

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, III, Circuit Court Judge

Appellate Case No.: 2018-000944

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
FORT MILL HOLDINGS, LLC AND DAVID BAUCOM**

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January 2, 2019

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ISSUES ON APPEAL

- I. DID THE CIRCUIT COURT ERR IN DISMISSING PLAINTIFF'S CLAIMS FOR LACK OF STANDING?
- II. DID THE CIRCUIT COURT ERR IN CONSIDERING PLAINTIFF'S MOTIONS TO DISMISS FOR LACK OF STANDING WHEN DEFENDANTS FORT MILL HOLDINGS, LLC AND DAVID BAUCOM EXPLICITLY INCLUDED LACK OF STANDING AS A GROUND OF DISMISSAL IN THEIR MOTION TO DISMISS?
- III. DID THE CIRCUIT COURT ERR IN HOLDING THAT PLAINTIFF AS A PURCHASER AT A TAX SALE COULD NOT CHALLENGE ITS OWN TITLE TO THE PROPERTY PURCHASED?
- IV. DID THE CIRCUIT COURT ERR IN FAILING TO PERMIT PLAINTIFF TO AMEND ITS PLEADINGS WHEN PLAINTIFF HAS NOT GIVEN ANY REASON WHY AN AMENDMENT IS NECESSARY?

Summary of the Case

This action arises from Plaintiff's purchase of real property at a York County tax sale which was conducted for the purpose of collecting past-due taxes on property described at Tax Map #721-00-00-035 in the York County tax rolls ("Subject Property"). Plaintiff was the successful bidder yet now claims that the sale should be undone because of alleged deficiencies in the advertising and sale process. The named defendants who would otherwise have standing to challenge the sale have no complaints about the process and request that the trial court's dismissal of Alterna Tax Asset Group, LLC's Complaint be affirmed.

Statement of Facts

Defendants Robert Sparrow and Mickey Crowe sold the Subject Property to Defendant Fort Mill Holdings, LLC on December 1, 2011 for a purchase price of \$907,300.00. The transaction was seller financed, and David Baucom was listed as a “guarantor” on the purchase money note. The real property taxes on the Subject Property were not paid for the year 2014, and the property was thereafter advertised for sale and sold at a public sale by York County through the procedures set forth in S.C. Code Ann. §§ 12-51-40, et seq. Plaintiff successfully purchased the Subject Property with a bid of Six Hundred Ten Thousand and no/100 Dollars (\$610,000.00). Plaintiff filed this action seeking to have its own deed to the Subject Property declared invalid.

Defendants Fort Mill Holdings, LLC and David Baucom have no objection to the manner in which the Subject Property was advertised and sold. (Hearing Transcript, pp. 10-12, 36) (Motion to Dismiss of Fort Mill Holdings, LLC and David Baucom) (Affidavit of David Baucom) (Affidavit of Tracy Goins). All remaining defendants also waive any alleged issues pertaining to the tax sale and waive any contest to Plaintiff’s title to the Subject Property. (Hearing Transcript, pp. 6-8) (Motion to Dismiss of Mickey Crowe and Robert Clay Sparrow, pp. 3, 5-7) (Affidavit of Robert Clay Sparrow) (Affidavit of Mickey Crowe) (Answer and Motion to Dismiss of York County Defendants, p. 6).

Standard of Review

“An appellate court applies the same standard of review as the trial court when reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRPC.” Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009). “The

trial court's grant of a motion to dismiss will be sustained only if the facts alleged in the complaint do not support relief under any theory of law. Id. A court may consider a document outside the pleadings in determining whether to dismiss the complaint where it is integral to and explicitly relied on in the complaint and when the plaintiffs do not challenge its authenticity. Phillips v. LCI Int'l, Inc., 190 F.3d 609, 618 (4th Cir. 1999).

“The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.” Rule 220, SCACR.

Argument

I. THE CIRCUIT COURT PROPERLY HELD THAT PLAINTIFF LACKED STANDING TO ASSERT ITS CLAIMS.

“Standing may be acquired: (1) by statute; (2) through the rubric of ‘constitutional standing;’ or (3) under the ‘public importance’ exception.” ATC S., Inc. v. Charleston Cty., 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008). Here, the “public importance” exception does not apply, so Plaintiff must show that it has standing through statute or constitutional law. For the reasons set forth below, Plaintiff does not have standing to bring this action, and the trial court’s Order should be affirmed.

a. Plaintiff Does Not Have Standing Pursuant to S.C. Code Ann. § 12-61-10.

The authority of counties to conduct tax sales is established and governed exclusively by statute. In Paragraph 10 of its Complaint, Plaintiff claims that it has standing to pursue this action by virtue of S.C. Code Ann. § 12-61-10. However, § 12-61-10 provides standing to quiet title in its favor – not to defeat its own ownership of the property as it seeks to do in this case.

S.C. Code Ann. § 12-61-10 provides:

“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).

Accordingly, S.C. Code Ann. § 12-61-10 provides a mechanism for quieting title in favor of the purchaser but does not provide Plaintiff with standing to challenge the sale.

Here, Defendants are the only parties who could possibly challenge title, and they are not challenging the same. Defendants are not aware of any statute or case that would provide Plaintiff with a right of action, and its Complaint should be dismissed pursuant to Rule 12(b)(6), SCRPC. Accordingly, the trial court’s Order should be affirmed.

b. Plaintiff Lacks Constitutional Standing Because It Has Not Satisfied the Required Elements

“Standing refers to a ‘[a] party's right to make a legal claim or seek judicial enforcement of a duty or right.’ Black's Law Dictionary 1413 (7th ed.1999). ‘Standing is ... that concept of justiciability that is concerned with whether a particular person may raise legal arguments or claims.’ 1A C.J.S. Actions § 101 (2005). It concerns an individual's ‘sufficient interest in the outcome of the litigation to warrant consideration of [the person's] position by a court.’ Id. Standing is comprised of three elements: First, the plaintiff must have suffered an ‘injury in fact’ – an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not ‘conjectural’ or ‘hypothetical.’ Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be ‘fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party

not before the court.’ Third, it must be ‘likely,’ as opposed to merely ‘speculative,’ that the injury will be ‘redressed by a favorable decision.’ Smiley v. South Carolina Dep’t of Health & Env’tl Control, 374 S.C. 326, 329, 649 S.E.2d 31, 32–33 (2007) (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992) (alteration in original)). ‘The party seeking to establish standing carries the burden of demonstrating each of the three elements.’ Sea Pines Ass’n for the Protection of Wildlife, Inc. v. South Carolina Dep’t of Natural Res., 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001). ‘As a general rule, to have standing, a litigant must have a personal stake in the subject matter of the litigation.’ Ex parte Morris, 367 S.C. 56, 62, 624 S.E.2d 649, 652 (2006). ‘One must be a real party in interest, i.e., a party who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action.’ Id.” Powell ex rel. Kelley v. Bank of Am., 379 S.C. 437, 444–45, 665 S.E.2d 237, 241 (Ct. App. 2008).

As stated above, the only parties who could possibly challenge Plaintiff’s title to the Subject Property are named defendants in this action, and they expressly waive any contest to Plaintiff’s ownership of the Subject Property. Accordingly, there is no present issue with or imminent threat to Plaintiff’s title.

In other words, there is no injury to Plaintiff. Plaintiff bid \$610,000 for the Subject Property at a public sale and, in exchange, received a deed to the Subject Property. These Defendants are unaware of any parties other than themselves who could challenge Plaintiff’s ownership of the Subject Property, and they expressly waive any challenge to the same. Plaintiff does not allege that there was any issue with the legal

description or any other circumstances that would indicate that some defect in the sale process induced it to pay more than it was otherwise willing to pay for the property.

Furthermore, S.C. Code Ann. § 12-51-160 provides: “[i]n all cases of tax sale the deed of conveyance, whether executed to a private person, a corporation, or a forfeited land commission, is 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. An action for the recovery of land sold pursuant to this chapter or for the recovery of the possession must not be maintained unless brought within two years from the date of sale as provided in Section 12-51-90(C).” Both aspects of § 12-51-160 are notable. First, Plaintiff’s deed is prima facie evidence of good title, and there is no challenge to said title. Accordingly, Plaintiff has good title. Second, § 12-51-160 provides for a limitations period in which an action for recovery of property can be maintained due to deficiencies with the tax sale process. Notably, the statute only contemplates an action for recovery of real property and does not contemplate a situation in which a buyer at a tax sale can challenge its own right to the property. Defendants are the only parties who could conceivably complain about the tax sale, and they are waiving any challenge whatsoever to Plaintiff’s ownership of the Subject Property – if such defect in the tax sale process even exists. Accordingly, Plaintiff’s Complaint should be dismissed for lack of standing.

II. DEFENDANTS FORT MILL HOLDINGS, LLC AND BAUCOM EXPRESSLY STATED THAT THEY WERE MOVING FOR DISMISSAL ON THE BASIS THAT PLAINTIFF LACKED STANDING

Plaintiff states, in Section II of its brief, that “Respondents Sparrow, Crowe, Fort Mill Holdings, L.L.C. and Baucom filed two separate motions to dismiss asserting

various defenses to the Appellant's Complaint. These two motions did not raise as a grounds the Appellant's lack of standing to assert the claims of the Complaint." (Initial Brief of Appellant, p. 7). This statement forms the basis of Appellant's second issue raised on appeal, but it is simply not true.

The opening paragraph of the Motion to Dismiss of Defendants Fort Mill Holdings, LLC and David Baucom states as follows:

"Defendants Fort Mill Holdings, LLC and David Baucom hereby move to dismiss Plaintiff's Complaint **on the basis that Plaintiff lacks standing to bring this action**, and because Plaintiff has failed to allege facts sufficient to constitute an action which requires dismissal pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. **Plaintiff has not suffered any injury, lacks standing to pursue this action, and fails to state facts sufficient to constitute a cause of action.** More specifically, Plaintiff was the successful bidder at a tax sale and ostensibly now has buyer's remorse because the subject real property was not redeemed. The parties who would have standing to challenge the tax sale have no complaint about the manner in which it was conducted and waive any challenge to Plaintiff's ownership of the real property that is the subject of this matter. Accordingly, Plaintiff's Complaint must be dismissed." (Motion to Dismiss, p. 1) (emphasis added).

Defendants could not have been more explicit in notifying Plaintiff that they were moving to dismiss Plaintiff's Complaint for lack of standing. Said motion was served on Plaintiff's on February 21, 2018 (Certificate of Service), and they do not allege that they did not receive it. Accordingly, Plaintiff had notice of the same, Plaintiff's second ground for appeal is without merit, and the trial court should be affirmed.

III. THE CIRCUIT COURT PROPERLY HELD THAT PLAINTIFF HAS FAILED TO ALLEGE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION

There are two types of claims relating to tax sales – and *only* two types of claims – which are permitted by statute. One is a quiet title action pursued by a purchaser at a tax sale for the purpose of excluding all other claims of ownership to the property, pursuant to S.C. Code Ann. §12-61-10. The other is an action pursued for the purpose of recovering property sold at a tax sale with the two-year period prescribed by S.C. Code Ann. § 12-51-160. There is no action available for a purchaser at a tax sale who ostensibly has buyer's remorse. The only action available to a purchaser is to either pursue an action to quiet title or defend an action brought by a party who loses property at a tax sale and seeks to recover it. There is no case or statute that provides Plaintiff a basis for relief under the facts alleged. Plaintiff cannot survive a motion to dismiss with a conclusory allegation that it cannot receive good title to the Subject Property – especially in light of the fact that all parties who *could* challenge Plaintiff's title to the Subject Property unequivocally waive any challenge to Plaintiff's ownership of the same (Affidavits of Tracy Goins and David Baucom). See Jones v. Gilstrap, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986) (providing that conclusory allegations are not sufficient to survive a motion to dismiss).

In order to state a claim under any cause of action alleged by Plaintiff, Plaintiff must have alleged facts which, if accepted as true, would constitute a claim and an injury. Plaintiff's conclusory allegation that it has suffered injury and cannot obtain good title is not sufficient under Rule 12(b)(6), SCRCP. Pursuant to S.C. Code Ann. § 12-51-160, Plaintiff is presumed to have good title until challenged, and no such challenge exists.

Furthermore, Plaintiff has not alleged that there is any challenge to its title. In fact, all parties who could potentially challenge Plaintiff's title to the Subject Property have waived the same. Accordingly, Plaintiff's Complaint must be dismissed pursuant to Rule 12(b)(6).

IV. PLAINTIFF FAILS TO ESTABLISH WHY IT SHOULD HAVE BEEN ALLOWED TO AMEND ITS COMPLAINT

Plaintiff complains that it should have been permitted to amend its Complaint to cure any defect. However, Plaintiff failed to state in the trial court or in its appellate brief what amendment(s) could have been made which would have changed the outcome.

The dispositive issues in this appeal are purely matters of law or are otherwise indisputable, and there are no amendments that can be made which would change the outcome. Accordingly, the trial court properly dismissed Plaintiff's Complaint without granting leave to amend.

V. DEFENDANTS FORT MILL HOLDINGS, LLC AND DAVID BAUCOM INCORPORATE THE ARGUMENTS OF ROBERT CLAY SPARROW, MICKEY CROWE, AND THE YORK COUNTY DEFENDANTS

The Defendants in this appeal are, for the most part, similarly situated with respect to the issues involved in this appeal. Accordingly, Defendants Fort Mill Holdings, LLC and David Baucom incorporate the arguments presented by Robert Clay Sparrow, Mickey Crowe, York County, York County Treasurer, and York County Delinquent Tax Collector in their respective submissions to the Court of Appeals.

Conclusion

For the reasons set forth herein and presented in briefs submitted by the other defendants, or for such other reasons as may appear in the record, Plaintiff requests that the Order of the Circuit Court be AFFIRMED.

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Appellants Case No.: 2018-000994

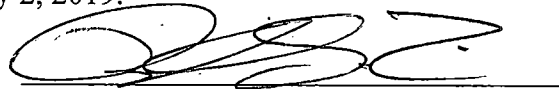
Alterna Tax Asset Group, LLCAppellant,

vs.

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

PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondents, Fort Mill Holdings, LLC and David Baucom and Designation of Matter to Be Included in the Record on Appeal to the appellant, addressed to its attorneys of record, Robert D. Dodson at 1722 Main Street, Suite 200 Columbia, SC 29201 and Matthew B. Rosbrugh at PO Box 292290, Columbia, SC 29229, by depositing a copy of the same in the United States Mail, postage prepaid, on January 2, 2019.



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Appellant Case No.: 2018-000944

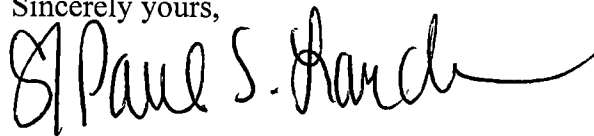
Dear Ms. Kitchens:

Please find enclosed for filing the original and one copy of the Initial Brief of Respondents, Fort Mill Holding, LLC and David Baucom and Designation of Matter to be Included in the Record of Appeal along with an original and one copy of the Proof of Service. I have provided a self-addressed envelope for return of a filed documents.

If you have any questions or concerns, please do not hesitate to contact me.

With kind regards, I am

Sincerely yours,

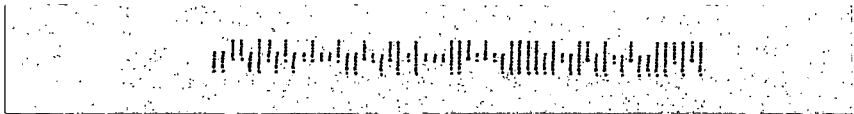


Paul S. Landis

PSL/pw

Enclosures (as stated)

cc: Robert Daniel Dodson, Esq.
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