

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Mikell R. Scarborough, Master-in-Equity

Trial Court Case No. 2010-CP-10-8732

Lashanda Ravenel and Henry Lee Ravenel, II, Appellants,

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 REPLY BRIEF OF APPELLANTS

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SC Court of Appeals

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I. BEFORE A STATE MAY TAKE PROPERTY AND SELL IT FOR UNPAID TAXES, THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT REQUIRES THE STATE TO PROVIDE THE OWNER WITH REASONABLE NOTICE. WHEN A CERTIFIED MAIL RECEIPT IS RETURNED UNSIGNED, THE STATE MUST TAKE ADDITIONAL REASONABLE STEPS OR USE DUE DILIGENCE TO FIND A BETTER ADDRESS TO PROVIDE NOTICE TO THE PROPERTY OWNER BEFORE SELLING HIS PROPERTY, IF IT IS PRACTICAL TO DO SO1

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The lower court's Order should be reversed based on Argument I:

I.

Before a state may take property and sell it for unpaid taxes, the due process clause of the 14th Amendment requires the state to provide the owner with reasonable notice. When a certified mail receipt is returned unsigned, the state must take additional reasonable steps or use due diligence to find a better address to provide notice to the property owner before selling his property, if it is practical to do so.

Vital to our assessment of the sufficiency of the evidence are the provisions of our state and federal *Due Process Clauses*, which provide that no person shall be deprived of life, liberty, or property without due process of law. *U.S. Const. amend. XIV, § 1; S.C. Const. art. 1, § 3*. “The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review.” *Kurschner v. City of Camden Planning Comm’n*, 376 S.C. 165, 171, 656 S.E.2d 346 350 (2008). [Emphasis added.]

. . . a claim of denial of due process must be analyzed with a two-party inquiry: (1) whether the interest involved can be defined as “liberty” or “property” within the meaning of the *Due Process Clause*; and if so (2) what process is due in the circumstances. [Emphasis added.]

State v. Binnar, 400 S.C. 156, 733 S.E.2d 890 (2012).

South Carolina has followed the requirement for due diligence when the certified mail receipt is returned unsigned since the case of *Good v. Kennedy*, 291 S.C. 204, 352 S.E.2d 708 (Ct. App. 1987). The *Good* case was followed by *Benton v. Logan*, 323 S.C. 338, 474 S.E.2d 446 (Ct. App. 1996).

More important, the United States Supreme Court ruled that when the receipt is returned unsigned, the state must use reasonable steps to find a better address for the

delinquent taxpayer, if it is practical to do so. *Jones v. Flowers*, 547 U.S. 220, 126 S. Ct. 1708 (2006).

The *Jones* case involves a tax sale in Arkansas with similar statutory requirements except a Commissioner is involved and not a Delinquent Tax Collector (DTC).

Pertinent provisions from *Jones*, as they apply to the instant case follow.

The Commissioner's arguments that

“notice was sent to an address that Jones provided and had a legal obligation to keep updated . . . and “after failing to receive a property tax bill and pay property taxes, a property holder is on inquiry-notice that his property is subject to governmental taking.”

As for the Commissioner's inquiry notice argument, the common knowledge that property may become subject to government taking when taxes are not paid does not excuse the government from complying with its constitutional obligation of notice before taking private property. We have previously stated the opposite: An interested party's “knowledge of delinquency in the payment of taxes is not equivalent to notice that a tax sale is pending.”

In response to the returned form suggesting that Jones had not received notice that he was about to lose his property, the State did – nothing. For the reasons stated, we conclude the State should have taken additional reasonable steps to notify Jones, if practicable to do so.

Other reasonable followup measures, directed at the possibility that Jones had moved as well as that he had simply not retrieved the certified letter, would have been to post notice on the front door, or to address otherwise undeliverable mail to “occupant.”

There is no reason to suppose that the State will ever be less than fully zealous in its efforts to secure the tax revenue it needs. The same cannot be said for the State's efforts to ensure that its citizens receive proper notice before the State takes action against them. In this case, the State is exerting extraordinary power against a property owner – taking and selling a house he owns. It is not too much to insist that the State do a bit more to attempt to let

him know about it when the notice letter addressed to him is returned unclaimed.

The *Jones* case was extensively addressed in the Appellants' proposed Order to the lower court of June 22, 2012 (R. pp. 158-173) and in their Rule 59(e) Motion of June 20, 2012 (R. pp. 77-80). The lower court ignored the *Jones* case. (R. pp. 22-29, Order of May 30, 2012.)

The only allusion to the *Jones* case by Respondent appears at page 12 of its Initial Brief as follows:

Although the Appellants do not raise a constitutional issue in their questions presented, they do cite a 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. [Emphasis added.]

This is not the law as set forth in *Jones*.

The *Jones* case was cited by the Supreme Court of South Carolina in the case of *State v. Binnar, supra*.

Binnar was a convicted sex offender subject to a number of statutory requirements.

After his initial conviction, the Corrections Department was required to give oral and written notice to register with the Sheriff of Charleston County and to notify the Sheriff of any change of address. He was to register annually, which was changed to biannually.

Binnar did not register biannually and he was indicted, convicted and sentenced to 90 days pursuant to statute.

A representative of the Sheriff testified that the change to biannual registration was widely circulated in the media, but stated she took additional steps. She sent a letter by regular mail and a second letter was sent certified, return receipt requested, advising Binnar of the requirement to register, which he had failed to do. The certified letter was returned to the Sheriff receipt unsigned. Binnar testified that he did not receive either letter.

He appealed his conviction essentially on the grounds that the statute did not contain a notice requirement and lack thereof violated Binnar's due process rights and failure of the Department of Corrections to give him oral and written notice.

The Court of Appeals affirmed and the matter went before the Supreme Court, which reversed, citing the *Jones* case.

The Supreme Court stated,

. . . we find the State failed to produce any direct or substantial circumstantial evidence from which a jury could determine that Petitioner received actual notice of his duty to re-register.

Thus, we cannot conclude that an unreturned letter, without more, constitutes substantial circumstantial evidence that Petitioner received actual notice of his duty to re-register prior to the original February 2007 deadline. Cf. *Jones v. Flowers*, 547 U.S. 220, 234, 126 S.Ct. 1708, 164 L. Ed. 2d 415 (2006) (holding that taxpayer was not provided sufficient notice of a tax sale involving his property where unclaimed letters "suggest[ed] that [the taxpayer] had not received notice that he was about to lose his property," and concluding that the "State should have taken additional reasonable steps to notify [the taxpayer], if practicable to do so.")

. . . we believe the Sheriff's Office needed to more than passively rely on an unreturned letter to ensure compliance with the change in the law. In this limited set of circumstances, we find the Sheriff's Office could have made a phone call or sent a deputy to Petitioner's house as

his contact information had not changed between August 2006, the new deadline, and February 2007, the original deadline.

Given the significant deprivation of liberty for one who is convicted of failing to re-register due to a change in the law, we hold that substantial circumstantial evidence of actual notice is not satisfied by a negative inference arising from unreturned first class mail. To hold otherwise would effectively minimize a person's significant liberty interest as we have recognized the need for strict compliance to notice requirements even in cases where a property interest was at stake. Cf. *Hawkins v. Bruno Yacht Sales, Inc.*, 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003) . . . [Emphasis added.]

The *Hawkins* case involves a tax sale.

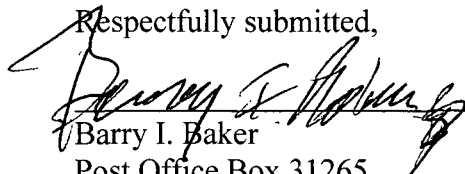
Respondent, at pages 12 and 13 of its Initial Brief, cites cases from foreign jurisdictions dated between 1947 and 2000 which are inapposite. These are prior to the *Jones* case of 2006.

CONCLUSION

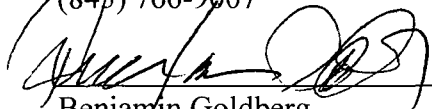
The *Jones* case governs.

The DTC is and was required to take reasonable steps or use due care to find a better address for Appellants, which was practical to do, which the DTC failed to do.

Respectfully submitted,



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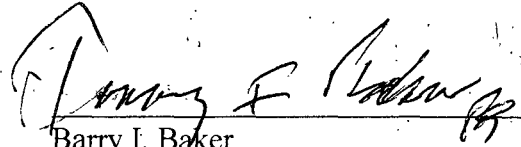
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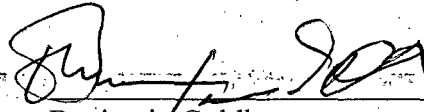
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CERTIFICATE OF COUNSEL

I certify that Appellants' Final Brief and Final Reply Brief comply with Rule
211(b) SCACR.



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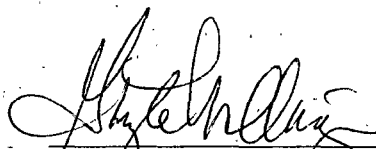
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PROOF OF SERVICE

I certify that I have served the **Certificate of Counsel** pertaining to the Final Brief of Appellants and Final Reply Brief of Appellants on Equivest Financial, LLC by sending a copy of it, postage prepaid, via certified mail, return receipt requested, on February 28, 2013, addressed to its attorneys of record, S.R. Anderson, Esquire, Law Office of Steven R. Anderson, Post Office Box 12188, Columbia, SC 29211 and James B. Richardson, Jr., Esquire, Law Office of James B. Richardson, Jr., 1229 Lincoln Street, Columbia, SC 29201.

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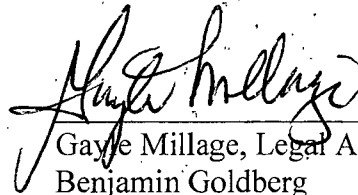
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