

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

George M. McFaddin, Jr., Circuit Court Judge

Appellate Case No. 2019-000030

Case No. 2015-CP-45-00401

RECEIVED
MAY 16 2019
SC Court of Appeals

Shawonder Scott, Appellant,

v.

Curtis McAlister, Acquana McAlister, Norma L. Cyrus, Tax Collector for Williamsburg County, the County of Williamsburg, an Unincorporated Subdivision of the State of South Carolina, Hartwell Pendergrass, Sr., and Hattie S. Pendergrass, Defendants,

Of whom Norma L. Cyrus, Tax Collector for Williamsburg County and the County of Williamsburg, an Unincorporated Subdivision of the State of South Carolina, are the Respondents.

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUE ON APPEAL

- I. DID THE CIRCUIT COURT ERR IN FINDING NO GENUINE ISSUE OF MATERIAL FACT AND GRANTING THE RESPONDENTS MOTION FOR SUMMARY JUDGMENT?

STATEMENT OF THE CASE

In 1998 the Appellant and the Defendant Curtis McAlister allegedly entered into a contract for the purchase of residential real estate located at 196 Gausetown Road in Kingstree, South Carolina for \$35,000.00, to be paid in monthly installments as well as a down payment. The property tax for the 2011 tax year was not paid and the property was sold at a delinquent tax sale on December 3, 2012. The Appellant claims the County owes her a duty of notice as provided in S. C. Code §12-51-40, in regards to the default of the 2011 tax year payment and resulting delinquent tax sale of the aforementioned property.

On August 5, 2015, the Appellant filed a Summons and Complaint in the Court of Common Pleas of the Third Judicial Circuit, therein alleging breach of contract, breach of contract with fraudulent intent, breach of trust, breach of trust with fraudulent intent, violation of statute and civil conspiracy. The only cause of action concerning the Respondents is the alleged violation of S. C. Code §12-51-40. The Respondents filed their Answer on September 3, 2015, therein denying the allegations contained in the Appellant's Summons and Complaint.

On June 28, 2018, the Respondents filed a Motion for Summary Judgment based upon: 1) The pleadings, depositions, and evidence provided, there is no genuine issue as to any material fact and that Respondents are entitled to judgment as a matter of law pursuant to Rule 56 of the SCRCF; 2) South Carolina public duty doctrine; 3) South Carolina Torts Claims Act, §15-78-10, et seq.; and 4) Applicable South Carolina case law incorporated in the Respondents memorandum in support of summary judgment. On July 7, 2018, the Appellant filed a Reply to the Respondents motion for summary judgment therein asking the court to deny same. On July 9, 2018, the Respondents filed a motion to amend their Answer, along with an amended Answer, to include the South Carolina Torts Claims Act, §15-78-10, et seq., as an affirmative defense, and a memorandum.

in support of summary judgment. Also on July 9, 2018, the parties attended a motions hearing which resulted in the Respondents motions being continued until September 27, 2018.

On September 27, 2018, the parties attended a motions hearing in regards to the Respondents aforementioned motions and the court heard oral arguments. On December 11, 2018, the Honorable George M. McFaddin, Jr., signed an order granting the Respondents their request for summary judgment. On January 10, 2019, the Appellant filed a Notice of Appeal in regards to the aforementioned order.

STANDARD OF REVIEW

An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRPC. Bray v. Marathon Corp., 347 S.C. 189, 553 S.E.2d 477 (Ct. App. 2001) Motions for summary judgment are governed by Rule 56, SCRPC. A grant of summary judgment is appropriate when no genuine issue of material fact exists. In determining whether any triable issues of fact exist, this Court must consider the evidence and all reasonable inferences in the light most favorable to the Plaintiffs. McLaughlin v. Williams, 379 S.C. 451, 665 S.E.2d 667 (Ct. App. 2008).

Under Rule 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Carolina Alliance for Fair Employment v. South Carolina Dep't of Labor, Licensing, and Regulation, 337 S.C. 476, 523 S.E.2d 795 (Ct. App. 1999). Once the moving party meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings; rather, the non-moving party must come forward with specific facts showing there is a genuine issue for trial. Rule 56(e), SCRPC; Peterson v. West Am. Ins. Co., 336 S.C. 89, 518 S.E.2d 608 (Ct. App. 1999). The plain language of Rule 56(c), SCRPC,

mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial. Carolina Alliance for Fair Employment, 337 S.C. at 485, 523 S.E.2d at 800.

FACTS

In 1998 the Appellant and the Defendant Curtis McAlister allegedly entered into an oral contract for the purchase of residential real estate located at 196 Gausetown Road in Kingstree, South Carolina for \$35,000.00, to be paid in monthly installments as well as a down payment. The Appellant asserts that the contract for this sale of land is evidenced by a receipt from 1998 that indicates the Appellant paid \$4,000.00 to the Defendant Curtis McAlister. (Depo. of Plaintiff p. 20, line 25 through p. 27 lines 1-11) However, the drafter of this receipt is not known as the receipt bears no signature of the Defendant, no terms of payment, no contract price and no identification of the land being sold. Id. The Appellant and her attorney admit that the Respondents were never privy to this alleged contract. (Depo. of Plaintiff at p. 64, lines 8-10 and Tr. at p. 19, lines 20-22)

The Appellant admits that she was not the owner of record and her name has never been on the deed to the property. (Depo. of Plaintiff at p. 59, lines 11-19). The Appellant asserts that according to the alleged agreement the Defendant Curtis McAlister was to pay the taxes on the subject property and if he couldn't, then the Appellant would help out. (Id. at p. 60, lines 12-25 and p. 61, lines 1-18, and Tr. p. 14, lines 9-15). During the time defaulting 2011 tax year and subsequent sale, the Appellant admits that she didn't know when the taxes were due on the subject property because the Defendant Curtis McAlister did not let her know. (Depo. of Plaintiff at p. 61, 13-18 and p. 63, lines 9-16).

The Appellant admits that it was proper for the Respondents to send notice of the tax delinquency to the Defendant Curtis McAlister since he is the owner of record of the real property. (Id. 62, lines 3-14). The Respondents sent notices of tax bills and delinquency to the address provided by the Defendant Curtis McAlister and his daughter, the Defendant Acquana McAlister. (Depo. of Defendant Acquana McAlister, p. 21, lines 7-25 and p. 22, lines 1-3) (Depo. of Curtis McAlister, p. 36, line 25 and p. 37, lines 1-5) (Depo. of Norma L. Cyrus, p. 27, lines 3 - 15).

The Appellant admits that the Respondents should not have known that the Appellant was alleging to have owned the property since she is not on the deed. (Depo. of Plaintiff at p. 64, lines 16-24). Further, the Appellant's attorney admits that the Respondents owed a statutory duty of notice in regards to tax sale and tax delinquency to the landowner. (Tr. at p. 11, lines 1-4). Attorney for the Appellant even handed up case law to support this contention, and the Respondents completely agree with his position that such a duty is owed to the landowner and should be strictly complied with; however, the Appellant is admittedly not the landowner. (Tr. at p. 18, lines 8-25 and p. 19, lines 1-4 and Depo. of Plaintiff at p. 59, lines 11-19). The Attorney for the Appellant further argues that S. C. Code §12-51-40 not only gives rise to a cause of action by the landowner, but also any individual who is claiming some form of equitable right to the property without the County ever being involved or on notice of the alleged agreement which creates this equitable right. (Tr. at p. 11, lines 24 & 25 and p. 12, lines 1 & 2 and p. 19, lines 20 - 25).

ARGUMENT

I. THE CIRCUIT COURT DID NOT ERR IN FINDING NO GENUINE ISSUE OF MATERIAL FACT AND GRANTING SUMMARY JUDGMENT IN FAVOR OF THE RESPONDENTS IN ACCORDANCE TO THE SOUTH CAROLINA PUBLIC DUTY DOCTRINE.

Under South Carolina's public duty doctrine, public officials are not liable to individuals for their negligence in discharging public duties as the duty is owed to the public at large rather

than to anyone individually. Tanner v. Florence Co. Treasurer, et al., 336 S.C. 552, 521 S.E.2d 153 (S.C. 1999); Jensen v. Anderson County Dep't of Soc. Servs., 304 S.C. 195, 403 S.E.2d 615 (S.C. 1991). However, an affirmative legal duty may be created by statute, contractual relationship, status, **property interest**, or some other special circumstance. Id. The public duty rule is a defense which denies an element of the plaintiff's cause of action; the existence of a duty of care to the individual plaintiff, and the burden is on the plaintiff to show a duty of care was owed to him. Rayfield v. South Carolina Dep't of Corrections, 297 S.C. 95, 105-06, 374 S.E.2d 910, 916 (Ct.App.1988), cert. denied, 298 S.C. 204, 379 S.E.2d 133 (1989). Under South Carolina law, however, a "special duty" to particular individuals may be created by such a statute when:

- (1) an essential purpose of the statute is to protect against a particular kind of harm;
- (2) the statute, either directly or indirectly, imposes on a specific public officer a duty to guard against or not cause that harm;
- (3) the class of persons the statute intends to protect is identifiable before the fact;
- (4) the plaintiff is a person within the protected class;
- (5) the public officer knows or has reason to know of the likelihood of harm to members of the class if he fails to do his duty; and
- (6) the officer is given sufficient authority to act in the circumstances or he undertakes to act in the exercise of his office.

In general, our courts have been reluctant to find special duties statutorily imposed. Brady Dev. Co. v. Town of Hilton Head Island, 312 S.C. 73, 439 S.E.2d 266, 268 (1993). However, 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** and are regarded as mandatory and are strictly

enforced. Dibble v. Bryant, 274 S.C. 481, 265 S.E.2d 673 (1980). Failure to give the required notice is a fundamental defect in the tax proceedings which renders the proceedings absolutely void. Donohue v. Ward, 298 S.C. 75, 378 S.E.2d 261 (Ct. App.1989). The Court will set aside sales where S.C. Code Ann. §12-51-40 has not been complied with by public officials. Snelgrove v. Lanham, 298 S.C. 302, 379 S.E.2d 904 (1989).

In Tanner, while the petitioner was imprisoned, the respondent sold petitioner's home. Petitioner brought suit, alleging the sale was void because he was not given proper notice. Petitioner moved to file a supplemental complaint. Respondent brought a summary judgment motion, alleging it was immune from the tort claims made in the supplemental complaint. The trial court granted the summary judgment motion, holding that petitioner could not supplement his complaint due to respondent's tort immunity. The appellate court affirmed, but the reviewing court reversed and remanded, holding that where the trial court failed to allow evidence that respondent had petitioner's correct prison mailing address and failed to comply with notice requirements, summary judgment was premature. Such evidence was crucial where respondent's failure to comply with notice requirements rendered the tax sale void. In Tanner, the State's Supreme Court indicated that the notice provision of S.C. Code §12-51-40 creates a special duty to the owner of property so as to provide him or her with notice to protect the taxpayer against surprise or the sacrifice of his or her property. However, the Court further indicated that only in cases such as this one where the delinquent taxpayer asserts that he provided the County with his correct address, and the County failed to use that address, that the special duty exception to the public duty doctrine may arise. In that case, the Petitioner was never given the chance to put forth that evidence and so summary judgment was premature.

In the current case, the Appellant is asserting that the Respondents are liable to her for violating S.C. Code §12-51-40, by not providing her notice of the delinquent taxes, the sale of the property and the opportunity redeem the subject property located at 196 Gausetown Road in Kingstree. However, there simply is no genuine issue of material fact. If this Court, like the trial court, views the evidence in the light most favorable to the Appellant, the Appellant still would not fall under the public duty exception because she is admittedly not the defaulting taxpayer and not the owner, or grantee, of record to the subject property. Any breach of contract or equitable claim that she may have against the landowner of the property does not make her the landowner or defaulting tax payer to the subject property for the 2011 tax year. Likewise, any property tax payments she made on behalf of the landowner does not make her the landowner or defaulting tax payer to the subject property for the 2011 tax year. Therefore, the Appellant is not the class of persons “property owners” that the statute is intended to protect. The essential purpose of S. C. Code §12-51-40, is to protect the taxpayer against surprise or the sacrifice of his property, not an alleged individual claiming an equitable interest in property after the sale of the property for delinquent taxes. Additionally, the Appellant and her attorney admit that the Respondents should not have known and would not have known of the Plaintiff’s existence or her claim to the property, or the harm to her if the statute was not complied with, as the Respondents were in no way privy to the alleged oral contract from 1998.

CONCLUSION

For the reasons set forth above, the trial court’s ruling should be affirmed as there is no genuine issue of material fact in regards to the only cause of action (Fifth Cause of Action – Violation of Statute) which concerns the Respondents. Considering the evidence and all reasonable inferences in the light most favorable to the Appellant, the Appellant still has no

standing to assert a claim against the Respondents for violating S.C. Code §12-51-40 as she is not a member of the class for which the statute is purported to protect. Any ruling to the contrary would overly broaden the class the statute was intended to protect to the point that the Counties of this State would not be able to comply with the statute as the members of the protected class would now become anyone, anywhere who claims any form of property interest after the fact. Therefore, this Court should affirm the trial court's ruling.

Kingstree, SC
May 13, 2019



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S. Pendergrass, Defendants,

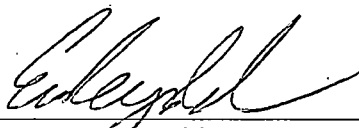
Of whom Norma L. Cyrus, Tax Collector for Williamsburg County and the
County of Williamsburg, an Unincorporated Subdivision of the State of South
Carolina, are the Respondents.

PROOF OF SERVICE

I certify that I have served the Initial Brief of the Respondent in the above referenced
case, by depositing a copy of it in the United States Mail, postage prepaid, on May 14, 2019,
addressed to:

Dwight C. Moore
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May 14, 2019



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The Honorable Jenny Abbott Kitchings
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MAY 16 2019

SC Court of Appeals

Re: Shawonder Scott v. Curtis McAlister, et al.
Appellate Case Number 2019-000030

Dear Mrs. Kitchings:

Please find enclosed the following documents:

- 1) Original and one copy of the Initial Brief of the Respondents and Designation of Matter to be Included in the Record on Appeal in the above captioned case; and
- 2) Original and one copy of Proof of Service on opposing counsel.

Please file the original and mail the stamped copy back to my office using the enclosed self-addressed stamped envelope. By copy of this letter to opposing counsel, I am serving them with a copy of these documents.

We appreciate your continued cooperation.

With warm personal regards, I am

Very truly yours,

W. Evan Reynolds
evan@jenkinsonlaw.com

WER/

Enclosures: as stated

Pc: Dwight C. Moore, Esquire



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