

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

RECEIVED

APPEAL FROM CHARLESTON COUNTY  
COURT OF COMMON PLEAS

JUL 09 2018

S.C. SUPREME COURT

R. Markley Dennis, Jr., Circuit Court Judge  
Appellate Case No. 2018-001005  
Court of Appeals Opinion No. 5536

On Petition for a Writ of Certiorari  
to the South Carolina Court of Appeals

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

v.

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

Of Whom Mary B. Ravenel is the ..... Petitioner.

RETURN TO PETITION  
FOR A WRIT OF CERTIORARI

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES  
OF THE SUPREME COURT OF SOUTH CAROLINA:

Respondent would show that the decision of the Court of Appeals does not merit further review, for the following reasons.

COUNTERSTATEMENT OF THE CASE

This is the second quiet title action concerning the subject property, a house and lot in Charleston County. The first action, Case No. 2010-CP-10-8732 (“the 2010 case”), resulted in a Final Order Quieting Title entered by the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County, on June 5, 2012. The plaintiffs in the 2010 case were Lashanda Ravenel and Henry Lee Ravenel, II, the children of Mary Ravenel, the petitioner herein. Mrs. Ravenel deeded the subject property to her children by deed recorded November 6, 2007. The chief defendant in the first quiet-title action was Equivest Financial, LLC, as grantee from the purchaser at a tax sale held on November 3, 2008.

In the Final Order entered in the 2010 case [R. 13], the court found that Mary Ravenel's conveyance to her children was in violation of the Statute of Elizabeth because it was intended to defraud her creditors, and hence was void; that moreover the deed was not delivered to Mrs. Ravenel's children and so did not take effect, in any event; that Mrs. Ravenel's children were straw owners and became complicit in their mother's fraudulent conduct by commencing the 2010 case, and that they were in privity with their mother, in whose behalf they sued; that no irregularities occurred in the tax sale process; and that the plaintiffs came to court with unclean hands, having themselves received nominal title to the property from their mother's unclean hands. Title was quieted in favor of Equivest.

The children of Mrs. Ravenel appealed. The Court of Appeals affirmed on the ground that the deed into the children never took effect, having not been delivered. [Unpublished Opinion No. 2013-UP-495, filed 12/23/13.] The Court therefore declined to reach any of the other issues presented by the appellants. A petition for a writ of certiorari by the Ravenel children was denied.

Since Mary Ravenel was not a named party to the 2010 case, Equivest, the respondent herein, brought this second quiet title action, Case No. 2014-CP-10-0667 ("the 2014 case"), against Mary Ravenel, the petitioner herein. The 2014 case was tried before the Honorable R. Markley Dennis, Jr., Presiding Judge of the Ninth Judicial Circuit, on June 27, 2015. Judge Dennis entered a Final Order on July 27, 2015 [R. 4], finding as follows:

The Defendant, who conveyed the property to her children, cannot now come to Court and contend that since the deed was set aside and void, she was the true owner of record and thus entitled to the statutory notices.

The defendant's motion to alter or amend was denied by order entered on September 29, 2015 [R. 1], and an appeal followed.

The Court of Appeals affirmed on the ground that Mrs. Ravenel was in privity with her children. More than that, they were straw plaintiffs in the 2010 action which

they brought solely in her behalf. The Court of Appeals held that each of the substantive issues presented could and should have been presented in the earlier case but were not. The Court of Appeals affirmed on the ground of res judicata. The material part of the Court's opinion is quoted here:

Although not raised at trial, we affirm on the theory of res judicata, which was raised by Equivest as an additional sustaining ground in its appellate brief. For res judicata to apply, a three-part test must be met. The first element requires the same identity of the parties or their privies. In this case, Ravenel's absence as a named party from the previous tax sale lawsuit should not insulate her due to her interests and Children's interests in the previous action being identical. Ravenel is in privity with Children due to their intertwining interests in the property, and the master ruled in the previous action that "[Ravenel] is the real individual in interest with regard to the subject real property." The master also found in that case "[i]t is [Ravenel] who will benefit if the tax deed is set aside, not [Children], who are simply straw owners." Thus, the first element is met. The second element requires the subject matter be identical. In the previous case, the master conclusively decided the issue of whether the tax sale was valid. In the present action, Ravenel again questions the validity of the tax sale. Therefore, the second element is met as the subject matter in the present case is identical to that in the first. The third element, which requires a final, valid judgment on the merits, is also satisfied. The master heard the first case in full, ruled, and this court affirmed on appeal. Because all three elements are met, we find res judicata applies to Ravenel's arguments regarding the validity of the tax sale.

### **STATEMENT OF FACTS**

Property taxes on Mary Ravenel's home in Hollywood, South Carolina, became delinquent for the year 2007, as had happened in the previous two years. [Record on Appeal in the 2010 case, Appellate Case No. 2012-212772, pp. 84; 106-07.] The Delinquent Tax Collector for Charleston County ("DTC") addressed successive notices in the collection process to the owners of record of the property, the children of Mrs. Ravenel, who were the grantees in a deed from their mother recorded November 6, 2007, the day before the first meeting of creditors in Mrs. Ravenel's bankruptcy proceeding. [R-2012, pp. 122-24; 132; 136.] The notices were addressed to Mrs. Ravenel's children at the address given for them in the deed, prepared at Mrs.

Ravenel's direction, a post office box in Hollywood, South Carolina — P. O. Box 455. In accordance with Section 12-51-40, the notices were sent to the best available address, defined by statute to be "either [1] the address shown on the deed conveying the property to [the defaulting taxpayer], [or (2)] the property address, or [3] other corrected or forwarding address of which the [DTC] has actual knowledge." S.C. Code Ann. § 12-51-40(a). The deed to Mrs. Ravenel's children was recorded months before the first notice was mailed, making this the best available address according to Mrs. Ravenel herself.

The first notice was sent by regular mail, as provided by statute.

The second and third notices were sent by certified mail, return receipt requested, restricted delivery, again as provided by statute.

The first of the certified mailings — the notice of levy — was returned to the DTC marked "Return to Sender, Unable to Forward" on May 24, 2008. [PI. Ex. 4, R-2012, p. 178.] The property was then posted in accordance with the statute.

The second of the certified mailings — Final Notice of Property Redemption — was sent in three mailings: one to each of the children and one to them jointly. They were all returned on October 26, 2009 marked "Return to Sender/Ravenel, PO Box 263, Hollywood, SC 29449-0263". [R-2012, p. 85.] The statutory deadline for mailing this notice by certified mail having passed [R-2012, p. 104], the DTC immediately sent a courtesy copy of the notice by regular mail to the address shown on the returned mailings, P. O. Box 263, Hollywood, South Carolina.

Although Henry Ravenel Jr. did not know that his mother had deeded her house to him, Henry Jr. heard from a third party in early October 2009 that back taxes were due. [R-2012, p. 141.] He called the office of the DTC on October 2, 2009 and learned the amount due upon his mother's house. [R-2012, p. 83; PI. Ex. 9, R-2012, p. 182.] When Mary Ravenel received the courtesy copy of the redemption notice soon after it was mailed on October 27, 2009 [R-2012, p. 103], she also communicated with the DTC and learned the amount due. Mrs. Ravenel was unable to pay the taxes of about

\$27,000, and the property was deeded to the high bidder for \$130,000.

In the 2010 quiet title action brought by the Ravenel children to set aside the tax deed, the court rejected their contentions for the reasons noted above.

In the appeal of the Ravenel children in the 2010 case, the Court of Appeals chose not to reach the issues presented when it affirmed the judgment on the ground that the children were never the owners of the property.

In the appeal of Mrs. Ravenel in the 2014 case, the Court of Appeals affirmed on the ground of res judicata, as noted above.

## ARGUMENT

### I.

**The trial court asked whether the parties wished to supplement the record with further evidence. The petitioner did not respond. The only fact which the petitioner now claims required testimony was in the record and undisputed. The only factual finding which she contends is unsupported was found in the 2010 case.**

The heading of petitioner's Question I assigns error to the failure to take testimony. Mrs. Ravenel identifies a single material fact which she says "should have been addressed." [Appellant's Brief in the Court of Appeals at 5.] This is the fact that the delinquent tax collector did not send her the Section 12-51-40 notices. This fact was undisputed. The record of the 2010 case shows that Mrs. Ravenel was sent no notices because she had recorded a deed purporting to show that she no longer owned the property.

At trial, Judge Dennis saw no material issue of fact not resolved in the record of the 2010 case and in the thirteen exhibits offered into evidence in this 2014 case. The following colloquy took place:

THE COURT: Mr. Berlinsky, if there's anything that you need to add to protect your record, you let me know and I will be glad to do that. Because I really think the record in this case — I don't think we need to have testimony and put you all through that.

MR. BERLINSKY: Right, because we've agreed on the joint exhibits, so the

exhibits are the exhibits. They say what they say.

THE COURT: All the exhibits are admitted and are now part of the record fully, as is your memorandum.

(Whereupon, Joint Exh. 1 through 13 are received in evidence.)

[R. 43/17-24.]

There was no need for testimony; none was offered; and all factual findings are supported.

## II.

**The Court of Appeals correctly applied the law of res judicata in declining to address the substantive issues which could have been raised in the earlier suit but were not.**

The petitioner did not complain in her petition for rehearing in the Court of Appeals, and does not complain now, that the Court of Appeals erred in exercising its *l'On* discretion<sup>1</sup> to affirm on the ground of res judicata. In her petition for rehearing, the petitioner's only complaint was that she "should have been a party [in the earlier action] and since she was not made a party, then res judicata does not apply to her." [Petition for Rehearing, p. 6.]

Mrs. Ravenel's children were the plaintiffs in the earlier action. They determined who they would sue. They were straw plaintiffs, acting solely in behalf of their mother as her agents. They had nothing to gain from the action. It was not incumbent upon the defendant in that action, Equivest, to seek to implead Mrs. Ravenel when her own plaintiff-agents had not done so and she had elected to stay out. She had to do this in order to preserve the contention that her children, not she, were the owners.

Not only was Mrs. Ravenel in privity with her plaintiff-children in the first action, but she herself was the plaintiff in everything but name. Her children were her straws, her agents, her *alter ego*, acting exclusively under her direction and for her benefit.

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<sup>1</sup> *l'On L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000).

For these reasons she was bound by the earlier judgment, and not entitled to relitigate an array of new claims which could and should have been raised years ago.

In her petition Mrs. Ravenel repeats all the substantive arguments which she attempted to present to the Court of Appeals. Although the respondent answered them all in its brief, the Court of Appeals found it improper to address them, since litigation must come to an end when a party has had one fair chance to present her case.

### CONCLUSION

Mrs. Ravenel has lived on this property rent-free for nearly ten years. This case is unworthy of further review.

The respondent respectfully asks the Court to deny the petition.

Respectfully submitted,

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by:   
Attorneys for Respondent.

July 6, 2018.

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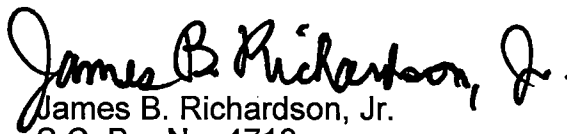
Of Whom Mary B. Ravenel is the ..... Petitioner.

CERTIFICATE OF SERVICE

I certify that I served a copy of the respondent's return to the petition for a writ of certiorari by first class mail, postage prepaid, addressed to appellant's attorney at his address of record, namely:

G. Thomas Hill, Esq.  
Attorney at Law  
6209 Savannah Hwy.  
Ravenel, SC 29470

on July 6, 2016.



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July 6, 2016.

Attorney for Respondent.