

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

RECEIVED

MAY 18 2020

SC Court of Appeals

Case No: 2018-CP-21-02662

Sandy Hill Partners, LLCAppellant

v.

Central Palmetto Asset Management, LLC and
Florence CountyRespondents

INITIAL BRIEF OF RESPONDENT FLORENCE COUNTY

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STATEMENT OF ISSUES ON APPEAL

- I. WERE THERE GENUINE ISSUES OF MATERIAL FACTS EXISTING TO PRECLUDE SUMMARY JUDGEMENT THAT THE TAX SALE WAS VALID?**

- II. DID GENUINE ISSUES OF MATERIAL FACTS EXIST TO PRECLUDE SUMMARY JUDGMENT THAT PLAINTIFF WAS NOT ENTITLED TO RENTAL COSTS?**

STATEMENT OF THE CASE

The Appellant commenced this action against Respondents on October 5, 2018, challenging a Tax Sale of certain mobile homes and the issuance of a Tax Title to the Respondent, Central Palmetto Asset Management, LLC, (hereinafter Respondent Palmetto) by the Respondent Florence County (hereinafter Respondent County). The Appellant in its Complaint seeks to set aside a tax sale of four (4) mobile homes. The Appellant also seeks lot rent subsequent to the sale of the mobile homes.

The Respondent County filed an Answer on July 11, 2019 denying the allegations in the Complaint alleging the tax sale should be set aside. The Respondent Palmetto filed an Answer on December 18, 2018 and an Amended Answer and Counterclaim on January 18, 2019. In its Answer, the Respondent Palmetto denied the Appellant's assertion that the tax sale was improper and should be set aside. In its Amended Answer and Counterclaim, the Respondent Palmetto denies the relief sought by the Appellant and asserts a Counterclaim against the Appellant alleging the Tort of Conversion.

The Respondent Palmetto filed a Notice of Motion and Motion for Summary Judgment on February 5, 2019. The Motion for Summary Judgment was scheduled to be heard on April 1, 2019, but the Trial Judge continued the hearing which was rescheduled for August 26, 2019. The Order of Continuance was filed on May 6, 2019. The Respondent Palmetto's Motion for Summary Judgment was heard on August 26, 2019. By Order filed September 4, 2019 the Respondent Palmetto's Motion for Summary Judgment was granted.

The Appellant filed a Notice and Motion to Reconsider on September 5, 2019. By Order filed September 6, 2019 the Appellant's Motion to Reconsider was denied. On September 18,

2019, a Notice of Motion to Stay Execution of Order was filed by the Appellant. By Order dated October 7, 2019 an order was issued staying execution and ordering an appeal bond to stay the execution of the Court's order. This appeal followed.

STATEMENT OF THE FACTS

By a Deed recorded October 6, 2016, the Appellant acquired certain real property located in Florence County, which is a mobile home park. (R. p. _____) The four (4) mobile homes at issue in this case were located on the real property described in this Deed. On February 28, 2017, the Appellant acquired title to the four (4) mobile homes at issue. (R. p. _____) That on January 9, 2018, title to a 1995 Sunshine Mobile Home was conveyed to the Respondent Palmetto. (R. p. _____) On October 9th, 2018 title was acquired by the Respondent Palmetto to a 1997 Bellcrest mobile home. (R. p. _____) On January 9, 2018 title was acquired by the Respondent Palmetto to a 2000 Fleetwood mobile home. Finally, on October 9, 2018 title was acquired to a 1996 Oakwood mobile home by the Respondent Palmetto. These four (4) mobile homes are the subject of this action.

These four (4) mobile homes were registered with the Florence County Tax Assessor in the name of Mark M. Richardson with an address of 1514 Tommy Drive, Florence, South Carolina at the time of the tax sale. (R. p. _____)

The Respondent County, for the 1997 Bellcrest mobile home, issued an Execution for failure to pay property taxes dated March 28, 2016 (R. p. ____). On April 12, 2016 the Respondent County mailed to Mark M. Richardson an Official Notice of Delinquent Tax at his address of 1514 Tommy Drive, Florence, South Carolina. (R. p. _____) On May 20, 2016 a Notice of Levy was mailed to Mark M. Richardson by certified mail to 1514 Tommy Drive, Florence, South Carolina and signed for by him on June 3, 2016. (R. p. _____) The 1997 Bellcrest mobile home was posted with a Notice of Levy on July 13, 2016 by M. Davenport and A. Ivey. (R. p. ____). On September 21, 2016 the 1997 Bellcrest mobile home was advertised for sale for delinquent taxes in a newspaper of general circulation in Florence County. (R. p. _____)

^
____). On September 28, 2016, the 1997 Bellcrest mobile home was advertised for sale for delinquent taxes in a newspaper of general circulation in Florence County. On November 15, 2016, a Right of Redemption letter was sent to Mark M. Richardson at 1514 Tommy Drive, Florence, South Carolina for the 1997 Bellcrest mobile home. On February 2, 2017, a Right of Redemption letter was mailed to Mark M. Richardson at 1514 Tommy Drive, Florence, South Carolina for the 1997 Bellcrest mobile home. An undated letter was sent to RMR Rental and Investment, LLC 3 at 1514 Tommy Drive, Florence, South Carolina, including a redemption notice. (R. p. ____). On May 8, 2017 a redemption letter was sent to Mark M. Richardson at 1514 Tommy Drive, Florence, South Carolina. On September 11, 2017, a last date of redemption letter was mailed certified to Mark M. Richardson at 1514 Tommy Drive, Florence, South Carolina. It was signed for on September 15. On September 11, 2017, a last date of redemption letter was sent to the Appellant, certified. (R. p. ____). On September 14, 2017 someone on behalf of the Appellant signed for the letter.

The Respondent County, for the 1996 Oakwood mobile home, issued an Execution for failure to pay property taxes dated March 28, 2016 (R. p. ____). On April 12, 2016 the Respondent County mailed to Mark M. Richardson an Official Notice of Delinquent Tax at his address of 1514 Tommy Drive, Florence, South Carolina. (R. p. ____). On May 20, 2016 a Notice of Levy was mailed to Mark M. Richardson by certified mail to 1514 Tommy Drive, Florence, South Carolina and signed for by him on June 3, 2016. (R. p. ____). The 1996 Oakwood mobile home was posted with a Notice of Levy on July 13, 2016 by M. Davenport and A. Ivey. (R. p. ____). On September 21, 2016 the 1996 Oakwood mobile home was advertised for sale for delinquent taxes in a newspaper of general circulation in Florence County. (R. p. ____). On September 28, 2016, the 1996 Oakwood mobile home was advertised for sale for

delinquent taxes in the newspaper of general circulation in Florence County. On November 15, 2016, a Right of Redemption letter was sent to Mark M. Richardson at 1514 Tommy Drive, Florence, South Carolina for the 1996 Oakwood mobile home. On February 2, 2017, a Right of Redemption letter was mailed to Mark M. Richardson at 1514 Tommy Drive, Florence, South Carolina for the 1996 Oakwood mobile home. An undated letter was sent to RMR Rental and Investment, LLC 3 at 1514 Tommy Drive, Florence, South Carolina, including a redemption notice. (R. p. ____) On May 8, 2017 a redemption letter was sent to Mark M. Richardson at 1514 Tommy Drive, Florence, South Carolina. On September 11, 2017, a last date of redemption letter was mailed certified to Mark M. Richardson at 1514 Tommy Drive, Florence, South Carolina. It was signed for on September 15. On September 11, 2017, a last date of redemption letter was sent to the Appellant, certified. (R. p. ____) On September 14, 2017 someone on behalf of the Appellant signed for the letter.

The Respondent County, for the 2000 Fleetwood mobile home, issued an Execution for failure to pay property taxes dated March 28, 2016 (R. p. ____) On April 12, 2016 the Respondent County mailed to Mark M. Richardson an Official Notice of Delinquent Tax at his address of 1514 Tommy Drive, Florence, South Carolina. (R. p. ____) On May 20, 2016 a Notice of Levy was mailed to Mark M. Richardson by certified mail to 1514 Tommy Drive, Florence, South Carolina and signed for by him on June 3, 2016. (R. p. ____) The 2000 Fleetwood mobile home was posted with a Notice of Levy on July 13, 2016 by M. Davenport and A. Ivey. (R. p. ____) On September 21, 2016 the 2000 Fleetwood mobile home was advertised for sale for delinquent taxes in a newspaper of general circulation in Florence County. (R. p. ____). On September 28, 2016, the 2000 Fleetwood mobile home was advertised for sale for delinquent taxes in a newspaper of general circulation in Florence County. On

November 15, 2016, a Right of Redemption letter was sent to Mark M. Richardson at 1514 Tommy Drive, Florence, South Carolina for the 2000 Fleetwood mobile home. On February 2, 2017, a Right of Redemption letter was mailed to Mark M. Richardson at 1514 Tommy Drive, Florence, South Carolina for the 2000 Fleetwood mobile home. An undated letter was sent to RMR Rental and Investment, LLC 3 at 1514 Tommy Drive, Florence, South Carolina, including a redemption notice. (R. p. ____) On May 8, 2017 a redemption letter was sent to Mark M. Richardson at 1514 Tommy Drive, Florence, South Carolina. On September 11, 2017, a last date of redemption letter was mailed certified to Mark M. Richardson at 1514 Tommy Drive, Florence, South Carolina. It was signed for on September 15. On September 11, 2017, a last date of redemption letter was sent to the Appellant, certified. (R. p. ____) On September 14, 2017 someone on behalf of the Appellant signed for the letter.

The Respondent County, for the 1995 Sunshine mobile home, issued an Execution for failure to pay property taxes dated March 28, 2016 (R. p. ____) On April 12, 2016 the Respondent County mailed to Mark M. Richardson an Official Notice of Delinquent Tax at his address of 1514 Tommy Drive, Florence, South Carolina. (R. p. ____) On May 20, 2016 a Notice of Levy was mailed to Mark M. Richardson by certified mail to 1514 Tommy Drive, Florence, South Carolina and signed for by him on June 3, 2016. (R. p. ____) The 1995 Sunshine mobile home was posted with a Notice of Levy on July 13, 2016 by M. Davenport and A. Ivey. (R. p. ____). On September 21, 2016 the 1995 Sunshine mobile home was advertised for sale for delinquent taxes in a newspaper of general circulation in Florence County. (R. p. ____). On September 28, 2016, the 1995 Sunshine mobile home was advertised for sale for delinquent taxes in a newspaper of general circulation in Florence County. On November 15, 2016, a Right of Redemption letter was sent to Mark M. Richardson at 1514 Tommy Drive,

Florence, South Carolina for the 1995 Sunshine mobile home. On February 2, 2017, a Right of Redemption letter was mailed to Mark M. Richardson at 1514 Tommy Drive, Florence, South Carolina for the 1995 Sunshine mobile home. An undated letter was sent to RMR Rental and Investment, LLC 3 at 1514 Tommy Drive, Florence, South Carolina, including a redemption notice. (R. p. ____) On May 8, 2017 a redemption letter was sent to Mark M. Richardson at 1514 Tommy Drive, Florence, South Carolina. On September 11, 2017, a last date of redemption letter was mailed certified to Mark M. Richardson at 1514 Tommy Drive, Florence, South Carolina. It was signed for on September 15. On September 11, 2017, a last date of redemption letter was sent to the Appellant, certified. (R. p. ____) On September 14, 2017 someone on behalf of the Appellant signed for the letter.

STANDARD OF REVIEW

In determining whether summary judgment is proper, the Trial Court must view all evidence in the light most favorable to the non-moving party. Summary Judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party. *Silvester v. Spring Valley Country Club*, 344 S.C. 280, 285, 543 S.E.2d 563, 566 (Ct.App. 2001).

When reviewing a grant of summary judgment, Appellate Courts apply the same standard applied by the Trial Court pursuant to Rule 56 (c), SCRPC. *Turner v. Milliman*, 392 S.C. 116, 112, 708 S.E.2d 766, 769 (2011).

I. THERE ARE NO ISSUES OF MATERIAL FACT TO PRECLUDE THE GRANTING OF SUMMARY JUDGMENT CONFIRMING THAT THE TAX SALE WAS VALID.

The standard by which the Respondent County's Treasurer must apply in tax sales is mapped in S.C. Code Ann. §12-51-40, as amended. S.C. Code of Laws §12-51-40 as amended sets forth the procedure to be followed by the Treasurer in pertinent part as follows:

- After issuing an execution against the defaulting taxpayer, the Treasurer shall:
- a. On April 1st 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 to him, the property address, or other corrected or forwarding address...
 - b. If the taxes remain unpaid after thirty (30) 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 personal property,

exclusive possession is taken by mailing the Notice of Delinquent Property Taxes, Assessments, Penalties, and Costs to the person at the address of the person shown on the tax receipt or to an address of which the officer has actual knowledge. The return receipt of the "certified mail" notice is equivalent to "levying by distress".

- c. If the "certified mail" 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...the posting of the notice is equivalent to levying by distress, seizing, and taking exclusive possession of it, or by taking exclusive of personality..... Mobile Homes are considered to be personal property for the purposes of this section unless the owner gives written notice to the auditor of the Mobile Homes annexation to the land on which it is situated.
- d. The property must be advertised for sale at public auction. The advertisement must be in a newspaper of general circulation within the county or municipality, if applicable, and must be entitled "Delinquent Tax Sale". It must include the delinquent taxpayer's name and the description of the property, a reference to the county auditor's map book parcel number being sufficient for a description of realty. The advertising must be published for a week before the legal sales date for three (3) consecutive weeks for the sale of real property and two (2) consecutive weeks for the sale of personal property....

S.C. Code Ann. §31-17-320 requires the owner of a mobile home, within fifteen (15) days of purchase, to obtain a license from the county within which it is situate. The licensing county is required to obtain from the person applying for the license a copy of the certificate of title or an application for the certificate of title.

The information given to the Florence County Tax Assessor (the licensing agent for the County) was that the owner of the four (4) mobile homes in question was Mark M. Richardson with an address of 1514 Tommy Drive, Florence, South Carolina. All of the notices referred to in the Statement of Facts were mailed to the individual identified to the Respondent County as the owner of record. Additionally, Respondent County sent a Notice of Redemption to the Appellant prior to the redemption period expiring. Though the County was not required, under the statute, to send a notice to the Appellant, in an effort to protect any interest the Appellant may have claimed in the property put the

Appellant on notice that the property would be sold unless it was redeemed. The owner of record at the time of the tax sale was Mark M. Richardson. Mr. Richardson was placed on notice the requirement of registering the mobile home in the name of the titled owner.

The Appellant did not become an owner of record until after the tax sale. The Appellant was not an owner of record at the time of the tax sale and was placed on notice of the right to redeem the property prior to a tax deed being issued to the Respondent Palmetto. As set forth in the Statement of Facts, the County Treasurer issued an execution against the defaulting taxpayer Mark M. Richardson. On or before April 1, a Notice of Delinquent Property Taxes was sent to the defaulting taxpayer. This Notice is not required to be sent certified mail. Thirty (30) days from the Notice described above, the Treasurer is required to send by certified mail notice that the property taxes have not been paid and the amount owed. If the certified mail receipt is not received by the Treasurer, then the property is required to be posted with a Notice of Levy. This was done in the case of all four (4) mobile homes on July 15, 2016. On the four (4) mobile homes the Notice of Levy certified receipt was returned signed by Mark M. Richardson. All the properties were posted with a Notice of Levy.

The Court in *Rives v. Bulsa*, 325 S.C. 287, 478 S.E.2d 878 (S.C. App. 1996) held that the entity seeking to enforce a tax sale is held to strict compliance with S.C. Code Ann. §12-51-40, 1976, as amended. In the case of *Dibble v. Bryant*, 274 S.C. 281, 265 S.E.2d 673 (1980), the reason for this rule was enunciated. The purpose of the strict compliance is intended to protect the taxpayer against surprise or the sacrifice of his property without due notice. Mr. Richardson had paid taxes on these mobile homes for a

number of years prior to 2015. The entity that the Appellant contends was the owner of the property RMR Rental Investments, LLC III was an LLC whose sole member was Mark M. Richardson. (R. p. _____)

In this case, the Treasurer of Florence County exercised due diligence by notifying the Appellant of the impending expiration of the redemption period and the necessity to redeem the property or the tax deed would be issued. The County relied on the information given by Mark M. Richardson of the true ownership of the four (4) mobile homes and sent the tax notices to Mr. Richardson accordingly. Mr. Richardson, for a number of years, paid the taxes. Title to the mobile homes were placed in the name of RMR Rental and Investment, LLC III at 1500 Tommy Drive, Florence, South Carolina on April 24, 2008 and April 1, 2008. (R. p. _____) (R. p. _____) (R. p. _____) (R. p. _____) The notices were sent to Mr. Richardson at 1514 Tommy Drive, Florence, South Carolina every year thereafter. Up until 2015 the property taxes were paid with the notices going to 1514 Tommy Drive.

The Appellant argues that the County failed to post the Notice of Levy on the four (4) mobile homes. The undisputed evidence was that the notice was posted by the Treasurer of Florence County. (R. p. _____) (R. p. _____) (R. p. _____) (R. p. _____)

The Appellant argues that the Notice of Sale used an incorrect parcel number. The map book and parcel numbers used for mobile homes does not describe real property. It describes the four (4) mobile homes in question for recording keeping purposes by the County. All of the tax notices that are sent contain the map book and parcel number for each mobile home.

Likewise, the Notice of Sale contains the map book and parcel number for each mobile home used each year in the tax notices, as well as in the notices sent in connection with the failure to pay the 2015 personal property taxes. Mobile homes are by their nature nomadic. A mobile home is moved from place to place. S.C. Code Ann. §12-51-40 does not require the mobile home to be identified with a real property location.

II. DID GENUINE ISSUES OF MATERIAL FACTS EXIST TO PRECLUDE SUMMARY JUDGMENT THAT PLAINTIFF WAS NOT ENTITLED TO RENTAL COSTS?

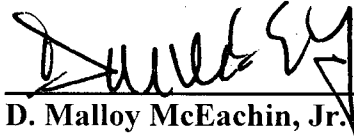
There are no genuine issues of material facts to preclude summary judgment that the Plaintiff was not entitled to rental costs. The Florence County Treasurer does not acquire title or ownership of mobile homes. If a mobile home is sold for delinquent taxes at a tax sale, the title is transferred to the successful bidder. There is never any title ownership of the mobile home by the Florence County Treasurer

In the event that a mobile home is not bid in at a tax sale, the Florence County Treasurer “no sales” the auction and title remains in the defaulting taxpayer’s name. As the Respondent County never took title to the mobile homes, any responsibility for rent is between the Appellant and the Respondent Palmetto.

CONCLUSION

As set forth herein, the Respondent County complied with S. C. Code Ann. §12-51-40.
The Trial Court was correct in sustaining the Tax Sale.

For the reasons set forth in Respondent County's Brief, it is appropriate for the Trial
Court's decision to be sustained.



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Sandy Hill Partners, LLCAppellant

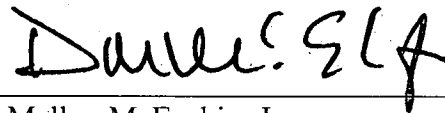
v.

Central Palmetto Asset Management, LLC and
Florence CountyRespondents

PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondents and Designation of Matter to be Included in the Record on Appeal on Sandy Hill Partners, LLC by mailing, through the United Postal Service, a copy of it to their attorney of record, Walker Willcox, at his address of 248 W. Evans Street, Florence, SC 29501 and on Central Palmetto Asset Management, LLC by mailing, through the United Postal Service, a copy of it to their attorney, Theodore von Keller, at his address of 1640 St. Julian Place, Columbia, SC 29204, on May 13, 2020.

May 14, 2020



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SC Court of Appeals

Jenny Abbott Kitchings
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RE: Sandy Hill Partners, LLC v. Central Palmetto Asset Management, LLC and
Florence County
Case No: 2018-CP-21-02662

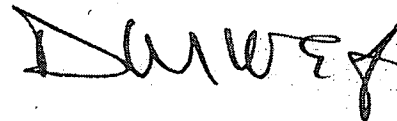
Dear Ms. Kitchings:

Enclosed please find the original and one (1) copy of the Appellant's Initial Brief and Designation of Matter in connection with the above matter.

By copy of this letter, I am serving attorney for the Appellant, Walker H. Willcox, and Theodore von Keller, attorney for Central Palmetto Asset Management, LLC, with one (1) copy of the Respondent's Initial Brief and Designation of Matter.

With kind regards I am,

Yours very truly,



D. Malloy McEachin, Jr.

DMMjr/sdh

Enclosure

cc:

Walker H. Willcox, Esquire
Theodore von Keller, Esquire

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