the improper taking of Mary B. Ravenel's property rights.

II. The two year statute of limitation does not apply when the Due Process rights of a property owner have been infringed upon and violated.

According to Dibble v. Bryant, 274 S.C. 481, 265 S.E.2d 673 (1980) the South Carolina Supreme Court has consistently *held the enforcing agencies of government to strict compliance with all the legal requirements surrounding tax sales.* Proper Notice equals Due Process, and in the present action Mary B. Ravenel did not receive proper notice and was not properly named as a party in the first legal action filed against her children regarding the subject property. The statutory requirement of South Carolina Code § 12-51-40 were not strictly complied with, as stated in the first argument delineated above. The lack of notice (i.e., due process) prevents the assertion of the statute of limitation defense on the part of the

proceeds. The successful bidder at the delinquent tax sale shall pay legal tender as provided in Section 12-51-50 to the person officially charged with the collection of delinquent taxes in the full amount of the bid on the day of the sale. Upon payment, the person officially charged with the collection of delinquent taxes shall furnish the purchaser a receipt for the purchase money. He must attach a copy of the receipt to the execution with the endorsement of his actions, which must be retained by him. Expenses of the sale must be paid first and the balance of all delinquent tax sale monies collected must be turned over to the treasurer. Upon receipt of the funds, the treasurer shall mark immediately the public tax records regarding the property sold as follows: Paid by tax sale held on (insert date). All other monies received, including any excess after payment of delinquent taxes, assessments, penalties, and costs, must be retained, paid out, and accounted for by the delinquent tax collector. Once a tax deed has been issued, *the defaulting taxpayer and the owner of record immediately before the end of the redemption period must be notified in writing by the delinquent tax collector of any excess due. The notice must be addressed and mailed in the manner provided in Section 12-51-40(b) for taking exclusive possession of real property.* Expenses of providing this notice are considered costs of the sale for purposes of determining the amount, if any, of the excess.

Respondents. South Carolina Code § 12-51-160 was not intended to bar an action under the circumstances of this case. The legislature intended the statute to create a time limit during which one who lost title to property through a tax sale, after proper notice, may attempt to regain title.⁵ The one exception to this statute is lack of proper notice and strict compliance with the statutes governing tax sale process and procedures. Proper notice was never afforded to Appellant in the first action to which she would have been a proper party. Appellant Mary B. Ravenel is not bound by the legal ruling in the first case, thus, res judicata does not apply against the Appellant because the legal ruling is impotent, insufficient and ineffectual since she was not made a party thereto. Likewise the statute of limitation clock failed to begin to tick since the Appellant Mary B. Ravenel was unnamed in the first proceeding and at any point during the tax sale process as delineated in the South Carolina Code. Appellant also cites S.C. Const. art. I, § 3 providing no person "shall . . . be deprived of life, liberty, or property without due process of law" the U.S. Constitution Fifth Amendment - No person shall ... be deprived of life, liberty, or property, without due process of law.....; and, the U.S. Constitution Fifth Amendment Fourteenth Amendment § 1. - All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

⁵ Section 12-51-160 provides that the tax sale deed is evidence of good title and that "all proceedings have been regular and that all legal requirements have been complied with." S.C. Code Ann. § 12-51-160. The section further provides a time limit for recovering land sold pursuant to a tax sale: "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."

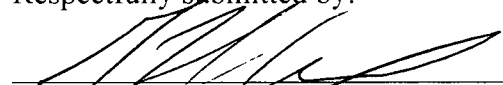
III. Res Judicata is not applicable to the case at hand since the Appellant's due process right have been infringed upon.

The Appellant incorporated the arguments above in this section, further stating the opinion of the Court of Appeals does not take into account that in the first action Mary B. Ravenel should have been made a party and since she was not made a party then res judicata does not apply to her. In the first hearing if Appellant would have been named as a party she would have been able to prove that she was not properly notified by the DTC and the tax sale would have been void based on the strict compliance requires discussed in Dibble v. Bryant, 274 S.C. 481, 265 S.E.2d 673 (1980). Res Judicata should have not been at issue in the case, that is, as it relates to being applied against the Appellant.

CONCLUSION

The Appellant was not afforded her due process right of notice pursuant to the U.S. Constitution and the South Carolina Constitution; also the statutes regarding tax sales were not strictly comply with, therefore, the ruling of the lower court and court of appeals should be reversed. An old woman is about to lose her house and errors have been made, equity demands a rehearing and reversal.

Respectfully submitted by:

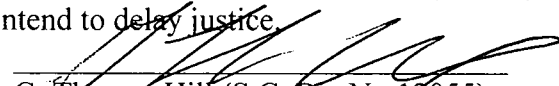

G. Thomas Hill (S.C. Bar No:12055)

HILL & HILL

Counsel for Appellant Mary B. Ravenel

CERTIFICATE OF COUNSEL

As counsel for the petitioner, I believe this petition for rehearing in meritorious hereby certify that this petition is presented in good faith and not intend to delay justice.



G. Thomas Hill (S.C. Bar No: 12055)
HILL & HILL
6209 Savannah Highway
Ravenel, South Carolina 29470
(843) 889-2261

ATTORNEYS FOR APPELLANT
(Mary B. Ravenel)

March 1, 2018