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.

FINAL BRIEF OF APPELLANT

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March 13, 2019

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STATEMENT OF THE CASE

This matter was originally filed in the United States District Court for the District of South Carolina on April 7, 2017. *See Alterna Tax Asset Group, LLC v. York County, York County Treasurer, York County Delinquent Tax Collector, Robert Clay Sparrow, Mickey Crowe, Fort Mill Holdings, LLC, and David Baucom*, Civil Action No. 0:17-cv-00913-MBS. That action was dismissed without prejudice by the Honorable Margaret B. Seymour based upon the Tax Injunction Act, finding that the District Court did not have jurisdiction to consider the issues raised by Appellant. The District Court did not rule on any substantive issues related to this dispute.

Appellant filed this matter in the York County Court of Common Pleas on January 12, 2018. **R. pp. 8-21.** Appellant's Complaint against Respondents related to Respondent York

County's sale of the subject property at a delinquent tax sale on or about November 16, 2015. Respondents Baucom, Fort Mill Holdings, Sparrow, and Crowe may have some interest in that property. Appellant's Complaint alleges the procedures followed by Respondent York County in conducting the delinquent tax sale were inadequate and in violation of the statutory requirements. **Id.**

Prior to any discovery or other proceedings in this matter, Respondents Sparrow and Crowe filed a Motion to Dismiss on February 26, 2018. **R. pp. 75-98.** Respondent Fort Mill Holdings filed a similar Motion to Dismiss contemporaneously with Sparrow and Crowe. **R. pp. 72-74.** Respondents York County, York County Treasurer, and York County Delinquent Tax Collector did not file any motions with the Circuit Court. Appellant's filed a responsive memorandum with exhibits on April 18, 2018. **R. pp. 99-131.**

A hearing was held before the Master in Equity, the Honorable S. Jackson Kimball, III, on April 19, 2018. **R. pp. 31-71.** Judge Kimball's bench ruling was reduced to writing and entered by the Court on May 11, 2018. **R. pp. 1-7.** Appellant received notice of the entry of the order on the same date and filed a timely Notice of Appeal with this Court on May 11, 2018. **R. pp. 1-7.**

FACTUAL BACKGROUND

This matter arises as a result of a delinquent tax sale conducted by Respondents York County Treasurer and York County Delinquent Tax Collector (hereinafter referred to collectively as York County). **R pp. 12-21.** The subject of this tax sale is located at 3490 Hwy 51, N., Fort Mill, South Carolina at tax map #721-00-00-035 within York County. **R. p. 14.** This property was subject to substantial litigation between and among Respondents Fort Mill Holdings, Baucom, Sparrow, and Crowe. *See 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). **R. pp. 16, 120-24, 126-28.** As a result of the property owners' failure to pay the tax year 2014 property taxes, York County initiated the procedures for a delinquent tax sale. **R. p. 14.** As set forth within Appellant's Complaint, and not contested by any of the Respondents in their pleadings below, York County failed to comply with the strict statutory requirements of S.C. Code Ann., § 12-51-40(c), and S.C. Code Ann., §12-51-40(b). **R. pp. 14-21.**

Subsequently, York County conducted a tax sale for the subject property on or about November 16, 2017. R. p. 37. Appellant was the successful bidder at the auction having purchased the property for six hundred ten thousand dollars ($610,000.00). **R. p 17, ¶ 37.** Appellant subsequently discovered the defects related to the non-compliance with the strict statutory provisions and initiated this suit to recover their money where the deed issued to them was void *ab initio*.[1] **R. pp. 17, ¶¶ 35-39, 18, ¶¶ 43-45.**

Prior to any discovery or other proceedings in this matter, Respondents Sparrow and Crowe, as well as Respondent Fort Mill Holdings, contemporaneously filed motions to dismiss. **R. pp. 72-4, 75-98.** The York County Respondents did not file any motions. Appellant filed a response to the motions on April 18, 2018. **R. pp. 99-131.** The Honorable S. Jackson Kimball, III held a hearing on the motions on April 19, 2018. **R. pp. 31-71.** Judge Kimball issued a ruling from the bench finding as a matter of law that A) Appellant, as purchaser of a property at a delinquent tax sale, was not entitled to contest the statutory irregularities in the tax sale; B) that Appellant had no standing to challenge the tax sale; and C) that Appellant had no interest in the

[1] Appellant originally filed this action in the United States District Court for the District of South Carolina.

property to have standing to bring the action. **R. pp. 67-69.** This bench ruling was reduced to a written order and entered by the Court on May 11, 2018. **R. pp. 1-7.**

Appellant filed a timely notice of appeal with this Court on May 11, 2018. **R. pp. 29-30.**

STANDARD OF REVIEW

"The appellate court applies the same standard of review as the trial court in reviewing the dismissal of an action pursuant to Rule 12 (b)(6), SCRCP. 'In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint.' A Rule 12 (b)(6) motion may not be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. 'The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.' The court should not dismiss a complaint merely because the court doubts the plaintiff will prevail in the action." *Cole Vision Corp. v. Hobbs*, 680 S.E.2d 923, 925-26, 384 S.C. 283 (Ct.App. 2009) (internal citations omitted) quoting *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (S.C. 2007).

ARGUMENTS

I. THE CIRCUIT COURT ERRED WHEN IT HELD AT A RULE 12(B)(6) HEARING THAT THE PLAINTIFF LACKED STANDING TO ASSERT ITS CLAIMS.

The Trial Court incorrectly found Plaintiff lacked standing to assert its claims where it failed to look to the four corners of the Complaint in making its determination. Plaintiff's Complaint clearly sets forth the reasons for its suit and the factual basis for asserting its claims related to the County's failures to comply with the strict statutory requirements for delinquent tax sales. As such, the Trial Court committed reversible error.

"In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint." *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (S.C. 2007). "[T]he factual analysis of a Rule 12(b)(6) motion is confined to the four corners of the complaint..." *Spence v. Spence*, 628 S.E.2d 869, 368 S.C. 106 (S.C., 2006). A Rule 12 (b)(6) motion may not be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. 'The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.' The court should not dismiss a complaint merely because the court doubts the plaintiff will prevail in the action." *Cole Vision Corp. v. Hobbs*, 680 S.E.2d 923, 925-26, 384 S.C. 283 (Ct.App. 2009) (internal citations omitted) quoting *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (S.C. 2007),

The Court's strict adherence to the allegations of the Complaint in resolving questions at a Rule 12(b)(6), SCRCP, motion to dismiss even extends to assertions of counterclaims. If there is any valid claim for relief, no matter how much the Court may believe the party will not prevail, the motion to dismiss should be denied. *Charleston Cnty. Sch. Dist. v. Laidlaw Transit, Inc.*, 348 S.C. 420, 424, 559 S.E.2d 362, 364 (Ct.App.2001); *Menezes v. WL Ross & Co. Llc*, 392 S.C. 584, 709 S.E.2d 114 (S.C. App., 2011).

"[P]leadings in a case should be construed liberally and the Court must presume all well pled facts to be true so that substantial justice is done between the parties." *Charleston County Sch. Dist. v. Harrell*, 393 S.C. 552, 713 S.E.2d 604, 270 Ed. Law Rep. 357 (S.C., 2011) quoting *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005) (citing *Stroud v. Riddle*, 260 S.C. 99, 102, 194 S.E.2d 235, 237 (1973)).

The case of *Charleston County Sch. Dist. v. Harrell*, 393 S.C. 552, 173 S.E.2d 604 (S.C. 2011) is instructive in this matter. In that case, the School District sued Speaker Harrell and the Governor related to allegedly unconstitutional special legislation. During the hearing on the Respondents' motion to dismiss pursuant to Rule 12(b)(6), SCRCP, the Court considered matters outside of the pleadings, including citations to a federal case regarding the topography of Charleston County. Our Supreme Court reiterated that "[i]t is a well settled principle that in resolving a Rule 12(b)(6) motion to dismiss, the court is limited to a consideration of the allegations contained within the four corners of the complaint." The Supreme Court went on to state that the Circuit Court's use of outside facts "impermissibly went beyond the proper parameters of a motion to dismiss." *Harrell, supra* at 609. The Supreme Court went on to note that "at this procedural juncture, we are only concerned with whether the ... complaint states a viable cause of action sufficient to withstand a Rule 12(b)(6) motion to dismiss." *Id.* As such, the Supreme Court reversed the Circuit Court dismissal of the complaint.

In the instant case, Appellant's Complaint clearly asserts standing to pursue its claims related to the improper delinquent tax sale. The Complaint alleges the "Defendants did not follow the statutory mandates, thereby creating a cloud on title to the property Plaintiff purchased at the tax sale." **R. p. 12 ¶ 1.** It further specifically alleges the Appellant has standing to pursue these claims. **R. p. 13 ¶ 10.** The Complaint goes on the allege that a parcel of real property within York County was sold to Appellant at a delinquent tax sale. **R. p. 17 ¶ 37.** The Complaint also goes into substantial detail regarding the County's multiple failures to comply with the strict statutory requirements of a delinquent tax sale. **R. pp. 14-17 ¶¶ 16-36.** The Complaint goes on to assert multiple causes of action related to the defective tax sale, including allegations that Appellant is vested with a right to institute this action. **R. pp. 18-20 ¶ 51.**

Instead of relying on the four corners of the Appellant's Complaint, the Circuit Court specifically went outside of the record and based its decision on matters not within the pleadings. In fact, the Circuit Court specifically stated that it has "taken judicial notice" of documents at the Register of Deeds.[2] **R. p. 3.** The Court goes on to state "I do not consider these allegations as true for the purposes of ruling on this motion. Rather I rely on the public record of York County." ***Id.***

Appellant has clearly pled sufficient facts to survive a motion to dismiss at the Rule 12(b)(6) stage. The four corners of the Complaint demonstrate that Appellant has pled the ownership of the property at issue, the defects in the delinquent tax sale, and the damages and prayer for relief. The Circuit Court erred when it relied on facts outside of the four corners of the Complaint in dismissing Appellant's Complaint. Therefore, the Circuit Court's dismissal was error and must be reversed.

II. THE CIRCUIT COURT ERRED WHEN IT DISMISSED THE COMPLAINT AT A RULE 12(B)(6) HEARING ON A GROUND NOT SET FORTH BY ANY MOTION AND WHERE APPELLANT WAS NOT PROVIDED NOTICE OF THE GROUND.

The Circuit Court erred where it dismissed the Appellant's Complaint based on a ground not set forth by any of the motions before it and where there was no notice to Appellant of the ground prior to the hearing.

Respondents Sparrow, Crowe, Fort Mill Holdings, L.L.C. and Baucom filed two separate motions to dismiss asserting various defenses to the Appellant's Complaint. **R. pp. 72-98.** These two motions did not raise as a grounds the Appellant's lack of standing to assert the claims of the

[2] The documents from the Register of Deeds do not appear in the record and were not submitted as a part of any of the motions filed with the York County Clerk of Court. **R. pp. 72-98.**

Complaint.[3] **Id.** The York County Respondents did not file any motions nor did they serve any motion on Appellant. The Court issued a hearing notice for the two motions to dismiss filed by Sparrow / Crowe and Fort Mill / Baucom. **R. p. 30, ln 2-5. Supp. R p. 133-34.** The Court did not notice any motions by the York County Respondents as none had been filed or served by York County.

"Rule 5(a) of the South Carolina Rules of Civil Procedure requires every written motion to be served upon all of the parties." *Hopkins v. Harrell*, 352 S.C. 517, 574 S.E.2d 747 (S.C. App., 2002). Rule 7(b)(1), SCRCP, states: "An application to the court for an order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion."

The case of *Summer Place of Myrtle Beach Homeowner's Ass'n, Inc. v. Knight*, 379 S.E.2d 724, 298 S.C. 241 (S.C. App., 1989), is instructive to this matter. In that case, the Circuit Court heard and ruled upon a motion for summary judgment raised during a pre-trial hearing. The Appellant, Summer Place, argued that it did not receive "notice of intent to resubmit the motion to dismiss with supporting evidence or raise a motion for summary judgment and the motion for

[3] York County argued at the motions hearing that the Appellant was not the holder of the deed to the property at the tax sale. However, the four corners of the Complaint alleges Appellant is the purchaser of the property. Further, during argument before the Court, Appellant noted that the proper recourse for any alleged technical deficiency in the pleadings is through an amendment to the pleadings rather than a dismissal. **R. p. 62 ln 18-22.** Rule 15(a), SCRCP. *Spence v. Spence*, 628 S.E.2d 869, 368 S.C. 106 (S.C., 2006) *citing* James F. Flanagan, South Carolina Civil Procedure 95 (2d ed. 1996) (party who loses a motion to dismiss normally is given the right to amend the complaint to cure the defect). The Circuit Court offered no such opportunity to Appellant.

present, the motion should not have been considered." *Summer Place*, at 725, 243. The Court of Appeals reversed the Circuit Court's grant of summary judgment. The Court noted that while the parties previously filed motions to dismiss, the motions had been ruled upon and adjudicated. Therefore, there were no pending motions at the time of the pre-trial hearing and the dismissal was error. "Because there were no motions for summary judgment pending at the time of the pre-trial hearing, there was no motion before the court to grant." *Summer Place of Myrtle Beach Homeowner's Ass'n, Inc. v. Knight*, 379 S.E.2d 724, 298 S.C. 241, 244 (S.C. App., 1989).

Taken a step further, a party must be put on notice of the grounds for the motion to protect procedural due process rights. "A motion presented in writing 'shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.'" *Camp v. Camp*, 662 S.E.2d 458, 378 S.C. 237 (S.C. App., 2008) quoting Rule 7(b)(1), SCRCP. An appellant asserting a lack of notice regarding a motions hearing must demonstrate prejudice as a result of the insufficient notice of the grounds for the motion. "To demonstrate prejudice in a matter involving allegedly insufficient notice, an appellant must establish if he or she had received appropriate notice, he or she would have done something different, thereby affecting the decision of the trial court and advancing his or her case." *Chastain v. Hiltabidle*, 673 S.E.2d 826, 831, 381 S.C. 508 (S.C. App., 2009).

The cases cited relate to situations where a motion has actually been filed but where the non-moving party has alleged some deficiency in the statement of the grounds. In the instant case, there is no motion on behalf of the York County Respondents. In fact, the York County Respondents raised grounds that were not asserted within either of the two filed motions. **R. pp. 72-98.** In fact, York County had not filed ***any*** motions in this matter and neither of the other two

motions included this ground. Appellant objected to the Court's consideration of the un-noticed grounds and specifically asserted "that issue is not before you. They have not filed a motion to dismiss on that issue. It is not before Your Honor." **R. p. 59 ln 7-9.** Appellant went on to argue to the Circuit Court that "York County has never filed a motion to dismiss on that." **R. p. 60 ln 4-5.**

Despite knowledge Appellant had not received notice of this ground for dismissal, the Court went outside of the record and improperly based its dismissal in part on this ground. Had this ground been included within the two written motions, or had the York County Respondents filed a motion, the Appellant could have filed an amended complaint or taken other steps to address the issues raised for the first time at the hearing. Appellant was substantially prejudiced by the failure to receive any notice from the York County Respondents regarding any motion, further prejudiced by both the Court's consideration of the unstated grounds, and by the complete inability to provide any effective counter to the ground. Nor did the Circuit Court provide the Appellant with an opportunity to respond to the ground raised for the first time at the hearing.

Therefore, the Circuit Court committed reversible error by considering a ground not included in any of the filed motions and further by considering arguments where the moving party failed to file any motion.

III. THE CIRCUIT COURT ERRED WHEN IT HELD AT A RULE 12(B)(6) HEARING THAT PLAINTIFF COULD NOT CHALLENGE THE SUFFICIENCY OF THE PROCEDURES USED FOR A TAX SALE.

Appellant's Complaint is based upon its assertion that the delinquent tax sale conducted by York County failed to strictly comply with the statutory requirements related to such sales. **R. p. 12 ¶ 1.** The Complaint further alleges that Appellant has suffered damages as a result of these failures and is entitled to return of its purchase funds as the title it received is void *ab initio*. **R. pp.**

12, 14-20 ¶¶ 1, 12-45, 49, 53, 59, 64. The Circuit court erred when it found that Appellant was not entitled to contest the sufficiency of York County's compliance with the tax sale procedures and held that Appellant, or any purchaser at a delinquent tax sale, is not entitled to the protections of the statutory provisions. **R. p. 3-4.** Specifically, the Circuit Court found, without any citation, that the protections of the statutory structure cannot be used to protect a purchaser at a defective tax sale. ***Id.*** There is simply no case law or statutory basis for this limitation on the statutory requirements.

"[W]here there is cause for doubt, or it is clear that the ends of justice may well be promoted by a trial on the merits, a demurrer should be denied where novel issues are present or are involved" *Gentry v. Yonce*, 522 S.E.2d 137, 337 S.C. 1 (S.C., 1999) citing *Springfield v. Williams Plumbing Supply Co.*, 249 S.C. 130, 153 S.E.2d 184 (1967). "If the facts and inferences drawn from the facts alleged on the complaint 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." *Nelson v. QHG of South Carolina, Inc.*, 354 S.C. 290, 580 S.E.2d 171 (S.C. App., 2003) (emphasis added), citing *Brown v. Leverette*, 291 S.C. 364, 353 S.E.2d 697 (1987); and *McCormick v. England*, 328 S.C. 627, 494 S.E.2d 431 (Ct.App.1997).

S.C. Code Ann., § 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 Ann., § 12-51-40. See generally, **R. pp. 12-18 ¶¶ 12-45.**

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[ing] advertised." **R. p. 15 ¶¶ 23-25.** Instead, it is written in a way that does not "strict[ly] compl[y] with the statutory requirements" of S.C. Code Ann., § 12-51-40.

There are additional deficiencies as well that made the sale void *ab initio*. 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. **R. pp. 14-15 ¶¶ 16, 27.** Moreover, there is nothing showing the certified mail requirements were satisfied. **R. pp. 14-17 ¶¶ 17, 26-35.** 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." **R. p. 15 ¶ 25.** In short, the Complaint demonstrates the York County Respondents failed to strictly comply with statutorily mandated requirements of S.C. Code Ann. § 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...'" As alleged within the Complaint, the York County Respondents failed to comply with this statutory requirement. **R. p. 15 ¶¶ 23-25.** South Carolina Courts have repeatedly voided tax sales where the required language was not followed. *See Fox v. Moultrie*, 379 S.C. 609, 666 S.E.2d 915 (S.C., 2008); *Dibble v. Bryant*, 274 S.C. 481, 265 S.E.2d 673 (S.C., 1980); *Terry v. Brown*, Op. No. 2008-UP-413 (Ct.App., 2008). Thus, the sale to Appellant was a nullity as it was void *ab initio*.

The case law in South Carolina is very clear that a tax sale that does not strictly comply with the statutory scheme set forth is void *ab initio*. *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. S.C. Code Ann. § 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 repeatedly 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 Respondents did not strictly comply with the statutory mandates found in S.C. Code Ann., § 12-51-40.

While the specific facts of this case appear relatively novel at the appellate level, the South Carolina Attorney General's Office published an opinion on February 18, 2004 addressing the

impact of the *Bruno Yacht Sales* decision on County delinquent tax sales. In answering several questions, the Attorney General's office opined as to Newberry County's question regarding the discovery of a defective notice and its application to a tax sale. The Attorney General's office noted that "[i]n the case that the official in charge of the tax sale discovers before a tax title has passed, the failure of any action required to be properly performed, the official may void the tax sale and refund the amount paid to the successful bidder." Opinion regarding the applicability of *Hawkins v. Bruno Yacht Sales*, 353 S.C. 31, 577 S.E.2d 202 (2003), to delinquent tax sales conducted in 2002 by the Delinquent Tax Collector for Newberry County. (South Carolina Office of the Attorney General, 2004). Further, the Attorney General's Office's answer the Newberry County Attorney's final question regarding whether the successful bidder of a void tax sale should receive their purchase money back as well as interest on their purchase money is instructive. Citing to S.C. Code Ann. § 12-51-90, the Attorney General's Office opined that

> such provision is also instructive as to the rate of interest to be paid where the successful bidder does not receive title to the property as the result of the County's error pursuant to Section 12-51-150. Therefore, the interest provisions of Section 12-51-90(B) would appear to also apply to a successful bidder who is deprived of title to the purchased property as the direct result of the County's mistake where the sale is subsequently voided pursuant to Section 12-51-150. The common element of the redemption situation and the situation presented here is the ultimate effect on the successful bidder. In both situations the bidder's purchase money is tied up for an extended period of time. Instead of receiving title to the purchased property, the successful bidder only receives a refund of the purchase money. The primary difference in these two situations is that the delinquent taxpayer pays the interest in the redemption situation, and here the county would be responsible for the interest payment.

Opinion regarding the applicability of *Hawkins v. Bruno Yacht Sales*, 353 S.C. 31, 577 S.E.2d 202 (2003), to delinquent tax sales conducted in 2002 by the Delinquent Tax Collector for Newberry County. (South Carolina Office of the Attorney General, 2004). Clearly, the question of a

prospective purchaser's recourse under the statutory scheme is one that has previously been anticipated and analyzed. This further supports Appellant's contention that the Circuit Court's dismissal was in error and must be reversed.

As alleged within the Appellant's Complaint, these failures by the York County Respondents nullified any sale because it was impossible for the Appellant to receive good title under these circumstances. As a result, the Circuit Court's dismissal at a Rule 12(b)(6) motion to dismiss was in error and should be reversed.[4]

IV. THE CIRCUIT COURT ERRED WHEN IT DISMISSED APPELLANT'S COMPLAINT RATHER THAN ALLOW FOR AN AMENDMENT PURSUANT TO RULE 15.

The Circuit Court erred in dismissing the Appellant's Complaint rather than allow Appellant to amend the pleadings to correct any perceived deficiency within the pleadings. "Rule 15(a) states 'a party may amend his pleading ... by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party.' Rule 15(a), SCRCP." *City of North Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 599 S.E.2d 462 (S.C. App., 2004). Rule 15 allows for amendment of a Complaint to correct deficiencies within the pleadings. "Ordinarily, when a demurrer is sustained for mere insufficiency, the complaint should not be absolutely dismissed, if the omission can be supplied by amendment, for the latter course saves the delay, trouble, and expense of bringing a new action."

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[4] In the instant case Appellant recognizes these are relatively novel, though not entirely unanticipated, issues of law. Rather than dismissal at a Rule 12(b)(6), SCRCP, motion to dismiss, this matter should have been tried before the Court for a full development of the record and facts. Instead, the Circuit Court substituted its judgment and short-circuited the adversarial process, denying both the Appellant its procedural rights as well as this Court the opportunity to fully consider a well-developed record on appeal. The proper procedure would have been for the Court to deny the Rule 12(b)(6), SCRCP, motion and allow the parties to fully develop the record and try the case. *See I'ON, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (S.C., 2000).

Portman v. Garbade, 337 S.C. 186, 190, 522 S.E.2d 830 (S.C. App., 1999). "It is the general rule that amendments to pleadings are favored and should be liberally allowed in furtherance of justice, in order that every case may so far as possible be determined on its real facts, unless there are circumstances such as inexcusable delay, or the taking of the adverse party by surprise, or the like, which might justify[217 S.C. 60] a refusal to amend." *Braudie v. Richland County*, 217 S.C. 57, 59, 59 S.E.2d 548, 549 (S.C., 1950). "Ordinarily, permission will be given to amend if the objection can be obviated. In such case, it is usual and entirely proper to sustain the demurrer with leave to amend." *Braudie v. Richland County*, 217 S.C. 57, 60, 59 S.E.2d 548, 550 (S.C., 1950).

In the instant case, the Circuit Court erred by not allowing Appellant an opportunity to correct any perceived deficiencies in the Complaint. In fact, at the motions hearing Appellant requested that it be allowed to amend the Complaint to correct any alleged deficiencies. Counsel argued that "even if there is a technical defect in the pleadings, a dismissal is not the appropriate remedy in this case. It would be an amendment for that --- ." **R. p.62 ln 19-22.** Instead of allowing the amendment subject to Respondents' motions, the Circuit Court summarily dismissed the Complaint at the hearing. **R. p.67, ln 20-25, p.68, p.69, ln 1-14; R. p. 1-7.** This dismissal was based in part on the Court's interpretation of the purpose of the statutory scheme but also on alleged technical defects in the pleadings. Because these alleged defects were subject to cure by an amended Complaint pursuant to Rule 15, SCRCP, the dismissal was in error and should be reversed.

CONCLUSION

The record is clear that the tax sale at issue in this matter was void *ab initio* for Respondent York County's failures to strictly comply with the statutory requirements for delinquent tax sales, the Appellant has standing to assert its claims, and dismissal at a Rule 12(b)(6), SCRCP, motion

to dismiss was error. Therefore, Appellants are entitled to reversal of the Circuit Court's dismissal and reinstatement of this matter.

Respectfully submitted,

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March 31, 2019

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.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Appellant complies with Rule 211(b) of the South Carolina Appellate Court Rules. Counsel further certifies that the reply brief of appellant complies with the Order of the Supreme Court of South Carolina, *Re Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings,* 407 S.C. 607, 757 S.E. 2d 421 (April 15, 2014).

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