

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Francisco Nicolas Miguel, )  
 )  
 Plaintiff, )  
 )  
 )  
 )  
 v. )  
 )  
 Palmetto Asset Investments, LLC, )  
 Gabriel Angel Prestegui Gomez, and )  
 A. Kevin Hunter, II, Greenville County Tax )  
 Collector, )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 THIRTEENTH JUDICIAL DISTRICT

**ORDER GRANTING PLAINTIFF'S  
 MOTION FOR SUMMARY  
 JUDGMENT**

C.A. NO: 2018-CP-23-03713

**RECEIVED**  
 MAR 02 2020  
 SC Court of Appeals

Hearing Date: November 14, 2019, at 10:00 a.m.  
 Hearing Judge: Charles B. Simmons, Jr.  
 Counsel for Plaintiff: Ryan E. Gaylord  
 Counsel for Defendants: C. Richard Stewart  
 Jeffrey D. Wile  
 Court Reporter: Danette Hanks

This matter was before the Court on Thursday, November 14, 2019 in Greenville County, South Carolina upon Plaintiff's Motion for Summary Judgment. Attorney Ryan E. Gaylord of Hyde Law Firm, PA, was present representing the interests of the Plaintiff. Attorney C. Richard Stewart was present representing the interests of Defendant, Palmetto Asset Investments, LLC. Attorney Jeffrey D. Wile was present representing the interests of Defendant, A. Kevin Hunter, II, Greenville County Tax Collector. Defendant, Gabriel Angel Prestegui Gomez, is not represented and did not attend the hearing.

### **PROCEDURAL BACKGROUND**

This action was commenced by the filing of a Summons and Complaint on July 11, 2018 seeking to set aside a tax sale and subsequent instruments of title and reinstate Plaintiff's right of redemption. Gabriel Angel Prestegui Gomez was properly served with the Summons and Complaint on July 12, 2018 as demonstrated by that Affidavit of Service filed July 13, 2018, but has not filed any responsive pleadings or appeared in this action. Palmetto Asset Investments, LLC was properly served with the Summons and Complaint on July 12, 2018 as demonstrated by that Affidavit of Service filed July 13, 2018, and filed an Answer on August 10, 2018. Palmetto Asset Investments, LLC thereafter filed an Amended Answer on August 30, 2018 and Second Amended Answer, Counterclaim and Cross Claim on November 13, 2019. A. Kevin Hunter, II, Greenville County Tax Collector was properly served with the Summons and Complaint on July 13, 2018 as demonstrated by that Affidavit of Service filed July 20, 2018, and filed an Answer on July 17, 2018. The Plaintiff filed a Motion for Summary Judgment on September 25, 2019. The parties were before the Court regarding the Motion for Summary Judgment on November 14, 2019.

### **FACTUAL BACKGROUND**

This is an action seeking to set aside as defective a delinquent property tax sale conducted in 2016 for certain property in Greenville County, South Carolina located at 1 Hilltop Avenue, Greenville, South Carolina and subsequent instruments of title. Plaintiff was the owner of the property subject to the tax sale that is the subject of this action at the time of the sale. Palmetto Asset Investments, LLC was the purchaser of the property through the tax sale that is the subject of this action. Gabriel Angel Prestegui Gomez claims an interest in the property by an instrument of title entered with Palmetto Asset Investments, LLC subsequent to the tax sale.

A. Kevin Hunter, III is the Tax Collector for Greenville County, South Carolina and was responsible for administration of the delinquent property tax sale that is the subject of this action.

By deed dated August 29, 2013 and recorded on September 3, 2013 in the Office of the Register of Deeds for Greenville County, South Carolina, Ralph E. Scopa, Jr., as Trustee of the U.R. Home Trust conveyed certain real property in Greenville County, South Carolina located at 1 Hilltop Avenue, Greenville, South Carolina to Plaintiff. The deed conveying the Property to Plaintiff identified his address as 1 Hilltop Avenue, Greenville, SC 29609. In about October, 2014, the Plaintiff moved to 117 Odom Circle, Greenville, SC 29611.

Greenville County uses a mail service vendor to print and mail its property tax bills. Prior to mailing tax bills, the mail service vendor seeks to discover possible updated addresses through the NCOA system, a database coordinated by the Postal Service and other addressing entities, in order to try to save the County money on postage. The mail service vendor sends the tax bill to the updated address, and reports the discovery of any possible new address to Greenville County. The existence and record of a possible new address is then available to and accessible by the Greenville County Tax Collector's Office. Kevin Hunter, Greenville County's Tax Collector, stated in his deposition that his office also relies on either the taxpayer or the tax assessor for changes of addresses, because "... a lot of people, they change their addresses all the time." (Hunter depo., P. 13, ll. 19-22)

During the compilation and mailing of the 2015 property tax bills Greenville County's mail service vendor discovered a possible new address for Plaintiff through the NCOA system. The new address was 117 Odom Circle, Greenville, SC 29611.

The vendor mailed the 2015 tax bill to 117 Odom Circle and notified Greenville County of the discovery of the new address. The vendor also mailed Plaintiff a postcard asking Plaintiff to reply and confirm his mailing address.

Plaintiff did not respond to the postcard mailed by the vendor, thus failing to inform the County of his new address. On November 13, 2015 Greenville County Real Property Services updated its records for the property at 1 Hilltop Avenue to note the discovery of a possible new address by the vendor. The Tax Collector's Office, however, did not update its address records since the postcard was never returned by Plaintiff.

Plaintiff did not pay the 2015 taxes and Greenville County initiated collection for the delinquent taxes pursuant to Section 12-51-40 et. seq.

All notices relating to the 2016 sale of 1 Hilltop Avenue, Greenville, South Carolina for delinquent taxes mailed by Greenville County, including the notices required by S.C. Code Ann. § 12-51-40(b) (1976) and S.C. Code Ann. § 12-51-120 (1976), were addressed to Plaintiff at 1 Hilltop Avenue, Greenville, SC 29609. None of the notices mailed by Greenville County in conducting the tax sale were mailed to 117 Odom Circle, Greenville, SC 29611. On June 6, 2016 Greenville County mailed a notice of delinquent property taxes, penalties and costs owed pursuant to S.C. Code Ann. § 12-51-40(b) (1976) to Plaintiff at 1 Hilltop Avenue, Greenville SC 29609 by certified mail, return receipt requested – restricted delivery. The notice was signed and returned; however, the signature on the notice was illegible. Plaintiff did not receive the notice and no notice of the tax sale was posted at 1 Hilltop Avenue, Greenville, South Carolina.<sup>1</sup>

---

<sup>1</sup> Employees of the Tax Collector's Office stated that under the facts of this case, the property probably should have been posted. See, Depo. D. Henderson (p. 17: 17-24) and Depo. A. Hunter (p. 28:16-29:1).

On October 24, 2016, after due advertisement, Greenville County conducted an auction and sold 1 Hilltop Avenue, Greenville, South Carolina to Palmetto Asset Investments, LLC. Plaintiff's right to redeem the property expired on October 24, 2017.

On November 4, 2016 Greenville County's mail service vendor mailed the 2016 tax bill for 1 Hilltop Avenue, Greenville, South Carolina to Plaintiff at 117 Odom Circle, Greenville, SC 29611-2957. On the payment stub attached to this tax bill, there is a note which states "On 11/4/2016 there were delinquent taxes due on this property, which must be paid before these current taxes may be paid. Please contact the Tax Collectors Office as this property may be sold for delinquent taxes" (hereafter, the delinquent taxes note). Plaintiff did not pay 2016 taxes, nor did he respond to this note in any way. On November 8, 2016 another entry was made in Greenville County Real Property Service's records for the property at 1 Hilltop Avenue to note Plaintiff's possible address change to 117 Odom Circle, Greenville, SC 29611-2957.

On September 15, 2017 Greenville County mailed notice of the approaching end of the redemption period pursuant to S.C. Code Ann. § 12-51-120 (1976) to Plaintiff at 1 Hilltop Avenue, Greenville, SC 29609 by certified mail, return receipt requested – restricted delivery. The notice was returned to Greenville County as "Unclaimed – Unable to Forward". Plaintiff did not receive this notice of his right to redeem the property and did not redeem the property.

On October 18, 2017 Greenville County's mail service vendor mailed the 2017 tax bill for 1 Hilltop Avenue, Greenville, South Carolina to Plaintiff at 117 Odom Circle, Greenville, SC 29611-2957. The tax bill made no notice of mention that 1 Hilltop Avenue had been auctioned for delinquent taxes or that Plaintiff's right to redeem would expire October 24, 2017.

On October 20, 2017 another entry was made in Greenville County Real Property Service's records for the property at 1 Hilltop Avenue to note Plaintiff's possible address change to 117 Odom Circle, Greenville, SC 29611-2957.

On December 5, 2017, A. Kevin Hunter, II executed a Tax Deed on behalf of Greenville County to convey the property at 1 Hilltop Avenue, Greenville, South Carolina to Palmetto Asset Investments, LLC. The Tax Deed was recorded on December 8, 2017 in Deed Book 2527, Page 3023 in the Office of the Register of Deeds for Greenville County, South Carolina. Thereafter, on February 5, 2018, Palmetto Asset Investments, LLC and Gabriel Angel Prestegui Gomez entered an Installment Contract for Sale of Real Estate which was recorded on February 8, 2018 in Deed Book 2531, Page 2233 in the Office of the Register of Deeds for Greenville County, South Carolina.

### **LAW AND DECISION OF THE COURT**

Summary Judgment is appropriate only when it is perfectly clear that no genuine issue of material fact exists; further inquiry into the facts is not necessary to clarify the application of the law; and the moving party is entitled to judgment as a matter of law. *Folkens v. Hunt*, 290 S.C. 194, 195, 348 S.E.2d 839, 841 (Ct. App. 1986). In this matter the parties agree that no genuine issue of material fact exists and that the record as developed by the pleadings filed in support of and in opposition to Plaintiff's Motion for Summary Judgment is complete.

Section 12-51-40 et seq. of the South Carolina Code prescribes the conditions precedent for foreclosing a taxpayer's rights in property for delinquent taxes. *Good v. Kennedy*, 291 S.C. 204, 207, 352 S.E.2d 708, 711 (S.C. App. 1986), citing 72 Am.Jur.2d State and Local Taxation Section 1010 (1974); accord, 85 C.J.S. Taxation Section 868 (1954). The provisions are intended for the protection of the taxpayer against "surprise or the sacrifice of his property" and

“all requirements of the law leading up to tax sales are to be regarded as mandatory and strictly enforced”. *Leysath v. Leysath*, 209 S.C. 342, 40 S.E.2d 233, 235 (1946). *Good v. Kennedy*, 291 S.C. 204, 207, 352 S.E.2d 708, 711 (S.C. App. 1986).

Section 12-51-40(a) of the South Carolina Code dictates that notice of delinquent taxes must be made to the taxpayer by mail addressed to “the best address available, which is either the address shown on the deed conveying the property to 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.*” *Reeping v. Jebbco, LLC*, 402 S.C. 195, 200, 740 S.E.2d 504, 506 (Ct. App. 2013). Further, Section 12-51-120 of the South Carolina Code requires that notice of the approaching end of the redemption period “be mailed to the best address of the owner available to the person officially charged with the collection of delinquent taxes...” S.C. Code Ann. § 12-51-120 (1976).

A person authorized to send notice by mail as a condition precedent to foreclosure of a taxpayer’s rights in property “must exercise diligence to ascertain the correct address of the property owner.” *Reeping*, 402 S.C. at 199-200, see also *Good*, 291 S.C. at 207-08.

“Though diligence is a relative term depending upon the circumstances of each case, ... it imparts upon a public official due care in the performance of her duties” *Good*, 291 S.C. at 208. A tax collector’s receipt of information that indicates the existence of a new address for a taxpayer requires further inquiry. *Good v. Kennedy*, 291 S.C. 204, 207-08 (S.C. App. 1986), *Benton v. Logan*, 323 S.C. 338, 340 - 43, 474 S.E.2d 446, 447-48 (S.C. App. 1996).

The Greenville County Tax Collector’s Office handles an extremely high volume of delinquent tax matters and does an admirable job protecting the rights of taxpayers. However, under the unique facts of this case and even though Plaintiff did not avail himself of

opportunities to formally provide a change of address, the notice herein was not given to Plaintiff at the best address. Greenville County's mail service vendor had notice of Plaintiff's possible new address through the NCOA system and provided notice of the new address to Greenville County. Greenville County Real Property Service's records were updated to note the possible address change, and the tax bills for 2015, 2016 and 2017 were mailed to the new address. The Greenville County Tax Collector's Office had access to both the possible address change notes within County records and the address used for the mailing of tax bills. The return of the green card from the June 6, 2016 notice with an illegible signature and the return of the September 15, 2017 notice with the notation "Return to Sender – Unclaimed – Unable to Forward" together with notice of the address change derived from the NCOA system should have prompted further inquiry and provision of tax sale notices to Plaintiff at the 117 Odom Circle address.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The 2016 tax sale of the property located at 1 Hilltop Avenue, Greenville, South Carolina was not conducted in strict compliance with statutory requirements and is set aside.
2. The Tax Deed recorded on December 8, 2017 in Deed Book 2527, Page 3023 in the Office of the Register of Deeds for Greenville County, South Carolina and the Installment Contract for Sale of Real Estate which was recorded on February 8, 2018 in Deed Book 2531, Page 2233 in the Office of the Register of Deeds for Greenville County, South Carolina are voided.
3. Plaintiff's right to redeem the property is reinstated and Plaintiff shall pay to Greenville County all delinquent taxes owed from 2015, together with statutory interest and

penalties, and all taxes assessed against property for 2016, 2017, 2018 and 2019. Payment shall be made to the County of Greenville within forty-five (45) days of the date of this Order. Upon receipt of an Affidavit from Mr. Wile, as attorney for Defendant Tax Collector, that payment has not been made within forty-five (45) days of the date of this Order, this Order shall be voided and the tax sale that is the subject of this action shall be deemed valid.

4. Upon payment noted above, Palmetto Asset Investments, LLC shall receive a refund of all amounts paid to Greenville County for the property a 1 Hilltop Avenue, Greenville, South Carolina, together with the statutory interest accruing on such amounts, from Greenville County upon Plaintiff's redemption of the property.

AND IT IS SO ORDERED.

**Judge's Signature on Following Page**



Greenville Common Pleas

**Case Caption:** Francisco Nicolas Miguel vs. Palmetto Asset Investments LLC ,  
defendant, et al  
**Case Number:** 2018CP2303713  
**Type:** Order/Summary Judgment

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)