

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

Case No. 2018-CP-46-0107

Alternax Tax Asset Group, LLC,

Appellant,

vs.

Respondents.

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

INITIAL BRIEF OF RESPONDENTS

January 16, 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?**
- 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 PLEADING WHEN PLAINTIFF HAS NOT GIVEN ANY REASON WHY AN AMENDMENT IS NECESSARY?**

Statement of the Case

This appeal arises from the sale of property at the 2015 Tax Sale which York County¹ conducted in order to collect past-due taxes on properties within the County including the unpaid taxes for the property in issue in this appeal and identified as Tax Map #721-00-00-035 in the York County tax rolls ("Subject Property"). York County issued its Tax Deed for the Subject Property to an entity other than Appellant; and, the entity receiving the Tax Deed thereafter transferred the Subject Property to yet another entity, not the Appellant.² Appellant, as an entity purporting standing³ to bring this action regarding the Subject Property, brought the action below

¹ "York County" is used collectively in this Brief to refer to the individually named Respondents, York County, the York County Treasurer, and the York County Delinquent Tax Collector as their interests are consistent with one another and their arguments regarding the Issues on Appeal are aligned.

² In its Order filed on May 11, 2108, the Master in Equity took Judicial Notice of these facts appearing in the records of the York County Register of Deeds.

³ York County takes issue with the Appellant's assertion that it was the successful purchaser at the York County Tax Sale regarding the Subject Property (see, e.g., page 3 Appellant's Brief: "Appellant was the successful bidder at the auction...."). As the Lower Court noted through its taking judicial notice of the recorded deeds maintained by the York County Register of Deeds, Appellant did not receive a Tax Deed to the Subject Property. Moreover, as the Lower Court also noted, the recipient of the Tax Deed has subsequently transferred the property. Appellant has

pursuant to S.C. Code Ann. §12-61-10⁴, et seq., seeking to void the tax sale based upon certain alleged improprieties in the tax sale process at the time of the 2015 tax sale.⁵ In response to the Motions to Dismiss filed by the Respondents Sparrow, Crowe, Fort Mill Holdings, LLC, and David Baucom, the Lower Court dismissed the Complaint for lack of standing. Upon receipt of the Order ruling in favor of Respondents in this case, Appellant filed its appeal, no before the Court.

Statement of Facts

The underlying salient facts are that the ad valorem taxes on the Subject Property were not paid for Tax Year 2014, and the property was thereafter advertised for sale and sold at a public sale conducted by York County through the procedures set forth in S.C. Code Ann. § 12-51-40, et seq. An entity other than Appellant successfully bid and acquired the Subject Property by Tax Deed with a bid of Six Hundred Ten Thousand and 00/100 (\$610,000.00) Dollars.

Appellant filed the action below seeking to void a Deed it did not acquire.

made this inaccurate representation in its pleadings (Complaint, Paragraphs 37 and 38), in its argument to the Lower Court (Tr. p. lines 5-7), and in its Brief to this Court (Appellant's Brief, p. 3).

⁴ § 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.

⁵ York County takes further issue with Appellant's assertion appearing on Page 3 of Appellant's Brief that Respondents failed to challenge in their pleadings the assertion that York County did not comply with the requirements of the South Carolina Code. Not only did York County present a General Denial in Paragraph 1 of its Answer, but also, in Paragraph 2 of its Answer, responding to the blanket allegation set out in Paragraph 1 of Plaintiff's Complaint that York County did not follow statutory mandates, York County stated in its Answer: "The Defendant York County admits only so much of the allegations of Paragraph 1 which set out that the action arises from a delinquent tax sale. The Defendant denies the remaining allegations and demands strict and absolute proof thereof." These responses by York County were incorporated in each separate and distinct response and defense presented in its Answer.

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.” Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). “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.” Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 99, 674 S.E. 2d 524, 528 (Ct. App. 2009). A court may consider a document outside the pleading 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).

Argument

I. THE CIRCUIT COURT PROPERLY HELD THAT APPELLANT LACKED STANDING TO ASSERT ITS CLAIM

Appellant cannot bring itself within the requisite requirements for standing. Regarding standing, the South Carolina Supreme Court has specified:

[t]he ‘irreducible constitutional minimum of standing’ has three components: 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. S.C. Dep’t of Health & Env’tl. Control, 374 S.C. 326, 329, 649 S.E.2d 31, 32-33 (2007) citing Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992) (internal citations omitted); Sea Pines

Ass'n for the Protection of Wildlife, Inc. v. S.C. Dep't of Natural Resources, 345 S.C. 594, 550 S.E.2d 287 (2001).

The Appellant has alleged standing to bring its action pursuant to S.C. Code Ann. § 12-61-10. (Complaint, Paragraphs 10 and 51). The statute provides: "... any person... 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." S.C. Code Ann. § 12-61-10 (emphasis added). As noted by the court below, Appellant was not issued a Tax Deed by York County. (Order of Court, p. 3).

Additionally, S.C. Code Ann. § 12-61-10, et seq., which is entitled the "Suits to Clear Tax Titles" Act (the "Act") establishes a process in which one can validate a tax sale, not void it. Plaintiff solely alleges standing by virtue of the Act. (Complaint, Paragraph 10). Plaintiff singularly seeks to void the Tax Deed issued for the Subject Property subsequent to the 2015 tax sale. (Complaint, Paragraphs 38, 48, 52, 58, 62, and Prayer for Relief). However, the Act sets forth a procedure relative to quieting title and tailors remedy in favor of the successful purchaser. See Rosenbaum v. S-M-S 32, 311 S.C. 140, 142, 427 S.E.2d 897, 898 (1993)(S.C. Code Ann. § 12-61-10, et seq., "a specific remedy created by the legislature."), Plaintiff's action does not fall within the statute. The procedure set out in the statute is one to clear title. The Rosenbaum Court noted: "[i]n our view, the legislative intent supporting S.C. Code Ann. Chapter 61 (1976) is that **purchasers of property at tax sales** in South Carolina be provided an efficient, unencumbered method of clearing those titles." Id. at 311 S.C. 140 at 142, 427 S.E.2d at 898 (emphasis added). Moreover, the Rosenbaum Court continued by citing the state code: " 'This chapter shall be liberally construed to the end that it shall afford a complete remedy to any plaintiff **claiming** property by forfeiture ...' S.C. Code Ann. § 12-61-60 (1976)." Id. (emphasis added). To the

points illuminated by Rosenbaum, Appellant never was and never has been the purchaser of the Subject Property at the York County Tax Sale. The court below took judicial notice of this fact. (Order fn. 1). Additionally, the Appellant is not attempting to “claim” property by forfeiture, but is seeking to void title. Consequently, Appellant cannot bring itself within statutory provisions of the Act. Appellant did not challenge the Lower Court’s ability to take judicial notice of the records on file with the York County Register of Deeds. In fact, Appellant conceded, as much. (Record of Transcript, p. 31, lines 20-22). As the lower court determined: “[t]his court may properly take judicial notice of matters of public record.” (Order, fn. 1 citing Martin v. A. Celli Intern., Inc., 2014 WL 1912064 at 1 (D.S.C. April 12, 2012)). Consequently, the Appellant lacks standing by not being the purchaser of the Subject Property at the York County tax sale and thereby not maintaining an interest in the property. Moreover, as the Appellant neither bid upon the Subject Property nor owned or owns the Subject Property, it is axiomatic that there can be no injury to Appellant for purposes of conferring standing upon Appellant. Lastly, the facts alleged to do not support the theory of relief pled, as a quiet title action under S.C. Code Ann. § 12-61-10, et seq., is not equivalent to an action to set aside or void a deed.

II. RESPONDENTS FORT MILL HOLDINGS, LLC, BAUCOM, SPARROW AND CROWE EXPRESSLY NOTICED THAT DISMISSAL OF THE COMPLAINT BELOW WAS BASED UPON LACK OF STANDING

Appellant has always been on Notice that lack of standing was an issue confronting it. Respondent York County in its Answer below, asserted in Paragraph 46 that “Plaintiff lacks standing to bring this action as Plaintiff is neither the successful bidder at the 2015 York County Tax Sale nor the current owner of the Property in issue.” (Answer of York County, Paragraph 46). Moreover, the opening paragraph of the Motion to Dismiss of Defendants Fort Mill Holdings, LLC and David Baucom states: “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**" (Ft. Mill Holdings and Baucom Motion, p. 1). Similarly, Respondents Sparrow and Crowe sought dismissal of the Complaint alleging "Plaintiff **lacks requisite standing**" (Sparrow and Crowe Motion, p. 1)(emphasis added). The record clarifies with certainty that Appellants were on notice of a challenge based upon lack of standing.

III. THE CIRCUIT COURT PROPERLY DISMISSED THE COMPLAINT BELOW PURSUANT TO RULE 12(B)(6), SCRPC, FOR FAILURE TO ALLEGE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION

Rule 12(b)(6), SCRPC, provides a basis for dismissing a Complaint for "failure to state facts sufficient to constitute a cause of action." Rule 12(b)(6), SCRPC. Appellant York County hereby incorporates its argument set out in Section I, *supra*, in full. Argument presented in Section I, *supra*, supports the conclusion that an action brought pursuant to S.C. Code Ann. § 12-61-10 is the lone basis to clear title acquired through a tax sale and confirm the Tax Deed issued, to the exclusion of all others. Axiomatically, the process provided by the statute is not to void title. The Argument presented in Section I, *supra*, also addresses the issue that Appellant has no interest in the Subject Property. Therefore, Appellant could not state facts sufficient to support a cause of action for which relief could be granted as it is not the purchaser at a tax sale and has inappropriately usurped the legislative strictures set out in S.C. Code Ann. § 12-61-10, et seq. Moreover, the entity actually acquiring title at the tax sale received presumptively valid title to the Subject Property pursuant to S.C. Code Ann. § 12-51-160⁶. The code provides in pertinent part that the Tax Deed issued "is prima facie evidence of a good title in the holder, that all

⁶ § 12-51-160. Deed as evidence of good title; statute of limitations, provides:

"In 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)."

proceedings have been regular and that all legal requirements have been complied with.” As a result, the successful purchaser of the Subject Property held a presumptively valid tax title underscored by a presumptively valid tax sale process; the subsequent grantee holds a presumptively valid deed.

IV. APPELLANT FAILS TO ESTABLISH WHY IT SHOULD HAVE BEEN ALLOWED TO AMEND ITS COMPLAINT OR PRESERVE THE ISSUE FOR APPEAL

Appellant complains that it should be permitted to amend its Complaint to cure a defect. However, Appellant took no measures to address the basis for the amendment should be amended and further failed to preserve the matter with the lower court.

In its brief, Appellant cited Portman v. Garbade, 337 S.C. 186 522 S.E.2d 830 (Ct. App. 1999) for the proposition that amendments to the pleadings should be freely granted. However, Portman also states: “But, when the complaint shows affirmatively that plaintiff is not entitled to relief in any view of the case, dismissal of the action is proper; and, in such cases, the judgment of dismissal will bar another action for the same cause.” Id. at 337 S.C. at 190-191, 522 S.E.2d at 832. Here, Appellant is not entitled to relief as it is not the property owner and it seeks to void a Tax Deed through the Suits to Clear Tax Titles Act. Moreover, Portman is significant in that it points out that the Plaintiff Portman who failed to overcome a Rule 12(b)(6) motion in its case, unlike Appellants here, filed a motion to reconsider the court’s ruling to dismiss the complaint to clarify the omissions in the court’s order and to argue for a perceived implicit right to amend. Id. 337 S.C. at 189, 522 S.E.2d at 832. The court denied the motion to reconsider. Id. In this appeal, Appellants failed to file a motion to reconsider its perceived right to amend its pleadings and should therefore be precluded from arguing the issue before the Court. See, e.g., Talley v. South Carolina Higher Educ. Tuition Grants Committee, 289 S.C. 483, 347 S.E.2d 99 (Ct. App.

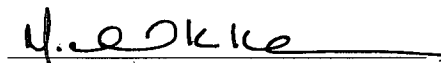
1999)(issue raised but not ruled upon below is not properly before the appellate court).

Consequently, Appellant should not be entitled to argue the appropriateness of an amendment as the court's order below is devoid of any reference to the issue.

Conclusion

For the foregoing reasons and for such other reasons as may appear in the record, Respondent York County requests that the Order of the Circuit Court be AFFIRMED.

Respectfully submitted,



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York, S.C.
January 16, 2019

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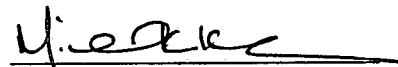
JAN 22 2019

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PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondents York County, York County Treasurer, and York County Delinquent Tax Collector by depositing a copy of it in the United States Mail. Postage prepaid, addressed to the attorneys of record, Robert D. Dodson, 1722 Main Street, Suite 200, Columbia, SC 29201; Mathew B. Rosbrugh, P.O. Box 292290, Columbia, SC 29229; James Mixon Griffin and Margaret Nicole Fox, P.O. Box 999, Columbia, SC 29202; and Paul Landis, 209 E. Washington Street, Greenville, SC 29601.

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Re: Alterna Tax Asset Group, LLC vs. York County, et al
Appellate Case #: 2018-000944

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Dear Ms. Abbott Kitchings:

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

1. Initial Brief of Respondents, York County, York County Treasurer, and York County Delinquent Tax Collector;
2. Designation of Matter to be Included in the Record of Appeal;
3. Proof of Service.

Please file these documents and return the clocked copy in the enclosed self-addresses postage prepaid envelope.

With kindest regards, I am

Sincerely,

Michael K. Kendree
County Attorney

MKK/mng

Enclosures: as noted

cc: Robert D. Dodson (Via US Mail)
Matthew Rosbrugh (Via US Mail)
James Griffin (Via US Mail)
Paul Landis (Via US Mail)
file



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SC Court of Appeals

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