

RECEIVED

Jun 12 2020

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Charles B. Simmons, Jr., Master-in-Equity

Appellate Case No. 2020-000390

Francisco Nicolas Miguel, Respondent,

v.

Palmetto Asset Investment, LLC, Gabriel Angel Prestegui Gomez, and A. Kevin Hunter, II,
Greenville County Tax Collector, Defendants

Of which Palmetto Asset Investments, LLC is the Appellant.

INITIAL BRIEF OF RESPONDENT

Ryan E. Gaylord, Esquire
S.C. Bar 101946
Hyde Law Firm, P.A.
360 East Main Street
Suite One
Spartanburg, SC 29302
(864) 804-6330
Attorney for Respondent

Other Counsel of Record:

Jeffrey T. Spell, Esquire
SC Bar No. 13527
1721 Ashley River Road
Charleston, SC 29407
(843) 452-3553

Jeffrey D. Wile, Esquire
SC Bar No. 6102
301 University Ridge
Greenville, SC 29601
(864) 467-7110

TABLE OF CONTENTS

Table of Authorities.....	ii
Statement of Issue on Appeal.....	1
Statement of the Case.....	1
Standard of Review.....	3
Argument.....	3
Facts of the Case.....	3
Discussion.....	8
a. The Tax Collector did not strictly comply.....	8
b. Nicolas’s actions do not absolve the deficiencies.....	11
c. The Ruling is fair and consistent with statutory intent.....	12
Conclusion.....	13

TABLE OF AUTHORITIES

Cases:

Reeping v. Jebbco, LLC, 402 S.C. 195, 740 S.E.2d 504 (Ct. App. 2013)

King v. James, 388 S.C. 16, 694 S.E.2d 35 (Ct. App. 2010)

Coker v. Cummings, 381 S.C. 45, 671 S.E.2d 383 (Ct. App. 2008)

Good v. Kennedy, 291 S.C. 204, 352 S.E.2d 708 (Ct. App. 1986)

Leysath v. Leysath, 209 S.C. 342, 40 S.E.2d 233 (1946)

Benton v. Logan, 323 S.C. 338, 474 S.E.2d 446 (Ct. App. 1996)

Halsey v. Simmons, 429 S.C. 385, 837 S.E.2d 919 (Ct. App. 2020)

In re Ryan Inv. Co., 335 S.C. 392, 517 S.E.2d 692 (1999)

Statutes:

S.C. Code Ann. § 12-51-40(a) (1976)

S.C. Code Ann. § 12-51-120 (1976)

STATEMENT OF ISSUE ON APPEAL

I. DID THE MASTER-IN-EQUITY ERR IN FINDING THAT THE TAX COLLECTOR DID NOT STRICTLY COMPLY WITH THE STATUTORY REQUIREMENTS FOR THE TAX SALE?

STATEMENT OF THE CASE

The Respondent, Francisco Nicolas Miguel (hereafter Nicolas) commenced this action on July 11, 2018 by the filing of a Summons and Complaint against Palmetto Asset Investments, LLC (hereafter Palmetto), Gabriel Angel Prestegui Gomez (hereafter Prestegui), and A. Kevin Hunter, II, Greenville County Tax Collector (hereafter the Tax Collector).

The action seeks to set aside a Tax Sale and Tax Deed and subsequent instruments of title. Nicolas is the owner of the real property that was subject to a Tax Sale administered and Tax Deed issued by the Tax Collector. Palmetto was the purchaser through the Tax Sale and grantee under the Tax Deed. Subsequent to the issuance of the Tax Deed, Palmetto entered an installment sale contract for the subject property with Prestegui.

Palmetto appeared in this action and filed an Answer on August 10, 2018 denying Nicolas's allegations that the Tax Sale was defective. Palmetto subsequently filed an Amended Answer on August 30, 2018 and a Second Amended Answer, Counterclaim and Cross Claim on November 13, 2019.¹

The Tax Collector appeared in this action and filed an Answer on July 17, 2018 denying Nicolas's allegations that the Tax Sale was defective.

¹ Nicolas filed a Reply to the Counterclaim of Palmetto on December 5, 2019.

Although personally served with the Summons and Complaint, Prestegui has never appeared in the action or filed any Answer to the Complaint.

This matter was referred to the Master-in-Equity for Greenville County by Consent Order filed on May 31, 2019.

Nicolas filed a Motion for Summary Judgment with supporting exhibits and Affidavit on September 25, 2019. Palmetto and the Tax Collector filed a joint Memorandum in opposition to the Motion for Summary Judgment with supporting exhibits on November 7, 2019. The Tax Collector also filed an Affidavit of Debbie Adkins, the Manager of Real Property Services for Greenville County, on November 6, 2019. The hearing on Nicolas's Motion for Summary Judgment was held on November 14, 2019 before Charles B. Simmons, Jr., Master-in-Equity for Greenville County. Following the hearing, and as noted in the Order Granting Plaintiff's Motion for Summary Judgment, the parties agreed that no genuine issue of material fact existed and that the record as developed by the pleadings filed in support of and in opposition to the Motion for Summary Judgment is complete.

Judge Simmons entered an Order Granting Plaintiff's Motion for Summary Judgment on January 7, 2020.

Palmetto filed a Motion to Alter or Amend on January 17, 2020. Judge Simmons heard argument on Palmetto's Motion on January 28, 2020 and issued a FORM 4 denying Palmetto's Motion and ending the case on January 29, 2020.

Palmetto filed a Notice of Appeal on February 24, 2020 in the lower Court, which was filed with the Court of Appeals on March 2, 2020.

STANDARD OF REVIEW

“An action to set aside a tax sale lies in equity.” *Reeping v. Jebbco, LLC*, 402 S.C. 195, 198, 740 S.E.2d 504, 506 (Ct. App. 2013) quoting *King v. James*, 388 S.C. 16, 24, 694 S.E.2d 35, 39 (Ct. App. 2010). The scope of review for a case heard by a Master-in-Equity allows this Court “to determine facts in accordance with (its) own view of the preponderance of the evidence.” *Id.*

“The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder.” *Coker v. Cummings*, 381 S.C. 45, 671 S.E.2d 383, 386 (Ct. App. 2008). “When reviewing the grant of a summary judgment motion, this court applies the same standard that governs the trial court under Rule 56(c), SCRPC: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” *Id.*

ARGUMENT

I. THE TAX COLLECTOR FAILED TO PROVIDE NOTICE OF THE TAX SALE TO NICOLAS AT THE BEST ADDRESS AVAILABLE.

FACTS OF THE CASE

Nicolas purchased real property located at 1 Hilltop Avenue, Greenville, South Carolina on or about September 3, 2013.² The deed through which Nicolas received title to the real property identified his address as 1 Hilltop Avenue, Greenville, SC 29609 (hereafter 1 Hilltop Avenue).³ In about October, 2014, the Plaintiff moved to 117 Odom Circle, Greenville, SC 29611 (hereafter 117 Odom Circle) and lived at that address at all times relevant to this action.⁴

² Defs.’ Mem., Ex. 1

³ Defs.’ Mem., Ex. 1

⁴ Pl.’s Mot. Summ. J., Ex. 5, Aff. Francisco Nicolas Miguel, Para. 2

Greenville County uses a mail service vendor (hereinafter the Vendor) to print and mail its property tax bills.⁵ Prior to mailing tax bills, the mail service vendor seeks to discover any possible updated address through the NCOA system, a database coordinated by the Postal Service and other addressing entities, in order to try to save Greenville County money on postage.⁶ The Vendor sends the tax bill to the updated address as determined through the NCOA system.⁷ Tax bills are sent to only the updated address.⁸ The Vendor also reports the discovery of possible updated addresses to Greenville County and the new address is included in County records.⁹ The existence and record of a new, possible address as determined through the NCOA system is available to and accessible by the Tax Collector, and the Tax Collector is aware of the NCOA system.¹⁰

The Tax Collector does not consider information derived through the NCOA System because the tax bill has already gone-out before delinquent notices are sent and many people change their addresses all the time.¹¹ The Tax Collector only considers address changes made by the taxpayer or the assessor.¹²

During the compilation and mailing of 2015 property tax bills the Vendor discovered a possible new address for Nicolas through the NCOA system.¹³ The new address was 117 Odom Circle.¹⁴

The Vendor mailed the 2015 tax bill to 117 Odom Circle - and only to 117 Odom Circle.¹⁵ The Vendor also notified Greenville County of the discovery of the new address, and

⁵ Pl.'s Mot. Summ. J., Ex. 1, Depo. D. Adkins 6:15-7:4

⁶ Pl.'s Mot. Summ. J., Ex. 1, Depo. D. Adkins 9:1-13 and Ex. 2, Depo. A. Hunter 9:14-18

⁷ Pl.'s Mot. Summ. J., Ex. 1, Depo. D. Adkins 9:1-22

⁸ Id.

⁹ Id.

¹⁰ Pl.'s Mot. Summ. J., Ex. 2, Depo. A. Hunter 13:11-13

¹¹ Pl.'s Mot. Summ. J., Ex. 2, Depo. A. Hunter 13:17-23

¹² Id.

¹³ Aff. D. Adkins

¹⁴ Pl.'s Mot. Summ. J., Ex. 1, Depo. D. Adkins Ex. 1

mailed Nicolas a postcard asking Nicolas to reply and confirm his mailing address.¹⁶ The postcard mailed by the Vendor included the following statements: “During the processing of the addresses the United States Postal Service shows that they have an address forwarding instruction from you to forward the mail to the following address... Greenville County is proactively trying to make sure your upcoming tax bill is received at the correct address. Please sign as indicated below, giving us permission to make this change in our system.”¹⁷

Nicolas did not respond to the postcard mailed by the Vendor.¹⁸

On November 13, 2015 Greenville County Real Property Services updated its records for 1 Hilltop Avenue to note the discovery of a new address for Nicolas by the Vendor.¹⁹ The Tax Collector did not update his records because the postcard was not returned.²⁰

Nicolas did not pay the 2015 taxes and Greenville County initiated collection for the delinquent taxes pursuant to Section 12-51-40 et. seq.²¹

All notices relating to the 2016 delinquent tax sale of 1 Hilltop Avenue mailed by the Tax Collector, 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 Nicolas at 1 Hilltop Avenue.²² None of the notices mailed by the Tax Collector were mailed to 117 Odom Circle.²³

On June 6, 2016 the Tax Collector mailed a notice of delinquent property taxes, penalties and costs owed pursuant to S.C. Code Ann. § 12-51-40(b) (1976) to Nicolas at 1 Hilltop Avenue,

¹⁵ Pl.’s Mot. Summ. J., Ex. 1, Depo. D. Adkins 9:1-22 and Ex. 1

¹⁶ Aff. D. Adkins

¹⁷ Defs.’ Mem., Ex. 3

¹⁸ Id.

¹⁹ Pl.’s Mot. Summ. J., Ex. 1, Depo. D. Adkins 13:22 – 14:15, 17:11-13, Ex. 1, Ex. 3

²⁰ Aff. D. Adkins

²¹ Pl.’s Compl. Para. 9

²² Pl.’s Mot. Summ. J., Ex. 4, Resp. to Req. for Prod. of Docs. of A. Hunter

²³ Id.

by certified mail, return receipt requested – restricted delivery.²⁴ The return receipt was signed and returned; however, the signature on the return receipt was illegible.²⁵ Nicolas did not receive the notice of delinquent property taxes, penalties and costs and no notice was posted at 1 Hilltop Avenue.²⁶ Both the Tax Collector and a member of his staff agree the notice of delinquent taxes should have been posted because the returned receipt provides no confidence that it was received by Nicolas.²⁷

On October 24, 2016 the Tax Collector conducted an auction and sold 1 Hilltop Avenue to Palmetto.²⁸ Nicolas’s right to redeem the property would expire on October 24, 2017.²⁹

On November 4, 2016, fifteen days after the auction, the Vendor mailed the 2016 tax bill for 1 Hilltop Avenue to Nicolas at 117 Odom Circle - and only to 117 Odom Circle.³⁰ The payment stub attached to the bill includes 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 Collector’s Office as this property may be sold for delinquent taxes.”³¹ The tax bill does not provide that 1 Hilltop Avenue has been seized and sold for delinquent taxes. The tax bill does not provide notice of Nicolas’s right to redeem 1 Hilltop Avenue.³²

On November 8, 2016 a second entry was made in the records of Greenville County Real Property Services for 1 Hilltop Avenue to note the new address for Nicolas – 116 Odom Circle.³³

²⁴ Id.

²⁵ Pl.’s Mot. Summ. J., Ex. 1, Depo. D. Henderson 17:25 – 18:6

²⁶ Pl.’s Mot. Summ. J., Ex. 5, Aff. Francisco Nicolas Miguel, Ex. 2, Depo. A. Hunter 28:16 – 29:1), Ex. 3, Depo. D. Henderson 17:17-24

²⁷ Pl.’s Mot. Summ. J., Ex. 2, Depo. A. Hunter 28:16 – 29:1), Ex. 3, Depo. D. Henderson 17:17-24

²⁸ Pl.’s Mot. Summ. J., Ex. 4, Resp. to Req. for Prod. of Docs. of A. Hunter

²⁹ Id.

³⁰ Pl.’s Mot. Summ. J., Ex. 2, Depo. A. Hunter Ex. 2

³¹ Id.

³² Id.

³³ Pls. Mot. Summ. J., Ex. 1, Depo. D. Adkins Ex. 3, Ex. 2 Depo A. Hunter Ex. 2

On September 15, 2017 the Tax Collector mailed notice of the approaching end of the redemption period pursuant to S.C. Code Ann. § 12-51-120 (1976) to Nicolas at 1 Hilltop Avenue by certified mail, return receipt requested – restricted delivery.³⁴ The notice was returned to the Tax Collector as “Unclaimed – Unable to Forward”.³⁵ Nicolas did not receive notice of his right to redeem the property and did not redeem the property.³⁶

On October 18, 2017, six days before Nicolas’s right to redeem would expire, the Vendor mailed the 2017 tax bill for 1 Hilltop Avenue to Nicolas at 117 Odom Circle.³⁷ The payment stub attached to the bill includes a note which states, “On 10/16/2017 there were delinquent taxes due on this property, which must be paid before these current taxes may be paid. Please contact the Tax Collector’s Office as this property may be sold for delinquent taxes.”³⁸ The tax bill contains no notice Nicolas will lose his property if he fails to take action within six days.³⁹

On October 20, 2017 Greenville County Real Property Services updated its records for 1 Hilltop Avenue for the third time to note the discovery of a new address for Nicolas – 116 Odom Circle.⁴⁰

On December 5, 2017, the Tax Collector executed a Tax Deed on behalf of Greenville County to convey 1 Hilltop Avenue to Palmetto. The Tax Deed was recorded on December 8,

³⁴ Resp. to Req. for Prod. of Docs. of A. Hunter

³⁵ Resp. to Req. for Prod. of Docs. of A. Hunter

³⁶ Pl.’s Mot. Summ. J., Ex. 5, Aff. Francisco Nicolas Miguel, Para. 3

³⁷ Pl.’s Mot. Summ. J., Ex. 2, Depo. A. Hunter Ex. 3

³⁸ Id.

³⁹ Id.

⁴⁰ Pls. Mot. Summ. J., Ex. 1, Depo. D.Adkins Ex. 3, Ex. 2 Depo A. Hunter Ex. 2

2017.⁴¹ Thereafter, on February 5, 2018, Palmetto and Prestegui entered an Installment Contract for Sale of Real Estate which was recorded on February 8, 2018.⁴²

DISCUSSION

a. The Tax Collector did not strictly comply with the requirements for the Tax Sale.

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 (Ct. App. 1986), citing 72 Am.Jur.2d State and Local Taxation Section 1010 (1974); accord, 85 C.J.S. Taxation Section 868 (1954). The statutory 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), see also *Good v. Kennedy*, 291 S.C. at 207.

Section 12-51-40(a) of the South Carolina Code directs 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), summarizing S.C. Code Ann. § 12-51-40(a) (1976). In addition, 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

⁴¹ Pl.'s Compl. Para. 13

⁴² Pl.'s Compl. Para. 14

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, see also *Benton v. Logan*, 323 S.C. 338, 341, 474 S.E.2d 446, 447 (Ct. App. 1996). “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*, 291 S.C. at 207-08, see also *Benton*, 323 S.C. at 340 - 43.

The Tax Collector willfully ignored readily available, relevant and reliable information in determining the best address of the taxpayer.

The Vendor discovered Nicolas’s new address through the NCOA system. The address confirmation requests provides that the new address is the result of an address forwarding instruction provided by the taxpayer to the United States Postal Service. The Vendor provided Greenville County notice of the new address in 2015, 2016 and 2017. Each time Greenville County updated its records to identify the new address. In addition, based on the findings of the NCOA search, tax bills for 2015, 2016 and 2017 were mailed to 117 Odom Circle – and only 117 Odom Circle. These actions demonstrate a significant level of confidence in the information derived from the NCOA System.

The Tax Collector is aware that Greenville County maintains records of information derived through the NCOA system and is familiar with the NCOA system. However, the Tax Collector chose to ignore the findings received through the NCOA System, even though the

information was readily available to him, relevant and relied upon by Greenville County for the mailing of tax bills. Instead, the Tax Collector mailed all notices to a different address than the one used by Greenville County for tax bills. The Tax Collector's failure to identify and consider readily available, relevant, and reliable information is similar to the deficient actions identified by this Court in *Reeping*, *Good*, and *Benton*. In *Reeping*, the tax collector failed to identify an updated address included on a check used to pay taxes and an updated street address noted by the postal service on a returned certified letter. *Reeping*, 402 S.C. at 197-98. In *Good*, the tax collector failed to review available county records in response to an undelivered, returned notice. *Good*, 291 S.C. at 205-06 and 208. In *Benton*, the treasurer failed to recognize the import of a note on a returned notice indicating that a prior forwarding address existed for the taxpayer. *Benton*, 323 S.C. at 342. Greenville County received notice of a new address for the taxpayer. Greenville County's correspondence explains that the new address was identified as a result of an address forwarding order provided to the United States Postal Service. The Tax Collector chose to ignore this information despite the fact that it was readily available, relevant and reliable. The Tax Collector did not exercise diligence.

The Tax Collector was put on notice of potential problems with the address used for tax sale notices twice during the administration of the sale and failed to respond.

As admitted by the Tax Collector, the illegible signature on the return receipt from the June 6, 2016 delinquent tax notice provides no confidence that Nicolas received the notice. Thereafter, the return of the September 15, 2016 certified mailing with the notation "Unclaimed – Unable to Forward" provided another indication that a better address existed. As this Court expressed in *Good*, "it should have become evident to the Tax Collector that such address was not the best available address for *Good* when the notice was returned undelivered." *Good*, 291

S.C. at 208. Upon receipt of the illegible signature on the return receipt from the June 6, 2016 notice and the undelivered September 15, 2016 notice with the notation “Return to Sender – Unclaimed – Unable to Forward” it should have become evident to the Tax Collector that he was not using the best address for Nicolas. The Tax Collector should have consulted the readily available, relevant and reliable county records, which should have prompted the provision of tax sale notices to 117 Odom Circle. Despite being put on notice of potential problems with the address twice, the Tax Collector took no remedial action.

This case imposes a duty of diligence.

Unlike the tax collector in *Halsey*, the Tax Collector was not required to research and unravel a complicated inheritance to adequately administer the tax sale for 1 Hilltop Avenue. *Halsey v. Simmons*, 429 S.C. 385, 398, 837 S.E.2d 919, 927 (Ct. App. 2020). The administration of the tax sale for 1 Hilltop Avenue only required the reasonable inspection of information received and the undertaking of reasonable responses.

b. Nicolas’s failure to return the address confirmation does not absolve the deficiencies of this sale.

The attempt to shift the burdens of tax collectors in the administration of a delinquent tax sale to taxpayers is not consistent with our statutes or common law.

Evaluating whether the tax collector strictly complied with the statutory requirements rather than actions of the taxpayer is the primary consideration in assessing the validity of a tax sale. *In re Ryan Inv. Co.*, 335 S.C. 392, 395, 517 S.E.2d 692, 693 (1999). Taxpayers are required to provide notice of known problems with the County’s assessment, but only known problems. *Halsey v. Simmons*, 429 S.C. 385, 398, 837 S.E.2d 919, 927 (Ct. App. 2020). The address confirmation provides that Greenville County will update its records and mail tax bills to

the address as confirmed by Nicolas. Even though Nicolas did not return the address confirmation Greenville County objectively acted as if he did. Greenville County forwarded all tax bills to the updated address and updated their records. The consistent provision of tax bills to Nicolas at his home throughout the administration of this tax sale objectively demonstrates that the return of the address confirmation is not necessary and that there is no problem with Greenville County's assessment.

Neither Sections 12-51-40(a) nor 12-51-120 of the South Carolina Code provide that notice be provided to the best address *as provided by the taxpayer*. These code sections provide no limitations on the sources that may be relied upon by tax collectors in determine the best address of a taxpayer.

c. The Master's ruling is fair and consistent with the intent of the statutes.

It would be unfair and inconsistent with the established intent of protecting against surprise to deprive Nicolas of his property when all notices sent by Greenville County to his home demonstrated that no immediate action was necessary to preserve his ownership of 1 Hilltop Avenue. *Leysath*, 209 S.C. 342, 40 S.E.2d 233, 235. Nicolas should not be punished because he failed to untangle the web of Greenville County's inconsistent statements and actions. Ultimately, Nicolas was not afforded the opportunity to preserve his property and his right to redeem must be restored.

CONCLUSION

The final decision reached by the Master as reflected within the Order Granting Plaintiff's Motion for Summary Judgment is consistent with the rulings of this Court as expressed on three different occasions spanning approximately twenty-six years and fairly resolves this dispute. The Master's Order imposes no new burden on tax collectors; it merely requires they exercise diligence. This Court has long-recognized that standard.

Conversely, Appellant asks this court to impose a new obligation on taxpayers – to review and confirm county assessment records even where there is no objective reason to do so. This proposal is inconsistent our statutes and the established common law.

The Order Granting Plaintiff's Motion for Summary Judgment was soundly decided and should be affirmed.

Respectfully submitted,

June 12, 2020

s/ Ryan E. Gaylord
Ryan E. Gaylord, Esquire
S.C. Bar 101946
Hyde Law Firm, P.A.
360 East Main Street
Suite One
Spartanburg, SC 29302
(864) 804-6330
Attorney for Respondent