THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2018-CP-21-02662

Sandy Hill Partners, LLC ..... Plaintiff,

v.

Central Palmetto Asset Management, LLC and
Florence County ..... Defendants,

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

On October 5, 2018, Sandy Hill Partners, LLC ("Plaintiff") commenced this action against Central Palmetto Asset Management, LLC ("CPAM") and Florence County ("County"). Plaintiff raised claims to set aside a tax sale of four mobile homes (collectively the "homes") and in the alternative for lot rent accruing while the homes were stored at Plaintiff's mobile home park. CPAM filed an Answer on December 18, 2018, and it later filed an Amended Answer and Counterclaim on January 18, 2019. It immediately filed a motion for summary judgment on February 5, 2019. Plaintiff filed a reply to the counterclaim. The County filed an answer on January 11, 2019.

The Court scheduled and conducted a hearing on the motion for summary judgment on April 1, 2019. It did not issue a decision; instead, the Court issued a 90 day deadline to conduct discovery. The Court held a second hearing on August 26, 2019. On September 4, 2019, the Court issued Findings of Facts and Conclusions of law on the pending motion for summary judgment. It dismissed Plaintiff's claims and awarded possession of the homes to CPAM. On September 5, 2019, Plaintiff filed a motion to amend pursuant to Rule 59(e), SCRCP, and on September 6, 2019, the Court denied the motion without a hearing. This appeal followed.

STATEMENT OF THE FACTS

On October 4, 2016, Plaintiff purchased the Sandy Hills Mobile Home Park ("park") along with several mobile homes from RMR Rental Investments, LLC, III ("RMR"). (Affidavit of Andrew Nissen, ¶ 1; R____ and Exhibit B, Deed; R____). The park included more than 61 lots. (Spreadsheet; R____). Plaintiff searched for taxes owed by RMR and paid the taxes at closing. (Affidavit, ¶ 3 and ¶ 5; R____).

Four of the mobile homes conveyed in the purchase were titled in the name of RMR and identified as follows: 1. Sunshine, 2. Fleetwood, 3. Bellcrest and 4. Oakwood. (RMR Titles; R____). On February 28, 2017, the titles to these homes were transferred to Plaintiff. (Sandy Hills titles; R____).

Apparently, the homes were sold at a tax sale the day before the closing. The County advertised the homes for sale as owned by Mark M. Richardson ("Richardson") and it lists a tax map and parcel number along with the make of the home. (Advertisement; R____). The advertisement list other homes owned by RMR and other homes in Sandy Hill MHP. (Id.) Respondents at no point offer an explanation as to how the block and parcel numbers identify the mobile homes. Prior to the tax sale, on March 28, 2016, the County issued notice of delinquent property taxes to Richardson. (Information Sheets; R_____). The County offered no evidence as to why it sent notices to Richardson instead of RMR. It provides no prior application completed by Richardson that he was the taxpayer or grantee of record of the homes. The County did not offer any

tax bills for the homes that were issued prior to the sale.

The County can easily search DMV records for the title owner. The County conducted a DMV search after it sold the homes. (County DMV search; R_____). No evidence is offered as to why this was not done before notices were sent and the tax sale was held. Moreover, the advertisement demonstrates that the County knew RMR existed and owned other homes. (Advertisements; R____). The County knew or should have known that RMR was the owner of the homes and not Richardson. There was no evidence in the record to refute this conclusion.[1]

Respondents claim that a notice of levy was posted on the homes in the park before the tax sale, but they do not dispute that no one confirmed the identity of the homes using a vin number or other method. Plaintiff did not see any levy notices when it inspected the park. (Aff. at ¶ 5; R___).

The County issued a bill of sale in November 2017 to CPAM, and CPAM went to the park in January 2018 to post threatening notices to tenants to pay it rent or face eviction. Despite claiming ownership of the homes kept at the park, neither CPAM nor the County ever paid Plaintiff any lot rent. CPAM did not pay the property taxes in 2018

[1] Richardson was the principal of RMR. However, he owned several homes individually and several homes in the name of RMR. This was a deliberate division of assets to a separate entity.

and never attempted to move the homes. (Aff. at ¶ 6; R____). CPAM received rent from at least one of the homes in the park.

On October 5, 2018, Plaintiff commenced this non-jury action asking the Court to set aside the tax sale or in the alternative for payment of lot rent during Respondents' use of the park. On January 18, 2019, CPAM filed an amended answer and counterclaim, and before a response to the counterclaim was due, on February 5, 2019, CPAM filed a motion for summary judgment.

The Court heard the motion for summary judgment on April 1, 2019, which was less than two months after the parties finished pleading. (Order dated May 6, 2019; R____ and Transcript of Hearing Dated April 1, 2019; R_____). At this date, the County had not responded to Plaintiff's discovery requests and no depositions had been taken. (Id.) Instead of denying the motion, the Court held it in abeyance for 90 days to allow for discovery, which essentially fast tracked the case. (Id.). The Trial Court heard the motion again on August 26, 2019. At no time was the Plaintiff notified that the hearing was going to be an evidentiary hearing and that findings of fact would be made. At the hearing, CPAM merely submitted the entire file of Florence County tax assessor to support its motion. (Transcript of Hearing Dated April 1, 2019, p. 3; R___ and Transcript of Hearing Dated August 26, 2019, p. 4; R____). No live testimony was presented.

On September 4, 2019, the Trial Court issued Findings of Facts and Conclusions of Law granting CPAM's motion. Plaintiff filed a motion to amend pursuant to Rule 59(e), SCRCP. On September 6, 2019, the Trial Court denied the motion in a Form 4 Order. This appeal followed.

ARGUMENT AND CITATION OF AUTHORITY

STANDARD OF REVIEW

Summary judgment is only appropriate when the record on file demonstrates there are no genuine issues of material fact such that the moving party must prevail as a matter of law. Turner v. Milliman, 392 S.C. 116, 121-122, 708 S.E.2d 766, 769 (2011). When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." Id. "[To] withstand a motion for summary judgment in cases applying the preponderance of evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence." Id.

I. GENUINE ISSUES OF MATERIAL FACTS PRECLUDED SUMMARY JUDGMENT THAT THE TAX SALE THAT DID NOT NOTICE THE OWNER OF THE HOMES WAS VALID.

1. Seizing and selling a citizen's personal property requires strict compliance with statutory requirements.

South Carolina Code Section 12-51-40 controls the procedure for conducting a tax sale for real property and personal property. Tax sales must be conducted in strict

compliance with statutory requirements. Hawkins v. Bruno Yacht Sales, 353 S.C. 31, 36, 577 S.E.2d 202, 205 (S.C. 2003). Failure to give the required notice of a tax sale "is a fundamental defect in the tax sale proceedings that renders the proceedings absolutely void." Id. "All requirements of law leading up to tax sales which are intended for the protection of the tax payer [sic] against surprise or the sacrifice of his property are to be regarded as mandatory and strictly enforced." Rives v. Bulsa, 325 S.C. 287, 292-293, 478 S.E.2d 878, 881 (Ct. App. 1996).

2. Failure to properly notify the owner of personal property of a seizure and sale is not strict compliance with the statute.

Section 12-51-40(a) requires a county to mail a notice of delinquent property taxes after April 1 to the defaulting taxpayer and to a grantee of record of the property using the best address available. The statute requires a county to post a notice on the property. S.C. Code § 12-51-40(b) and (c). After these steps are taken, the county must advertise the property with such advertisement including the delinquent taxpayer's name and a description of the property. S.C. Code § 12-51-40(d). The map block parcel number may be used to describe realty. Id.

A. Delinquency notice

The County's tax information sheet demonstrates that the initial delinquency

notice was mailed on March 28, 2016. (Information Sheets; R___). The statute prohibits notice before April 1. S.C. Code § 12-51-40(a). Based on the strict compliance standard, this early notice violates the statute and invalidates the tax sale. At a minimum, the Plaintiff is entitled to examine witnesses from Florence County to determine the truth of the matter and summary judgment should have been denied.

B. Notice to the defaulting taxpayer and grantee of record.

Notices were allegedly sent to Richardson. Nothing submitted to the Trial Court revealed that Richardson ever represented to the County that he was the owner of the homes. The Court essentially found and concluded that because the County sent notices to Richardson, the homes must have been registered in his name with the County. However, the evidence demonstrates that the homes were titled in the name of RMR as early as 2008. (RMR Titles; R____). The County sent notices for other homes presumably in the park to RMR and for other homes in the park identified as "Sandy Hills MHP." (Advertisement; R____).

Regardless, assuming that at some point Richardson registered the homes in his name, which is denied, the County in its ordinary course accessed DMV records to determine the grantee of record. Apparently, a quick online DMV search revealed that RMR owned the homes. (DMV Records; R___). No explanation was given as to why

this routine search was not performed prior to selling the homes. The multiple homes and confusion of names provide the reasonable inference that the County attached and sold the wrong homes.

The Trial Court improperly relied on a post-hearing legal argument made by CPAM that the County is not bound by this notice requirement if an owner fails to timely register a mobile home with the County. (Transcript dated August 26, 2019, p. 22; R___). South Carolina Code Section 31-17-320(a) requires the owner of a mobile home to "obtain a license" from a county where the home is located within 15 days of placing the home in the county. This code section does not expressly purport to relieve a county of the requirement set forth in Code Section 12-51-40 that it must notify the taxpayer and grantee of record of a tax delinquency and sale.

The Court relied on an unpublished opinion Groce v. Horry County, 2011 S.C. App. Unpubl. Lexis 109; 2011 WL 1173361 to supports its conclusion that the failure to register a mobile home relieves a county of the notice requirement.[2] However, the Groce decision arose from a trial which the county proved that it did not have the plaintiff's address. In this case, the Court was required to decide the case on a summary judgment standard construing the evidence in a light most favorable to Plaintiff. In doing so, the

[2] Unpublished orders have no precedential value. Rule 268(d)(2), SCACR.

evidence easily created a reasonable inference that the County either knew or should have known that RMR owned the homes when the County sold them. Moreover, the record was absent of any application by Richardson to register the homes in his name. Tellingly, the Respondents did not produce a tax bill for the homes dated before the sale.

In Rives v. Bulsa, the South Carolina Court of Appeals, in a published opinion, addressed an argument that sending a notice to an agent of the owner of property satisfied Section 12-51-40. 325 S.C. 287, 289, 478 S.E.2d at 880. The Court of Appeals rejected the argument, and it noted that strict compliance with the statute is required. Id. at 881. The failure to sell the property in the name of the true owner required the invalidation of the tax sale. Id. The County attempts to do the same in this case and attach and sell homes not owned by Richardson. The County cannot impose taxes owed by Richardson against property owned by RMR and now Plaintiff. Property taxes attach to a delinquent taxpayer's property. *See* S.C. Code §§ 12-49-10 and 12-49-30. The lien does not attach to property owned by a separate entity such as RMR.

Not only does recording and advertising the sale of the homes in the name of Richardson prejudice RMR but it prejudices good faith and innocent purchasers such as

Plaintiff. No personal property search of RMR would have uncovered the delinquent taxes against a different party. (Aff. ¶ 4; R___). If the County wished to lien the homes, it had an obligation to properly notice the taxes.

In a recent decision by the South Carolina Court of Appeals, the Court restated the established law that although it is unreasonable to require tax officers to "unravel complicated inheritances" a county tax official must exercise diligence to ascertain the correct address of the property owner. Halsey v. Gwendolette Halsey Simmons, No. 5712, 2019 S.C. App. LEXIS 198, at *16, n. 5 (Ct. App. Jan. 22, 2020) (citing Reeping v. JEBBCO, LLC, 402 S.C. 195, 199-200, 740 S.E.2d 504, 506 (Ct. App. 2013). In this case, the County easily checked the DMV records after the sale to determine that RMR was the owner of the property. Despite the easy access to the information, the County noticed and sold the homes in the name of Richardson and not RMR. This failure invalidates the tax sale. At a minimum, genuine issues of material fact exist that the sale was invalid.

C. Notice of Levy

A notice of levy must be posted on the property for the county to take exclusive possession of the property. S.C. Code § 12-51-40(c). Respondents offer a notice of levy but presented no testimony that the County officials posted the levy to the correct homes.

Plaintiff did not observe levy notices on homes when it inspected the park. (Aff. ¶ 5; R____). The homes on the lots in the park do not match the description in the levy notices. (Spreadsheet; R____). Genuine issues of material fact exist as to whether the County properly levied the homes.

D. Notice of Sale

A county must advertise the property with such advertisement including the delinquent taxpayer's name and a description of the property. S.C. Code § 12-51-40(d). The map block parcel number may be used to describe realty. Id. The South Carolina Supreme Court held in Hawkins v. Bruno Yacht Sales that a description should provide enough information to allow a potential buyer the ability to look up information on the property. Hawkins, 353 S.C. at 41, 577 S.E.2d at 207.

The advertisement in this case lists the incorrect name of the owner for the homes. (Advertisement; R___). It uses a parcel number that does not correspond with the location of the homes and is not something that would allow a prospective buyer to look up the homes. (Id.) Finally, the advertisement lists the year and make of the homes. (Id.) However, as is apparent in the advertisement, listing the make of a mobile home does not separate it from other homes also built by the same manufacturer.

The evidence demonstrates that the advertisement did not strictly comply with the statutory requirements. At a minimum, the evidence demonstrates genuine issues of material facts exist to dispute that the County strictly complied with the statute.

3. The Trial Court was not permitted to find facts in response to a motion for summary judgment.

The motion before the Trial Court was a motion for summary judgment. Any evidentiary record is limited to affidavits and other written evidence. Rule 56(a), SCRCP. The standard to decide a motion for summary judgment is favorable to the party opposing the claim. Turner, 392 S.C. at 121-122, 708 S.E.2d at 769. The Trial Court did not apply this standard. Instead, it found facts, which under a summary judgment standard it is not permitted to do. The Trial Court applied the incorrect standard in ruling on the motion, and its decision must be reversed.

II. GENUINE ISSUES OF MATERIAL FACT EXISTS AS TO WHETHER PLAINTIFF WAS ENTITLED TO RENTAL COSTS.

Plaintiff, in the alternative, sought rental fees from the County and CPAM for keeping the homes they allegedly own on Plaintiff's real property for nearly three years without paying rent. "All expenses of the levy, seizure and sale must be added and

collected as additional costs, and must include but not be limited to, the expenses of taking possession of real or personal property, advertising, storage, ..." S.C. Code § 12-51-40(d).

The Trial Court dismissed the claim for rent based on the reasoning that Plaintiff did not present evidence that it demanded rent and that it did not cite a statute in its complaint. Plaintiff did not demand rent because it did not know that the County sold them to CPAM in 2016 and 2017. When the County allegedly seized the homes and sold them, rent began accruing. The County was required under Section 12-51-40 to recover the costs from CPAM. This statutory requirement is not triggered by a demand requirement.

Any reasonable person, particularly persons in the mobile home business such as Respondents would know that mobile homes accrue lot rent when they are kept in a park. CPAM was collecting rent from a tenant in one of the homes while the home was in the park. Even if Plaintiff is not entitled to rent under the statute, it is entitled to rent either under an unjust enrichment theory or based on common law and statutory remedies for

rent owed while knowingly occupying someone else's property. Boykin Contracting, Inc. v. Kirby, 405 S.C. 631, 637, 748 S.E.2d 795, 798 (Ct. App. 2013) (unjust enrichment). Genuine issues of material facts exist as to whether Plaintiff is entitled to recover rent from Respondents.

As to the Trial Court's other ground for dismissing Plaintiff's claim, "a complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever." Russell v. Columbia, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991). Pleadings should be "construed liberally so that substantial justice is done between the parties." Id.; *see also* Rule 8(f), SCRCP. Plaintiff alleged that Respondents kept the homes in its park for three years without payment of rent and that Respondents owe rent plus interest. (Summons and Complaint, ¶ 10.; R____). The allegations in the Complaint are sufficient to state a cause of action for the collection of rent.

CONCLUSION

Genuine issues of material facts exist that the Plaintiff is entitled to the relief requested in its complaint. The Trial Court improperly granted CPAM's motion for summary judgment. Consequently, Plaintiff requests that the Court of Appeals reverse the Trial Court's decision and remand this action for additional discovery and trial.

February 27, 2020

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PROOF OF SERVICE

I certify that on February 27, 2020, I served the Appellant's Initial Brief and Designation of Matter to Included in the Record on Appeal on the Respondents, through their attorneys of record, by depositing a copy of same in the United States Mail, postage prepaid, to:

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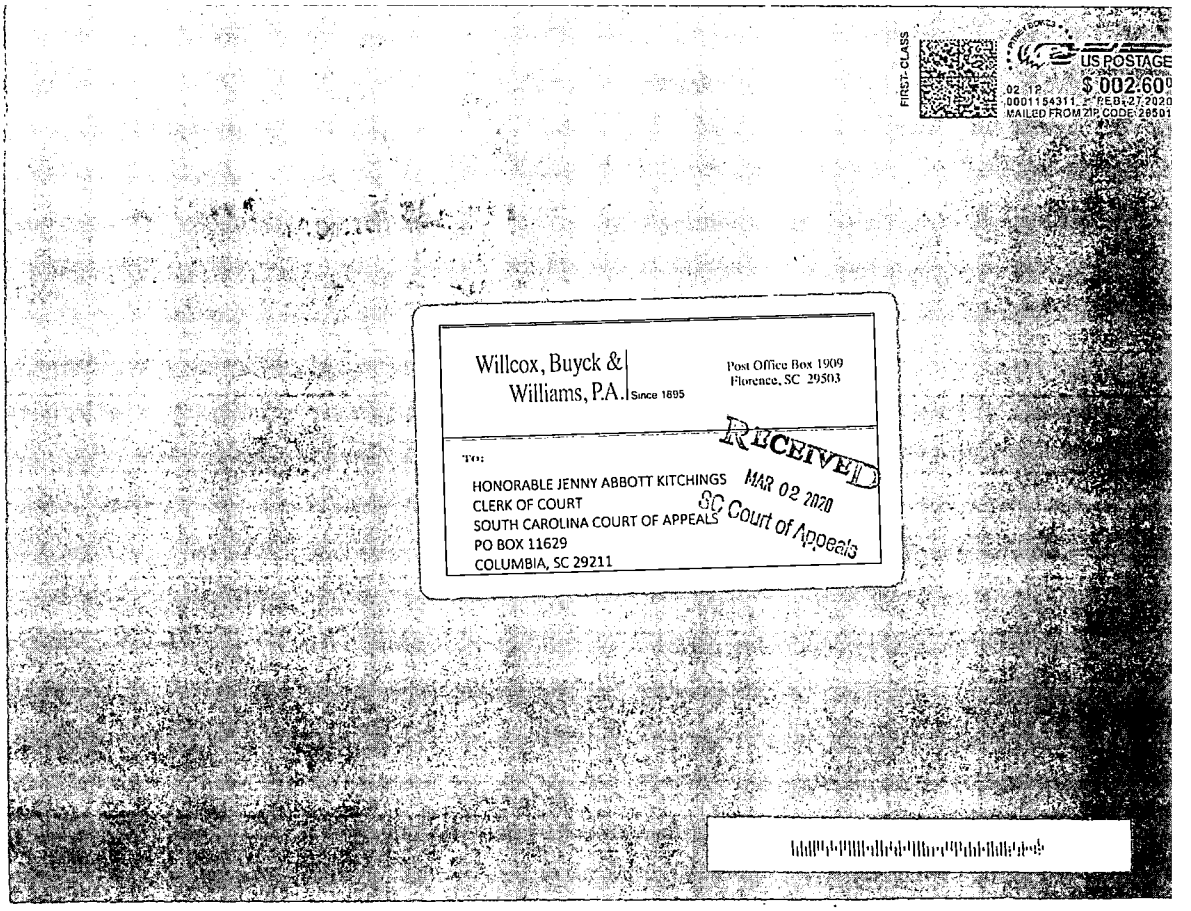

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