

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

Alterna Tax Asset Group, LLC,  
  
Plaintiff,

Case No. 2018-CP-46-0107

v.

York County, York County Treasurer, York  
County Delinquent Tax Collector, Robert  
Clay Sparrow, Mickey Crowe, Fort Mill  
Holdings, LLC, and David Baucom,

Defendants.

**ORDER**  
**RECEIVED**  
**MAY 21 2018**  
**SC Court of Appeals**

This matter came before the Court on April 19, 2018, for a hearing on Plaintiff's Motion for a Temporary Restraining Order/Preliminary Injunction ("Motion for TRO"), as well as Defendants Robert Sparrow and Mickey Crowe's Motion to Dismiss, and Defendants Fort Mill Holdings, LLC and David Baucom's Motion to Dismiss [collectively the "Motions to Dismiss"]. Plaintiff was represented by Robert D. Dodson and Matthew B. Rosbrugh. Defendants Fort Mill Holdings, LLC, and David Baucom, were represented by Paul S. Landis. Defendants Robert Clay Sparrow and Mickey Crowe were represented by James M. Griffin. Defendants York County, York County Treasurer, and York County Delinquent Tax Collector (collectively "York County"), were represented by Michael K. Kendree. Based on the record presented and the arguments of counsel, I make the following findings and conclusions.

**FACTUAL/PROCEDURAL BACKGROUND**

Defendants Robert Sparrow and Mickey Crowe sold the property identified as Tax Map #721-00-00-035 in the York County tax rolls ("Subject Property") to Defendant Fort Mill Holdings, LLC (FM Holdings) on December 1, 2011, for a purchase price of \$907,300.00. Defendant David Baucom (Baucom) is a guarantor on the purchase money note.

Property taxes for the Subject Property were not paid in 2014, and subsequently, it was advertised for sale, and sold, at a tax sale by Defendant York County. MTAG, as custodian for Alterna Funding II, LLC, ("Alterna II") purchased the Subject Property at the tax sale with a bid

of \$610,000.000 (the "Funds"). The Subject Property was conveyed to Alterna II by Tax Title dated February 28, 2017, and recorded on March 1, 2017, in the Office of Register of Deeds for York County, in book 16256 at page 312.

On April 3, 2017, Alterna II executed a quitclaim deed of the Subject Property to ATCF REO Holdings LLC ("REO Holdings") that was recorded April 4, 2017, in the Office of Register of Deeds for York County in book 16309 at page 260.

On January 12, 2018, Plaintiff, Alterna Tax Asset Group, LLC ("Alterna Tax"), filed an action in the United States District Court for the District of South Carolina seeking a declaration that the tax sale was null and void for failure to adhere to S.C. Code Ann. § 12-61-10, *et seq.* (1976, as amended). Alterna Tax sought injunctive relief, and a return of the Funds. *See Alterna Tax Asset Grp., LLC v. York Cty., et al.*, C.A. No. 0:17-cv-00913-MBS, Dkt. No. 1.

All Defendants in that action moved to dismiss the complaint, citing Plaintiff's lack of standing. *Id.*, Dkt. Nos. 33, 35, & 36. Prior to ruling on the pending motions, the District Court dismissed the suit for lack of subject matter jurisdiction. *Id.*, Dkt. No. 50.

Plaintiff subsequently filed the present action in State court seeking the same relief, and Defendants Sparrow, Crowe, Baucom, and FM Holdings have moved to dismiss this action pursuant to Rule 12(b)(6), SCRPC, asserting that Plaintiff lacks standing to bring this action.

#### **DISCUSSION/ANALYSIS**

A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of a claim, and must be granted if the claim does not set forth sufficient allegations entitling the party to relief. *Williams v. Condon*, 347 S.C. 227, 232–33, 553 S.E.2d 496, 499 (Ct. App. 2001). This analysis looks to see if there are facts alleged that satisfy every element of the cause of action asserted.

When a pleading filed in an action fails ". . . to state facts sufficient to constitute a cause of action", it may be dismissed. (Rule 12(b)(6), SCRPC). Ordinarily, the motion must be dealt with based solely on the allegations contained in the pleading. *FOC Lawshe Limited Partnership v. International Paper Company*, 352 S.C. 408, 574 S.E.2d 228 (Ct.App. 2002). In considering the motion, all allegations of the pleading, and all inferences reasonably deducible therefrom are deemed admitted. *Id.* "If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper." *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006).

While acknowledging the standard cited above, I have also taken judicial notice of the deeds on file with the Office of Register of Deed for York County that pertain to this action. Rule 201, SCRE; *see generally Bowers v. Bowers*, 349 S.C. 85, 561 S.E.2d 610 (Ct.App. 2002). In ruling on a Rule 12(b)(6) motion, the court may take judicial notice of matters of public record.<sup>1</sup> As the motions are premised on Rule 12(b)(6), SCRCF, I do not take into consideration the affidavits filed by the Defendants in ruling on the motions.

Applying the applicable standard, the Complaint contains the following allegations. At ¶ 10, Plaintiff asserts standing based on S.C. Code Ann. §12-61-10 (1976, as amended). At ¶ 37, Plaintiff states that it “. . . won the defective tax sale with a bid of . . . \$610,000.” At ¶ 38, Plaintiff alleges “. . . York County issued a deed to Plaintiff . . . .” Based on the public record, none of these allegations is true. Further, Plaintiff is not now the owner of the Subject Property. I therefore do not consider these as allegations as true for the purposes of ruling on this motion. Rather, I rely on the public record of York County.

Plaintiff’s assertion that § 12-61-10 affords it standing to challenge the tax sale process in this case is incorrect. § 12-61-10 states:

§ 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.*** (Emphasis added.)

First of all, the title of the statute and its plain language makes clear its sole purpose and application. It is only to clear a “tax title”, not challenge it. “All requirements of law leading up to tax sales are intended for the protection of the taxpayer against surprise or the sacrifice of his property . . . .” *Tanner v. Florence Cty. Treas.*, 336 S.C. 552, 563, 521 S.E.2d 153, 158-159 (1999).

<sup>1</sup> [T]his Court is not required ‘to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences,’ nor must this Court ‘accept as true allegations that contradict matters properly subject to judicial notice . . . .’ This Court may consider the complaint, ‘documents attached to the complaint’, documents ‘attached to the motion to dismiss, so long as they are integral to the complaint and authentic,’ and ‘***may properly take judicial notice of matters of public record.***’ *Martin v. A. Celli Intern., Inc.*, U.S. Dis. Ct., D.S.C., Spartanburg Division; May 12, 2014; 2014 WL 1912064 (Internal citations omitted; emphasis added.) *See also, J & J Sports Productions Inc. v. Latin America Club*, U. S. Dis. Ct., D.S.C., Spartanburg Division; April 12, 2012; 2012 WL 1593977; footnote 3.

Its purpose is to protect the taxpayer against surprise or the sacrifice of his property without notice sufficient to satisfy due process. Secondly, only those who acquired an interest in the subject property may bring an action to clear the title they received.

Plaintiff and Plaintiff's law suit meet neither of these criteria. Plaintiff's action does not seek to clear the title; rather, it seeks to void the tax sale. Also, Plaintiff was not a purchaser, and is not a grantee of the purchaser, at the tax sale, and thus, lacks standing to bring an action under the statute.

In addition, as already indicated, based on the public record, Plaintiff has no ownership interest in the property. Thus, Plaintiff has suffered no loss, has not been damaged by reason of a void tax sale (if indeed the sale is void), and is not a real party in interest. For this reason also, Plaintiff lacks standing to bring this action.

#### **CONCLUSION**

Therefore, based on the record presented, and the discussion herein, Plaintiff's Complaint fails to state a cause of action upon which relief can be granted, as Plaintiff lacks standing to prosecute such a claim. Therefore, it is ordered as follows:

1. Plaintiff's Motion for injunctive relief is denied.
2. Defendants' motion to dismiss is granted, and Plaintiff's Complaint, and the claims therein, are dismissed with prejudice.

AND IT IS SO ORDERED.

**JUDGE'S E-SIGNATURE TO FOLLOW**

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF YORK  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2018CP4600107

Alterna Tax Asset Group LLC		York County Of York County Delinquent Tax Collector Mickey Crowe David Baucom	York County Treas Robert Clay Sparro Fort Mill Holdings I
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.  
 Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Defendants	Plaintiff	n/a

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

Special Circuit Court Judge	3063 Judge Code	5/11/2018 Date
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**For Clerk of Court Office Use Only**

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

**Robert Daniel Dodson** 1722 Main St Suite 200 Columbia, SC 29201-2851  
**Matthew B. Rosbrugh** MBR Law, LLC PO Box 292290 Columbia, SC 29229

**Michael Kurt Kendree Sr.** PO Drawer 299 York, SC 29745  
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**Paul S. Landis** 209 E. Washington St. Greenville, SC 29601  
**Margaret Nicole Fox** PO Box 999 Columbia, SC 29902

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**ATTORNEY(S) FOR THE PLAINTIFF(S)**

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**ATTORNEY(S) FOR THE DEFENDANT(S)**

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**Court Reporter**

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**David Hamilton - Clerk of Court**

**Court Reporter:**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.**

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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York Common Pleas

**Case Caption:** Alterna Tax Asset Group LLC VS York County Of , defendant, et al

**Case Number:** 2018CP4600107

**Type:** Order/Summary Judgment

So Ordered

s/ S. Jackson Kimball 3063

Electronically signed on 2018-05-11 13:57:15 page 7 of 7

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