THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
COURT OF COMMON PLEAS

Mikell R. Scarborough, Master-in-Equity

Case No. 2010-CP-10-8732

Lashanda Ravenel and Henry Lee Ravenel, II, Apellants,
v.
Equivest Financial, LLC, Respondent,
v.
Mary M. Scarborough, Delinquent Tax Collector for Charleston County; AAA Plumbing, LLC; Pep Boys, Manny, Moe and Jack; Monogram Credit Card Bank of Georgia; Discover Bank; SC Federal Credit Union; Alabama Credit Corp. d/b/a Preferred Teachers Association, Cross-Defendants.

FINAL BRIEF OF RESPONDENT

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

I.

Did the circuit court err in finding that the children of Mary Ravenel stood in her shoes, and actively joined with her, in her effort to defraud her creditors, so that the children were not entitled to the aid of the equity court in their effort to preserve the fraud?

II.

Did the Delinquent Tax Collector comply with the statutory mandate to send the required notices to the best available address of the taxpayers, as defined by statute?

III.

Does the Delinquent Tax Collector have a duty to search outside the records of her own office to track down taxpayers who have failed in their duty to keep their address of record current?

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. [R. 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. 122-24; 132; 136.] The notices were addressed to Mrs. Ravenel's children at the address given for them in the deed, a post office box in Hollywood, South Carolina — P. O. Box 455.

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. [Pl. Exh. 4, R. 178.]

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. 85.] The statutory deadline for mailing this notice by certified mail having passed [R. 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. 141.] He called the office of the DTC on October 2, 2009 and learned the amount due upon his mother's house. [R. 83; Pl. Ex. 9, R. 182.] When Mary Ravenel received the courtesy copy of the redemption notice soon after it was mailed on October 27, 2009

[R. 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.

ARGUMENT

I.

Mrs. Ravenel's children had a full and fair opportunity to address the court's concerns about whether they were entitled to the aid of the equity court, where her own testimony disclosed for the first time that Mrs. Ravenel transferred title to her children in an effort to defraud creditors. They stood in her shoes, and took an active part in the effort.

Mary Ravenel signed a deed conveying her house to her adult children, intending to shield it from creditors. [R. 132.] She defends this conduct by saying that her lawyer advised her to do it. The fact that an attorney may have advised a client to engage in illegal conduct may sometimes be a limited defense in criminal prosecution, but it does not cleanse or excuse civil wrongs. It simply makes the lawyer a co-conspirator in the scheme.

Mrs. Ravenel did not deliver the deed to her children. [Order of 5/30/12, p. 3, R. 24.] This unappealed finding of fact is the law of the case. *JASDIP Properties SC, LLC v. Estate of Richardson,* 395 S.C. 633, 641, 720 S.E.2d 485, 489 (Ct. App. 2011). An undelivered deed never takes effect. *See generally: Branton v. Martin,* 243 S.C. 90, 132 S.E.2d 285 (1963) (*per* Brailsford, J.). The circuit court could and should have dismissed this quiet title action on that ground alone, since the appellants have no legal title to the house. They are, as the circuit court found, "straw owners."[1]

The appellants' complaint about the circuit court's holding on the matter of unclean

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[1] *I'On, LLC v. Town of Mt. Pleasant,* 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000) ("[A] respondent . . . may raise . . . any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court.").

hands is five-fold. First, the appellants say that their mother's attorney advised her to do it in the first place. Moreover, she acknowledged the conveyance when questioned about it at her first meeting of creditors in Bankruptcy Court, thereby curing any wrongdoing. Second, the appellants contend that it is wrong to blame them for their mother's misconduct, if any, since they had no part in it. Third, the appellants argue that the issue was not properly before the court, not having been pled. Fourth, they challenge the standing of the respondent to raise the issue in any event. Fifth, they contend that they lacked a fair opportunity to respond to this unpled issue.

It is true that Mrs. Ravenel truthfully acknowledged at her creditors' first meeting that she had transferred title to the house the day before. [R. 132.] The bankruptcy proceeding failed anyway. But the transfer in fraud of creditors survived. Record title to the house remained in the children after the bankruptcy was dismissed, and there it stayed until the tax sale and conveyance to the high bidder. If Mrs. Ravenel intended to rescind the fraudulent transfer, she could and should have taken steps to do so but did not. Her bankruptcy was dismissed with the house still in her children's names, and there it stayed.[2] On these facts, Mrs. Ravenel's truthful answers at the first meeting of creditors did not expunge the fraudulent transfer of title. It continued to have the effect intended.

The aid of the equity court is no more available to the appellants than it would be to their mother. The grantor's intent to defraud her creditors is imputed to the grantee. *See: Albertson v. Robinson,* 371 S.C. 311, 638 S.E.2d 81 (Ct. App. 2006); *In re Ducate,* 369 B.R. 251 (B'ruptcy D.S.C. 2007). As nominal owners, Mrs. Ravenel's children act in this case solely in their mother's interest. The house is hers, not theirs. [Order of 5/30/12, ¶ 6–12, R. 27-28.] Their names were placed in the public record for no other purpose but to protect this asset from Mrs. Ravenel's creditors. The children are their mother's agents

[2] The world had no way to know that the deed had never been delivered and that legal as well as equitable title remained in Mrs. Ravenel. Throughout the trial she continued to speak of the house as being hers, and so it was.

in this litigation. [Order of 5/30/12, ¶ 14, R. 28.] This is not a passive role. As plaintiffs they have actively joined in their mother's misconduct and on that ground alone are no more deserving of the equity court's assistance than is their mother.

The appellants contend that the closure to them of the doors of the equity court should have been pled as an affirmative defense. The respondent did not learn of this fact until Mrs. Ravenel disclosed it at trial. In any case, this is not an affirmative defense which redounds to the benefit of a particular litigant. It is a policy of the court itself, preserving the integrity of the court rather than being granted to the benefit of a litigation adversary.

The appellants contend that the respondent has no standing to raise the question of fraudulent transfer, since the respondent was not defrauded. The point is not whether the respondent was defrauded but whether the appellants are affirmatively entitled to the aid of the equity court in light of what they have done. The doors of that court are closed to them. *See: Wachovia Bank v. Coffey,* 389 S.C. 68, 698 S.E.2d 244 (Ct. App. 2010).

In any event, the appellants were granted a full right to address the question of whether the doors of the equity court were closed to them. They briefed the question ably and thoroughly. [*See* Appellants' Proposed Order, pp. 14–17, R. pp. 171-72.[3]] They have suffered no prejudice from the way in which this matter was handled in circuit court.

II.

It is for the General Assembly to say how the Delinquent Tax Collector addresses her notices. The statute is perfectly clear. The Delinquent Tax Collector complied exactly with the statute.

The General Assembly has directed that three notices be sent to the defaulting taxpayer by the Delinquent Tax Collector ("DTC"). The first notice goes by ordinary mail. S.C. Code Ann. § 12-51-40(a) ("the Section 40(a) notice"). If the taxes remain unpaid thirty days after the first notice, a second notice goes out by a form of certified mail. S.C. Code

[3] Pages 16-17 of the proposed order were inadvertently omitted from the Record on Appeal.

Ann. § 12-51-40(b) ("the Section 40(b) notice"). After the property is sold for taxes, the one-year redemption period begins. No more than 45 days nor fewer than 20 days before expiration of the redemption period, Section 12-51-120 requires that a third notice ("the Section 120 notice") go out by certified mail in the same manner "as provided in Section 12-51-40(b)".

These two statutes — Section 12-51-40 and Section 12-51-120 — are *in pari materia* and hence should be construed together. *Brown v. James,* 389 S.C. 41, 697 S.E.2d 604 (Ct. App. 2010); *Burns v. State Farm Mut. Auto. Ins. Co.,* 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989). They have been simultaneously amended more than once. *See, e.g.,* 2000 Act No. 399. Moreover, Section 12-51-120 expressly refers back to Section 12-51-40. These two sections are components of an integrated statutory process, the parts of which must be read together.

The DTC must address the Section 40(a) notice and the Section 120 notice in the same way. The Section 40(a) notice "**must** be mailed" in the prescribed way.[4] It must be addressed to "the best address available" — ***a defined term.*** The *best address available* is one of three things: The best address available "is 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 first two of the three things meeting the definition of "best address available" are objective addresses of public record. Anyone can determine what they are, even though finding the physical address might require the DTC to search outside the records of her office. By contrast, in regard to the third address which may be the best address available, the DTC need only examine her own records. Those records are the sole source of her **actual knowledge**. Actual knowledge does not include constructive notice. A person charged with a duty which depends upon actual knowledge has no

[4] The Legislature's use of the word "must" is mandatory, not precatory. *See: Ex parte Oliver,* 134 S.E. 657 (S.C. 1925). It is the equivalent of "shall," which is generally mandatory. *See, e.g., Montgomery v. Keziah,* 277 S.C. 84, 282 S.E.2d 853 (1981).

obligation to search for additional knowledge. Among the large array of cases emphasizing the distinction between actual knowledge and constructive notice is *Daniels v. Berry,* 148 S.C. 446, 146 S.E. 420 (1929).

Thus, there is no ambiguity and no doubt about how the DTC must address the Section 40(a) notice. Section 12-41-120 provides that the Section 120 notice **"must** be mailed to the best address of the owner available to the [DTC] . . . ." (Emphasis added.) The General Assembly does not redundantly repeat in Section 12-51-120 the three-part definition of "best address available" set forth earlier in Section 12-51-40(a). The "best address available" for the Section 120 notice is the same as for the Section 40(a) notice: "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."

It is undisputed that the DTC complied with the statute as written. She mailed both of the certified mail notices to the address placed by Mary Ravenel on the deed to her children. This was the same post office box — P.O. Box 455, Hollywood, South Carolina — found in the 2001 deed into Mrs. Ravenel when she acquired the property. The post office box was that of Mrs. Ravenel's mother, and apparently served as a family address. The DTC had no actual knowledge of any other address, nor was she bound by statute to look for any. The first moment that the DTC had actual knowledge of an "other corrected or forwarding address" was on October 26, 2009, when the Section 120 notice was returned, marked with what appeared to be a new address. [R. 85; 115.] By then it was too late for a second certified mailing to go out, since the end of the redemption period was less than twenty days away. [R. 104; 114.] The DTC immediately sent a courtesy copy of the notice of redemption by regular mail.

A tax collector's actual knowledge is that of her own records, not the records of other officials or non-governmental sources. In the case of *Elizondo v. Read,* 588 N.E.2d 501, 504-05 (Ind. 1992), statutory notices were returned marked "Unclaimed" or

"Undeliverable as addressed." The Indiana Supreme Court stated:

> Like information in possession of other public officials, knowledge of information contained in records maintained by a county auditor may be imputed to the auditor. This means that the Auditor will be considered to have been aware of any address for the Elizondos that is contained in the auditor's own records to the extent that the alternate listing linked the persons therein to the property upon which taxes were delinquent. This also suggests, however, that the auditor does not have knowledge of, nor should be required to seek knowledge of, information contained in records or documents not routinely maintained by and within the auditor's office. For example, contrary to the Elizondos' argument, the auditor should not be required to resort to the most recent telephone directories to ascertain a different address, nor should the auditor be required to search the records of other offices such as the recorder or the court clerk. All that is required is that the auditor send notice to the owner's last known address, that is, the last address of the owner of the specific property in question of which the auditor has knowledge from records maintained in its office. . . .
>
> It is reasonable to require the auditor to search the records of his own office for other possible addresses upon the receipt of an undelivered notice. It is not, however, reasonable to require the auditor to speculate as to whether these possible alternatives are addresses for the property owner who owes taxes on the property in question or another taxpayer with the same name. This type of confusion may not be very great when the auditor is searching for an Urbano Elizondo in Marshall County. It does pose a problem, however, when the auditor of Marion County is attempting to find an address for Mary Smith, or the auditor of Lake County is searching for a John Jones.

The Charleston County DTC conscientiously tried to look outside her own records to locate taxpayers who defaulted in their duty to keep their addresses up to date, but she had no obligation to do so. *See: Bell v. Knight,* 376 S.C. 380, 656 S.E.2d 393 (Ct. App. 2008) ("The tax collector was not required to send notice to Husband, and we will not find notice inadequate because a tax collector exceeded the statutory notice requirements."). The DTC knew that the statute requires no search outside her own records [R. 112], but she conscientiously tried to do more than the law requires. Even if she had labored under a mistaken belief of what the law requires of her, a mistake of law seldom means anything. *See, e.g., Tobias v. Rice,* 379 S.C. 357, 362, 665 S.E.2d 216, 221 (Ct. App. 2008). It

would have meant nothing here. The DTC had no statutory duty to try to track down the defaulting taxpayer.

III.

The statute should not be judicially expanded. The Delinquent Tax Collector should not be saddled with the role of a private detective, required to track down every delinquent taxpayer who has failed to keep his address current on the rolls. The DTC's statutory duty to search for the delinquent taxpayer's address is confined to her own records.

The case of *Good v. Kennedy,* 291 S.C. 204, 352 S.E.2d 708 (Ct. App. 1987), involved the tax sale of a rental house owned by taxpayer Kennedy in Chester. When he bought the house, Kennedy listed his correct mailing address on the deed, and that address was correctly placed by the Assessor on his rolls. Years later, for a reason unknown, the Assessor changed Kennedy's address on the rolls to the street address of the rental property. In addressing her notice of the right of redemption, the City of Chester Tax Collector used the street address found on the rolls of the Assessor. The letter was returned marked "moved left no address." The court invalidated the tax sale.

The holding in *Good* was clearly sound. The Tax Assessor had no right to change the correct mailing address supplied by the taxpayer without the taxpayer's knowledge. *Accord: Snelgrove v. Lanham,* 298 S.C. 302, 379 S.E.2d 904 (1989).

In invalidating the tax sale, however, the Court of Appeals cited a 1954 encyclopedia in support of its holding. The Court stated:

> Moreover, where a statute permits the giving of such notice by mail, the person authorized to send the notice must exercise diligence to ascertain the correct address of the property owner. 85 C.J.S. Taxation Section 868 (1954).

Good, 291 S.C. at 207-08, 352 S.E.2d at 711. The Court's reference to due diligence was dictum. Upon close examination, the encyclopedia section does not support the proposition

for which it was cited.[5]

Later Court of Appeals cases have relied upon the "due diligence" dictum in *Good* without further statutory or caselaw analysis. The Supreme Court has yet to reach the issue.

If the Court's statement in *Good v. Kennedy* concerning due diligence is regarded as holding, not dictum, it was overruled by the General Assembly in 2000. When *Good v. Kennedy* was decided, "best address available" was an undefined term. The General Assembly thereafter amended Section 12-51-40(a) to define the term, limiting it to addresses within the actual knowledge of the DTC. 2000 Act No. 399, § 3(X)(7).

A New York trial court relied upon the same encyclopedia authority cited in *Good v. Kennedy* in holding that the person sending a redemption notice — in New York, the tax purchaser — must make a due-diligence search if the statute does not expressly limit the search for best available address:

> Clearly under the [applicable statute] the [sender] is not required to ascertain at his peril the owner's address, but since the statute under which he proceeds does not specify the means by which the address is to be ascertained, he must exercise due diligence to obtain the correct address. 85 C.J.S. Taxation § 868 b, p. 269. **Were the statute specific there would be no obligation to proceed further when the notice**

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[5] Section 868 of the 1954 edition of the C.J.S. article on taxation reads as follows in pertinent part:

> Where service by mail is permitted, the person sending the notice must exercise diligence to ascertain the correct address, but, where statutes specify the means to be employed to ascertain the necessary information, there is no obligation to go beyond the statutory requirements; and the fact that a notice to redeem, which has been sent by mail, is returned to the sender indicating that it could not be delivered imposes on the sender no duty to make further inquiry to ascertain another address to which the notice could be sent, or necessitates resort to another method of service.

(Footnotes omitted.) Among other cases, the encyclopedia cites *McDonald v. Abraham,* 75 N.D. 457, 28 N.W.2d 582 (1947), discussed hereinbelow. The 1954 edition of Volume 85 of C.J.S. has been superseded (twice) but is available in the Supreme Court Library.

> **is returned undelivered** . . . . But it is not specific and a purchaser to whom a notice is returned undelivered and who makes no inquiry beyond the Receiver's records cannot be said to have exercised due diligence.

Schwartz v. Armour Fertilizer Works, 31 Misc.2d 421, 219 N.Y.S.2d 685 (Sup. Ct. 1961) (emphasis added). Reversing this judgment, the New York Appellate Division held that the trial court had misinterpreted Section 848(b) of the encyclopedia. The court stated:

> The search and inspection of the records and the mailing of the notice to redeem were made in compliance with [the applicable statute]. In our opinion, the [sender] was not required to make further inquiry to ascertain another address to which the notice could be sent . . . . 85 C.J.S. Taxation, § 868, subd. b; 155 A.L.R. 1280 . . . .

Schwartz v. Armour Fertilizer Works, 16 A.D.2d 947, 229 N.Y.S.2d 465, 467 (1962). *Accord: Weinstein v. Allstate Credit Corp.,* 34 A.D.2d 971, 312 N.Y.S.2d 582 (1970). *See also: Keiser v. Young,* 181 A.D.2d 170, 585 N.Y.S.2d 880 (1992).

Decisions from other jurisdictions reject the imposition of a "due diligence" burden upon the taxing authorities where the legislature has not seen fit to impose one. For example, in *Stubbs v. Cummins,* 336 So.2d 412, 415 (Fla. App. 1976), the court stated:

> The legislature has not seen fit to impose upon the county officials involved in tax deed procedures a duty to ascertain the status of owners of property by a search of all public records which might reveal same . . . .

That court reiterated in *Alwani v. Slocum,* 540 So.2d 908 (Fla. App. 1989):

> It would place an intolerable burden on the clerk to make an independent examination in every case to determine if the names and addresses recorded in the collector's office were accurate, and if he determined that some name or other was misspelled or some address or other inaccurate and he used what he thought were the true ones, he would be acting wholly without authority, and his actions might well be challenged because of disregard of the law.

Id. at 909 (*quoting: Mullin v. Polk,* 76 So.2d 282, 284 (Fla.1954)).

In *McDonald v. Abraham,* 75 N.D. 457, 28 N.W.2d 582, 585 (1947), cited as authority in 85 C.J.S. *Taxation* § 868(b) (1954), the court held:

> It is apparent that the auditor not only did all that the statute required of her, but, as an act of favor and grace, went beyond

> it and did all that it was reasonably possible for her to do in order that the plaintiffs might receive the notice. Where the officer charged with the duty of giving notice of expiration of the period of redemption to delinquent taxpayers follows the letter of the statute in so doing, as was the case here, the requirement as to service of notice is satisfied although the taxpayer does not receive such notice.

In *Dahn v. Trownsell,* 1999 S.D. 36, 576 N.W.2d 535 (1998), a certified mailing was returned marked "Returned to Sender, Forwarding Order Expired". Unlike our statute, the South Dakota statute did not define the relevant statutory phrase — "last known address". Nevertheless, the court reasoned;

> The realities of this case are that counties rely upon the cooperation of property owners to provide accurate information so that counties may discharge their taxation duties efficiently and effectively. Furthermore, it is not practical to place the burden upon counties to maintain current addresses on every owner of property within the county. As individual property owners change their residence, it is incumbent upon them to notify counties of their address. It is also not an unduly burdensome task to fill out a change of address form sent with the tax notice and return it to the county. . . .
>
> . . . . By requiring [the tax collector] to send his [notice] to Trownsell's "last known address," the legislature unambiguously "placed a duty upon" Trownsell to inform the county of his current address. . . . This is certainly a reasonable requirement. . . . "Even if the auditor knew that mail was being returned from [the last known address where the tax deed sale and notice were sent], the notice statutes and constitutional due process requirements do not impose . . . a duty to search for an alternative address." Trownsell knew in fact, and was chargeable at law, that he was required to pay annual property taxes on the Star Lode and if he failed his property could be sold. He was delinquent in paying such taxes no less than six times during his ownership, and failed to provide his current address to County, even though he changed his residence three times during a five-year period.
>
> We hold that [the tax collector] fully complied with [the statute] by mailing the [notice] to Trownsell's "last known address." To hold otherwise would place undue burdens on the counties to collect taxes for support of local governmental institutions. The counties and purchasers of tax certificates should not be required to engage detectives to ferret out delinquent taxpayers who find it all too financially convenient to be missing.

576 N.W.2d at 540, 542.

In reversing a contrary decision of its intermediate appellate court, the Michigan Supreme Court had much to say that is relevant here. One of the notices was returned as "Not Deliverable As Addressed". The court stated:

> The statute generally provides that mailed notice to the owner is to be at the owner's last known address. . . . The fact that one of the mailings was returned by the post office as undeliverable does not impose on the state the obligation to undertake an investigation to see if a new address for the association could be located. . . . The courts lack the authority to create new notice requirements. The fact that another statutory scheme might appear to have been wiser or would produce fairer results is irrelevant. Arguments based on such policy considerations must be addressed to the *Legislature*. . . . Similarly, the fact that the township might have sought out defendant's legal residence in a more thorough or conscientious manner is not relevant to our analysis, in light of the language of the statute.
>
> Not only does the Court of Appeals decision infringe the authority of the Legislature, but it would also undermine the tax sale process. The principle underlying the Court of Appeals decision is that in some circumstances it is not enough to comply with the requirements of the General Property Tax Act, but that more must be done. However, exactly what that is will be different in every case. No matter what efforts are made to give notice, the owner who has not, in fact, been provided notice will always contend that something more could have been done. This will make the process of tax sales completely unpredictable, destroying the government's ability to recoup unpaid taxes by foreclosing and reselling. For due process purposes, the focus must be on the constitutional adequacy of the statutory procedure and not on whether some additional effort in a particular case would have in fact led to a more certain means of notice.

Smith v. Cliffs on the Bay Condominium Assoc., 463 Mich. 420, 428-31, 617 N.W.2d 536, 541 (2000).

Although the appellants do not raise a constitutional issue in their questions presented, they do cite a U.S. Supreme Court case involving due process requirements applicable to the service of process by constructive means. Due process requirements are met where the tax collector sends notice to the statutorily defined last known address of the owner of the property. Some of the decisions so holding are reviewed in *Tsann Kuen Enterprises Co. v. Campbell,* 355 Ark. 110, 125, 129 S.W.3d 822, 831 (2003).

If the court were to require the DTC to undertake a search outside her own records — undefined in scope — for better addresses for the defaulting taxpayer, it would place a heavy burden upon the limited resources of the county [*see* R. 116] — in effect, a judicially unfunded mandate. In the case at bar, the appellants point to seven sources which they say would have led the DTC to a better address for the appellants.[6] [Appellant's Initial Brief at 9-10.] The second of these pertains not to the appellants but to their mother. Contrary to the appellants' contention [R. 86; 92], by no stretch would the DTC be required to ascertain the kinfolk of the defaulting taxpayer to inquire after a better address. Three of the information sources identified by the appellants were vehicle tax records for Henry Ravenel Jr. The appellant is identified by a different name — Henry Ravenel II — in his own caption, and that is the name by which his mother identified him in the deed. [*See* R. 101; 110.] The appellants contend that the DTC should have examined the title report she received, identifying judgments and tax liens against Mary Ravenel and "a Henry Ravenel, not involved." [Appellant's Initial Brief at 6.] In other words, that Henry Ravenel was someone else. Suppose the taxpayer were John Smith rather than Henry Ravenel Jr. or Henry Ravenel II or Henry Ravenel. Suppose the RMC records show scores of deeds into John Smith, with an array of different addresses. *See*: *Elizondo v. Read,* 588 N.E.2d 501, 505 (Ind. 1992). Item No. 5 in the appellant's list is the address given on a deed of other property into appellant Lashanda Ravenel. There is nothing to show that this should be perceived as a better *mailing address* for this taxpayer.

A case-by-case judicial determination of where the DTC should look would inevitably produce variable results, favoring some defaulting taxpayers and discriminating against others.

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[6] To this day, the appellants have not notified the Auditor of a mailing address for the lots in their name on Mary Ravenel Road, other than P. O. Box 455, Hollywood, South Carolina. *See* Plaintiffs' Exhibits 36, 37, 38, and 39, R. 221-24; R. 95-96; 105; 133.

CONCLUSION

The judgment should be affirmed for the reasons given by the circuit court, and additionally because the respondents do not own the property and are not the delinquent taxpayers.

However, in the event that the Court reaches the due-diligence issue, the respondent urges the Court to hold that the DTC has performed her duty when she does what the statute requires. The DTC's search for the defaulting taxpayer's best address available should be confined to the space where the statute expressly places it — the DTC's *actual knowledge*. The DTC should have to search her own records because she has *actual knowledge* of those, but none other: Imposing a broader burden to search for a better address would be to rewrite the statute.

For all these reasons, the judgment should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I certify that respondent's final brief complies with Rule 211(b), SCACR.

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February 12, 2013.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
COURT OF COMMON PLEAS

Mikell R. Scarborough, Master-in-Equity

Case No. 2010-CP-10-8732

Lashanda Ravenel and Henry Lee Ravenel, II, ... Appellants,

v.

Equivest Financial, LLC, ... Respondent.

CERTIFICATE OF SERVICE

I certify that I served a copy of respondent's final brief upon appellants' attorneys by first class mail, postage prepaid, addressed to them at their respective addresses of record, namely:

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