

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM YORK COUNTY  
Court of Common Pleas

S. Jackson Kimball, III, Circuit Court Judge

Appellate Case No.: 2018-000944

**RECEIVED**  
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SC Court of Appeals

Alterna Tax Asset Group, LLC ..... Appellant,

v.

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

**INITIAL BRIEF OF RESPONDENTS**  
**ROBERT CLAY SPARROW AND MICKEY CROWE**

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January 2, 2019  
Columbia, South Carolina

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Respondents Robert Clay Sparrow (“Sparrow”) and Mickey Crowe (“Crowe”) hereby adopt by reference the brief of Respondents David Baucom (“Baucom”) and Fort Mill Holdings, LLC (“Fort Mill Holdings”) in the present matter. *See* S.C.A.C.R. 208(b)(6). In addition, Respondents Sparrow and Crowe supplement the Issues on Appeal, Statement of Facts and Argument sections therein as follows:

### **ISSUES ON APPEAL**

Respondents Sparrow and Crowe adopt Issues I, III, and IV as stated in the brief of Respondents Baucom and Fort Mill Holdings. They supplement the statement of Issue II as follows:

- I. DID THE CIRCUIT COURT ERR IN CONSIDERING DEFENDANTS’ MOTIONS TO DISMISS FOR LACK OF STANDING WHEN DEFENDANTS FORT MILL HOLDINGS, LLC, DAVID BAUCOM, ROBERT CLAY SPARROW, AND MICKEY CROWE EXPLICITLY INCLUDED LACK OF STANDING AS A GROUND FOR DISMISSAL IN THEIR MOTIONS TO DISMISS?**

### **STATEMENT OF FACTS**

On December 1, 2011, Sparrow and Crowe sold the property identified and described at tax map #721-000-00-035 in the York County, South Carolina tax rolls (the “Property”) to Defendant Fort Mill Holdings, LLC (“FM Holdings”). Defendant FM Holdings executed a promissory note (the “FM Holdings Note”) to Sparrow and Clay in the sum of \$907,300.00, plus interest, in exchange for the Property. Defendant David Baucom (“Baucom”) was the guarantor

to the FM Holdings Note. The purchase money mortgage for the Property was recorded December 30, 2011, in Record Book 12360, Page 239, RMC Office for York County, South Carolina.

After May 1, 2012, Defendant FM Holdings ceased making monthly payments under the FM Holdings Note to Sparrow and Crowe, and thus, was in default. Despite demands made to FM Holdings and Baucom, the balance on the FM Holdings Note remained delinquent. Thereafter, Sparrow and Crowe filed an action against FM Holdings and Baucom, C.A. No. 2013-CP-46-00438, seeking judgment against them and foreclosure in the amount due and owing under the FM Holdings Note, together with taxes, insurance premiums, and costs and attorneys' fees.

On October 1, 2014, Crowe assigned all interest in the purchase money mortgage on the Property to Sparrow for value received, which assignment was recorded in Mortgage Book 12360, Page 235, RMC Office for York County, South Carolina. *See* Aff. of M. Crowe, Feb. 22, 2018, ¶¶ 4-5. Prior to trial, a mediation was conducted and settlement agreement reached. Notably, the settlement agreement resolved the action involving the Property, as well as an action involving a related entity, Maurer Holdings, LLC for which Baucom was also the guarantor on the note involved, C.A. No. 2013-CP-46-00438.<sup>1</sup>

By Order dated March 29, 2016, the Honorable S. Jackson Kimball entered judgment against FM Holdings and Baucom in accordance with the terms of the settlement agreement.

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<sup>1</sup> Sparrow and Crowe sold a second parcel of property to Maurer Holdings, LLC in the same manner as that used for the Property – a promissory note from the entity and guaranty of the note by Baucom (“Maurer Note”). This purchase money mortgage was also recorded. Thereafter, Maurer Holdings, LLC also ceased making monthly payments under its note to Sparrow and Crowe, and thus, was in default. Despite demands made to Maurer Holdings, LLC and Baucom, the balance on the Maurer Holdings Note remained delinquent. Thereafter, Sparrow and Crowe filed an action against Maurer Holdings, LLC and Baucom, C.A. No. 2013-CP-46-00440, requesting relief akin to that in 2013-CP-46-00438. Prior to mediation, Crowe also assigned his interest in the purchase money mortgage secured by the Maurer Note to Sparrow for value received, which assignment was recorded in Mortgage Book 12360, Page 230, RMC Office for York County, South Carolina.

Subsequently, FM Holdings and Baucom agreed that the proceeds from any tax sale of the Property would be given to Sparrow as partial payment for the judgment. Subsequently, the Property was sold to Plaintiff at a deficiency tax sale for \$610,000 (the “Funds”) and the tax deed was duly recorded. Defendants Sparrow, Baucom, and Fort Mill Holdings intended for this sale to take place and have no objection with the manner in which the York County Defendants carried out the sale of the Property. *See* Aff. of R. Sparrow, Feb. 22, 2018, ¶¶ 4-5; Aff. of FM Holdings, Feb. 19, 2018, Aff. of D. Baucom, Feb. 19, 2018, ¶¶ 4-5.

However, prior to the York County Treasurer issuing the Funds to Defendant Sparrow in accordance with the Judge Kimball’s Order, Plaintiff filed a complaint in the United States District Court for South Carolina seeking the exact same remedies sought in the present action. *Compare* Complaint [ECF No. 1], C.A. No. 0:17-0913-MBS, April 7, 2017 *with* Complaint, C.A. No. 2018-CP-46-0107, Jan. 12, 2018. Following briefing by the parties, the Honorable Margaret B. Seymour dismissed the case for lack of subject matter jurisdiction. [ECF No. 50 at 6-7]. Plaintiff subsequently refiled its suit in state court.

Thereafter, Respondents Sparrow and Crowe filed a motion to dismiss the action on the grounds the Plaintiff lacked standing and the Complaint failed to state a viable cause of action. *See* Sparrow & Crowe Mot. to Dismiss, February 26, 2018, at 4-7. Respondents Baucom and Fort Mill Holdings also filed a motion to dismiss the Complaint on similar grounds. *See* Baucom & Fort Mill Holdings Mot. to Dismiss, February 21, 2018, at 3. Thereafter, the Court dismissed Alterna’s action finding it lacked standing to bring the claim, and thus had failed to state a cause of action for which relief could be granted. *See* Order, May 11, 2018, at 2-7. The present appeal followed.

## ARGUMENT

Respondents Sparrow and Crowe incorporate the arguments set forth in the Initial Brief of Respondents Baucom and Fort Mill Holdings, LLC and supplement it as follows:

### II. **RESPONDENTS FORT MILL HOLDINGS, LLC, BAUCOM, SPARROW, AND CROWE EXPRESSLY STATED THAT THEY WERE MOVING FOR DISMISSAL OF THE COMPLAINT ON THE BASIS THAT APPELLANT LACKED STANDING.**

Like Respondents Fort Mill Holdings, and Baucom, Respondents Sparrow and Crowe also filed a motion to dismiss the Complaint on the grounds that Appellant lacked standing. Appellant was, or should have been, on notice of this argument given the discussion of the same in Respondents Sparrow and Crowe's motion. Specifically, the introductory paragraph of the motion states: "Dismissal is appropriate for lack of subject matter jurisdiction under Rule 12(b)(6) because Plaintiff *lacks* the requisite standing, and thus, Plaintiff cannot state facts sufficient to constitute a cause of action." Sparrow & Crowe Mot. to Dismiss at 1 (emphasis added). The first sentence of the argument section of this motion contains the following sentence, "The Complaint should be dismissed because Plaintiff has failed to establish an injury in fact, and thus, *has not made the requisite showing of standing.*" Id. at 4 (emphasis added). Immediately thereafter, Sparrow and Crowe identify and present their first argument for dismissal as follows:

#### 1. **Plaintiff has failed to establish standing, thus, the Complaint should be dismissed.**

Plaintiff's Complaint should be dismissed because it fails to allege facts establishing it suffered an injury in fact, and moreover, one that is redressible under S.C. Code Ann. § 12-61-10 or its other causes of action. To establish standing, a plaintiff must show it has suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) there exists a causal connection between the injury and the challenged conduct; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Smiley v. S.C. Dep't of Health & Envtl. Control*, 649 S.E.2d 31, 32-33 (S.C. 2007) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61

(1992)). The party seeking to establish the “irreducible constitutional minimum of standing” bears the burden of demonstrating each element. *Sea Pines Ass’n for Protection of Wildlife, Inc. v. S.C. Dept. of Nat’l Res.*, 550 S.E.2d 287, 291 (S.C. 2001) (quoting *Lujan*, 504 U.S. at 559-61).

Plaintiff’s Complaint fails to set forth any allegations that it suffered an injury in fact- namely that its claim to title of the Property is being challenged. Instead, Plaintiff generically alleges it has standing under S.C. Code Ann. § 12-61-10 to bring its present claims. Compl. ¶ 10. However, this argument is contrary to the plain language of the statute and the legislative intent in enacting the statute. Section 12-61-10 provides that,

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). The plain and unambiguous language of the statute makes clear that it affords a party standing to quiet title in its favor against “all other claims.” However, the Complaint fails to allege that Defendants Sparrow, Baucom, and FM Holdings – the only parties that could conceivably claim an interest in the Property<sup>2</sup> - have made an adverse claim to Plaintiff’s interest in the Property. Moreover, Defendants have expressly waived any such adverse claim. *See* Ex. B at ¶¶ 4-5; Ex. C at ¶¶ 4-5; Ex. D at ¶¶ 4-5. Thus, there are no competing claims against Plaintiff’s interest in the Property and Plaintiff’s reliance on section 12-61-10 to remedy a hypothetical injury is improper. *See Smiley*, 649 at 32-33 (citing *Lujan*, 504 U.S. 560-61) (requiring the injury-in-fact be “actual or imminent,” not “conjectural or hypothetical” to establish the first element of standing). To construe “all other claims” as used in the statute to include Plaintiff’s claim to the Property is nonsensical. *See Cain v. Nationwide Prop. & Cas. Ins. Co.*, 661 S.E.2d 349, 352 (S.C. 2008) (citing *Hodges v. Rainey*, 533 S.E.2d 578, 581 (S.C. 2000) (“Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. The statute’s language is considered the best evidence of legislative intent.”)).

Moreover, as recognized by the South Carolina Supreme Court, the legal requirements leading up to tax sales “are intended for the protection of the taxpayer against surprise or the sacrifice of his property.” *Baker v. Denton*, 37 F.Supp.3d

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<sup>2</sup> As set forth in the factual section of this brief, Defendant Crowe has not had an interest in the Property since October 1, 2014. Ex. A at ¶ 4. Moreover, to the extent such existed – which it does not – Crowe has waived the same. *Id.* at ¶ 6.

794, 799 (D.S.C. 2014) (quoting *Tanner v. Florence Cty. Treas.*, 521 S.E.2d 153, 158-159 (S.C. 1999)). They are not, as is evident from Plaintiff's Complaint, a mechanism through which a purchaser can void a sale to remedy "buyer's remorse." Here, Defendant FM Holdings, the taxpayer of the Property at the time of the sale, has never objected to the manner of the sale of the Property and has waived any objections it could have raised, as well as any interest in the Property. *See* Ex. C at ¶¶ 4-5. Defendants Baucom, Sparrow, and Crowe, to the extent applicable, have likewise waived the same. *See* Ex. A at ¶ 6; Ex. B at ¶¶ 4-5; Ex. D at ¶¶ 4-5. Thus, the Complaint should be dismissed because Plaintiff has failed to establish injury in fact, a requisite element of standing.<sup>3</sup>

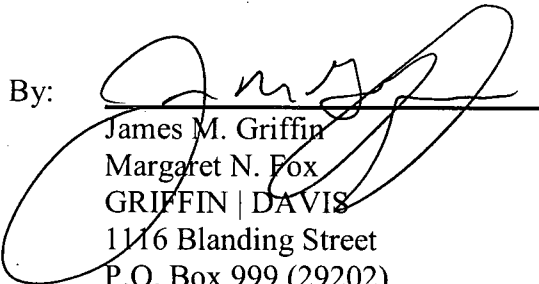
Id. at 4-6. Given the multiple references to Appellant's lack of standing, as well as the discussion regarding the same, within the motion to dismiss of Respondents Sparrow and Crowe, Appellant cannot be deemed to have been without notice of this issue. This is especially true when Respondents Baucom and Fort Mill Holdings made the same argument in a separate motion. Accordingly, the Order of the trial court should be affirmed.

### CONCLUSION

Based on the foregoing, Respondents Sparrow and Crowe respectfully request the Court affirm the Order of the trial court dismissing Appellant's Complaint.

Respectfully submitted,

By:



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<sup>3</sup> Respondents Sparrow and Crowe also submit this discussion in support of Issue No. 1 on Appeal – that the trial court properly ruled Appellant lacked standing to bring its action.

Attorneys for Respondents Sparrow and Crowe

January 2, 2019  
Columbia, South Carolina

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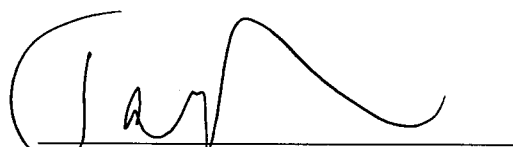
I, Jaime Harmon, the undersigned employee of Griffin Davis LLC, attorney for Respondents Robert Clay Sparrow and Mickey Crowe, do hereby certify that I have served a copy of Initial Brief of Respondents and Designation of Matter to be Included in the Record on Appeal on January 2, 2019, by causing a copy of same to be deposited in the U.S. Mail, proper postage prepaid addressed as follows:

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January 2, 2019

January 2, 2019

**VIA HAND DELIVERY**

The Honorable **Jenny Abbott Kitchings**  
Clerk of Court, South Carolina Court of Appeals  
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**Re:    Alterna Tax Asset Group, LLC v. York County Treasurer, et al.**  
**Appellate Case No.: 2018-000944**

Dear Ms. Abbott Kitchings:

Enclosed please find the original and one copy of the following documents:

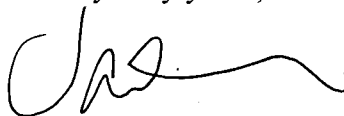
- (1)    Initial Brief of Respondents Sparrow and Crowe;
- (2)    Designation of Matter to be Included in the Record on Appeal;
- (3)    Proof of Service.

Please file these documents and return the clocked in copy to the courier.

If you have any questions, please do not hesitate to contact this office.

With best regards, I am

Very truly yours,



Jaime Harmon  
Assistant to James M. Griffin

cc:    Robert Dodson (Via U.S. Mail)  
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