

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

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.

FINAL BRIEF OF APPELLANT

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S.C. Code Ann. Section 12-51-120 (1976)

STATEMENT OF ISSUES ON APPEAL

- I. DID THE MASTER ERR IN FINDING THAT NOTICE WAS NOT GIVEN TO THE TAXPAYER AT HIS BEST ADDRESS AS REQUIRED BY STATUTE?

STATEMENT OF THE CASE

This is an action to set aside a Tax Sale and Tax Deed.

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

Nicolas was the owner of the subject property at the time of the Tax Sale. Palmetto purchased the property at the Tax Sale which was conducted by Hunter, the Tax Collector. After the property was deeded by Tax Deed to Palmetto, Palmetto entered into an installment contract to sell the property to Prestegui. Nicolas' Complaint also sought to set aside the installment contract between Palmetto and Prestegui.

Nicolas alleged, as the basis of his Complaint, that the Tax Collector failed to provide Nicolas with notices required by statute and therefore the Tax Sale, Tax Deed and Installment Contract should all be set aside.

The Tax Collector filed an Answer on July 17, 2018. Palmetto filed an Answer on August 10, 2018 followed by an Amended Answer on August 30, 2018 and a Second Amended Answer, Counterclaim and Cross Claim on November 13, 2019. Prestegui never appeared in the case.

The matter was referred to the Master in Equity by Consent Order filed on May 31, 2019.

Nicolas filed a Motion for Summary Judgment on September 25, 2019. A hearing was held on November 14, 2019 before Charles B. Simmons as Master in Equity for Greenville County.

The Master issued an Order on January 7, 2020 granting Summary Judgment in favor of Nicolas.

Palmetto filed a Motion to Alter or Amend on January 17, 2020. The Master heard argument on Palmetto's Motion on January 28, 2020 and issued a FORM 4 Denying Palmetto's Motion and thereby ending the case on January 29, 2020.

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

FACTS

The facts of this case as set forth in the Order Granting Summary Judgment are largely not in dispute.

The subject property is located at 1 Hilltop Avenue in Greenville, South Carolina. The property was conveyed to Nicolas (the Plaintiff in the underlying case) by Deed dated August 29, 2013 and recorded September 3, 2013. Nicolas' address was identified on the Deed as 1 Hilltop Avenue, Greenville, South Carolina 29609. (R. p. 66)

In about October 2014, Nicolas moved to 117 Odom Circle, Greenville, South Carolina 29611. (R. p. 61)

Greenville County uses a mail service vendor to print and mail its tax bills. (R. pp. 27-28) 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 save the County money on postage. (R. pp. 29-30) The mail service vendor

sends the tax bill to the updated address and reports the discovery of any possible new address to Greenville County. (R. pp. 29-30) The existence and record of a possible new address is then available to and accessible by the Greenville County Tax Collector's Office.

During the compilation of the 2015 property tax bills, Greenville County's mail service vendor discovered a possible new address for Nicolas through the NCOA system. The possible new address was 117 Odom Circle, Greenville, South Carolina 29611. (R. p. 32)

The mail service vendor mailed the 2015 tax bill to 117 Odom Circle and notified Greenville County of the discovery of the new address. (R. p. 32) The vendor also mailed Nicolas a postcard to the new address asking him to reply to confirm the change of his mailing address. (R. pp. 30, 69, 70)

Nicolas 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 located at 1 Hilltop Avenue to note the discovery of a possible new address by the vendor. (R. p. 32) The Tax Collector's Office however did not update its records since the postcard was never returned by Nicolas.

Nicolas 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 those notices required by S.C. Code Ann. Section 12-51-40(b) (1976) and S.C. Code Ann. Section 12-51-120 (1976), were addressed to Nicolas at 1 Hilltop Avenue, Greenville SC 29609. None of the notices mailed by Greenville County in conducting the 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 Section 12-51-40(b) (1976) to Nicolas at 1 Hilltop Avenue, Greenville, SC 29609 by certified mail, return receipt requested – restricted delivery. The postal receipt was signed and returned; however, the signature on the notice was illegible. Because the postal receipt was signed and returned, the property was not posted.

On October 4, 2016, after due advertisement, Greenville County conducted an auction and sold 1 Hilltop Avenue, Greenville, South Carolina to Palmetto Asset Investments, LLC.

On September 15, 2017, Greenville County mailed notice of the approaching end of the redemption period pursuant to S.C. Code Ann. Section 12-51-120 (1976) to Nicolas at 1 Hilltop Avenue, Greenville, SC 29609 by certified mail, return receipt requested – restricted delivery. This notice was returned to Greenville County marked “Unclaimed – Unable to Forward”. (R. pp. 72, 73)

Nicolas’ did not redeem the property and his statutory right to do so expired on October 24, 2017.

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. Thereafter, on February 5, 2018, Palmetto Asset Investments, LLC and Gabriel Angel Prestegui Gomez entered into an Installment Contract for the sale of 1 Hilltop Avenue, Greenville, South Carolina which was recorded in Deed Book 2531, Page 2233 in the Office of the Register of Deeds for Greenville County.

STANDARD OF REVIEW

This is an action in equity. See Godfrey v. Webb, 277 S.C. 246, 285 S.E.2d 883 (1982) (ruling suit to set aside a tax deed is in equity). Therefore, this Court may find facts according to its own view of the preponderance of the evidence. Townes Assocs. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976).

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000). Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000).

The decision to grant or deny a motion for relief from judgment lies within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. BB & T v. Taylor, 369 S.C. 548, 551, 633 S.E.2d 501, 502-03 (2006). "An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support." *Id.* at 551, 633 S.E.2d at 503.

ARGUMENT

- I. THE MASTER ERRED IN FINDING THAT NOTICE WAS NOT GIVEN TO THE TAXPAYER AT HIS BEST ADDRESS AS REQUIRED BY STATUTE.

The Master found that “under the unique facts of this case and even though the Plaintiff did not avail himself of the opportunity to formally provide a change of address, the notice herein was not given to Plaintiff at his best address.” See Order, Page 7 and 8.

Section 12-51-40(a) of the South Carolina Code requires 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. Section 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 due diligence to ascertain the correct address of the property owner. Reeping, 402 S.C. at 199-200.

“Though due 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 v. Kennedy, 291 S.C. 204, 207-208 (S.C. App. 1986).

In our case, the County exercised due diligence by engaging a third-party vendor to seek “to discover possible updated addresses” for the taxpayer. See Order Granting Summary Judgment, page 3. Furthermore, when the vendor found a “possible updated address”, the vendor

mailed a postcard to the taxpayer at the “possible updated address” (Odom Circle) asking the taxpayer to simply confirm this address by signing and returning the postcard. See: Exhibit 3 to Defendants Memorandum in Opposition to Plaintiff’s Motion for Summary Judgment. When the postcard was not returned, and the “new possible address” was not confirmed, the tax collector sent the required notices to the address which appears on the Deed into the taxpayer (Hilltop) as the statute requires. See: Section 12-51-40(b) and 12-51-120.

The Master found that three events “together” should have “prompted further inquiry and provision of tax sale notices to Plaintiff at the 117 Odom Circle Address”, they are:

1. The return of the green card from the June 6, 2016 notice with an illegible signature,
2. The return of the September 15, 2017 notice with the notation “Return to Sender – Unclaimed – Unable to Forward” and
3. The notice of the address change derived from the NCOA system.

However, the County strictly followed the Statutory requirements in sending Notices to the taxpayer at the address on his Deed which is the address of the property. In addition, the County exercised diligence beyond the requirements of the Statute by sending the postcard to the taxpayer seeking confirmation of any change of address.

Regarding the June 6th notice, surely the Master would not have the County engage in the deciphering of a signature on a postal receipt sent “Restricted Delivery.” Regarding the September 17th notice, “Unclaimed” tells the County that nobody came to the Post Office to claim the parcel and “Unable to Forward” tells the County that there is not a valid forwarding request on file. As for the “possible new address” derived from the NCOA system, the mail service vendor sent a card to that address to give the taxpayer an opportunity to confirm the new address. Absent

confirmation by the taxpayer, the County would have no reason to believe that the Odom address is the taxpayer's "best address". It is only in hindsight, after the filing of this action, that the Tax Collector would have any reason to know that the Odom address was a better address for the taxpayer than the Hilltop address which is on his Deed.

The Tax Collector had no "actual knowledge" that the Odom address was a better address for the taxpayer than Hilltop.

In Halsey v. Simmons (Opinion No. 5712 Ct. App. 2020), this Court recently recognized limitations on the burden tax collectors are under in conducting tax sales. "Our courts have held that it is unreasonable to require tax officers to unravel complicated inheritances." See, e.g. Koth v. Pallachacola Club, 79 S.C. 514, 517-18, 61 S.E. 77, 78 (1908). To the extent that they are aware, property owners must provide county officials with actual notice of any problem with the County's assessment of their property and exercise their own diligence in remedying the issue. See Taylor v. Mill, 310 S.C. 526, 528, 426 S.E.2d 311, 312-13; see also Robinson v. Estate of Harris, 389 S.C. 360, 372, 698 S.E.2d 801, 807-08 (2010).

In the present case, the tax collector exercised diligence to use the best address of the taxpayer beyond the statutory requirements, while the taxpayer exercised no diligence (nor any effort at all) in notifying the County of his new address.

CONCLUSION

The findings of the Master in this case, if upheld, create a burden on the Tax Collector beyond those required by statute and case law. Because the Tax Collector strictly followed the statutory requirements and exercised the required diligence in the mailing of the notices to the taxpayer, the Master erred in finding that the Tax Collector did not send the notices to the best

address available. The burden of notifying the County of a change of address must at some point fall on the taxpayer.

Because the Master erred in finding that the Tax Collector failed to send the required notices to the best address available, Summary Judgment was inappropriate. The Order Granting Summary Judgment should be reversed with the direction from this Court to the Master that the notices were sent by the Tax Collector to the Taxpayer at the best address available to the Tax Collector as required by Statute and case law.

Respectfully submitted,

August 6, 2020

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