

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

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SC Court of Appeals

Alterna Tax Asset Group, LLC, v. Appellant,
York County, York County Treasurer, v. Respondents.
York County Delinquent Tax Collector,
Robert Clay Sparrow, Mickey Crowe,
Fort Mill Holdings, L.L.C. and David
Baucom,

RECORD ON APPEAL

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February 27, 2019

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Alterna Tax Asset Group, LLC,
Plaintiff,

Case No. 2018-CP-46-0107

v.

ORDER

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

Defendants.

This matter came before the Court on April 19, 2018, for a hearing on Plaintiff's Motion for a Temporary Restraining Order/Preliminary Injunction ("Motion for TRO"), as well as Defendants Robert Sparrow and Mickey Crowe's Motion to Dismiss, and Defendants Fort Mill Holdings, LLC and David Baucom's Motion to Dismiss [collectively the "Motions to Dismiss"]. Plaintiff was represented by Robert D. Dodson and Matthew B. Rosbrugh. Defendants Fort Mill Holdings, LLC, and David Baucom, were represented by Paul S. Landis. Defendants Robert Clay Sparrow and Mickey Crowe were represented by James M. Griffin. Defendants York County, York County Treasurer, and York County Delinquent Tax Collector (collectively "York County"), were represented by Michael K. Kendree. Based on the record presented and the arguments of counsel, I make the following findings and conclusions.

FACTUAL/PROCEDURAL BACKGROUND

Defendants Robert Sparrow and Mickey Crowe sold the property identified as Tax Map #721-00-00-035 in the York County tax rolls ("Subject Property") to Defendant Fort Mill Holdings, LLC (FM Holdings) on December 1, 2011, for a purchase price of \$907,300.00. Defendant David Baucom (Baucom) is a guarantor on the purchase money note.

Property taxes for the Subject Property were not paid in 2014, and subsequently, it was advertised for sale, and sold, at a tax sale by Defendant York County. MTAG, as custodian for Alterna Funding II, LLC, ("Alterna II") purchased the Subject Property at the tax sale with a bid

of \$610,000.000 (the "Funds"). The Subject Property was conveyed to Alterna II by Tax Title dated February 28, 2017, and recorded on March 1, 2017, in the Office of Register of Deeds for York County, in book 16256 at page 312.

On April 3, 2017, Alterna II executed a quitclaim deed of the Subject Property to ATCF REO Holdings LLC ("REO Holdings") that was recorded April 4, 2017, in the Office of Register of Deeds for York County in book 16309 at page 260.

On January 12, 2018, Plaintiff, Alterna Tax Asset Group, LLC ("Alterna Tax"), filed an action in the United States District Court for the District of South Carolina seeking a declaration that the tax sale was null and void for failure to adhere to S.C. Code Ann. § 12-61-10, *et seq.* (1976, as amended). Alterna Tax sought injunctive relief, and a return of the Funds. *See Alterna Tax Asset Grp., LLC v. York Cty., et al.*, C.A. No. 0:17-cv-00913-MBS, Dkt. No. 1.

All Defendants in that action moved to dismiss the complaint, citing Plaintiff's lack of standing. *Id.*, Dkt. Nos. 33, 35, & 36. Prior to ruling on the pending motions, the District Court dismissed the suit for lack of subject matter jurisdiction. *Id.*, Dkt. No. 50.

Plaintiff subsequently filed the present action in State court seeking the same relief, and Defendants Sparrow, Crowe, Baucom, and FM Holdings have moved to dismiss this action pursuant to Rule 12(b)(6), SCRCP, asserting that Plaintiff lacks standing to bring this action.

DISCUSSION/ANALYSIS

A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of a claim, and must be granted if the claim does not set forth sufficient allegations entitling the party to relief. *Williams v. Condon*, 347 S.C. 227, 232–33, 553 S.E.2d 496, 499 (Ct. App. 2001). This analysis looks to see if there are facts alleged that satisfy every element of the cause of action asserted.

When a pleading filed in an action fails ". . . to state facts sufficient to constitute a cause of action", it may be dismissed. (Rule 12(b)(6), SCRCP). Ordinarily, the motion must be dealt with based solely on the allegations contained in the pleading. *FOC Lawshe Limited Partnership v. International Paper Company*, 352 S.C. 408, 574 S.E.2d 228 (Ct.App. 2002). In considering the motion, all allegations of the pleading, and all inferences reasonably deducible therefrom are deemed admitted. *Id.* "If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper." *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006).

While acknowledging the standard cited above, I have also taken judicial notice of the deeds on file with the Office of Register of Deed for York County that pertain to this action. Rule 201, SCRE; *see generally Bowers v. Bowers*, 349 S.C. 85, 561 S.E.2d 610 (Ct.App. 2002). In ruling on a Rule 12(b)(6) motion, the court may take judicial notice of matters of public record.¹ As the motions are premised on Rule 12(b)(6), SCRCF, I do not take into consideration the affidavits filed by the Defendants in ruling on the motions.

Applying the applicable standard, the Complaint contains the following allegations. At ¶ 10, Plaintiff asserts standing based on S.C. Code Ann. §12-61-10 (1976, as amended). At ¶ 37, Plaintiff states that it “. . . won the defective tax sale with a bid of . . . \$610,000.” At ¶ 38, Plaintiff alleges “. . . York County issued a deed to Plaintiff” Based on the public record, none of these allegations is true. Further, Plaintiff is not now the owner of the Subject Property. I therefore do not consider these as allegations as true for the purposes of ruling on this motion. Rather, I rely on the public record of York County.

Plaintiff’s assertion that § 12-61-10 affords it standing to challenge the tax sale process in this case is incorrect. § 12-61-10 states:

§ 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.*** (Emphasis added.)

First of all, the title of the statute and its plain language makes clear its sole purpose and application. It is only to clear a “tax title”, not challenge it. “All requirements of law leading up to tax sales are intended for the protection of the taxpayer against surprise or the sacrifice of his property” *Tanner v. Florence Cty. Treas.*, 336 S.C. 552, 563, 521 S.E.2d 153, 158-159 (1999).

¹ [T]his Court is not required ‘to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences,’ nor must this Court ‘accept as true allegations that contradict matters properly subject to judicial notice’ This Court may consider the complaint, ‘documents attached to the complaint’, documents ‘attached to the motion to dismiss, so long as they are integral to the complaint and authentic,’ and ‘***may properly take judicial notice of matters of public record.***’ *Martin v. A. Celli Intern., Inc.*, U.S. Dis. Ct., D.S.C., Spartanburg Division; May 12, 2014; 2014 WL 1912064 (Internal citations omitted; emphasis added.) *See also, J & J Sports Productions Inc. v. Latin America Club*, U. S. Dis. Ct., D.S.C., Spartanburg Division; April 12, 2012; 2012 WL 1593977; footnote 3.

Its purpose is to protect the taxpayer against surprise or the sacrifice of his property without notice sufficient to satisfy due process. Secondly, only those who acquired an interest in the subject property may bring an action to clear the title they received.

Plaintiff and Plaintiff's law suit meet neither of these criteria. Plaintiff's action does not seek to clear the title; rather, it seeks to void the tax sale. Also, Plaintiff was not a purchaser, and is not a grantee of the purchaser, at the tax sale, and thus, lacks standing to bring an action under the statute.

In addition, as already indicated, based on the public record, Plaintiff has no ownership interest in the property. Thus, Plaintiff has suffered no loss, has not been damaged by reason of a void tax sale (if indeed the sale is void), and is not a real party in interest. For this reason also, Plaintiff lacks standing to bring this action.

CONCLUSION

Therefore, based on the record presented, and the discussion herein, Plaintiff's Complaint fails to state a cause of action upon which relief can be granted, as Plaintiff lacks standing to prosecute such a claim. Therefore, it is ordered as follows:

1. Plaintiff's Motion for injunctive relief is denied.
2. Defendants' motion to dismiss is granted, and Plaintiff's Complaint, and the claims therein, are dismissed with prejudice.

AND IT IS SO ORDERED.

JUDGE'S E-SIGNATURE TO FOLLOW

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF YORK
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2018CP4600107

Alterna Tax Asset Group LLC		York County Of York County Delinquent Tax Collector Mickey Crowe David Baucom	York County Treas Robert Clay Sparro Fort Mill Holdings I
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nons);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Defendants	Plaintiff	n/a

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Special Circuit Court Judge	3063 Judge Code	5/11/2018 Date
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ELECTRONICALLY FILED - 2018 May 11 2:03 PM - YORK - COMMON PLEAS - CASE#2018CP4600107

ELECTRONICALLY FILED 2008 May 11 2:03 PM - YORK - COMMON PLEAS - CASE#2018CP4600107

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on, to attorneys of record or to parties (when appearing pro se) as follows:

Robert Daniel Dodson 1722 Main St Suite 200 Columbia, SC 29201-2851
Matthew B. Rosbrugh MBR Law, LLC PO Box 292290 Columbia, SC 29229

Michael Kurt Kendree Sr. PO Drawer 299 York, SC 29745
James Mixon Griffin PO Box 999 Columbia, SC 29202
Paul S. Landis 209 E. Washington St. Greenville, SC 29601
Margaret Nicole Fox PO Box 999 Columbia, SC 29902

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

David Hamilton - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



York Common Pleas

Case Caption: Alterna Tax Asset Group LLC VS York County Of , defendant, et al
Case Number: 2018CP4600107
Type: Order/Summary Judgment

So Ordered

s/ S. Jackson Kimball 3063

Electronically signed on 2018-05-11 13:57:15 page 7 of 7

ELECTRONICALLY FILED - 2018 May 11 2:03 PM - YORK - COMMON PLEAS - CASE#2018CP4600107

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Alterna Tax Asset Group, LLC,

Plaintiff(s)

vs.

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

Defendant(s)

Submitted By: Robert D. Dodson
Address: Law Office of Robert Dodson, PA
1722 Main Street, Suite 200
Columbia, SC 29201

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2018 - CP - 46 - 107

FILED-RECEIVED
JAN 12 PM 4:22
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

SC Bar #: 16205
Telephone #: 803.252.2600
Fax #: 803.771.2259
Other:
E-mail: rdodson@rdodsonlaw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
NON-JURY TRIAL demanded in complaint.
This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), General (130), Breach of Contract (140), Fraud/Bad Faith (150), Failure to Deliver/Warranty (160), Employment Discrim (170), Employment (180), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20 -NI-, Notice/File Med Mal (230), Other (299)
Torts - Personal Injury: Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Assault/Battery (370), Slander/Label (380), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Administrative Law/Relief: Reinstate Drv. License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement Approval (780), Other (799)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Comm. (990), Employment Security Comm (991), Other (999)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Sexual Predator (510), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Pre-Suit Discovery (670)

Submitting Party Signature:

[Handwritten Signature]

Date: 1/12/18

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Alterna Tax Asset Group, LLC)

Plaintiff,)

v.)

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

Defendants.)

IN THE COURT OF COMMONS PLEAS

Docket No.:

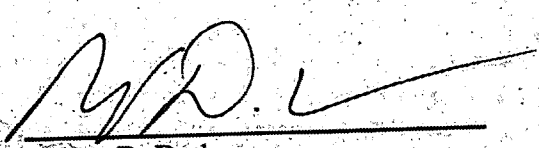
2018 CP46070 7

SUMMONS

FILED-RECEIVED
2018 JAN 12 PM 4:22
DAVID HANSTON
C.C. CLERK
YORK COUNTY, SC

TO: THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served on you, and to serve a copy of your Answer to the said Complaint upon the subscribers at 1722 Main Street, Suite 200, Columbia, South Carolina 29201; within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in such Complaint.



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Email: matt@mrblawllc.com
Attorneys for the Plaintiff

Columbia, South Carolina

January 12, 2018

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Alterna Tax Asset Group, LLC)

Plaintiff,)

v.)

York County, York County Treasurer,)

York County Delinquent Tax Collector,)

Robert Clay Sparrow, Mickey Crowe,)

Fort Mill Holdings, LLC, and David)

Baucom.)

Defendants.)

IN THE COURT OF COMMONS PLEAS

Docket No.: 2018 CP160107

COMPLAINT

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2018 JAN 12 PM 4:22
DAVID H. OLTON
C.C. CLERK
YORK COUNTY, SC

Plaintiff, by and through undersigned counsel, complaining of the above named Defendants would respectfully show unto the Court as follows:

JURISDICTION, PARTIES AND VENUE

1. This case arises out of a delinquent tax sale where Defendants did not follow the statutory mandates; thereby creating a cloud on title to the property Plaintiff purchased at the tax sale. Plaintiff seeks an Order(s) from the Court as outlined and pleaded more fully below.
2. Plaintiff is a limited liability company organized and existing under the law of the State of Louisiana with its principal place of business in Louisiana. Plaintiff is authorized to do business in the the State of South Carolina and in fact does business in the State of South Carolina.
3. Defendant, York County, is a political subdivision and body politic of the State of South Carolina.

4. Defendant, York County Treasurer, is the duly elected Treasurer for the County of York, State of South Carolina and is charged with conducting delinquent tax sales pursuant to S.C. Code Ann. § 12-51-40, et. seq.
5. Defendant, York County Delinquent Tax Collector, is a subdivision of the County of York and the governmental entity charged with collection of delinquent property taxes in the County of York, State of South Carolina.
6. Defendant, Robert Clay Sparrow, is, on information and belief, a resident of the State of South Carolina, County of Cherokee and the mortgage holder and assignee of the real property at issue in this action.
7. Defendant, Mickey Crowe, is, on information and belief, a resident of the State of South Carolina, County of York and the mortgage holder and assignee of the real property at issue in this action.
8. Defendant, Fort Mill Holdings, LLC, is a North Carolina limited liability company and the title owner of the real property at issue in this action.
9. Defendant, David Baucom, is, on information and belief, a resident of the State of North Carolina and the guarantor for the real property mortgage note at issue in this action.
10. The Plaintiff in this action has standing to assert these claims pursuant to S.C. Code Ann., § 12-61-10.
11. Venue is proper in this Court because the acts and omissions occurred within the York County and the real property at issue is located in York County.

FACTS

12. Within York County, State of South Carolina, exists a parcel of real property identified and described at tax map #721-00-00-035 in the York County tax rolls.
13. The aforesaid property was conveyed to Defendant, Fort Mill Holdings, LLC, by deed from Defendant Robert Clay Sparrow (hereinafter "Sparrow") and Mickey Crowe (hereinafter "Crowe").
14. The deed was duly recorded with the York County Register of Deeds.
15. On information and belief, Defendant Fort Mill Holdings, LLC, failed to pay assessed property taxes to York County for the tax year 2014.
16. Thereafter, the York County Treasurer issued a facially defective "Execution Notice for Delinquent Property Taxes" to the York County Delinquent Tax Collector for the real property taxes owed for the above-described property for tax year 2014.
17. The above-described Notice was mailed to Defendant Fort Mill Holdings, LLC by certified mail restricted delivery but the signature on the return green card indicates it was signed by "David Baucom, Jr." and is therefore improper because it fails to indicate that Baucom is an agent for the addressee.
18. More specifically, the South Carolina Secretary of State lists Brian McCoy as the registered agent for Defendant, Fort Mill Holdings, LLC.
19. The North Carolina Secretary of state lists Tracy M. Goins who is also listed as the "Managing Member" of Defendant, Fort Mill Holdings, LLC.
20. Both the South Carolina and North Carolina Secretary of State maintain these records on a freely accessible online system including providing the identity of the registered agent and the managing member.

21. All North Carolina LLC's are managed by their managers pursuant to N.C.G.S. 57D-3-20.
22. On information and belief, none of the documents on file for either the South Carolina Secretary of State or the North Carolina Secretary of State indicate or identify "David Baucom, Jr." as an agent of Defendant, Fort Mill Holdings, LLC.
23. Therefore, Defendant York County Delinquent Tax Collector issued a facially defective "Notice of Levy" to Defendant Fort Mill Holdings, LLC wherein it failed to comply with the statutory provisions of the State of South Carolina including failure to comply with the language set forth within S.C. Code Ann., § 12-51-40(c).
24. More specifically, S.C. Code Ann., § 12-51-40(c), provides in pertinent part that the Notice of Levy specifically must read "Seized by person officially charged with the collection of delinquent taxes of (name of political subdivision) to be sold for delinquent taxes".
25. In this case, the Notice of Levy posted by Defendant York County Delinquent Tax Collector fails to include the mandatory statutory language rendering it null and void.
26. On or about October 4, 2016, Defendant, York County Delinquent Tax Collector, mailed Defendant Fort Mill Holdings, LLC, a "Notice of Final Redemption for Property Sold at Delinquent Tax Sale".
27. The aforementioned "Notice of Final Redemption for Property Sold at Delinquent Tax Sale" is facially defective and fails to comply with the mandatory statutory language of S.C. Code Ann., §12-51-40(b).

28. Defendant York County Delinquent Tax Collector also mailed the aforementioned "Notice" to James Mixon Griffon as described in the "cc" addressed at the bottom of the "Notice".
29. The "cc" of the "Notice" also references civil action numbers 2013-CP-46-00438, 2013-CP-46-00440, and 2013-CP-46-00438 which are all cases involving the real property at issue in this action and/or Defendants Sparrow, Crowe, Baucom, and Fort Mill Holdings, LLC.
30. James Mixon Griffon was legal counsel to Defendants Sparrow and Crowe in a foreclosure action filed against Defendants Baucom and Fort Mill Holdings, LLC.
31. Defendants, Fort Mill Holdings, LLC and Baucom, were represented by legal counsel in the litigation described in the "Notice" but no copies of the "Notice" were sent to counsel for Defendants Baucom or Fort Mill Holdings.
32. Defendant, York County Delinquent Tax Collector, was on actual notice regarding litigation between Defendants Baucom, Fort Mill Holdings, Crowe, and Sparrow related to the subject property.
33. Nevertheless, Defendant, York County Delinquent Tax Collector, did not mail the Notice of Final Redemption to the best address for Defendant Fort Mill Holdings, LLC but instead sent the notice to 8001 Tryon Street, Charlotte, NC 29262 in violation of South Carolina statutory law.
34. The Notice of Final Redemption was returned to Defendant York County Delinquent Tax Collector by the United States Post Office as undeliverable as addressed.

35. Defendant York County Delinquent Tax Collector failed to comply with the statutory requirements by not mailing the "Notice" to the best address after actual notice from the United States Postal Service that the Tryon Street address was undeliverable.
36. Thereafter, the Plaintiff bid on the real property at issue in a delinquent tax sale but that sale should have been voided due to the failures of Defendant York County Delinquent Tax Collector to comply with the mandatory statutory language for the sale of real property.
37. The Plaintiff won the defective tax sale with a bid of six-hundred-ten-thousand dollars (\$610,000).
38. Thereafter, Defendant York County issued a deed to Plaintiff that should be voided based upon the failures of Defendant York County Delinquent Tax Collector as set forth more fully herein.
39. Thereafter, the tax deed issued by Defendant York County was duly recorded in the chain of title for the property at issue.
40. Defendants Baucom and Fort Mill Holdings have assigned to Defendants Sparrow and Crowe the overage between the delinquent taxes due and the Plaintiff's bid.
41. On information and belief, Defendants Sparrow and Crowe intend to have the overage amount between Plaintiff's bid and the past due taxes paid out to them as soon as possible by the York County Defendants.
42. On information and belief, the monies Plaintiff paid for the winning bid should be immediately returned to the Plaintiff in light of the defective nature of the delinquent tax sale.

43. Moreover, the York County Defendants should be required to return Plaintiff's funds to Plaintiff (plus applicable interest from the date of payment) and should be prohibited from disbursing those funds to any of the Defendants including but not limited to Defendants Sparrow and Crowe.

44. Additionally, the York County Defendants failed to comply with the statutory requirements for the delinquent tax sale making the tax sale null and void.

45. As a direct and proximate result of the defects and statutory failures the Defendants cannot provide good title to Plaintiff for the real property described herein.

FOR A FIRST CAUSE OF ACTION – QUIET TITLE

46. Plaintiff repeats and re-alleges as if repeated herein verbatim each and every fact and allegation contained herein.

47. The York County Defendants have failed to comply with the statutory requirements for the delinquent tax sale.

48. The deed issued by York County to Plaintiff should be voided and nullified as a direct and proximate result of Defendant York County Delinquent Tax Collector's acts and omissions as described more fully above.

49. The Plaintiff is entitled to an Order of this Court vacating the tax sale and requiring the York County Defendants to return to Plaintiff the six-hundred-ten-thousand dollars (\$610,000) paid to York County plus applicable interest from the date of payment.

FOR A SECOND CAUSE OF ACTION – DECLARATORY JUDGMENT

50. The Plaintiff repeats and re-alleges as if repeated herein verbatim each and every fact and allegation contained herein.

51. As outlined and pleaded more fully above, S.C. Code Ann. 12-61-10 et. seq. vests Plaintiff with the statutory right to institute this action.

52. Therefore, Plaintiff seeks a declaratory judgment holding, *inter alia*, that the tax sale at issue is null and void because of the York County Defendants' failures and omissions in complying with the statutory provisions of S.C. Code 12-51-et. seq. and other statutory provisions and law.

53. Additionally, because the tax sale violated statutory law Plaintiff is entitled to a declaratory judgment and the injunctive relief pleaded for and articulated more fully below.

FOR A THIRD CAUSE OF ACTION – INJUNCTIVE RELIEF

54. The Plaintiff repeats and re-alleges as if repeated herein verbatim each and every fact and allegation contained herein.

55. The Plaintiff has set forth herein a *prima facie* case demonstrating that the delinquent tax sale statutory requirements were not complied with by the York County Delinquent Tax Collector.

56. The Plaintiff is likely to suffer irreparable harm if the York County Defendants are allowed to transfer the six-hundred-ten-thousand dollars (\$610,000)(plus applicable interest from the date of payment) paid by Plaintiff to any other party including Defendants Sparrow and Crowe.

57. The Plaintiff is entitled to an Order prohibiting the York County Defendants from alienating, transferring, or otherwise assigning the funds to any person, business, and/or entity other than the Plaintiff.

58. Moreover, because of the York County Defendants' failures and omissions as outlined and pleaded more fully above, the tax sale of the property at issue was unlawful, illegal and is null and void.

59. Therefore, the Court should also issue an Order granting Plaintiff permanent injunctive relief which specifically prohibits Defendants from alienating, transferring, or otherwise assigning the funds (plus applicable interest from the date of payment) to any person, business, and/or entity other than the Plaintiff.

FOR A FOURTH CAUSE OF ACTION – UNJUST ENRICHMENT

60. The Plaintiff repeats and re-alleges as if repeated herein verbatim each and every fact and allegation contained herein.

61. The Plaintiff has paid to York County Defendants six-hundred-ten-thousand dollars (\$610,000) at a void delinquent tax sale.

62. The consideration for the property is void where the York County Defendants cannot deliver good title to the property as a result of the multiple statutory defects in the delinquent tax sale.

63. To allow the Defendants to realize the economic benefits of the Plaintiff's money as a result of the defective delinquent tax sale would be unjust.

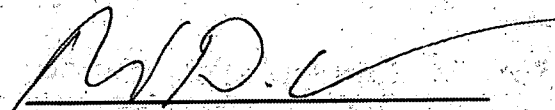
64. The Plaintiff is entitled to declaratory relief requiring the Defendants to disgorge the monies paid by Plaintiff plus applicable interest from the date of payment.

PRAYER FOR RELIEF

The Plaintiff prays this Court grant the injunctive relief contained herein; issue a temporary restraining order and permanent restraining order prohibiting the York County Defendants from transferring the Plaintiff's payment of six-hundred-ten-thousand dollars (\$610,000) plus

applicable interest from the date of payment to anyone other than the Plaintiff; issue an Order finding the delinquent tax sale failed to meet the statutory requirements thereby voiding the sale; issue an Order requiring the Defendants return to Plaintiff the six-hundred-ten-thousand dollars (\$610,000) plus applicable interest from the date of payment paid by Plaintiff to the York County Defendants at the delinquent tax sale; and for such other and further relief, in law or equity that the Court deems just and proper including but not limited to costs and attorney's fees where provided by statute or court rule.

Respectfully submitted,



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Attorneys for the Plaintiff

Columbia, South Carolina

January 12, 2018

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2018-CR-46-0107

Alterna Tax Asset Group, LLC,)
)
Plaintiff,)

**ANSWER OF YORK COUNTY, YORK
COUNTY TREASURER, AND THE YORK
COUNTY DELINQUENT TAX COLLECTOR**

vs.)

York County, York County Treasurer,)
York County Delinquent Tax)
Collector, Robert Clay Sparrow,)
Mickey Crowe, Fort Mill Holding,)
LLC, and David Baucom,)
)
Defendants.)

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DAVID MILTON
C.C.P. & C.S.
YORK COUNTY, SC

York County, the York County Treasurer, and the York County Delinquent Tax Collector (collectively "York County") by way of Answer to the Complaint of Alterna Tax Asset Group, LLC, would respectfully show unto the Court:

GENERAL DENIAL

1. The Defendant York County denies each and every allegation of the Complaint not specifically admitted, qualified or denied.

FOR A FIRST RESPONSE

2. 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.
3. Responding to the allegations of Paragraph 2 of the Complaint, the Defendant York County does not have sufficient information to either admit or deny the allegations of the Paragraph and therefore denies the same and demands strict and absolute proof thereof.
4. The Defendant York County admits the allegations of Paragraph 3 of the Complaint.

5. The Defendant York County admits so much of the allegations of Paragraph 4 which alleges that that office of the York County Treasurer is responsible for conducting the delinquent tax sale. By way of explanation the York County Treasurer is not an elected position.

6. The Defendant York County admits the allegations of Paragraph 5 of the Complaint.

7. Responding to the allegations of Paragraphs 6, 7, 8, and 9 of the Complaint, the Defendant York County does not have sufficient information to either admit or deny the allegations of the Paragraphs and therefore denies the same and demands strict and absolute proof thereof.

8. The Defendant York County denies the allegations of Paragraph 10 of the Complaint.

9. The Defendant York County admits the allegations of Paragraphs 11, 12, 13, 14, and 15 of the Complaint.

10. The Defendant York County denies the allegations of Paragraph 16 of the Complaint.

11. The Defendant York County admits only so much of the allegations on Paragraph 17 which alleges Notice was mailed to Fort Mill Holdings, LLC and was signed for by "David Baucom, Jr." The Defendant denies the remaining allegations and demands strict and absolute proof thereof.

12. Responding to the allegations of Paragraphs 18, 19, 20, 21, and 22 of the Complaint, the Defendant York County does not have sufficient information to either admit or deny the allegations of the Paragraphs and therefore denies the same and demands strict and absolute proof thereof.

13. The Defendant York County denies the allegations of Paragraph 23 of the Complaint.

14. The Defendant York County admits only so much of Paragraph 24 which provides for the language in the Notice reading "seized by person officially charged with the collection of delinquent taxes of (name of political subdivision) to be sold for delinquent taxes." The

Defendant York County denies the remaining allegations and demands strict and absolute proof thereof.

15. The Defendant York County denies the allegations of Paragraph 25 of the Complaint.

16. The Defendant York County admits the allegations of Paragraph 26 of the Complaint.

17. The Defendant York County denies the allegations of Paragraph 27 of the Complaint.

18. The Defendant York County admits the allegations of Paragraphs 28 and 29 of the Complaint.

19. Responding to the allegations of Paragraphs 30, 31 and 32 of the Complaint, the Defendant York County does not have sufficient information to either admit or deny the allegations of the Paragraphs and therefore denies the same and demands strict and absolute proof thereof.

20. The Defendant York County denies the allegations of Paragraph 33 of the Complaint.

21. Responding to the allegations of Paragraph 34 of the Complaint, the Defendant York County does not have sufficient information to either admit or deny the allegations of the Paragraph and therefore denies the same and demands strict and absolute proof thereof.

22. The Defendant York County denies the allegations of Paragraph 35 of the Complaint.

23. The Defendant York County admits only so much of the allegations on Paragraph 36 which alleges Plaintiff bid on the real property. The Defendant denies the remaining allegations and demands strict and absolute proof thereof.

24. The Defendant York County admits only so much of the allegations on Paragraph 37 which alleges Plaintiff was the highest bidder in the amount of \$610,000.00. The Defendant denies the remaining allegations and demands strict and absolute proof thereof.

25. The Defendant York County denies the allegations of Paragraph 38 of the Complaint. By way of explanation, the deed issued subsequent to the tax sale was "MTAG AS CUSTODIAN FOR ALTERNA FUNDING II, LLC."

26. The Defendant York County admits to the allegations of Paragraph 39 of the Complaint.

27. Responding to the allegations of Paragraph 40 of the Complaint, the Defendant York County does not have sufficient information to either admit or deny the allegations of the Paragraph and therefor denies the same and demands strict and absolute proof thereof.

28. The Defendant York County admits the allegations of Paragraph 41 of the Complaint, upon information and belief.

29. The Defendant York County denies the allegations of Paragraph 42, 43, and 44 of the Complaint.

30. The Defendant York County denies the allegations of Paragraph 45 of the Complaint. By way of explanation Defendant, is not required to provide "good title" to the Plaintiff.

FOR A SECOND RESPONSE

31. The responses within Paragraphs 1 through 30 above are hereby re-alleged, incorporated herein by reference and made a part of this defense and return insofar as they are not inconsistent herewith.

32. Paragraph 46 of the Complaint does not require a responsive pleading.

33. The Defendant York County denies the allegations of Paragraphs 47, 48, and 49 of the Complaint.

FOR A THIRD RESPONSE

34. The responses within Paragraphs 1 through 33 above are hereby re-alleged, incorporated herein by reference and made a part of this defense and return insofar as they are not inconsistent herewith.

35. Paragraph 50 of the Complaint does not require a responsive pleading.

36. The Defendant York County denies the allegations of Paragraphs 51, 52 and 53 of the Complaint.

FOR A FOURTH RESPONSE

37. The responses within Paragraphs 1 through 36 above are hereby re-alleged, incorporated herein by reference and made a part of this defense and return insofar as they are not inconsistent herewith.

38. Paragraph 54 of the Complaint does not require a responsive pleading.

39. The Defendant York County denies the allegations of Paragraphs 55, 56, 57, 58 and 59 of the Complaint.

FOR A FIFTH RESPONSE

40. The responses within Paragraphs 1 through 39 above are hereby re-alleged, incorporated herein by reference and made a part of this defense and return insofar as they are not inconsistent herewith.

41. Paragraph 60 of the Complaint does not require a responsive pleading.

42. The Defendant York County denies the allegations of Paragraph 61 of the Complaint.

43. The Defendant York County denies the allegations of Paragraph 62 of the Complaint. By way of explanation Defendant York County is not required to provide "good title" to the Plaintiff.

44. The Defendant York County denies the allegations of Paragraphs 63 and 64 of the Complaint.

FOR A SIXTH RESPONSE AND FIRST DEFENSE

45. The responses within Paragraphs 1 through 44 above are hereby re-alleged, incorporated herein by reference and made a part of this defense and return insofar as they are not inconsistent herewith.

46. 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.

FOR A SEVENTH RESPONSE AND SECOND DEFENSE

47. The responses within Paragraphs 1 through 46 above are hereby re-alleged, incorporated herein by reference and made a part of this defense and return insofar as they are not inconsistent herewith.

48. Plaintiff is not a real party in interest under Rule 17(a), SCRPC and as a result the instant action cannot be brought in the name of Plaintiff.

FOR AN EIGHTH RESPONSE AND THIRD DEFENSE

49. The responses within Paragraphs 1 through 48 above are hereby re-alleged, incorporated herein by reference and made a part of this defense and return insofar as they are not inconsistent herewith.

50. The "Suits to Clear Tax Titles" Act is an act utilized to validate Tax Sales for "barring all other claims thereto" to the property in issue. See, S.C. Code Ann. Section 12-61-10, et seq.; and, as a result, the action to quiet title cannot afford the relief sought.

WHEREFORE, having fully answered, the Defendant York County prays that the Plaintiff's action be dismissed with prejudice; or alternatively, the Court uphold and confirm the November 2015 Tax Sale conducted by York County as relates to Tax Parcel 721-00-00-035; and, in any such relief granted by the Court, provide for such other and further relief, in law and equity that the Court deems just and proper.

Respectfully submitted,

YORK COUNTY
YORK COUNTY TREASURER
YORK COUNTY DELINQUENT TAX COLLECTOR

By: Michael K. Kendree
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Attorney for the County

February 15, 2018

York, South Carolina

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

Alterna Tax Asset Group, LLC,

v. Appellant,

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

v. Respondents.

NOTICE OF APPEAL

Alterna Tax Asset Group, L.L.C. appeals the following rulings and Orders of the Honorable S. Jackson Kimball, III:

- Order dated May 11, 2018 Denying Plaintiff's Motion for a TRO and granting Defendants' Motions to Dismiss.

Appellant received written notice of entry of the Order on May 11, 2018.

May 11, 2018



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STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

ALTERNA TAX ASSET)
GROUP, LLC.)

PLAINTIFF,)

2018-CP-46-00107

-VS-)

TRANSCRIPT OF RECORD

YORK COUNTY, YORK COUNTY)
TREASURER, ET AL.,)

DEFENDANTS.)

APRIL 19, 2018
YORK, SOUTH CAROLINA

BEFORE:

THE HONORABLE S. JACKSON KIMBALL, III

APPEARANCES:

ATTORNEYS FOR PLAINTIFF:

ROBERT D. DODSON, ESQ.
MATTHEW B. ROSBRUGH, ESQ.

ATTORNEYS FOR DEFENDANTS:

JAMES M. GRIFFIN, ESQ.
PAUL S. LANDIS, ESQ.
MICHAEL K. KENDREE, SR., ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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1 **THE COURT:** All right. What I have is the Plaintiff's
2 motion for a temporary injunction and Defendants' motion to
3 dismiss. Is that a fair statement?

4 **MR. DODSON:** That is correct, Your Honor. And we can
5 take those in any order Your Honor sees fit.

6 **THE COURT:** Well, what suits you all?

7 **MR. GRIFFIN:** Your Honor, we think we should hear the
8 dispositive motion first, motion to dismiss. And if we
9 prevail, then there'd be no reason to ---

10 **THE COURT:** And I couldn't agree more with that. All
11 right. Let me get these -- the one I pull up first is
12 Sparrow and Crowe.

13 **MR. GRIFFIN:** Yes, Your Honor.

14 **THE COURT:** All right.

15 **MR. GRIFFIN:** Jim Griffin. I represent the Defendants,
16 Clay Sparrow and Mickey Crowe. And Your Honor has some
17 familiarity with this matter.

18 Sparrow and Crowe have a judgment against Fort Mill
19 Holdings, LLC, and David Baucom. We had litigated a
20 settlement agreement before Your Honor. Your Honor ruled in
21 our favor as part of the judgment and execution process.

22 We, on behalf of Crowe and Sparrow, and Sparrow has an
23 assignment from Crowe of his interest in a note and
24 mortgage, but received an assignment of tax sale proceeds
25 that were -- that were sitting in York County Treasurer's

1 Office as a result of Alternative [sic] Tax being a high
2 bidder on -- to the forfeited land commission on property
3 that was subject to our note and mortgage and the settlement
4 agreement.

5 **THE COURT:** Now, wait a minute. This property didn't
6 come out of the forfeited land commission, did it?

7 **MR. GRIFFIN:** They bid at a tax sale. I don't ---

8 **MR. KENDREE:** Tax sale, not ---

9 **THE COURT:** That's what I thought.

10 **MR. GRIFFIN:** I'm sorry.

11 **THE COURT:** Okay.

12 **MR. GRIFFIN:** In other words, it was -- they acquired
13 it at a tax sale. That's right.

14 **THE COURT:** All right. Go ahead.

15 **MR. GRIFFIN:** And paid six hundred and ten thousand
16 dollars (\$610,000.00). The property was not redeemed. And
17 we were waiting to get our check from York County.

18 Then Alterna Tax, the winning bidder, filed a lawsuit
19 in federal court trying to get a -- buyer's remorse, as we
20 would say. They wanted to -- they want to get a refund and
21 not take possession ---

22 **THE COURT:** All right. Now what was -- I read in the
23 material -- what was the case in federal court?

24 **MR. GRIFFIN:** The same case that you have, Your Honor,

25 ---

1 **THE COURT:** Identical?

2 **MR. GRIFFIN:** The identical, but the federal court
3 ruled that there's a anti -- Tax Enforcement Act or
4 something that the federal courts can't get involved in the
5 collection of a state tax. And the court ruled ---

6 **THE COURT:** Estate tax? A state tax?

7 **MR. GRIFFIN:** A state tax.

8 **THE COURT:** Okay. Okay.

9 **MR. GRIFFIN:** Anti-Tax Injunction Act or something --
10 some federal act the federal court interpreted as barring a
11 lawsuit in federal court.

12 **THE COURT:** No federal jurisdiction.

13 **MR. GRIFFIN:** Correct. And so the federal judge ---

14 **THE COURT:** So there's been no decision on the merits
15 of that.

16 **MR. GRIFFIN:** Correct. The federal judge dismissed the
17 case for lack of jurisdiction.

18 **THE COURT:** All right.

19 **MR. GRIFFIN:** No one challenged that. And Alterna
20 filed this lawsuit. And this Court ---

21 **THE COURT:** Okay.

22 **MR. GRIFFIN:** We have -- we had filed a motion to
23 dismiss asserting a number of bases; Failure to state a
24 cause of action, lack of standing, and no cognizable injury.

25 And the -- the lawsuit, Your Honor, alleges three

1 causes of action. The first cause of action is to quiet
2 title. The second cause of action is for declaratory
3 judgment. And third cause of action is for injunctive
4 relief.

5 The basis of the lawsuit is that there was some
6 technical -- there was some technical failures to comply
7 with the -- with the statute. And as a result Alterna
8 believes that they are allowed to ---

9 **THE COURT:** The tax sale should be voided.

10 **MR. GRIFFIN:** Voided, right. And, Your Honor, Alterna
11 has named in this lawsuit every potential interested party
12 in that property. And every potential interested party in
13 that property has filed a statement of affidavit in this
14 court as well as federal court saying we have no claim to
15 the property. We're not seeking any interest in the
16 property, and so it's yours, Alterna Tax.

17 And for that reason, Your Honor, ---

18 **THE COURT:** Actually, they waived everything.

19 **MR. GRIFFIN:** Yeah.

20 **THE COURT:** The word used was waived, wasn't it?

21 **MR. GRIFFIN:** Waived every -- every potential
22 irregularity with regard to the tax sale and not disputing
23 the ownership of the property to Alterna Tax.

24 Your Honor, we think that's important because the --
25 first, the standing as alleged in the complaint, Your Honor,

1 is paragraph 10 that says the Plaintiff in this action has
2 standing to assert these claims pursuant to SC Code section
3 12-61-10. 12-61-10, Your Honor, states -- it allows a buyer
4 at a tax sale to bring an action in the Court of Common
5 Pleas for the purpose of barring all other claims to the
6 property.

7 **THE COURT:** Quiet title.

8 **MR. GRIFFIN:** There are no other claims to the
9 property.

10 Now, I suspect that they're going to argue, well, we're
11 looking outside the pleadings, and you can't consider the
12 affidavit, but you can in this context. It's like a
13 jurisdictional issue.

14 Plus, all these parties would be judicially estopped
15 anytime in the future to coming out in the future and
16 saying, oh, but we should give the property back because
17 some irregularity in the sale. I mean, that's -- we're on
18 the record, we're on the record in federal court, and we're
19 on the record in this court, judicial estoppel. I mean,
20 there is no dispute as to the ownership of this property.

21 And so they have no standing to assert the claims under
22 the statute they've alleged. There's no dispute over quiet
23 title. There's nothing to declare.

24 And for that reason, Your Honor, we believe that the
25 case should be dismissed, that they should be deeded the

1 property, and that the money should -- it's less, I guess,
2 our additional tax liabilities. It's just diminishing our
3 proceeds daily as long as this case continues on. And
4 that's another reason.

5 So that their equitable relief for injunctive and
6 declaratory judgment is really all dependent upon, is there
7 a dispute to the title of the property?

8 **THE COURT:** Do they have a claim?

9 **MR. GRIFFIN:** Correct.

10 And the statute, Your Honor, there's language in the
11 case law that says if you have any irregularity, it's void.
12 But I would point -- there's a case, Rives v. Balsa, B-u-l-
13 s-a, 325 S.C. 287. And it just explains the person being
14 protected is the tax payer. So a tax execution is not
15 issued against the property, it's issued against the
16 defaulting tax payer.

17 Due process of law requires some sort of notice to the
18 landowner before he is deprived of his property. The taxing
19 statutes in a legion of cases interpreted under these
20 statutes make it clear that the property shall be listed --
21 assessed, levied upon, advertised and sold in the name of
22 the true owner. And it says, so the owner's right of
23 redemption cannot be cut off unless the required notice is
24 given.

25 So the statutes are designed to protect the owner. And

1 the owners in this situation come to court and say, we waive
2 any defect in how the -- how it was done. And so we think
3 the case ---

4 **THE COURT:** All right.

5 **MR. GRIFFIN:** --- should be dismissed.

6 **THE COURT:** All right. Mr. Landis.

7 **MR. LANDIS:** Thank you, Your Honor. Paul Landis on
8 behalf of the Defendants, Fort Mill Holdings, LLC, and David
9 Baucom.

10 And, Your Honor, with the Court's permission, I'll just
11 incorporate Mr. Griffin's arguments because they're the same
12 on behalf of our clients, but I'll mention just a couple of
13 points.

14 There are really only two possible claims that can be
15 brought based on the factual history of -- that's brought us
16 to where we are. One would be the prior owners of the
17 property, which are all on this side of the courtroom, and
18 then York County, of course, claiming that they're entitled
19 to get the property back. And just to be clear, that's not
20 being done.

21 That authority would arise under Title 12-51-160, which
22 says that an action for recovery of land sold must be
23 brought within two years. Well, nobody's seeking a recovery
24 of the land sold.

25 And then the only other thing that can be done is under

1 12-61-10, which would be the action for quiet title, as Your
2 Honor mentioned. And so those are the only two actions that
3 can be brought.

4 And in paragraph 10 of the Plaintiff's complaint they
5 say that they have standing to pursue this action under 12-
6 61-10, which is an action for quiet title. Well, as Mr.
7 Griffin quoted, they can bring an action under 12-61-10 to
8 bar other claims to their title, but they can't bring an
9 action under 12-61-10 to have this Court declare that their
10 own deed is void because under 12-51-160, going back to that
11 one, the deed -- the deed of conveyance, which has been
12 taken care of by virtue of the tax sale, is prima facie
13 evidence of good title. And that's clear. Couldn't be more
14 clear under the statute.

15 So ---

16 **THE COURT:** It's not a warranty deed either.

17 **MR. GRIFFIN:** Correct.

18 **MR. LANDIS:** That's right. So you've got the statutory
19 prima facie good -- evidence of good title and everybody on
20 this side of the courtroom, which are all the Defendants
21 named as Mr. Griffin mentioned, who could possibly assert a
22 claim.

23 And Mr. Griffin mentioned about the affidavits. You
24 could call them stipulations, whatever, affidavits, whatever
25 you want to, they're styled as affidavits. Those don't have

1 to be considered.

2 I think we filed those in an abundance of caution to
3 make clear that we would be estopped and were waiving any
4 claim. But the Plaintiffs have not alleged that there's any
5 -- they've made a blanket claim that, oh, there's a cloud on
6 title because it wasn't a good tax sale, but they have not
7 alleged facts. That's not a fact. That's an opinion or a
8 legal conclusion.

9 There's no fact alleged that there's a challenge to
10 their title. And I think under the current posture any
11 amendment would be futile because they couldn't get there
12 under Rule 11.

13 And so I think that Your Honor could consider the
14 affidavits or even not consider the affidavits and reach the
15 same conclusion, and that's that they don't have standing or
16 they don't have -- they haven't stated facts, or I should
17 say, and they haven't stated the facts with a sufficient --
18 to constitute cause of action.

19 And so unless Your Honor has any questions or needs any
20 clarification, that's our position as well that this case
21 clearly should be dismissed.

22 **THE COURT:** All right. Who wants to go first?

23 **MR. DODSON:** You're looking at me, Your Honor, so I'll
24 go first. Robert Dodson for the Plaintiff, Alterna Tax.

25 **THE COURT:** Mr. Dodson.

1 **MR. DODSON:** Your Honor, we have standing and we have
2 standing to assert these claims because we paid the York
3 County Defendants the six hundred and ten thousand dollars
4 (\$610,000.00) for the property. What we got in return for
5 that was a deed that was void on its face, that was void ab
6 initio.

7 And the reason that that deed ---

8 **THE COURT:** There's ---

9 **MR. DODSON:** --- was void ---

10 **THE COURT:** --- been no determination of that.

11 **MR. DODSON:** That's right. And that's exactly why we
12 filed suit.

13 But the reason that it is void ab initio, the reason
14 that we make that claim is because the York County
15 Defendants did not follow the proper procedures for a tax
16 sale. And all that they told you a moment ago and all that
17 they briefed and wrote to the Court, no one has asserted
18 here that the procedures for a proper tax sale were
19 followed.

20 I know that we're taking the motion to dismiss first
21 over the motion for a preliminary injunction, but when we
22 filed our motion for a preliminary injunction, the motion
23 itself outlines and details what the deficiencies were, ---

24 **THE COURT:** All right.

25 **MR. DODSON:** --- and so does the supporting memorandum

1 of law that we filed yesterday and sent a courtesy copy to
2 Your Honor.

3 And the reason that that is important is as Mr. Griffin
4 told you a moment ago, there is a whole host of cases from
5 the Supreme Court, from the Court of Appeals that say any
6 deficiency, any variation from the code voids the sale.

7 **THE COURT:** And that enures to whose benefit?

8 **MR. DODSON:** It enures to anybody's benefit ---

9 **THE COURT:** No, it doesn't.

10 **MR. DODSON:** --- who has an interest -- Your Honor, let
11 me cite to you a case. That's what they say. They say that
12 we are not ---

13 **THE COURT:** No, I think I said that.

14 **MR. DODSON:** I understand. And with all due respect,
15 let me tell you what the Supreme Court said on this. In the
16 case of Dibble versus Bryant, and the cite is 274 S.C. 481,
17 Supreme Court noted -- I'm quoting from the case now,
18 respondent Bryant has never been ousted of possession of the
19 property, nor was he the defaulting tax payer.

20 Here's what the court held ---

21 **THE COURT:** What was he?

22 **MR. DODSON:** He had a claim to the property under
23 another chain of title that was a void ---

24 **THE COURT:** Was he ---

25 **MR. DODSON:** --- chain of title.

1 **THE COURT:** --- the purchaser of the tax sale?

2 **MR. DODSON:** No, sir.

3 **THE COURT:** Well.

4 **MR. DODSON:** He was not -- he was not the purchaser --
5 I don't know that we've had a case like this.

6 But here's what the Supreme Court said, they noted that
7 he was not the defaulting tax payer. And here was their
8 holding, and I'm quoting, we find the requirements of notice
9 to the owner and possession by an executing officer to be of
10 universal application not withstanding the particular
11 circumstances of the case.

12 In the next paragraph the Supreme Court goes on to talk
13 about that this is, quote -- it's notice to, quote, the
14 community. So the fact that we are not the defaulting tax
15 payer doesn't matter because in this -- in this case that I
16 just quoted to you ---

17 **THE COURT:** Does it matter that you're not the -- that
18 you were not -- that you had -- did not have and did not
19 claim any ownership interest in the property prior to the
20 sale?

21 **MR. DODSON:** It does -- it does not.

22 **THE COURT:** Why?

23 **MR. DODSON:** It does not because what our Supreme Court
24 has said is that -- they've said two important things. One,
25 that the procedures for the tax sale must be strictly

1 followed. And there's no dispute here that they were not.

2 And the second thing that our Supreme Court has said is
3 that they ---

4 **THE COURT:** I don't know that there's a dispute -- that
5 there's no dispute they were not. That's never been
6 determined.

7 **MR. DODSON:** Okay. Well, I defy them to stand up and
8 tell you -- tell Your Honor ---

9 **THE COURT:** They're not required to in this matter.

10 **MR. DODSON:** I understand.

11 **THE COURT:** They could -- I've tried them, be a trial
12 on that issue.

13 **MR. DODSON:** And we can have that trial on the issue.
14 That's our whole position is we should be allowed to have
15 that trial on the issue. But they've not -- my only point
16 to Your Honor is they have not argued today, nor briefed
17 Your Honor and said we take disagreement with Dodson's
18 assertion that the requirements ---

19 **THE COURT:** Well, let me ask you this, Mr. Dodson.
20 What is -- what is the injury that your client would suffer
21 as a result of deficiencies in the tax sale if, in fact,
22 there were some?

23 **MR. DODSON:** The injury is this, we have a defective
24 deed. Now, ---

25 **THE COURT:** No, you don't. You don't have a defective

1 deed.

2 MR. DODSON: We ---

3 THE COURT: You may ---

4 MR. DODSON: Our ---

5 THE COURT: Listen to me. You may have a defective tax
6 sale. I don't know that. You do not have a defective deed.
7 It's just a deed saying we sold this property according to
8 the statute and we've given you only the title -- not
9 warranting anything to you.

10 MR. DODSON: And that's the -- that's the point, Your
11 Honor, is that that deed, it warrants nothing because they
12 did not follow the procedures ---

13 THE COURT: Well, what would you suffer as an owner of
14 the property if, in fact, as you say, the notice posted on
15 the property was deficient?

16 MR. DODSON: Because that's -- we allege in our
17 complaint we have a cloud on title. And what we anticipate
18 ---

19 THE COURT: What would that cloud be?

20 MR. DODSON: That cloud would be we couldn't sell -- we
21 couldn't ---

22 THE COURT: No. No. No. What is the cloud? Not what
23 -- not the effect.

24 MR. DODSON: The cloud is that the deed itself is void
25 on its face, ---

1 THE COURT: No, sir.

2 MR. DODSON: --- ab initio ---

3 THE COURT: No, sir. Listen. Listen carefully. What
4 -- what is the subject matter of the cloud on the title?
5 The term cloud on title implies that somebody else may be
6 able to make a claim against the property. Who might that
7 be?

8 MR. DODSON: Anyone else who were to do a title search
9 on this. What we anticipate ---

10 THE COURT: No. No. No. People doing title searches
11 don't make claims of ownership. Who could claim ownership
12 or some other interest in the property as a result of a
13 defect in the tax sale?

14 MR. DODSON: Let me, if I may, answer your ---

15 THE COURT: No, answer my question ---

16 MR. DODSON: --- question.

17 THE COURT: --- first.

18 MR. DODSON: I'm trying to, Your Honor. What we
19 anticipate doing is naming an expert who will testify and
20 opine that because of the cloud on title, no reasonable
21 attorney would close on this property and sell this property
22 because of the cloud on title. So I cannot answer ---

23 THE COURT: I'm repeating -- let me -- that doesn't
24 answer my question. What is the factual cloud on the title?

25 MR. DODSON: Factual?

1 **THE COURT:** Who can claim ownership to the property?

2 **MR. DODSON:** The problem is that we have a deed that is
3 void on its ---

4 **THE COURT:** No, sir.

5 **MR. DODSON:** --- face.

6 **THE COURT:** The problem you're asserting is that you
7 want to rescind a tax sale, essentially, because, for
8 whatever reason, and it is premised on the fact that
9 somebody by reason of a defective procedural process may
10 claim an interest in the property superior to yours. And
11 I'm asking you who that is.

12 **MR. DODSON:** As I indicated earlier, I cannot directly
13 answer that question. Because of the pending litigation, no
14 one is going to make an offer to buy the property or do
15 anything else ---

16 **THE COURT:** There's a difference between a cloud on the
17 title that defects your ownership and the fact that you
18 can't sell it.

19 **MR. DODSON:** Well, we -- again, we're not to the point
20 in the litigation where we're talking about, you know, the
21 factual scenario of how does it -- how does it affect us.
22 Because, as I indicated to Your Honor earlier, you know,
23 what we anticipate doing in discovery and as we move forward
24 with the case is to name an expert who would opine and
25 testify that because of the cloud on title, created by the

1 defective tax sale, that that sale on title would make it
2 imprudent for any subsequent purchaser to buy the property.

3 So can I tell you that a John Doe purchaser is the
4 person who wants to buy the property, but won't because of
5 this defective tax sale? I can't because of the pending
6 litigation. But, you know, we have consulted with an expert
7 that we do anticipate naming -- formally naming during the
8 discovery process to support that portion of our case.

9 What we're saying here today is it is premature at a
10 12(b)6 motion to dismiss the case. Because the case is --
11 it has been properly alleged, which is there was a defective
12 tax sale. As a direct and proximate result of that
13 defective tax sale, we have a deed that is void on its face
14 because the procedures were not followed. And so we think
15 for purposes of a 12(b)6 that that is sufficient to allow us
16 to move forward to the next step of the case.

17 **THE COURT:** What about the fact that they have filed
18 affidavits beyond the typical 12(b)6 response?

19 **MR. DODSON:** Yeah, I'm glad you asked me that because
20 he was going to poke me with a stick if I didn't bring that
21 up. Those are improper affidavits, as Your Honor knows.

22 **THE COURT:** No, I don't know ---

23 **MR. DODSON:** It is ---

24 **THE COURT:** --- that.

25 **MR. DODSON:** The case law is very clear that a 12(b)6

1 motion is confined to the four corners of the complaint.

2 **THE COURT:** The case law is clear that a 12(b)6 motion
3 can be converted and ---

4 **MR. DODSON:** Right.

5 **THE COURT:** --- considered by the Court as a motion for
6 summary judgment in the face of documents being filed beyond
7 the pleadings, ---

8 **MR. DODSON:** That ---

9 **THE COURT:** --- such as affidavits.

10 **MR. DODSON:** That is correct. This has not been
11 noticed today as a motion for summary judgment. This was
12 noticed today ---

13 **THE COURT:** That's without ---

14 **MR. DODSON:** --- as a ---

15 **THE COURT:** --- regard to whether or not it's been
16 noticed as a motion for summary judgment.

17 **MR. DODSON:** Well, we're entitled to ten days' notice
18 on a motion for summary judgment. What was noticed today
19 was a motion to dismiss based on 12(b)6.

20 **THE COURT:** When did you receive the affidavits?

21 **MR. DODSON:** I'd have to look, specifically. I don't
22 know. It was -- I'm sure that it was more than ten days
23 ago.

24 But irregardless, what was noticed to us, what Court
25 Administration told us we were arguing today was not a

1 motion for summary judgment, but was rather a 12(b)6 motion.

2 **THE COURT:** What I'm trying to say is that I believe
3 that the Court can take into account a record that has been
4 made and transform, if that's the right word, a 12(b)6
5 motion into a motion for summary judgment when it appears
6 that that's appropriate. Is that not correct?

7 **MR. DODSON:** I agree with Your Honor. I -- I don't
8 disagree with that at all. I -- I agree with Your Honor.
9 My only position on that is that we should still be allowed
10 proper notice to respond to a motion to summary judgment
11 before Your Honor converts this to a motion for summary
12 judgment. That's my only point.

13 I am not questioning Your Honor's ---

14 **THE COURT:** Well, you did ---

15 **MR. DODSON:** --- authority ---

16 **THE COURT:** --- have an opportunity.

17 **MR. DODSON:** Well, ---

18 **THE COURT:** The question is -- well, you did have an
19 opportunity. The affidavits were filed -- were filed well
20 in advance of this hearing.

21 **MR. DODSON:** But what was noticed for today ---

22 **THE COURT:** I understand what was noticed today.

23 **MR. DODSON:** All right. And so, you know, nobody
24 indicated prior to Your Honor right now converting this to a
25 motion for summary judgment. That's the first time that

1 that has happened.

2 And the only thing that I would say in response to that
3 is that if that's going to happen, if Your Honor says I'm
4 going to convert this, as Your Honor has the full power and
5 authority to do, to a motion for summary judgment, then we
6 ought to be allowed to respond to it as a motion for summary
7 ---

8 **THE COURT:** I'm not necessarily ---

9 **MR. DODSON:** --- judgement and ---

10 **THE COURT:** --- saying ---

11 **MR. DODSON:** --- not a 12(b)6.

12 **THE COURT:** I'm not necessarily saying that. I'm just
13 -- I'm just really responding to your argument.

14 **MR. DODSON:** We do not feel that in the context,
15 strictly in the context of a 12(b)6 motion that any
16 affidavits, anything outside the pleadings is properly
17 considered by the Court.

18 **THE COURT:** Okay. Anything else?

19 **MR. DODSON:** Nothing else as it pertains to the motion
20 to dismiss, Your Honor.

21 **THE COURT:** All right. Response.

22 **MR. GRIFFIN:** Yes, Your Honor.

23 **THE COURT:** Well, first of all, out of sight, out of
24 mind. I neglected ---

25 **MR. KENDREE:** Yes, Your Honor.

1 **THE COURT:** --- Mr. Kendree hiding behind the screen.

2 **MR. KENDREE:** Michael Kendree ---

3 **MR. DODSON:** Your Honor, I'm sorry. May I make -- put
4 one other case on the court record ---

5 **THE COURT:** Yes.

6 **MR. DODSON:** --- as it pertains -- I cited for Your
7 Honor the Dibble versus Bryant case, and I quoted from that,
8 but there's actually another case that I wanted to bring up.
9 It's Fox versus Moultrie. And the citation is 379 S.C. 609.
10 That case also involved a tax sale. And the IRS was
11 actually the party that brought or was a party to that.

12 **THE COURT:** Why were they a party?

13 **MR. DODSON:** They ---

14 **THE COURT:** --- a tax lien.

15 **MR. DODSON:** On the tax lien. They were a party
16 because their position was we didn't get notice of the tax
17 sale and, therefore, when the purchaser of the property
18 purchased this property, it did not extinguish our tax lien.
19 And so the issue before the court was whether or not the
20 purchaser at the tax sale took the property -- whether the
21 tax sale extinguished the IRS's lien or whether they took
22 the property subject to the IRS's lien.

23 The point in me bringing up that case to Your Honor is
24 it's another example of where somebody that wasn't, you
25 know, a purchaser of the property had standing to assert a

1 claim because of their interest in the property ---

2 **THE COURT:** We're ---

3 **MR. DODSON:** --- the tax lien.

4 **THE COURT:** That's the point, they had an interest in
5 the property. But listen to me, please. They had a tax
6 lien. And clearly if they didn't receive notice under the
7 statute, the sale did not affect that lien. That's the law.

8 That's different from the purchaser now claiming that
9 the sale was defective and, therefore, -- and we want to
10 rescind what -- take back what we bought. We want to give
11 back what we bought and give us our money back.

12 **MR. DODSON:** I bring that up as two examples.

13 The other thing I would bring up is that the statutes
14 themselves that we're talking about here are not limited on
15 their face to only be applicable to the land owner or the
16 person in possession of the land.

17 **THE COURT:** I think they are limited to having delved
18 into all that quite a bit to be construed as a protection of
19 somebody who may have an interest in the property at the
20 time of the tax sale, ---

21 **MR. DODSON:** That ---

22 **THE COURT:** --- which is not your client.

23 **MR. DODSON:** That is not what the statutes say. They
24 do not say that. They are not limited in that way. That's

25 ---

1 THE COURT: All right. Let me ---

2 MR. DODSON: --- not what they say.

3 THE COURT: --- hear from Mr. Kendree.

4 MR. KENDREE: Thank you, Your Honor.

5 THE COURT: Michael, can I get you -- just pull up a
6 chair to that table so I can see you or ...

7 MR. KENDREE: May I do it after I finish ---

8 THE COURT: Sure.

9 MR. KENDREE: --- speaking, Your Honor?

10 THE COURT: Yeah.

11 MR. KENDREE: Thank you. Michael Kendree from York
12 County.

13 Just ever so briefly, Your Honor. York County takes
14 the position that the Defendants, who argued the initial
15 motions, characterizations of the statutes, are the County's
16 view of those statutes as well, that the protections enure
17 to the benefit of the Defendants whose property is ousted
18 and sold at the tax sale doesn't translate to some third
19 party perspective, successful bidder at a tax sale to stand
20 in the shoes of the Defendants and argue the defect.
21 Moreover, Your Honor, York County raised in its answer
22 standing, and it certainly may be appropriate for a summary
23 judgment motion, but just looking at the four corners of the
24 pleadings.

25 But the Plaintiffs suggest in their paragraphs 37, 38

1 and 39 that they are the successful purchaser at the tax
2 sale. The Plaintiff is Alterna Tax Asset Group, LLC. The
3 tax deed was issued to MTAG as Custodian for Alterna
4 Funding, II, LLC. Alterna Funding, II, LLC has subsequently
5 transferred the property to a group called ATCF REO
6 Holdings, LLC.

7 So the County's struggling with finding how this
8 Plaintiff, this LLC, this entity has any rights to even
9 argue interest in the property. Unless there's some phrase
10 in the pleadings that I missed, it looks like it's a
11 completely different entity than the purchaser of the tax
12 sale.

13 **THE COURT:** Okay. Give me a minute. Yeah, you got a
14 -- yeah, you need to come around here somewhere so the court
15 reporter ---

16 **MR. KENDREE:** Okay. Yes, sir.

17 **THE COURT:** --- can see you.

18 (Pause)

19 **THE COURT:** All right. Anything else, Mr. Kendree?

20 **MR. KENDREE:** No, Your Honor.

21 **THE COURT:** Okay. Mr. Dodson, let me ask you this.

22 **MR. DODSON:** Yes, Your Honor.

23 **THE COURT:** I'm looking at the complaint now. All you
24 say in the complaint is that the Plaintiff has standing to
25 assert these claims pursuant to 12-61-10. You do not say

1 that the -- and I may not have, you know, I didn't consider
2 this yesterday. Where do you say that the Plaintiff holds
3 any interest in the property?

4 **MR. DODSON:** Our interest in the property is we paid
5 six hundred and ten thousand dollars (\$610,000.00) for ---

6 **THE COURT:** Who is we?

7 **MR. DODSON:** --- the property. Our clients. And ---

8 **THE COURT:** Who is your client?

9 **MR. DODSON:** Alterna Tax and -- the issue that he
10 raised ---

11 **THE COURT:** No, listen to me for a minute, ---

12 **MR. DODSON:** Yes, sir.

13 **THE COURT:** --- would you? Who was title -- title was
14 given to whom? From the tax sale?

15 **MR. KENDREE:** It's an entity named MTAG as Custodian
16 for Alterna Funding, II, LLC.

17 **THE COURT:** An LLC. Does it say where that LLC is
18 formed?

19 **MR. KENDREE:** Not on what ---

20 **THE COURT:** Okay.

21 **MR. KENDREE:** --- I'm looking at, Your Honor.

22 **THE COURT:** No reason for it to. And then it was
23 transferred by that entity to whom?

24 **MR. KENDREE:** It was transferred after the tax sale by
25 that entity to ATCF REO Holdings, LLC.

1 **THE COURT:** An LLC.

2 **MR. KENDREE:** Yes, Your Honor.

3 **THE COURT:** Is there anything in the public record
4 indicating that the property was ever transferred to Alterna
5 Tax Asset Group, LLC?

6 **MR. KENDREE:** No, Your Honor.

7 **MR. DODSON:** Your Honor, that issue is not before you.
8 They have not filed a motion to dismiss on that issue. It
9 is not before Your Honor.

10 I mean no disrespect when I say that. There's
11 something not ---

12 **THE COURT:** Well, let me say it this way, Mr. Dodson.
13 Your complaint states no basis for your standing other than
14 ---

15 **MR. DODSON:** The complaint ---

16 **THE COURT:** --- 15-61-10.

17 **MR. DODSON:** The complaint specifically ---

18 **THE COURT:** You are not -- you were not an owner of the
19 property.

20 **MR. DODSON:** The complaint specifically says at
21 paragraph 37 ---

22 **THE COURT:** Let me stop you. Do you hold title -- does
23 Alterna Tax Asset Group, LLC, hold title of the property?

24 **MR. DODSON:** My understanding is that they -- that they
25 do.

1 **THE COURT:** Well, where is the deed?

2 **MR. DODSON:** Well, I don't know that I have the deed in
3 front of me, Your Honor, because I thought we were arguing
4 these two gentlemens' motion to dismiss. York County has
5 never filed a motion to dismiss on that.

6 **THE COURT:** Did you -- did you -- are you aware that
7 there have, in fact, been two transfers? And if you now own
8 the property, your client, if the Plaintiff now owns the
9 property, there have been three transfers of this property
10 without objection?

11 **MR. ROSBRUGH:** Your Honor, can I -- can I interject
12 here?

13 **THE COURT:** Yes, sir.

14 **MR. ROSBRUGH:** I'm Matt Rosbrugh on ---

15 **THE COURT:** Yes, sir.

16 **MR. ROSBRUGH:** --- behalf of the Plaintiff, Your Honor.
17 And I don't mean to be out of line, and I'm normally
18 not -- having two attorneys ---

19 **THE COURT:** Well, I've ---

20 **MR. ROSBRUGH:** --- speaking.

21 **THE COURT:** --- got your name on the list.

22 **MR. ROSBRUGH:** I understand, Your Honor, but I don't
23 want to offend Mr. Griffin or Mr. Landis.

24 But the -- my understanding is that Alterna is the
25 overarching entity of these entities.

1 **THE COURT:** My understanding is ---

2 **MR. ROSBRUGH:** And ---

3 **THE COURT:** --- that this whole argument depends upon
4 Alterna being a purchaser at the tax sale.

5 **MR. ROSBRUGH:** And, Your Honor, in the complaint, it's
6 kind of down there a little ways, ---

7 **THE COURT:** Well, where ---

8 **MR. ROSBRUGH:** It says ---

9 **THE COURT:** What paragraph?

10 **MR. ROSBRUGH:** It says at paragraph 36, thereafter the
11 Plaintiff bid on the real property issue, and goes on. And
12 then paragraph 37 says the Plaintiff won the defective tax
13 sale with the bid of six hundred and ten thousand dollars
14 (\$610,000.00). And I just ---

15 **THE COURT:** Well, look at 38. The Plaintiff alleges
16 that the Defendant, York County, issued a deed to Plaintiff.
17 That is false.

18 **MR. ROSBRUGH:** Your Honor, that may be something that
19 is an issue in the future, but at a motion to dismiss ---

20 **THE COURT:** Can I not take judicial notice of the
21 public record?

22 **MR. ROSBRUGH:** Yes, Your Honor, you can, however, I
23 don't think that's appropriate based on the fact that we're
24 here on a 12(b)6 motion to dismiss.

25 **THE COURT:** Listen, Mr. Rosbrugh, clearly, if your

1 client does not own an interest in the property, he cannot
2 possibly be damaged.

3 MR. ROSBRUGH: And, Your Honor, what the pleadings
4 allege is that ---

5 THE COURT: They allege something false.

6 MR. ROSBRUGH: Well, Your Honor, I will respectfully
7 disagree with you on that because the ---

8 THE COURT: Well, show me the deed to Alterna then.

9 MR. ROSBRUGH: Well, Your Honor, what I'm saying is the
10 Alterna entity is the overarching owner of all of this.

11 THE COURT: That does not mean a thing.

12 MR. ROSBRUGH: Your Honor, at this stage of the
13 pleadings and the litigation, before we have an opportunity
14 to do discovery, I think it does mean a thing. And ---

15 THE COURT: What we have is an attorney signed a
16 pleading containing false statements that are a matter of
17 public record.

18 MR. ROSBRUGH: Your Honor, I will disagree with that
19 characterization, first of all. Secondly, even if there is
20 a technical defect in the pleadings, a dismissal is not the
21 appropriate remedy in this case. It would be an amendment
22 for that ---

23 THE COURT: Well, let me ---

24 MR. ROSBRUGH: --- particular entity.

25 THE COURT: Let me say it this way. Alterna -- if

1 Alterna has no interest in the property, no title to the
2 property, and this case is dismissed, that doesn't bar --
3 that doesn't bar whoever owns the property from bringing
4 another action.

5 **MR. ROSBRUGH:** Well, Your Honor, I think ---

6 **THE COURT:** Because if the tax sale's defective and
7 that's your basis, the two year statute doesn't preclude
8 that.

9 **MR. ROSBRUGH:** I understand that, Your Honor. But I
10 think for the sake of judicial economy the appropriate thing
11 to do, if we get to that point, beyond the motion to dismiss
12 hearing, is for an amendment to occur, if that, in fact, is
13 the case. And at this stage we're here on the face of the
14 pleadings. And I don't believe it's appropriate for the
15 Court to dismiss this action in a manner that is consistent
16 with summary judgment.

17 And I don't believe that -- under the statute there's
18 no statutory provision that allows anybody to waive any of
19 the requirements of the statute. So with all due respect to
20 the Defendants in this case, they can waive anything they
21 want to, but it doesn't change the plain language of the
22 statute and they can't waive that statute.

23 And our courts have repeatedly said that this statute
24 has to be followed completely. It doesn't say if somebody
25 decides they don't care about it, if they don't care about

1 it, that's fine, they can waive it. It's not an issue that
2 can be waived.

3 **THE COURT:** Well, I'll ask you the same question I
4 asked Mr. Dodson. Who is damaged?

5 **MR. ROSBRUGH:** The Plaintiff has been damaged, ---

6 **THE COURT:** How?

7 **MR. ROSBRUGH:** --- Your Honor. Because ---

8 **THE COURT:** Because nobody else can claim title.

9 **MR. ROSBRUGH:** I disagree with that. And I was pulling
10 on Mr. Dodson's ---

11 **THE COURT:** Except the people that got the deed in the
12 first place.

13 **MR. ROSBRUGH:** Well, just -- I disagree with that, Your
14 Honor, because we don't know at this stage of the litigation
15 who else does.

16 **THE COURT:** Okay. I've heard enough.

17 **MR. ROSBRUGH:** What I was going -- can I just say one
18 more thing, Your Honor?

19 **THE COURT:** Yes, sir.

20 **MR. ROSBRUGH:** I'd like to finish up this thought. We
21 don't know at this stage in the litigation because as Mr.
22 Griffin has pointed out, there is a long and ugly history in
23 these -- in these dealings between these people. There are
24 -- there are -- not the lawyers, but between the parties.

25 On the Defendants' side there were agreements made, and

1 agreements rejected, and agreements violated, and Your
2 Honor, had to come in and try those issues.

3 We don't know what other things exists out there at
4 this stage in the litigation. It's an infant. And it has a
5 right to go forward at this stage to figure out what the
6 real things are. And I don't believe, again, that at this
7 stage of the litigation ---

8 **THE COURT:** That's been argued.

9 **MR. ROSBRUGH:** Thank you, Your Honor.

10 **THE COURT:** Anything further?

11 **MR. LANDIS:** Very briefly, if I may, Your Honor. To
12 that point exactly under the Lo han (ph.) case and other
13 standing cases it talks about injuries that have to be
14 concrete and particularized, not conjectural or
15 hypothetical.

16 And it sounds to me like -- I would argue the injuries
17 are impossible because there is nobody else on God's green
18 earth that can make a claim to this property other than the
19 people here. And under 12-51-160 it's not just about who
20 can bring an action, it's also about what type of action can
21 you bring? And the type of action that you can bring is an
22 action -- I'm sorry. I quoted the wrong one. 12 ---

23 **THE COURT:** 10 is what you're talking about.

24 **MR. LANDIS:** That's right, 12-61-10. The type of
25 action is an action barring all other claims to that

1 property. So if we're not taking the position that Alterna
2 or whoever the appropriate party is, can't bring an action,
3 but the only type of action they can bring is one for quiet
4 title. Here, fortunately, we've done their job for them
5 because everybody's declared in binding statements that
6 they're waiving any defect.

7 And to that end, I know we got sort of far afield on
8 the issue about whether to convert it. First of all, I
9 don't think the motion for 12(b)6 has to be converted
10 because they haven't alleged a fact, a fact that constitutes
11 a cloud on the title. But, certainly the affidavits can be
12 -- and they're basically -- stipulations can be -- can be
13 considered properly.

14 I think their response has to be, well, discovery isn't
15 complete. Well, if they're going to take that position,
16 they have the burden. Our courts have been clear on this.
17 If they say that summary judgment is premature, they have
18 the burden of telling the court why additional discovery is
19 necessary.

20 They talked about an expert who might have some legal
21 conclusion, but there's no additional discovery that is ever
22 going to create a cloud -- the only people whose input is
23 even relevant are the Defendants in this action, and they've
24 already been heard on.

25 And so there's absolutely no need to extend the record

1 in this case. And, again, I'm not sure that even the
2 affidavits have to be considered to get to where we arrive.

3 But that being said, to the Plaintiff's injury, they
4 bid at a public sale. They haven't said there was an issue
5 with the legal description. They haven't alleged that there
6 was something about the sale that made them bid on the
7 property and bid too much.

8 What they did is they bet that these people were going
9 to redeem the property and that they were going to collect
10 the interest through the redemption, and they bet wrong.
11 They had an opportunity to bid. If there was a defect in
12 the notice of the tax sale, presumably they got the benefit
13 because there would be fewer, at least in theory, there
14 would be fewer people bidding on the property. And so any
15 issue with the tax sale could only have enured to their
16 benefit.

17 Nobody forced them to pay six hundred and ten thousand
18 (610,000). They did that of their own free will at the tax
19 sale. And so they certainly cannot complain about that now.

20 **THE COURT:** All right. Based on the record I make
21 these findings, and as it relates to a motion to dismiss
22 pursuant to 12(b)6; The entire position of the Plaintiff in
23 this case depends upon having the Court construe the
24 statutory scheme for tax sales as enuring to the benefit of
25 the tax sale purchaser. I conclude as a matter of law that

1 that is not the case.

2 The -- or not just -- yeah, the -- I construe the
3 statutory scheme to be such as to protect the interest of
4 anyone who may have claimed some interest in or lien upon
5 the property that is being sold for taxes or to pay taxes.
6 The purchaser is essentially subject to the doctrine of
7 caveat emptor. And there's been no allegation of anything
8 inherently wrong with the sale. This is essentially an
9 action to rescind a tax sale.

10 Secondly, -- and for that reason I find as a matter of
11 law that the Plaintiff has no standing to challenge the tax
12 sale in any event, the process in any event.

13 Secondly, and I take judicial notice of the public
14 record, it appears that the Plaintiff has no interest in
15 this property as a matter of fact despite what the complaint
16 alleges and, thus, has no standing to bring this action. I
17 don't believe my consideration of the public record, as
18 brought to my attention by the County, needs to transform
19 this motion into a motion for summary judgment, and I do not
20 do that.

21 So for that reason I grant the Defendants', all of
22 them, motion to dismiss, as a matter of law, as a
23 construction of those statutes is a matter of law, and
24 follows, that I deny the motion for a temporary restraining
25 order or a preliminary injunction.

1 And I'm concerned about the fact that the Plaintiff has
2 brought this action when it doesn't even -- that there's no
3 indication on the public record that it has a deed. And, of
4 course, we are a record notice state. Much concern about
5 that.

6 It further appears, again from the public record, that
7 this property has, in fact, been transferred without
8 objection since the tax sale. So the very premise upon
9 which the Plaintiffs -- Plaintiffs argument is based fails,
10 that is, that it can be -- couldn't be transferred.

11 Now, Mr. Landis, Mr. Griffin, if you all will confer on
12 an order with those findings and submit that to me in email
13 format, not through the E-File System because I'm going to
14 -- I'm going to tinker with it.

15 **MR. GRIFFIN:** Yes, sir.

16 **MR. LANDIS:** Yes, sir.

17 **THE COURT:** And, of course, send a copy of that to Mr.
18 Dodson and Mr. Rosbrugh.

19 **MR. LANDIS:** Yes, sir.

20 **THE COURT:** And to Mr. Kendree.

21 **MR. KENDREE:** Thank you, Your Honor.

22 **THE COURT:** All right. That'll conclude the hearing.

23 **MR. ROSBRUGH:** Thank you, Your Honor.

24 **MR. LANDIS:** Thank you, Your Honor.

1

(Hearing Ended at 12:02 pm)

2

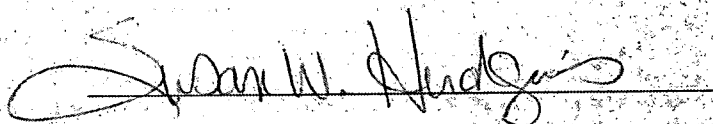
(End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for York County, South Carolina, on the 19th day of April 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 18, 2018

A handwritten signature in cursive script, reading "Susan W. Hudgins", written over a horizontal line.

Circuit Court Reporter

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

COUNTY OF YORK)

CASE NO: 2018 -CP-46-0107

Alterna Tax Asset Group, LLC)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,)

vs.)

York County, et al.)

Defendant.)

Plaintiff's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Paul S Landis, Bar No. 76120 Address: PO Box 10207, Greenville, SC 29603 Phone: 864-233-0445 Fax 864-233-4781 E-mail: paul@fayssouxlaw.com Other: _____
--	--

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

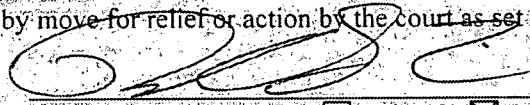
SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss
 Estimated Time Needed: 30 min Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
- Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.



Signature of Attorney for Plaintiff / Defendant

February 21, 2018
Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT: \$ _____
- EXEMPT: (check reason)
 - Rule to Show Cause in Child or Spousal Support
 - Domestic Abuse or Abuse and Neglect
 - Indigent Status: State Agency v. Indigent Party
 - Sexually Violent Predator Act Post-Conviction Relief
 - Motion for Stay in Bankruptcy
 - Motion for Publication Motion for Execution (Rule 69, SCRCP)
 - Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
- Name of Court Reporter: _____
- Other: _____

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order
- Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

- MOTION FEE COLLECTED: \$ _____
- CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Alterna Tax Asset Group, LLC,)

Plaintiff,)

vs.)

York County, York County Treasurer,)

York County Delinquent Tax Collector,)

Robert Clay Sparrow, Mickey Crowe,)

Fort Mill Holdings, LLC, and David)

Baucom,)

Defendants.)

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2018-CP-46-0107

**MOTION TO DISMISS ON BEHALF
OF DEFENDANTS FORT MILL
HOLDINGS, LLC AND DAVID
BAUCOM**

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 now ostensibly 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.

Defendant's motion is supported by the pleadings, statutory and common law, Affidavits of David Baucom and the manager of Fort Mill Holdings, LLC, arguments of counsel, and such other materials as may be submitted in the record and properly considered by the Court.

FAYSSOUX & LANDIS, PA



Paul S. Landis / SC Bar No. 76120

P.O. Box 10207

209 E. Washington Street (29601)

Greenville, SC 29603

(864) 233-0445

(864) 233-4781 (Fax)

paul@fayssouxlaw.com

February 21, 2018

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

MOTION FEE COLLECTED: \$ _____

CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Alterna Tax Asset Group, LLC,
Plaintiff,

Civil Case No. 2018-CP-46-0107

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

MOTION TO DISMISS OF
DEFENDANTS SPARROW AND
CROWE

Defendants.

Defendants Robert Clay Sparrow ("Sparrow") and Mickey Crowe ("Crowe"), by and through undersigned counsel, submit their Motion to Dismiss and incorporated memorandum of law in support, and move the Court for an order dismissing the Complaint of Plaintiff Alterna Tax Asset Group, LLC ("Plaintiff") with prejudice. 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. The Complaint is also properly dismissed pursuant to Rule 12(b)(6) because absent facts supporting injury to Plaintiff, the causes of action do not constitute viable claims for relief. Accordingly, the Court should dismiss the Complaint with prejudice.

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, attached hereto as **Exhibit A**. 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-46-00438.¹

¹ 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.

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. 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, attached hereto as **Exhibit B**; Aff. of FM Holdings, Feb. 19, 2018, ¶¶ 4-5, attached hereto as **Exhibit C**; Aff. of D. Baucom, Feb. 19, 2018, ¶¶ 4-5, attached hereto as **Exhibit D**.

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.

STANDARD OF REVIEW

Under Rule 12(b)(6), a defendant may move to dismiss a complaint due to its "failure to state facts sufficient to constitute a cause of action." *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 753 S.E.2d 846, 850 (S.C. 2014). The central inquiry is whether the allegations of the complaint, when viewed in the light most favorable to plaintiff, set forth a valid claim for relief. See *Plyler v. Burns*, 647 S.E.2d 188, 192 (S.C. 2007) (citing *Toussaint v. Ham*,

357 S.E.2d 8, 9 (S.C. 1987). The Court must grant the motion when "the facts and the inferences reasonably deducible from them show that the plaintiff could not prevail on any theory of the case." *Gray v. State Farm Auto Ins. Co.*, 491 S.E.2d 272, 275 (S.C. Ct. App. 1997); see *Flateau v. Harrelson*, 584 S.E.2d 413, 416 (S.C. Ct. App. 2003) (citing *Tatum v. Medical Univ. of South Carolina*, 346 S.C. 194, 552 S.E.2d 18 (2001)).

ARGUMENT

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. Additionally, the Complaint is void of any allegations that an individual or entity has challenged Plaintiff's title to the Property, and thus, even accepting all of Plaintiff's allegations as true, it fails to state a claim for relief that is plausible on its face. Accordingly, the Complaint is properly dismissed under Rule 12(b)(6) for Plaintiff's lack of standing and for Plaintiff's failure to state a claim.

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 Property²—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.*

² 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.

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 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.

2. The Complaint should be dismissed because it fails to state a claim for relief that is plausible on its face.

Even when the allegations of the Complaint are viewed in the light most favorable to Plaintiff, the Complaint is appropriately dismissed because it fails to set forth a claim for relief. *Plyler v. Burns*, 647 S.E.2d at 192 (citing *Toussaint*, 357 S.E.2d at 9). Notably lacking from the Complaint is a single allegation of how the conduct of any of the Defendants has caused damage to Plaintiff. Even if one were to assume as true the allegations relating to alleged deficiencies in the notice of the tax sale, Compl. ¶¶ 16-27, 33-35, 47, 52, such allegations do not establish a claim that is facially plausible given FM Holdings’ waiver of any objections to the tax sale. *See*

Ex. C at ¶ 4. Nor can Plaintiff claim injury stemming from the potential claim of interest in the Property adverse to Plaintiff given the waivers of Defendants FM Holdings, Baucom, Sparrow, and Crowe to any interest in the Property. See Ex. A at ¶¶ 4-6; Ex. B at ¶¶ 4-5; Ex. C at ¶¶ 4-5; Ex. D at ¶¶ 4-5. Absent any further allegations detailing how Plaintiff has been or could plausibly be injured by the tax sale, Plaintiff's claims must fail and are properly dismissed pursuant to Rule 12(b)(6).

CONCLUSION

Based on the foregoing, Defendants Sparrow and Crowe respectfully request the Court dismiss the Complaint with prejudice.

Respectfully submitted,

By: 

James M. Griffin
Margaret N. Fox
GRIFFIN | DAVIS
1116 Blanding Street
P.O. Box 999 (29202)
Columbia, S.C. 29201
jgriffin@griffindavislaw.com
mfox@griffindavislaw.com

Attorneys for Defendants Sparrow and Crowe

February 23, 2018
Columbia, South Carolina

Exhibit A

Affidavit of M. Crowe

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Alterna Tax Asset Group, LLC

Civil Case No. 2018-CP-46-0107

Plaintiff,

v.

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

Defendants.

**AFFIDAVIT OF
MICKEY CROWE**

BEFORE ME, the undersigned notary public, on this day appeared Mickey Crowe, who stated upon oath the following:

1. My name is Mickey Crowe and I am over the age of 18 years. I am not disqualified from making this sworn statement and I certify under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge.
2. I submit this affidavit in support of my Motion to Dismiss the Complaint in the above-captioned matter.
3. I am aware that the property identified and described at tax map #721-000-00-035 in the York County, South Carolina tax rolls (the "Property") was sold to Plaintiff at a delinquent tax sale.
4. On October 1, 2014, over two years prior to this sale, I assigned all interest I had in the Property to Sparrow for value received from Sparrow, which assignment was recorded in Mortgage Book 12360, Page 235, RMC Office for York County, South Carolina. See Exhibit A.
5. Thus, at the time of the sale of the Property to Plaintiff, I no longer had an interest in or claim to the Property.

6. To the extent such exists, I hereby waive (i) objection to any defect by the York County Defendants in carrying out the delinquent tax sale, including the alleged defects in Plaintiff's Complaint, and (ii) any interest in the Property that is adverse to Plaintiff's ownership of the Property.

FURTHER AFFIANT SAYETH NOT:

Date: 2-21-18

Mickey Crowe
Mickey Crowe

Sworn to and subscribed before me on the 22 day of February, 2018.

Danielle Polite

Notary Public for South Carolina
My Commission Expires: 12-04-2024

Exhibit A

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

PROBATE

PERSONALLY appeared before me the undersigned witness who made oath that s/he saw the within named Mickey Crowe, execute, seal and as his act and deed, deliver the within Assignment of Mortgage, and that s/he with the other witness witnessed the execution thereof.

SWORN TO BEFORE ME THIS
1 day of September, 2014.

Brenda Denton


Notary Public for South Carolina
My Commission Expires 3/19/22

Instrument
201409272969 DR 14419 41

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK) ASSIGNMENT OF MORTGAGE
 IN MORTGAGE BOOK 12360, PAGE 235

FOR VALUE RECEIVED, the receipt whereof is hereby acknowledged, the undersigned Mickey Crowe does hereby transfer, assign, set over and convey to Robert Clay Sparrow, his heirs and assigns, that certain mortgage executed by Fort Mill Holdings, LLC, to Robert Clay Sparrow and Mickey Crowe which mortgage is dated December 1, 2011, and recorded December 30, 2011, in Mortgage Book 12360, Page 235, RMC Office for York County, South Carolina, together with the Note and indebtedness secured by said mortgage; and the undersigned does hereby remise, release, quit claim and convey to the transferee herein all right, title and interest of the undersigned in and to the property described in and conveyed by said mortgage. The undersigned is now the joint owner of said debt and mortgage.

IN WITNESS WHEREOF, the undersigned Mickey Crowe has hereunto set his hand and seal this 1 day of ^{October} ~~September~~, 2014.

Signed, sealed and delivered
in the presence of:

Blenda S. [Signature]
[Signature]

Mickey Crowe
Mickey Crowe

201400272969
Filed for Record in
YORK COUNTY, SC
DAVID HAMILTON, CLERK OF COURTS
10-03-2014 AE 09:08 am.
ASSIGNMENT 7.00
DR Vol 14419 Page 40 = 41

Instrument: 201400272969 DR 14419 Page 40

Exhibit B

Affidavit of R. Sparrow

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Alterna Tax Asset Group, LLC

Civil Case No. 2018-CP-46-0107

Plaintiff,

v.

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

Defendants.

**AFFIDAVIT OF
ROBERT CLAY SPARROW**

BEFORE ME, the undersigned notary public, on this day appeared Robert Clay Sparrow,
who stated upon oath the following:

1. My name is Robert Clay Sparrow and I am over the age of 18 years. I am not
disqualified from making this sworn statement and I certify under penalty of perjury that the
foregoing statements are true and correct to the best of my knowledge.

2. I submit this affidavit in support of my Motion to Dismiss the Complaint in the
above-captioned matter.

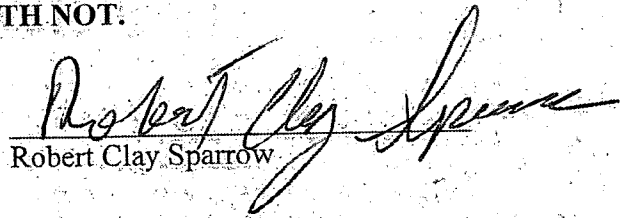
3. I am aware that the property identified and described at tax map #721-000-00-035
in the York County, South Carolina tax rolls (the "Property") was sold to Plaintiff at a delinquent
tax sale.

4. I was aware of this sale prior to its occurrence and intended for the sale to divest
me of any claim to the Property against its purchaser, the Plaintiff.

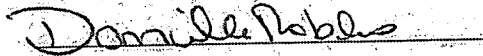
5. To the extent such exists, I hereby waive (i) objection to any defect by the York
County Defendants in carrying out the delinquent tax sale, including the alleged defects in
Plaintiff's Complaint, and (ii) any interest in the Property that is adverse to Plaintiff's ownership
of the Property.

FURTHER AFFLIANT SAYETH NOT:

Date: 2-22-18


Robert Clay Sparrow

Sworn to and subscribed before me on the 22 day of February, 2018.


Danielle Nobles

Notary Public for South Carolina
My Commission Expires: 12-04-2024

Exhibit C

Affidavit of FM Holdings

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Alterna Tax Asset Group, LLC,

Plaintiff,

v.

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

Defendants.

Civil Case No. 2018-CP-46-0107

**AFFIDAVIT OF
FORT MILL HOLDINGS, LLC**

BEFORE ME, the undersigned notary public, on this day appeared Tracy M. Goings, on behalf of Fort Mill Holdings, LLC ("FM Holdings"), who stated upon oath the following:

1. My name is Tracy M. Goings and I am over the age of 18 years. I am not disqualified from making this sworn statement and I certify under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge.

2. I am the Managing Member of FM Holdings and on its behalf, I submit this affidavit in response to Plaintiff's Complaint.

3. FM Holdings is aware that the property identified and described at tax map #721-000-00-035 in the York County, South Carolina tax rolls (the "Property") was sold to Plaintiff at a delinquent tax sale.

4. FM Holdings was aware the sale would take place and intended for the sale to divest FM Holdings of any claim to the Property against its purchaser, the Plaintiff.

5. To the extent such exists, FM Holdings hereby waives (i) objection to any defect by the York County Defendants in carrying out the delinquent tax sale, including the alleged defects in Plaintiff's Complaint, and (ii) any interest in the Property that is adverse to Plaintiff's ownership of the Property.

FURTHER AFFIANT SAYETH NOT.

Date: 2/19/18

Tracy M Goins
Fort Mill Holdings, LLC
By: Tracy M. Goins
Managing Member

Sworn to and subscribed before me on the 19 day of February, 2018.

Stephanie Burlew
Notary Public for ~~South Carolina~~ North Carolina
My Commission Expires: 5/30/22

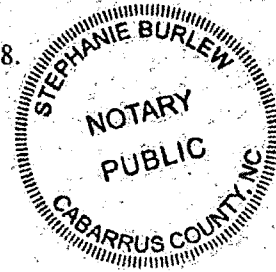


Exhibit D

Affidavit of D. Baucom

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Alterna Tax Asset Group, LLC,

Civil Case No. 2018-CP-46-0107

Plaintiff,

v.

**AFFIDAVIT OF
DAVID BAUCOM**

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

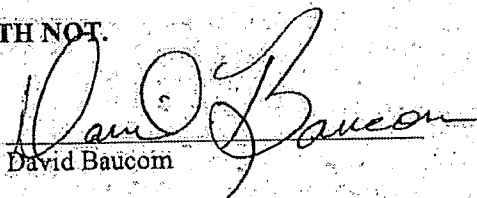
Defendants.

BEFORE ME, the undersigned notary public, on this day appeared David Baucom, who stated upon oath the following:


1. My name is David Baucom and I am over the age of 18 years. I am not disqualified from making this sworn statement and I certify under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge.
2. I submit this affidavit in support of my Motion to Dismiss the Complaint in the above-captioned matter.
3. I am aware that the property identified and described at tax map #721-000-00-035 in the York County, South Carolina tax rolls (the "Property") was sold to Plaintiff at a delinquent tax sale.
4. I was aware of this sale and intended for the sale to divest me of any claim to the Property against its purchaser, the Plaintiff.
5. To the extent such exists, I hereby waive (i) objection to any defect by the York County Defendants in carrying out the delinquent tax sale, including the alleged defects in Plaintiff's Complaint, and (ii) any interest in the Property that is adverse to Plaintiff's ownership of the Property.

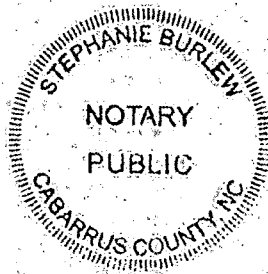
FURTHER AFFIANT SAYETH NOT.

Date: 2-19-18


David Baucom

Sworn to and subscribed before me on the 19 day of February, 2018.


Notary Public for ~~South Carolina~~ North Carolina
My Commission Expires: 5/30/22



STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

Alterna Tax Asset Group, LLC)
)
Plaintiff,)
v.)
York County, York County Treasurer,)
York County Delinquent Tax Collector,)
Robert Clay Sparrow, Mickey Crowe,)
Fort Mill Holdings, LLC, and David)
Baucom,)
)
Defendants.)
_____)

IN THE COURT OF COMMONS PLEAS

Docket No.: 2018-CP-46-0107

**MEMORANDUM OF LAW IN
SUPPORT OF PLAINTIFF'S
MOTION FOR TEMPORARY
RESTRAINING ORDER/
PRELIMINARY INJUNCTION**

BACKGROUND

This case arises out a delinquent tax sale. York County, the York County Treasurer and the York County Delinquent Tax Collector (hereinafter "York County Defendants") failed to comply with statutorily mandated requirements for a tax sale, creating a cloud on the title to the property. See S.C. Code. Ann. Section 12-51-40. Plaintiff purchased the property at the tax sale and initially filed this action in Federal Court to void the sale because the York County Defendants failed to comply with the statutorily mandated requirements.¹ The York County Defendants initially agreed to hold the proceeds of the tax sale until final adjudication on the merits. See Exhibit A.

¹ The facts of this matter do not appear to be in significant dispute. The records provided by the York County Defendants prior to the initiation of the litigation demonstrate certain facts as alleged within the underlying Complaint. The dispute in this matter is related to the legal consequences of these facts in light of the statutory requirements related to a delinquent tax sale.

Subsequently, the Federal Court found it lacked subject matter jurisdiction under the Tax Injunction Act and dismissed the matter without prejudice on January 11, 2018.² The next day, Plaintiff refiled the present action in the York County Court of Common Pleas. At that time, and for the first time since April, 2017 when the Federal Court action was initially filed, the York County Defendants attempted to rescind the prior agreement to continue holding the disputed funds pending adjudication of this case. *See* Exhibit B. The pending Motion was then filed.

ARGUMENT

I. Standard for a Preliminary Injunction

“The sole purpose of a temporary injunction is to preserve the status *quo* and thus avoid possible irreparable injury to a party pending litigation.” FOC. Lawshe Ltd. P’ship v. Int’l Paper Co., 352 S.C. 408, 413, 574 S.E.2d 228, 231 (Ct. App. 2002) (quoting Zabinski v. Bright Acres Assocs., 346 S.C. 580, 601, 553 S.E. 2d 110, 121 (2001)); Poynter Investments, Inc., v. Century Builders of Piedmont, Inc., 387 S.C. 583, 694 S.E.2d 15 (S.C. 2010). Stated differently, a temporary injunction is utilized “to preserve the subject of controversy in the condition which it is at the time of the Order until opportunity is offered for full and deliberate investigation and to preserve the existing status *quo* during litigation....” Cnty. of Richland v. Simpkins, 348 S.C. 664, 671, 560 S.E. 2d 902, 905 (Ct. App. 2002) (quoting Cnty. Council of Charleston v. Felkel, 244 S.C. 480, 483-84, 137 S.E.2d 577, 578 (1964)).

“For a preliminary injunction to be granted, the plaintiff must establish that (1) it would suffer irreparable harm if the injunction is not granted; (2) it would likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law.” *Id.* at 121, 603 S.E. 2d at 908 (citing

² Any statute of limitations issue in regard to this case was tolled pursuant to 28 U.S.C. § 1367(d).

Cnty. Of Richland v. Simpkins, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct. App. 2002)). “When a court is requested to issue a temporary injunction it may consider the merits of a case to the extent necessary to determine whether a temporary injunction is appropriate.” AJG Holdings, LLC v. Dunn, 674 S.E.2d 506, 509 (Ct.App.2009), quoting Helsel v. City of N. Myrtle Beach, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992). “Once a *prima facie* showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits.” Id.

II. The Motion seeks only to maintain the current status *quo*.

As a threshold matter, Plaintiff’s Motion seeks only to maintain the status *quo* the way it has been maintained since this case was initiated. In fact, the York County Defendants agreed to this very remedy, in writing. See Exhibit A. Only recently, did the York County Defendants change their collective minds and seek to back out of their existing agreement. See Exhibit B. In the pending motion, Plaintiff asks only that the Court maintain the status *quo* by requiring that the sales proceeds of the tax sale be held until final adjudication by the Court.³

In addition to the County Defendants’ agreement to maintain the funds, the Court should maintain the status *quo* regarding the custody of the money. The County Defendants received the funds as a result of a facially defective tax sale. Plaintiff paid the County Defendants Six Hundred Ten Thousand Dollars (\$610,000) with the understanding and belief that these funds would be safeguarded pending the County’s delivery of good title to the subject property. Therefore, the Court should require the County to continue to maintain the funds pending adjudication of the instant litigation and the questions related to the validity of the tax sale and title.

³ Alternatively, the funds could be paid into the Court in lieu of York County maintaining them.

III. Plaintiff would suffer irreparable harm if an injunction is not granted.

The harm Plaintiff would suffer if an injunction is not granted is clear when the facts and circumstances of this case are considered. First, the overage on the tax sale would be paid to the remaining Defendants whose property was sold at a tax sale because they did not pay their property taxes in a timely manner. As a result, if York County pays the overage money directly to the remaining Defendants before the end of litigation that money is effectively gone. As it stands now, the money Plaintiff paid for the property rests safely with the county. However, if the York County Defendants are allowed to disburse that money before the conclusion of this case Plaintiff's money is likely to vanish like a feather in the wind. *See* Exhibit H, *Aff. of T.J. Ryan*.

This is particularly true given the pending litigation between the parties. As this Court is aware, Defendants Sparrow and Crowe sued Fort Mill Holdings and David Baucom in separate actions captioned Robert Clay Sparrow and Mickey Crowe, Plaintiffs, v. Fort Mill Holdings, LLC and David Baucom Defendants (Docket No.: 2013-CP-46-00438) and Robert Clay Sparrow and Mickey Crowe, Plaintiffs, v. Maurer Holdings, LLC and David Baucom, Defendants (Docket No.: 2013-CP-46-00438). Those cases were consolidated and this Court entered an Order of Judgment for \$1,427,347.56 on or about March 29, 2016. *See* Exhibit F. Thereafter, the Defendants in those actions appealed and this Court entered a Consent Order on October 17, 2016 which provided that Fort Mill Holdings, LLC, and David Baucom “have agreed to assign to Plaintiffs all proceeds from the tax sale of the property and to refrain from dissipating their assets while the appeal is pending.” *See* Exhibit G. Given the wording of the Consent Order, any money from the tax sale, money that was paid in full by the Plaintiff to this action, would go straight to Sparrow and Crowe leaving the Plaintiff with no claim to money they paid. Further, there is no likelihood Plaintiff could ever recover those funds after they are released by the County Defendants.

IV. Plaintiff is likely to prevail on the merits of the case.

S.C. Code Ann Section 12-51-40 sets forth statutory mandates that must be strictly followed before a tax sale. In interpreting this statute, the courts in this state have held that tax sales of land must be conducted in strict compliance with statutory requirements. King v. James, 388 S.C. 16, 694 S.E.2d 35 (Ct. App. 2010). Put another way by the courts: All conditions governing tax sales are mandatory and strictly enforced. Hawkins v. Bruno Yacht Sales, Inc., 342 S.C. 352, 536 S.E.2d 698 (Ct. App. 2000), *rehearing denied, cert granted, affirmed as modified* 353 S.C. 31, 577 S.E.2d 202. In this case the York County Defendants did not strictly comply with the statutory mandates found in S.C. Code 12-51-40(a).

More specifically, subsection (a) of the statute provides in relevant part that “a notice of delinquent property taxes...must be mailed...[and] must specify that if the taxes penalties and costs are not paid, the property must be advertised and sold to satisfy the delinquency.” In this case, the Notice for Delinquent Property Taxes mentions nothing about the property “be advertised.” *See* Exhibit C. Instead, it is written in a way that does not “strict[ly] compl[y] with the statutory requirements” of S.C. Code 12-51-40.

There are additional deficiencies as well that make the sale void. Specifically, subsection (b) of the statute has additional and further requirements that must be met but were not in this case. In relevant part the statute provides: “In the case of real property, exclusive possession is taken by mailing a notice of delinquent property taxes, assessments, penalties and costs to the defaulting taxpayer and any grantee of record of the property at the address shown on the tax receipt ... by certified mail, return receipt requested-restricted delivery.” In this case, that simply was not done. Instead, a “Final Property Tax Bill” was mailed but not a “Notice of delinquent property taxes, assessments, penalties and costs” as required by the statute. *See* Exhibit D. Moreover, there is

nothing showing the certified mail requirements were satisfied. Finally, the purported notice did not “specify that if the taxes, assessments, penalties, and costs are not paid before a subsequent sales date, the property must be duly advertised and sold for delinquent property, taxes, assessments, penalties and costs.” In short, the York County Defendants failed to comply with statutorily mandated requirements of S.C. Code 12-51-40(b) thus voiding the tax sale altogether.

Lastly, the provisions of subsection (c) of the statute were not followed. That subsection of the statute provides that a physical notice be posted on the property “reading ‘Seized by person officially charged with the collection of delinquent taxes of (name of political subdivision) to be sold for delinquent taxes...’” *See* Exhibit E. As the Court can see, the language on the Notice simply does not match what subsection (c) of the statute expressly mandates. Thus, the sale is void.

The deficiencies noted above create a cloud on the title to the property. *See* Exhibit H. Thus, the reason for this action. Moreover, if the York County Defendants are allowed to disburse the overage to their Co-Defendants, Plaintiffs will suffer irreparable harm as the money they paid for defectively titled property will be gone.

V. Plaintiff does not have an adequate remedy at law.

The nature of the pending action is equity based. Plaintiff’s have pleaded causes of action for quiet title, declaratory judgment, injunctive relief and unjust enrichment by virtue of the fact that the York County Defendants did not follow the statutory mandates for tax sales. By the very nature of the causes of actions pleaded, Plaintiff’s remedy is based in equity and not a monetary award or remedy. If the York County Defendants are now allowed to disburse money on the illegal tax sale before a final determination of the Court, any remedy Plaintiff might achieve through a quiet title, declaratory judgment or injunctive relief could well be and likely would be meaningless.

CONCLUSION

For the reasons set for above, Plaintiff seeks a preliminary injunction that prohibits the York County Defendants from disbursing any money from the tax sale as the York County Defendants previously agreed to do until the issues are fully adjudicated by the Court.

Respectfully submitted,

s/Robert D. Dodson/
Robert D. Dodson
Law Offices of Robert Dodson, P.A.
1722 Main Street, Suite 200
Columbia, SC 29201
Telephone (803) 252-2600
Facsimile (803) 771-2259
Email: rdodson@rdodsonlaw.com

Matthew B. Rosbrugh
MRR Law, LLC
P.O. Box 292290
Columbia, SC 29229
Telephone: (803) 753-1432
Facsimile: (803) 419-9614
Email: matt@mrblawllc.com
Attorneys for the Plaintiff

Columbia, South Carolina

April 19, 2018

EXHIBIT A

From: Kendree, Michael
Sent: Thursday, April 20, 2017 2:27 PM
To: Robert Dodson
Cc: Mattevi, Tracy; Kendree, Michael
Subject: Alterna Tax Asset Group v. York County, et al.

Robert,

To confirm our earlier conversation today, York County is currently holding the overage amount generated by the York County 2015 tax sale for Tax Parcel 721-00-00-035. York County will not distribute any claim for the overage until such time as the above-referenced litigation is resolved as to York County or York County is otherwise instructed by Court Order. I am copying the Deputy Treasurer/Collections Supervisor, so that she is aware of this representation.

Please let me know if you have any questions or concerns.

Sincerely,

Michael K. Kendree
York County Attorney
York County Attorney's Office
26 West Liberty Street
P.O. Drawer 299
York, South Carolina 29745
Phone: 803-684-4851
Facsimile: 803-684-6682

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EXHIBIT B

From: Robert Dodson
Sent: Tuesday, January 23, 2018 6:17 PM
To: Kendree, Michael
Cc: Matthew Rosbrugh
Subject: RE: Alterna Tax Asset Group, LLC v. York County, et al.

Michael,

I find your response troubling. We previously agreed York County would not disburse the money until the issues were decided by the Court. It is for that reason that Matt and I did not initially move for injunctive relief. However, in light of you and York County changing its collective mind and effectively backing out of the agreement we will make a motion for a TRO and/or preliminary injunction. To be clear no money should be disbursed until the issue is addressed by the Court. If it is, we will pursue all lawful actions against the interested parties.

Sincerely,

Robert D. Dodson

Sent from Mail for Windows 10

From: Kendree, Michael
Sent: Tuesday, January 23, 2018 5:23 PM
To: Robert Dodson
Cc: Matthew Rosbrugh
Subject: RE: Alterna Tax Asset Group, LLC v. York County, et al.

Robert,


With the express demands being made in response to your email, I believe it preferable for the Court to opine on the request.

Thank you,

Michael K. Kendree
York County Attorney
York County Attorney's Office
26 West Liberty Street
P.O. Drawer 299
York, South Carolina 29745
Phone: 803-684-4851
Facsimile: 803-684-6682

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From: Robert Dodson [mailto:rdodson@rdodsonlaw.com]
Sent: Tuesday, January 23, 2018 5:54 AM
To: Kendree, Michael
Cc: Matthew Rosbrugh
Subject: RE: Alterna Tax Asset Group, LLC v. York County, et al.

Does our agreement remain in effect that no money will be disbursed until final adjudication of this matter on the merits?


Sent from Mail for Windows 10

From: Kendree, Michael
Sent: Monday, January 22, 2018 6:23 PM
To: 'Paul Landis'; Robert Dodson; Matthew Rosbrugh
Cc: Maggie Fox; Jim Griffin
Subject: RE: Alterna Tax Asset Group, LLC v. York County, et al.

Similarly, sorry for the delay. I will accept service on behalf of York County, the YC Treasurer, and Delinquent Tax Collector. Thank you.

Michael K. Kendree
York County Attorney
York County Attorney's Office
26 West Liberty Street
P.O. Drawer 299
York, South Carolina 29745
Phone: 803-684-4851
Facsimile: 803-684-6682

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 Please consider the environment before printing this email.

From: Paul Landis [mailto:paul@fayssouxlaw.com]
Sent: Monday, January 22, 2018 5:15 PM
To: Robert Dodson; Matthew Rosbrugh
Cc: Kendree, Michael; Maggie Fox; Jim Griffin
Subject: RE: Alterna Tax Asset Group, LLC v. York County, et al.

Robert,

I'm sorry for the delay. I am authorized to accept on behalf of David Baucom and Fort Mill Holdings.

Regards,
Paul

Paul S. Landis
FAYSSOUX & LANDIS
ATTORNEYS AT LAW, P.A.
864.233.0445
864.233.4781 FAX

From: Robert Dodson [mailto:rdodson@rdodsonlaw.com]
Sent: Thursday, January 18, 2018 12:07 PM
To: Matthew Rosbrugh <matt@mbrlawllc.com>; Paul Landis <paul@fayssouxlaw.com>
Cc: Kendree, Michael <michael.kendree@yorkcountygov.com>; Maggie Fox <MFox@griffindavislaw.com>; Jim Griffin <JGriffin@griffindavislaw.com>
Subject: RE: Alterna Tax Asset Group, LLC v. York County, et al.

Please respond to the email below.

Thank you.

Robert D. Dodson, Esquire
Law Offices of Robert Dodson, P.A.
1722 Main Street, Suite 200
Columbia, South Carolina 29201
Telephone: (803) 252-2600
Facsimile: (803) 771-2259
rdodson@rdodsonlaw.com
www.robertdodsonlaw.com
<https://www.facebook.com/robertdodsonlaw>
<https://www.twitter.com/robertdodsonlaw>
http://www.linkedin.com/profile/view?id=192464797&locale=en_US&trk=tab_pro

From: Robert Dodson
Sent: Monday, January 15, 2018 12:19:24 PM
To: Matthew Rosbrugh; Paul Landis

Cc: Kendree, Michael; Maggie Fox; Jim Griffin
Subject: RE: Alterna Tax Asset Group, LLC v. York County, et al.

All,

In light of Judge Seymour's Order on Thursday, attached please find a copy the civil cover sheet, summons and complaint which was filed the York County Court of Common Pleas on Friday.

Please let me know if you will accept service on behalf of your clients. Additionally, please let me know if the agreement we had with the York County defendants, that money from the tax sale would not be distributed until resolution of this case, is still agreeable. Obviously, if the York County cannot or will not agree to this, we will file for injunctive relief with the Court. However, I hope this will not be necessary.

Thank you.

Robert D. Dodson, Esquire
Law Offices of Robert Dodson, P.A.
1722 Main Street, Suite 200
Columbia, South Carolina 29201
Telephone: (803) 252-2600
Facsimile: (803) 771-2259
rdodson@rdodsonlaw.com
www.robertdodsonlaw.com
<https://www.facebook.com/robertdodsonlaw>
<https://www.twitter.com/robertdodsonlaw>
http://www.linkedin.com/profile/view?id=192464797&locale=en_US&trk=tab_pro

From: Matthew Rosbrugh <matt@mbrlawllc.com>
Sent: Tuesday, December 12, 2017 4:13:42 PM
To: Paul Landis
Cc: Kendree, Michael; Maggie Fox; Robert Dodson; Jim Griffin
Subject: Re: Alterna Tax Asset Group, LLC v. York County, et al.

Thank you all.

Matthew B. Rosbrugh
MBR Law, LLC
Post Office Box 292290
Columbia, South Carolina 29229
o) 803.753.1432

matt@mbrlawllc.com

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EXHIBIT C

TAX BILL NO. 036760143

EXECUTION NOTICE FOR DELINQUENT PROPERTY TAXES

TAX YEAR **2014**

YORK COUNTY, SOUTH CAROLINA

PERSONAL	LAND	BUILDING	TOTAL	CASES	ASSESSED VALUE	LEVY	LESS EXEMPTIONS	TOTAL TAXES DUE												
\$0.00	\$160,000.00	\$802,000.00	\$962,000.00	6.00	\$57,120.00	359.30	\$0.00	\$20,523.22												
DISTRICT: 4FH	CITY CODE: FORT MILL	SCHOOL DISTRICT:	CITY:	DESCRIPTION OF PROPERTY:																
PRIOR YEAR TAX ON THIS PROPERTY:				HWY 51 LOT 9-H AD#15-0221 3490 HWY 51																
MAP REFERENCE NUMBER: 721-00-00-035				ACRES: 1	LOTS: 1	BLOBB: B														
  <p>11295 1 AT 0.406 T31 3DG282 PL2 S206 FORT MILL HOLDINGS LLC 8001 N TRYON STREET CHARLOTTE N C 28262-0000</p>				<p>ELIZABETH W. LATHAM, TREASURER FOR YORK COUNTY TO THE DELINQUENT TAX COLLECTOR OF YORK COUNTY OR HIS OR HER DEPUTY; WHEREAS, THE TAXPAYER WHOSE NAME APPEARS ABOVE HAS BEEN DULY ASSESSED THE SUM NOTED ABOVE FOR SCHOOL, COUNTY, AND SPECIAL TAXES FOR THE TAX YEAR LISTED ABOVE AND HAS FAILED TO PAY THE TAXES, THIS EXECUTION COMMANDS YOU IN THE NAME OF THE STATE TO LEVY BY DISTRESS AND SALE ON SO MUCH OF THE DELINQUENT TAXPAYER'S PROPERTY AS IS SUFFICIENT TO SATISFY THE DELINQUENT TAXES, ASSESSMENTS, PENALTIES AND COSTS. THIS EXECUTION IS SUFFICIENT WARRANT FOR A LEVY BY DISTRESS AND SALE.</p> <p><i>Elizabeth W. Latham</i> (s.s.) YORK COUNTY TREASURER</p>																
TOTAL TAXES AFTER EXEMPTION \$10,904.21 SCHOOL OPERATIONS \$4,883.76 SCHOOL DEBT SERVICE \$0.00 CITY OPERATIONS \$2,918.82 COUNTY OPERATIONS \$388.42 COUNTY DEBT SERVICE \$251.33 LIBRARY \$148.51 CULTURE AND HERITAGE \$217.08 YORK TEC COLLEGE \$538.93 UNINCORPORATED COUNTY MILLAGE \$274.18 SPECIAL FIRE DISTRICT \$0.00 STORMWATER FEE \$20,523.22 TAXES DUE				<table border="1"> <tr> <td>GROSS TAXES</td> <td>\$20,523.22</td> </tr> <tr> <td>LESS EXEMPTIONS:</td> <td></td> </tr> <tr> <td>STATE PROPERTY TAX RELIEF</td> <td>\$0.00</td> </tr> <tr> <td>HOMESTEAD EXEMPTION</td> <td>\$0.00</td> </tr> <tr> <td>INDUSTRIAL ABATEMENT</td> <td>\$0.00</td> </tr> <tr> <td>TOTAL TAXES DUE</td> <td>\$20,523.22</td> </tr> </table>					GROSS TAXES	\$20,523.22	LESS EXEMPTIONS:		STATE PROPERTY TAX RELIEF	\$0.00	HOMESTEAD EXEMPTION	\$0.00	INDUSTRIAL ABATEMENT	\$0.00	TOTAL TAXES DUE	\$20,523.22
GROSS TAXES	\$20,523.22																			
LESS EXEMPTIONS:																				
STATE PROPERTY TAX RELIEF	\$0.00																			
HOMESTEAD EXEMPTION	\$0.00																			
INDUSTRIAL ABATEMENT	\$0.00																			
TOTAL TAXES DUE	\$20,523.22																			
<table border="1"> <tr> <td>SCHOOL TAXES</td> <td>CITY TAXES</td> <td>COUNTY TAXES</td> </tr> <tr> <td>\$15,787.97</td> <td></td> <td>\$4,735.25</td> </tr> </table>				SCHOOL TAXES	CITY TAXES	COUNTY TAXES	\$15,787.97		\$4,735.25	 <p>Taxes may be paid on-line at www.yorkcountysc.gov</p>										
SCHOOL TAXES	CITY TAXES	COUNTY TAXES																		
\$15,787.97		\$4,735.25																		

ELCTRONICALLY FILED 2018 APR 03 PM 10:00 YORK COUNTY COMMON PLEAS - CASE#2018CP4600107

TAX BILL NO. 036760-14-3

▲ DETACH HERE ▲

MAIL THIS STUB WITH PAYMENT TO:

YORK COUNTY TREASURER
P.O. BOX 116
YORK, S.C. 29745

FORT MILL HOLDINGS LLC
8001 N TRYON STREET
CHARLOTTE N C 282620000

TAX YEAR 2014	
TOTAL TAXES DUE	\$20,523.22
PENALTY	\$3,078.48
COSTS	\$5.00
TOTAL TAXES DUE (PENALTY & COSTS)	\$23,606.70

ADDITIONAL COST WILL APPLY IF PROPERTY IS POSTED FOR TAX SA
IF YOUR ADDRESS HAS CHANGED, PLEASE INDICATE NEW ADDRESS BELOW

RP 9

114

EXHIBIT D

TAX BILL NO. 036760143

FINAL PROPERTY TAX BILL

YORK COUNTY, SOUTH CAROLINA

TAX YEAR 2014

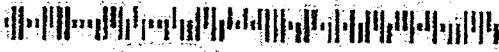
ELECTRONICALLY FILED - 2018 Apr 18 3:10 PM - YDRK: COMMON PLEAS - CASE#2018CP4600107

PERSONAL	AGRICULTURAL	SCHOOL	TOTAL	ASSESSED VALUE	ASSESSED VALUE	LEVY	LESS EXEMPTIONS	TOTAL TAXES DUE
\$0.00	\$0.00	\$0.00	\$0.00	0.00	\$0.00	359.3	\$0.00	\$20,523.22
\$150,000.00	\$802,000.00		\$952,000.00	6.00	\$57,120.00			

DISTRICT: 4FH CITY CODE: FORT MILL SCHOOL DISTRICT: CITY: FORT MILL

DESCRIPTION OF PROPERTY: HWY 51 LOT 9-H AD#15-02219 3490 HWY 51

MAP REFERENCE NUMBER: 721-00-00-035 ACRES: 1 LOTS: 1 BLDGS: 1



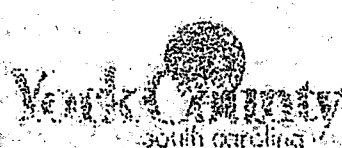
FORT MILL HOLDINGS LLC
8001 N TRYON STREET
CHARLOTTE N C 28262

NOTICE OF SEIZURE, LEVY AND TAX SALE:

ADDITIONAL COSTS OF ADVERTISING, POSTING AND OTHER COSTS OF SALE WILL BE ADDED AS NEEDED IF TAXES ARE NOT PAID PRIOR TO TAX SALE.

PAYMENT BY MAIL OR IN PERSON MUST BE MADE WITH CASH OR CERTIFIED FUNDS. CREDIT CARD PAYMENTS CAN BE MADE ON-LINE AT WWW.YORKCOUNTYGOV.COM

TOTAL TAXES AFTER EXEMPTION	GROSS TAXES
\$10,904.21 SCHOOL OPERATIONS	\$20,523.22
\$4,883.76 SCHOOL DEBT	LESS EXEMPTIONS:
\$0.00 CITY OPERATIONS	STATE PROPERTY TAX RELIEF \$0.00
\$2,918.82 COUNTY OPERATIONS	HOMESTEAD EXEMPTION \$0.00
\$388.42 COUNTY DEBT SERVICE	INDUSTRIAL ABATEMENT \$0.00
\$251.33 LIBRARY	TOTAL TAXES DUE \$20,523.22
\$148.51 CULTURE AND HERITAGE	
\$217.06 YORK TEC COLLEGE	
\$536.93 UNINCORPORATED COUNTY MILLAGE	
\$274.18 SPECIAL FIRE DISTRICT	
\$20,523.22 TAXES DUE	



Taxes may be paid on-line at www.yorkcountysc.gov

SCHOOL TAXES \$15,787.97	CITY TAXES	COUNTY TAXES \$4,735.25
--------------------------	------------	-------------------------

TAX BILL NO. 036760143

▲ DETACH HERE ▲

TAX YEAR 2014

MAIL THIS STUB WITH PAYMENT TO:

YORK COUNTY TREASURER
P.O. BOX 116
YORK, S.C. 29745

FORT MILL HOLDINGS LLC

8001 N TRYON STREET
CHARLOTTE N C 28262

PAYMENT BY MAIL OR IN PERSON MUST BE MADE WITH CASH OR CERTIFIED FUNDS. CREDIT CARD PAYMENTS CAN BE MADE ON-LINE AT WWW.YORKCOUNTYGOV.COM

TOTAL TAXES DUE	TOTAL TAXES DUE
\$20,523.22	\$20,523.22
PENALTY \$3,078.48	
COSTS \$17.00	
TOTAL AMOUNT DUE (PENALTY & COSTS) \$23,618.70	

IF YOUR ADDRESS HAS CHANGED, PLEASE INDICATE NEW ADDRESS BELOW:

RP 10

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EXHIBIT E

NOTICE OF LEVY



1207010

STATE OF SOUTH CAROLINA COUNTY OF YORK

TO BE SOLD FOR DELINQUENT TAXES

NOTICE IS HEREBY GIVEN, that pursuant to tax execution issued to the York County Delinquent Tax Collector, officially charged with the collection of delinquent taxes for the County of York, State of South Carolina, has seized and taken exclusive possession of the following described property in the name of FORT MILL HOLDINGS LLC
8001 N TRYON STREET
CHARLOTTE N C 0282620000

Recorded on county records as:

MAP # 721-00-00-035 HWY 51 LOT 9-H 3490 HWY 51

A/C .00

LOT 1

IMP/BLDG 1

Unless said taxes, penalties and costs are paid in full, all property above described will be sold after legal advertisement, to the highest bidder, at public auction, within the legal hours of sale at the York County Complex, Heckle Blvd., Rock Hill, SC on Monday, November 16, 2015, for the years through 2014 to satisfy said execution.

Payment Must Be Cash, Certified Check or Money Order
NO PERSONAL CHECKS ACCEPTED

By: *Robert N. Kiser*
ROBERT N. KISER

YORK COUNTY DELINQUENT TAX COLLECTOR
803-684-8527 or 803-909-7272

RP 13

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EXHIBIT F

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

Robert Clay Sparrow and
Mickey Crowe,

Plaintiffs,

v.

Fort Mill Holdings, LLC, and
David Baucom,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Case No. 2013-CP-46-00438

ORDER FOR
JUDGMENT

FILED-RECEIVED
2016 MAR 30 AM 8:52
DAVID HARRINGTON
C.C.P. & GS
YORK COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

Robert Clay Sparrow and
Mickey Crowe,

Plaintiffs,

v.

Maurer Holdings, LLC, and
David Baucom,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Case No. 2013-CP-46-00440

ORDER FOR
JUDGMENT

This matter came before me on March 24, 2016, upon Plaintiffs' Motion to Compel enforcement of the terms of a written settlement agreement reached between the parties in these two actions during mediation pursuant to the South Carolina Rules for Alternative Dispute Resolution ("ADR Rules"). Plaintiffs were represented by James M. Griffin, and Defendants were represented by Paul S. Landis. After considering the arguments of counsel, briefs of the parties and the record in this matter, I make the following findings and conclusions.

BACKGROUND

On December 1, 2011, Plaintiffs sold separate parcels of land to the Defendants. Defendant Fort Mill Holdings, LLC ("Fort Mill"), executed a promissory note to Plaintiffs in the sum of \$907,300.00 in exchange for certain property secured by the purchase money mortgage duly recorded December 30, 2011, in the RMC Office for York County ("Note 1"). Defendant Maurer Holdings, LLC ("Maurer"), executed a promissory note to Plaintiffs in the sum of

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\$284,500.00 in exchange for certain property secured by the purchase money mortgage duly recorded December 30, 2011, in the RMC Office for York County ("Note 2"). Defendant David Baucom ("Baucom") executed Note 1 and Note 2 (the "Notes") as guarantor. The sum of the Notes bore an interest rate of 7% per annum until paid, or until default. In the event of default, the Notes accrued interest at a rate of 15% per annum until paid.

Beginning in June, 2012, Defendants did not make timely and full payments due under the Notes, and were therefore in default. As a result, Plaintiffs notified Defendants Fort Mill and Maurer ("Corporate Defendants") of Plaintiffs' election to demand immediate payment of the principal amount remaining on the Notes, with applicable interest.

As a result of Defendants' failure to pay the Notes, Plaintiffs filed these actions on February 8, 2013, seeking judgment against Defendants and foreclosure of the mortgages in the amounts due and owing under the Notes, together with taxes and insurance premiums, and costs and attorneys fees. In response, Defendants filed a Motion to Dismiss Defendant Baucom, and Answers and Counterclaims in both actions. Prior to these actions coming to trial, all parties and their counsel participated in mediation on October 7, 2014, pursuant to the ADR Rules. This resulted in an agreement to settle all parties' then pending claims. The terms of the settlement were reduced to writing and signed by all parties and their counsel.

Pursuant to the terms of the settlement agreement, Plaintiffs agreed to pay the outstanding real estate taxes on the property, so that the property would not be sold at a tax sale. On their part, Defendants agreed to execute a contingent confession of judgment in favor of Plaintiffs as follows: (1) Principal and Interest under the Notes for \$1,356,752.10 (at 7% interest through October 7, 2014); (2) Real Property Taxes of \$70,595.46; and, (3) the combined amount of (1) & (2) to bear interest at a rate of \$273.74 per diem until the judgment was paid in full.

Plaintiffs agreed not to file the confession of judgment until the earlier of October 7, 2015, or until the sale of the mortgaged properties by Defendants resulted in a deficiency. In such case, the confession of judgment would be reduced by the proceeds of the sales paid to Plaintiffs. If a sale of the properties resulted in excess proceeds over the judgment, the excess would go to Defendants. Additionally, Plaintiffs would release the mortgages on the two properties prior to closing of any *bona fide* sale of the property by Defendants.

The settlement agreement was signed on October 7, 2014, by all parties, the parties'

Handwritten signature and initials

counsel, and the mediator.¹ Following execution of the settlement agreement, Plaintiff Sparrow paid the outstanding real estate taxes of \$70,595.46 per the terms of the agreement.

Defendants were unable to sell the property, and have refused to execute the confession of judgment as required by the terms of the settlement agreement. Further, the property has since been sold by York County for subsequent unpaid property taxes, accruing following mediation and execution of the settlement agreement. As a result, Plaintiffs filed the instant motion seeking to compel Defendants' compliance with the settlement agreement.

DISCUSSION / ANALYSIS

In South Carolina, settlement agreements are viewed as contracts, and a settlement to which all parties agree is valid and binding. *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 672 S.E.2d 799 (Ct.App. 2008); see *Pruitt v. South Carolina Medical Malpractice Liability Joint Underwriting Association*, 343 S.C. 335, 540 S.E.2d 843 (2001). "Absent fraud or mistake, where attorneys of record for a party agree to settle a case, the party cannot later repudiate the settlement." *Shelton v. Bressant*, 312 S.C. 183, 184, 439 S.E.2d 833, 834 (1993). Nor can a party rescind a settlement agreement upon the ground that he has entered into it by mistake based erroneous advice of his attorney. *Kirkland v. Moseley*, 109 S.C. 477, 96 S.E. 608 (1917).

In the present case, I find and conclude that the terms of the settlement agreement are not ambiguous; nor was the agreement the a product of any fraud. The agreement was reduced to writing and signed by all parties and their counsel as required by Rule 43(k), SCRCP. Accordingly, the settlement agreement should be enforced.

It is clear from the face of the agreement that the parties agreed that Defendants would execute a confession of judgment in favor of Plaintiffs in a specified amount, accruing a specified rate of interest until the debts were repaid. Plaintiffs agreed the confession of judgment would remain unfiled for one year, until October 7, 2015. If during the year, Defendants were able to sell the properties and repay Plaintiffs the amount owed, Plaintiffs would forgo filing the judgment. However, if the Defendants were unable to repay Plaintiffs \$1,427,347.56, with interest, prior to October 7, 2015, then Plaintiffs were entitled to file the confession of judgment.

There is no evidence before the Court that fraud or mistake induced the Defendants to enter into the settlement agreement. Rather, the fact that Plaintiffs, Defendants, and their

¹ On October 1, 2014, for value received, Plaintiff Crowe assigned his interests in the Notes and mortgages securing the same to Plaintiff Sparrow; thus, Sparrow executed the settlement agreement on behalf of Plaintiff Crowe.

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respective counsel were present at the mediation, participated in the mediation, and voluntarily executed the settlement agreement, illustrates that all parties were apprised of, and agreed to, the terms of the agreement when it was executed. Enforcement of the settlement agreement would not be substantially unfair to Defendants.

Defendants argue that the North Carolina's 'anti-deficiency' statute prevents Plaintiffs from obtaining a deficiency judgment in the foreclosure action, and that therefore, they are not required to execute the confession of judgment. Defendants assert that if they had been aware of this statute when they mediated these cases, they would not have entered into the settlement agreement. Plaintiffs contend that the anti-deficiency statute does not apply to these transactions. Whether the statute applies or not is not material to the conclusion herein that the settlement agreement is binding upon the Defendants. The present case pertains only to enforcement of a voluntary settlement agreement made in accordance with applicable South Carolina rules and case law. Defendants' assertion of the protection of the statute, if it applies, is left for a later date should the issue actually present itself.

Furthermore, it would be substantially unfair to Plaintiffs if the settlement agreement were not enforced. As set forth in the mortgages on the properties, Defendants were responsible for paying all property taxes on the mortgaged properties. In the event Defendants failed to timely pay the same, and Plaintiffs' incurred the expense, such monies were also secured by the mortgages. As part of the settlement agreement, Plaintiffs agreed to pay \$70,595.46 in property taxes owed by Defendants on the properties in exchange for Defendants' agreement to abide by the terms of the settlement agreement. Following Defendants' execution of the settlement agreement and in reliance on its terms, Plaintiffs paid the taxes. However, Defendants refused, and continue to refuse, to sign the confession of judgment that was the critical component in Plaintiffs' acceptance to the terms of the settlement agreement. Such refusal is without justification or legal excuse.

Accordingly, Plaintiffs' motion is granted because the terms of the settlement agreement are not ambiguous, and not influenced by fraud or mistake. Additionally, there is no evidence of substantial injustice to Defendants in the enforcement of the agreement. Finally, the agreement complies fully with Rule 43(k), SCRPC.

CONCLUSION

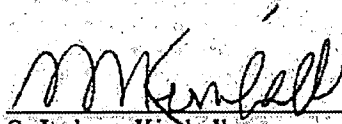
Therefore, based on the record presented, and the discussion and analysis herein, it is

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ordered that judgment be entered in favor of the Plaintiffs, Robert Clay Sparrow and Mickey Crow against Defendants Maurer Holdings, LLC, Fort Mill Holdings, LLC, and David Baucom in the principal amount of \$1,427,347.56, plus interest at the rate of \$273.74 per diem from October 7, 2014, until the date of the entry of this Order of Judgment.

AND IT IS SO ORDERED.

March 29, 2016



S. Jackson Kimball
Special Circuit Court Judge
York County

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EXHIBIT G

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Robert Clay Sparrow and
Mickey Crowe,

Plaintiffs,

Civil Case No. 2013-CP-46-00438

v.

Fort Mill Holdings, LLC, and
David Baucom,

Defendants.

FILED-RECEIVED
2016 OCT 18 AM 9:50
DAVID HAMILTON
C.C.C.P. & GS.
YORK COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Robert Clay Sparrow and
Mickey Crowe,

Plaintiffs,

Civil Case No. 2013-CP-46-00440

v.

Maurer Holdings, LLC, and
David Baucom,

Defendants.

CONSENT ORDER

Following a motion by Plaintiffs to enforce a settlement agreement previously reached between the parties in the above-referenced matters, this Court entered judgment in favor of Plaintiffs and against the Defendants in the principal amount of \$1,427,347.56, plus interest at the rate of \$237.74 per diem from October 7, 2014, until the entry of the Court's order on March 29, 2016. Defendants' motion to alter or amend this judgment was denied by this Court on May 23, 2016. Thereafter, Plaintiffs attempted to execute on the judgment; however, the execution of

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judgment was returned null bona by the sheriff's office on August 3, 2016. Defendants filed an appeal of this judgment on June 21, 2016 to the South Carolina Court of Appeals.

On August 25, 2016, this Court granted Plaintiffs motion for a rule to show cause why Defendants' property should not be applied toward satisfaction of the judgment and moved the Court to order the examination of Defendants under oath concerning Defendants' assets. The Court also ordered that the Defendants were temporarily restrained and enjoined from alienating, selling, transferring or otherwise disposing of [their] property, not exempt from execution, until further order of the Court. The parties are scheduled to attend a hearing on October 4, 2016 at which time the Defendants will give sworn testimony as to their assets.

So as to avoid the posting of bonds that each party would incur during the pendency of the appeal related to the property available to satisfy the judgment, Defendants have agreed to assign to Plaintiffs all proceeds from the tax sale of the property and to refrain from dissipating their assets while the appeal is pending. Given this agreement, the parties request the hearing set for October 4, 2016 be postponed until the resolution of the appeal.

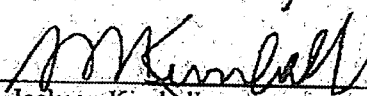
IT IS HEREBY ORDERED AND DECREED THAT:

1. Plaintiff Sparrow individually and a successor in interest to Mickey Crowe shall be receive all proceeds from the sale of that property located at 3490 HWY 51, Lot 9-H that was sold on November 16, 2015 at public auction for delinquent taxes to Plaintiffs.
2. The York County tax assessor is hereby directed and authorized to deliver all proceeds from the sale to Plaintiff Sparrow.
3. If the judgment of this Court is affirmed on appeal, such proceeds will offset the total amount owing by Defendants on the judgment. However, if the judgment of this Court is

vacated, the proceeds paid to Plaintiffs will offset the obligations the Defendants will continue to have under the mortgage of the property.

4. Defendants are restrained and enjoined from alienating, selling, transferring or otherwise disposing of their property, not exempt from execution, until further order of the Court.
5. The hearing set for October 4, 2016 shall be postponed until resolution of the appeal in this case. At which time, Plaintiffs shall request the Clerk schedule a hearing if necessary.

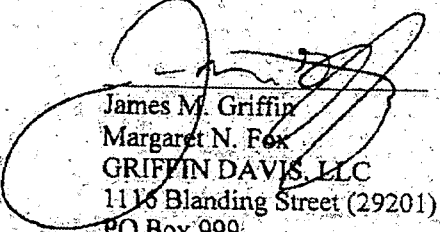
AND IT IS SO ORDERED.



 S. Jackson Kimball

Columbia, South Carolina
~~September 16~~ 17, 2016


WE SO MOVE:



 James M. Griffin
 Margaret N. Fox
 GRIFFIN DAVIS, LLC
 1116 Blanding Street (29201)
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 jgriffin@griffindavislaw.com
 mfox@griffindavislaw.com

Attorneys for Plaintiffs

WE CONSENT:



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 PO Box 10207
 Greenville, SC 29603
 (864) 233-0445
 paul@fayssoulaw.com

Attorney for Defendants

EXHIBIT H

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Alterna Tax Asset Group, LLC)
)
 Plaintiff,)
)
 v.)
)
 York County, York County Treasurer,)
 York County Delinquent Tax Collector,)
 Robert Clay Sparrow, Mickey Crowe,)
 Fort Mill Holdings, LLC, and David)
 Baucom,)
)
 Defendants.)

IN THE COURT OF COMMONS PLEAS

Docket No.: 2018-CP-46-0107

AFFIDAVIT OF T.J. RYAN

PERSONALLY APPEARED BEFORE ME, T.J. Ryan, who first being duly sworn

deposes and states as follows:

1. I am over the age of eighteen and otherwise qualified to make a statement under oath.
2. I make this statement on the basis of personal knowledge except for those things that are stated upon information and belief. As to those things, I reasonably believe to be true.
3. I am employed by the Plaintiff in this case and serve as the Director of Asset Management.
4. I am familiar with the business records of Plaintiff related to this property.
5. Plaintiff paid York County six hundred ten thousand dollars (\$610,000) for the property located at 3490 Highway 51, N., Fort Mill, South Carolina.
6. I now understand and believe there is a cloud on the title to the property as a result of certain defects in the procedures used by York County to seize the property from the taxpayer prior to the auction.

7. I believe that Plaintiff is entitled to a refund of the monies paid to York County as a result of these defects.

8. I believe that Plaintiff will suffer irreparable harm if the monies paid to York County are disbursed prior to the adjudication of this case.

9. I believe that York County is the best entity to maintain the status quo in regard to the funds paid by Plaintiff.

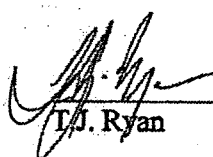
10. Alternatively, I believe the money should be paid into the Court until the conclusion of this litigation.

11. My concerns are based on a number of factors including but not limited to the prior litigation between some of the Defendants, including litigation related to the failure of certain parties to follow through in a settlement agreement.

12. If the money is disbursed by York County there is no reason for me to believe that Plaintiff will be able to recover the funds at the conclusion of this litigation.

FURTHER AFFIANT SAYETH NOT.

SWORN TO BEFORE ME THIS 30th
DAY OF January, 2018.



T.J. Ryan

 (SEAL)

Printed Name Sylvia Ullrich

NOTARY PUBLIC FOR Jan. 13 2020
MY COMMISSION EXPIRES:

SYLVIA ULLRICH
NOTARY PUBLIC OF NEW JERSEY
ID# 2323945
MY COMMISSION EXPIRES JAN. 13, 2020

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

Alterna Tax Asset Group, LLC, v. Appellant,
York County, York County Treasurer, v. Respondents.
York County Delinquent Tax Collector,
Robert Clay Sparrow, Mickey Crowe,
Fort Mill Holdings, L.L.C. and David
Baucom,

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.



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Email: matt@mbrlawllc.com
Attorneys for Appellants

February 27, 2019

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FEB 27 2019

SC Court of Appeals