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

Shawonder Scott, Appellant,

vs.

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

Respondents.

FINAL REPLY BRIEF OF APPELLANT

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Appellant hereby submits her Final Reply Brief in response to the Initial brief of Respondents dated May 13, 2019. However, Appellant asserts, as appropriate, and specifically reserves each and every objection to Respondents' failure to plead the South Carolina Tort Claims Act, § 15-78-10, et seq., and the South Carolina Public Duty Doctrine and to the ruling of the Court granting summary judgment in the absence of the applicable immunities and defenses from the Answer asserted as a general denial. (Please see Statement of the Case below)

STATEMENT OF THE ISSUE ON APPEAL

Whether or not the Circuit Court Judge erred in granting Respondents' Motion for Summary Judgment based upon the Court's determination that the Appellant lacks standing and is not owed any duty from the Respondents under S.C. Code Ann. § 12-51-40 (1976) as amended

STATEMENT OF THE CASE

So much of the Statement of the Case set forth in the Initial Brief of Appellant filed April 22, 2019, is incorporated herein by reference as fully as if recited verbatim except for that portion of Appellant's Statement of the case concerning Respondent's Motion to Amend their Answer. Appellant hereby amends her Statement of the Case by reiterating and/or adding the following:

On September 3, 2016, Respondents filed their Answer asserting a general denial and requested that the action be dismissed. Respondents did not plead immunity or assert a defense under § 15-78-10, et seq., the South Carolina Tort Claims Act or the South Carolina Public Duty Doctrine.

On June 28, 2018, Respondents filed a Motion for Summary Judgment based upon the pleadings, depositions, and evidence provided, pursuant to Rule 56, SCRCP, the South Carolina Public Duty Doctrine, South Carolina Tort Claims Act, § 15-78-10, et seq., and applicable South

Carolina case law to be incorporated in the forthcoming Defendants' Memorandum in Support for Summary Judgment.

On July 7, 2018, Appellant filed her Reply to Respondents' Motion for Summary Judgment. Respondents' Memorandum in Support of Summary Judgment was filed July 9, 2018.

Also on July 9, 2018, Respondents filed a Motion to Amend their Answer to assert the South Carolina Tort Claims Act § 15-78-10, et seq., as an affirmative defense. The proposed Amended Answer was filed on July 9, 2018, asserting the affirmative defense and immunities available to it pursuant to the South Carolina Tort Claims Act § 15-78-10, et seq., with regard to Appellant's Fifth Cause of Action in her Complaint for Violation of Statute.

Respondents' Motion for Summary Judgment came on for hearing on September 27, 2018. Circuit Court Judge George M. McFaddin, Jr., filed his Order on December 11, 2018, in which he granted Respondents' Motion for Summary Judgment. With regard to Respondents' Motion to Amend their Answer, the Order states as follows:

> Based on the arguments of counsel and the evidence presented, the Court finds it is not necessary to rule on said Defendants' motion to amend answer as the Court finds that there is no genuine issues as to any material fact and that said Defendants are entitled to a judgment as a matter of law based on the motion for summary judgment.
>
> *(Order, Dec. 11, 2018, R. p.1)*

STANDARD OF REVIEW

The Standard of Review set forth in the Initial Brief of Appellant filed April 22, 2019, is incorporated herein by reference as fully as if recited verbatim.

ARGUMENT

Whether or not the Circuit Court Judge erred in granting Respondents' Motion for Summary Judgment based upon the Court's determination that the Appellant lacks standing and is not owed any duty from the Respondents under S.C. Code Ann. § 12-51-40 (1976) as amended

Citing the cases of *Tanner v. Florence County Treasurer*, 336 S.C. 552, 521 S.E.2d 153 (1999), *Jensen v. Anderson County Dept. of Social Services,* 304 S.C. 195, 403 S.E.2d 615 (1991), Reh'g Denied April 10, 1991, and *Rayfield v. South Carolina Dept. of Corrections,* 297 S.C. 95, 374 S.E.2d 910 (Ct. App. 1988), Respondents argue that the Circuit Court Judge was correct in holding that the Appellant lacks standing and is not owed any duty from the Respondents under S.C. Code Ann. § 12-51-40 (1976) as amended. (*Respond. Initial Brief, Argument, pp. 5-8)*

Appellant contends that the record before the Court for consideration of Respondents' Motion for Summary Judgment reflected genuine issues of material fact precluding summary judgment. The standard for granting summary judgment was reiterated by the South Carolina Supreme Court in cases where, as here, the burden of proof is by a preponderance of the evidence. Our Supreme Court distinguished the standard in its decision in *Hancock v. Mid-South Management Co., Inc.,* 381 S.C. 326, 673 S.E.2d 801 (2009), Reh'g Denied March 18, 2009, in the following manner:

> ... We recognize that the court of appeals has been somewhat inconsistent on whether a mere scintilla of evidence will overcome a motion for summary judgment.[1] This Court, however, has consistently held that where the federal standard applies or where a heightened burden of proof is required, there must be more than a scintilla of evidence in order to defeat a motion for summary judgment.[2]

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[1] In *Anders v. South Carolina Farm Bureau Mut. Ins. Co.,* the court of appeals stated that "[a]t the summary judgment stage of the proceedings, it (is) only necessary for the [nonmoving party] to submit a scintilla of evidence warranting determination by a jury." 307 S.C. 371, 375, 415 S.E.2d 406, 408 (Ct. App. 1992). However, the court of appeals has also declared that [t]he existence of a mere scintilla of evidence in support of the nonmoving party's position is not sufficient to overcome a motion for summary judgment. *Shelton v. LSK, Inc.,* 374 S.C. 294, 297, 648 S.E.2d 307, 308 (Ct. App.2007); see also *Bravis v. Dunbar,* 316 S.C. 263, 265, 449 S.E.2d 495, 496 (Ct. App. 1994).

[2] See *Russell v. Wachovia Bank, N.A.,* 353 S.C. 208, 578 S.E.2d 329 (2003) (applying the unmistakable and convincing evidence standard in an undue influence case); *Whaley v. CSX Transp., Inc.,* 362 S.C. 456, 609 S.E.2d 286 (2005) (applying the federal heightened standard in a Federal Employers Liability Act suit); and *Fleming v. Rose,* 350 S.C. 488, 567 S.E.2d 857 (2002) (applying the clear and convincing standard of proof in a libel action brought by a public figure).

> Accordingly, we hold that in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.

Hancock, 381 S.C. at 330, 673 S.E.2d at 803

Appellant would show that the evidence in the record pertaining to her standing under S. C. Code Ann. § 12-51-40 (2000) exceeds the scintilla required to overcome Respondents' Motion for Summary judgment. Respondents make the following assertions in their Initial Brief:

> ... 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. 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 Appellant'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.

(Respond. Initial Brief, Argument, p. 8)

The relevant portion of § 12-51-40 at the time of the delinquency and the 2012 Tax Sale provided that:

"After the county treasurer issues his execution against a defaulting taxpayer in his jurisdiction, as provided in Section 12-45-180, signed by him or his agent in his official capacity, directed to the officer authorized to collect delinquent taxes, assessments, penalties, and costs, requiring him to levy the execution by distress and sale of the defaulting taxpayer's estate, real or personal, or both, or property transferred by the defaulting taxpayer, the value of which generated all or part of the tax, to satisfy the taxes, assessments, penalties, and costs, the officer to which the execution is directed shall:

(a) On April first or as soon after that as practicable, mail a notice of delinquent property taxes, penalties, assessments, and costs to the defaulting taxpayer and to a grantee of record of the property, whose value generated all or part of the tax. The notice must be mailed to the best address available, which is either the address shown on the deed conveying the property him, the property address, or other corrected or forwarding address of which the officer authorized to collect delinquent taxes, penalties, and costs has actual knowledge. The notice must specify that if the taxes, penalties, assessments, and costs are not paid, the property must be advertised and sold to satisfy the delinquency.

(b) If the taxes remain unpaid after thirty days from the date of mailing of the delinquent notice, or as soon thereafter as practicable, take exclusive possession of the property necessary to satisfy the payment of the taxes, assessments, penalties, and costs. 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 or to an address of which the officer has actual knowledge, by "certified mail, return receipt requested-restricted delivery" pursuant to the United States Postal Service "Domestic Mail Manual Section S912". ...

(c) If the "certified mail" notice has been returned, take exclusive physical possession of the property against which the taxes, assessments, penalties, and costs were assessed by posting a notice at one or more conspicuous places on the premises in the case of real estate, reading: "Seized by person officially charged with the collection of delinquent taxes of (name of political subdivision) to be sold for delinquent taxes", the posting of the notice is equivalent to levying by distress, seizing, and taking exclusive possession of it, or by taking exclusive possession of personalty. ... "

S. C. Code Ann. § 12-51-40 (2000)

Appellant argues that she is owed a duty under § 12-51-40 because she falls within the special duty exception to the public duty doctrine as set forth in *Tanner, supra,* by the South Carolina Supreme Court where it explained:

> ... [T]he public duty rule is a negative defense which denies an element of the plaintiff's cause of action - the existence of a duty of care to the individual plaintiff. The burden is on the plaintiff to show a duty of care was owed to him. In the context of a negligence action, the public duty rule may be stated as follows: a statute prescribing the duties of a public office does not, **without more**, impose on the person holding that office a duty of care towards individual members of the public in the performance of those duties. *(Emphasis supplied)*

Tanner, 336 S.C. at 561, 521 S.E.2d at 157 *(Internal Cites Omitted)*

An examination of the record in this case reveals that the Appellant has supplied evidence of the **"more"** referenced above in the quote from *Tanner* to establish a duty of care owed to her by the Respondents. Our Supreme Court went on to state that "[o]rdinarily, 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." ... "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 Appellant 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."

(Internal Cites Omitted) *Tanner*, 336 S.C. at 562, 521 S.E.2d at 158

In the South Carolina Court of Appeals' 1988 case of *Rayfield*, *supra*, which predates the Supreme Court's decision in *Tanner*, *supra*, in 1999, the Court of Appeals addressed a duty of care promulgated by statute in this manner:

> In order to show that the defendant owes him a duty of care arising from a statute, the plaintiff must show two things: (1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered; and (2) that he is a member of the class of persons the statute is intended to protect.

> If the plaintiff makes this showing, he has proven the first element of a claim for negligence: *viz.*, that the defendant owes him a duty of care. If he then shows that the defendant violated the statute, he has proven the second element of a negligence cause of action: *viz.*, that the defendant, by act or omission, failed to exercise due care. This constitutes proof of negligence *per se.*
>
> Negligence *per se* simply means the jury need not decide if the defendant acted as would a reasonable man in the circumstances. The statute fixes the standard of conduct required of the defendant, leaving the jury merely to decide whether the defendant breached the statute.

Rayfield at 297 S.C. 103, 374 S.E.2d 915

As Respondents stated in their Initial Brief, the South Carolina Supreme Court further elaborated upon the creation of special-duty exceptions to the public duty doctrine in *Jensen, supra*. *(Respond. Initial Brief, Argument, p. 6)* "An affirmative legal duty, however, may be created by statute, contract relationship, status, property interest, or some other special circumstance." *Jensen*, at 304 S.C. 199, 403 S.E.2d 617. Appellant submits that the following evidence is reflected in the record before the Court concerning § 12-51-40 and its application to a defaulting taxpayer, their estate, or property transferred by the defaulting taxpayer.

First, the essential purpose of § 12-51-40 is to protect taxpayers against surprise or the sacrifice of their property. The requirements under this statute are regarded as mandatory and they are strictly enforced. "Failure to give the required notice is a fundamental defect in the tax proceedings which renders the proceedings absolutely void. This Court will set aside sales where section 12-51-40 has not been complied with by public officials." *Tanner* at 336 S.C. 562, 521 S.E.2d 158;

Second, § 12-51-40 directly imposes upon the Respondents, *inter alia*, the responsibilities of levy, notice, seizure, advertisement, and sale of property for delinquent taxes. Furthermore, the statute leaves no room for discretion but gives a step-by-step procedure for the execution of

these functions so that taxpayers may timely pay property taxes, or redeem property that has been sold and not suffer the loss of the property;

Third, the class of persons the subject legislation is intended to protect is the taxpayer;

Fourth, as a person with an equitable interest in the subject property, the Appellant is a person within the protected class. The Appellant acquired her equitable interest in the property by virtue of the contractual relationship between the Appellant and Defendant Curtis McAlister for the sale and purchase of the property,

Fifth, the Respondents knew that if the Defendant Curtis McAlister, and others members of the class, did not receive notice of the delinquency and the impending auction so that he could timely pay the taxes before the auction, the real estate would be sold at a tax sale, regardless of its value, for unpaid taxes plus costs. Furthermore, the knowing failure of the Respondents to follow the notice mandate of the subject statute resulted in the inability of the Appellant and Defendant Curtis McAlister to timely pay the taxes or to redeem the property within the statutory period set forth in the statute, as a result of which the property was lost; and

Sixth, § 12-51-40, the enabling legislation, authorized and directed the Respondents to levy upon, give notice of, seize, advertise and sell the property for delinquent taxes.

Accordingly, among the evidence of record before the Court at the hearing on Respondents' Motion for Summary Judgment was more than the scintilla of evidence necessary to defeat a Motion for Summary Judgment. The evidence included: (1) the contractual relationship between Appellant and Defendant Curtis McAlister, (2) allegations and deposition testimony that real estate taxes had been paid for the property pursuant to the contract directly to the Respondents by the Appellant, (3) actual knowledge that none of the certified letters Respondents sent to Defendant Curtis McAlister at the new Columbia, S.C., address were

delivered and had been returned by the United States Postal Service, (4) assertions that Defendant Curtis McAlister neither requested nor authorized the change of address which Respondents made on their records, (5) conflicting allegations as to whether or not Respondents had seized and taken physical possession of the property by posting(s) on the property required by § 12-51-40(c), and (6) constructive knowledge of the fact that the loss of the property rendered moot the issue of specific performance under the contract.

Furthermore, the Court's grant of summary judgment to the Respondents invokes application of the mootness doctrine with regard to this entire litigation. Sloan v. Greenville County, 380 S.C. 528, 670 S.E.2d 663, Reh'g Denied Jan. 7, 2009, (Ct. App. 2009)

Respondents cite Rule 56(c), SCRCP, which provides that summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. (*Respond. Initial Brief, Standard of Review, pp.3-4)*

However, "[i]n an appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in the light most favorable to the non-moving party." *Joseph v. South Carolina Department of Labor, Licensing And Regulation, et al, 417 S.C. 436, 448, 790 S.E.2d 763, 769 (2016) Reh'g Denied Dec. 7, 2016. (Internal Cites Omitted)*

The Respondents' Initial Brief refers to several alleged admissions by Appellant, i.e.: (a) "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. (b) 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. (c) 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. (d) 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. (e) Appellant is admittedly not the landowner." (*Respond. Initial Brief, Facts, pp. 4-5)*

Appellant argues that these so-called facts are derived from a superficial, biased review of the record and directs this Court to evidence in the record adduced from the pleadings, depositions and answers to interrogatories to show that there are genuine issues of material fact in this case sufficient to overcome a motion for summary judgment.

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. ***(Respond. Initial Brief, Facts, p. 5.)***

The controverted facts of the case involve a disputed oral contract of sale for residential real estate between the Appellant and Defendant Curtis McAlister. The Complaint alleges a refusal by Defendant Curtis McAlister to deliver the deed to the Appellant after she had finished paying for the subject property, and a continuing effort to divest her of ownership by: (a) filing eviction proceedings in the Williamsburg County Magistrate Court, which proceedings were dismissed due to Appellant's claim of an equitable interest in the property by virtue of the contract; (b) by unsuccessfully attempting to persuade Appellant to sign a rental agreement which may have converted the contract to sell to a lease agreement; and (c) by having the Respondents change the mailing address for tax notices to deprive the Appellant of the opportunity to pay taxes when due. *(Shawonder Scott Depo., R. p. 108, line 13 - p. 131, line 11; p. 132, line 16 - p. 143, line 15.)*

The Appellant and Defendant Curtis McAlister had an arrangement whereby the tax notices came to the address of the subject property and for Appellant to pay the taxes to the Respondents. *(Depo. of Curtis McAlister, R. p. 173, line 13 – p. 174, line 21; p. 180, line 12 – p. 181, line 7; p. 186, line 13 - p. 187, line 6.)* When the tax notice mailing address was changed by the Respondents from the property address to the Columbia address, Defendant Curtis McAlister did not receive the correspondence, and the three notices addressed to him at the Columbia address were returned to the Respondents by the United States Postal Service. *(Depo. of Curtis McAlister, R. p. 187, line 7 – p. 190, line 1)* Consequently, the Respondents were made aware of an issue concerning compliance with the notice provisions of the statute.

The crux of the issue for consideration by the Court at the summary judgment stage was whether or not the Respondents followed the mandates set forth in § 12-51-40 with regard to notice.

Respondents contend that they provided notice, seized and took physical possession of the property in compliance with § 12-51-40. Appellant denies any knowledge of the tax sale until 2013 or 2014, and testified that Defendant Curtis McAlister did not know of address change. *(Depo. of Shawonder Scott, R. p. 149, line 2 - p. 152, line 24.)* Defendant Curtis McAlister testified that he was not aware that the taxes had not been paid, that no levy was posted, that he did not learn of the tax sale until after the fact, and that he was surprised to find out that the property had been sold. *(Depo. of Curtis McAlister, R. p. 26, line 16 – p. 189, line 20)*

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. ***(Respond. Initial Brief, Argument, p. 8.)***

Appellant asserts that she has established the special duty exception under *Jensen, supra.* Consequently, *if* Respondents had complied with § 12-51-40 in discharging their obligation to the property owner of record and ultimately to her, the Appellant's interest in the property would have been protected from loss and sacrifice with the right to become the owner of record subject to the outcome of a jury trial. When the ambiguities, conclusions, and inferences arising in and from the evidence are viewed in the light most favorable to the non-moving party, genuine issues of material fact are apparent as to whether Respondents fulfilled their duty to the Appellant under § 12-51-40.

Having established the special duty owed to Appellant by Respondents, the issue of standing is addressed by the South Carolina Supreme Court which defined standing in the case of *Joseph, supra:*

> Standing is defined as "a personal stake in the subject matter of a lawsuit. The United States Supreme Court has set forth the "irreducible constitutional minimum of standing," which consists of three elements: (1) the plaintiff must have suffered an "injury in fact;" (2) there must be a causal connection between the injury and the conduct complained of; and (3) it must be likely, as opposed to merely speculative, that the injury will be "redressed by a favorable decision." A party seeking to establish standing carries the burden of demonstrating each element.

Joseph, at 417 *S.C. 449, 790 S.E.2d 769.*

Additionally, the Appellant and her attorney admit that the Respondents should not have known and would not have known of the Appellant'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. ***(Respond. Initial Brief, Argument, p. 8.)***

The gravamen of this action is Appellant's claim that Respondent Curtis McAlister has failed to deliver to the Appellant a deed to the property after she had fully complied with the oral

contract between the two parties to buy and sell the subject real estate. Therefore, the issue to be determined by the Court in considering a motion for summary judgment is whether or not there is the existence of a mere scintilla of evidence in the record warranting consideration at trial. Knowledge of Appellant's existence, her claim to the property, and the harm to her if the statute was not complied with, are matters for determination by the weight of the evidence presented at trial; therefore summary judgment is not appropriate in this case. The trial Court must decide whether or not there was compliance *per se.* Under the circumstances here, proper notice to Defendant Curtis McAlister would have constituted notice to the Appellant and such notice, had it been given by posting the property in compliance with § 12-51-40 after the statutory notice letters were returned, would have preserved Appellant's right to require specific performance under the contract on his part.

Discovery material in the record, including a letter dated October 29, 2014, addressed to Norma Cyrus, Tax Collector, from Doward Keith Harvin, Esquire, Appellant's attorney at that time, refer to the contract for the sale of the subject property to the Appellant by Defendant Curtis McAlister, the fact that the Appellant occupied the subject premises at the time and the allegation that no notice was posted on the property as required by law. The letter also discusses the unauthorized change of address, while Defendant Curtis McAlister was hospitalized, made by Defendant Acquana McAlister to have tax notices mailed to Defendant Curtis McAlister at an address in Columbia, SC. *(Letter dated October 29, 2014, from Doward Keith Harvin to Norma Cyrus, Tax Collector, R. p. 444)*

Respondent Cyrus responded to Mr. Harvin through W. L. Jenkinson, III, Esquire, one of her current attorneys in this action,[3] by letter dated December 18, 2014. Of particular relevance in considering summary judgment is the following statement by Mr. Jenkinson: "As we see it,

[3] R., p. 57, ln.22 – p. 58, ln. 1

the only remedy your client has is to file a suit against Mrs. Pendergrass, the current owner, alleging that the tax deed should be set aside. Williamsburg County and Mrs. Cyrus, as Tax Collector, would *(sic)* necessary parties, even though they will take no serious position one way or another other than to relate the facts from their file." *(Letter dated December 18, 2014, from W.E. Jenkinson, III, to Doward Harvin, Esquire, R. 445)*

Concerning the unauthorized change of address, the Respondent's Residential Appraisal Card for Tax Map Number 45-200-016 for Curtis McAlister 2520 Carroll Dr Columbia SC 29204 shows in the Remarks & Description section the notation "10/20/10 Change of Address requested by his daughter Acquana McAlister" *(Residential Appraisal Card for Tax Map Number 45-200-016 for Curtis McAlister 2520 Carroll Dr Columbia SC 29204, R. p. 446)* The record contains an Address Change form dated 06/29/11 requested by Defendant Acquana McAlister by phone and another Address Change Form dated 10/20/10 by Defendant Acquana McAlister and the Date of Change as 10-21-10. *(Address Change form dated 06/29/11 requested by Defendant Acquana McAlister by phone, R. p. 449; Address Change Form dated 10/20/10 requested by Defendant Acquana McAlister showing the Date of Change as 10-21-10, R. p. 448)*

Each of the statutorily required delinquent tax and sale notices sent to Defendant Curtis McAlister at the address on the address change forms were returned to the Respondents. *(USPS Certified Mail Number 7100 5868 2454 5112 6759 from Norma L. Cyrus Williamsburg County Tax Collector addressed to McAlister Curtis 2520 Carroll Dr, Columbia SC 29204 bearing stamp dated 8/28/12 and marked "Return To Sender – Unclaimed – Unable to forwarded" containing a handwritten notation "8/31/12," R. p. 452; USPS Form 3811, Restricted Delivery Certified Mail receipt Number 7100 5868 2454 5112 6759 addressed to McAlister Curtis 2520 Carroll Dr, Columbia SC; R. p. 453; USPS Certified Mail Receipt 7013 1710 0000 0096 8966*

addressed to McAlister Curtis 2520 Carroll Dr. Columbia, SC 29204, R. p. 454; USPS Certified Mail No. 7013 1710 0000 0096 8966 from Norma L. Cyrus, Delinquent Tax Collector addressed to McAlister Curtis 2520 Carroll Dr. Columbia, SC 29204 containing notation "Return To Sender Temporarily Away Unable to Forward" bearing handwritten notation "12/28/13", R. p. 456). The return of the certified letters triggered the following provision of § 12-51-40:

> (c) If the "certified mail" notice has been returned, take exclusive physical possession of the property against which the taxes, assessments, penalties, and costs were assessed **by posting a notice at one or more conspicuous places on the premises in the case of real estate,** reading: "Seized by person officially charged with the collection of delinquent taxes of (name of political subdivision) to be sold for delinquent taxes", the posting of the notice is equivalent to levying by distress, seizing, and taking exclusive possession of it, or by taking exclusive possession of personalty. ...*(Emphasis supplied)*

S. C. Code Ann. § 12-51-40(c) (2000)

Appellant testified that she became aware of the tax sale when Defendant Hartwell Pendergrass came onto the property with a surveyor. Appellant went to Respondents' office and she was told by Respondent Cyrus about the sale. Appellant's Counsel argued before the Court that no such notice was posted on the property. Defendant Curtis McAlister testified that he was surprised to learn of the sale some time afterward, that he had received no notice and no levy was posted. *(Shawonder Scott Depo. R. p. 150, line 16 - p. 151, line 12; R. p. 65, line 19 - p. 66, line 20; Curtis McAlister Depo., R. p. 188, line 12 - p. 189, ln. 19)*

Furthermore, Appellant Counsel's argument at the summary judgment motions hearing that the change of address made by Respondents was not authorized by Defendant Curtis McAlister, that there was an arrangement in place for the Appellant to pay taxes on the property, and the contents of the letter to Respondents from Attorney Doward Keith Harvin, Appellant's prior attorney, and Respondents' counsel's letter in response, were sufficient to put the Circuit

Court Judge on notice that issues involving notice ruled out summary judgment and required consideration by a jury at trial. *(R. p. 66, line 12 - p. 71, line 21)*

Based upon the foregoing, Appellant urges that this Court find that she does fall under the public duty exception to the South Carolina Public Duty doctrine, that she is owed a special duty under § 12-51-40, and that she has standing to litigate her claim.

CONCLUSION

For the foregoing reasons, Appellant respectfully urges this Court to issue its opinion reversing the Order of the Circuit Court judge granting summary judgment in favor of Respondents and ordering that the case proceed to trial by a jury.

Respectfully submitted,

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June 26, 2019

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George M. McFaddin, Jr., Circuit Court Judge

Appellate Case No. 2019-000030

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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

Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Reply Brief of Appellant complies with Rule 211(b), SCACR.

June 26, 2019

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