

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, III, Circuit Court Judge

Case No. 2018-CP-46-0107

Alterna Tax Asset Group, LLC,

v. Appellant,

York County, York County Treasurer,
York County Delinquent Tax Collector,
Robert Clay Sparrow, Mickey Crowe,
Fort Mill Holdings, LLC and David
Baucom,

v. Respondents.

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT

I. RESPONDENTS' INITIAL BRIEFS MISCONSTRUE AND MISSTATE THE ARGUMENTS PRESENTED BY APPELLANT REGARDING STANDING WHERE THE RECORD CLEARLY REFLECTS THEY DID NOT FILE ANY MOTIONS RELATED TO THE PURPORTED CHAIN OF TITLE AND THE NAME OF THE PLAINTIFF / APPELLANT.

Respondents' briefs all attempt to misstate the arguments of Appellant regarding standing. Appellant's brief correctly notes that the York County Respondents did not file a motion before the York County Court. However, at the hearing before the Circuit Court the York County Respondents argued a novel issue not contained within any of the noticed motions regarding the chain of title to the property and that Appellant lacked standing because it was purportedly not the purchaser at the tax sale.¹ None of the other Respondents, who actually filed motions before the Court, set forth this ground and argument within their motions. Therefore, as correctly argued by Appellant's brief, there was no prior notice to the Appellant regarding this argument. The grounds for the argument were not set forth within the motions and therefore consideration of this standing argument by the Circuit Court was improper.

Further, as clearly set forth within the Appellant's brief, Appellant has argued it does have standing to pursue this action under the strict statutory scheme established by the legislature and interpreted by this Court. Respondents argue that Appellant lacks standing because they are "the only parties who could possibly challenge [Appellant's] title to the Subject Property ... and they expressly waive any contest to [Appellant's] ownership of the Subject Property." Brief of

¹ In actuality, Respondent York County's argument on this issue would have been easily corrected in an amendment to the pleadings. The Circuit Court's refusal to consider Appellant's arguments regarding the amendment is further evidence of reversible error and prejudice.

Respondents Fort Mill Holdings and Baucom, p. 5. This assertion is repeated throughout Respondents' arguments in regard to this issue. *See Id.* at p. 4, 6, 8, and 9. However, this assertion is without support in the record and is a conclusion without evidence.² Respondents may expressly waive any interest in the property but this does not establish there are no other entities with a claim in regard to the property. Further, it fails to obviate the fact that the failures of the York County Respondents to strictly comply with the statutory provisions voids any title *ab initio*.

Because the Circuit Court improperly considered the York County Respondents' arguments regarding the standing of this Appellant to assert the claims within the Complaint, the Rule 12(b)(6), SCRCF, dismissal should be reversed.

II. RESPONDENT YORK COUNTY'S BRIEF INCORRECTLY CITES TO A FOURTH CIRCUIT CASE ORIGINATING IN THE VIRGINIA FEDERAL COURTS IN REGARD TO THIS COURT'S STANDARD OF REVIEW.

The York County Respondents cite to the case of *Phillips v. LCI Int'l, Inc.*, 190 F.3d 609 (4th Cir. 1999), for support of the Circuit Court's consideration of matters outside of the pleadings at a Rule 12(b)(6), SCRCF, motions hearing. Reliance on this Federal District Court case from Virginia is misplaced in this matter. The case cited deals with a shareholder dispute where the Court looked at a specific news article for the purported context of a statement by a company president. The Court did not rely on the article for the ruling, instead using it for context of the

² Respondents Baucom and Fort Mill Holdings walk this assertion back in their brief by admitting they "are unaware of any parties other than themselves who could challenge [Appellant's] ownership of the Subject Property." Brief of Respondents Fort Mill Holdings and Baucom, p. 5. (emphasis added).

statement at issue. In the instant matter at bar, the Court improperly and specifically relied on assertions not contained within the record and inconsistent with the pleadings before it. Such reliance was reversible error at a motions hearing pursuant to Rule 12(b)(6), SCRCF, and this Court should reverse the Circuit Court and reinstate this matter.

III. INsofar AS THE CIRCUIT COURT WERE TO HAVE CONSIDERED THE ISSUE RAISED BY YORK COUNTY REGARDING THE NAME OF THE PURCHASER AND THE NAME OF THE APPELLANT, THIS ALLEGED PLEADING DEFECT WOULD HAVE BEEN EASILY CURED BY AMENDMENT.

As noted in Appellant's Brief, the Circuit Court erred in considering Respondent York County Respondents' argument regarding the name of the Appellant / Plaintiff. By refusing to allow an amendment to correct this purported error and instead using it as a basis for its ruling dismissing the Complaint, the Circuit Court committed reversible error. As noted in Appellant's Brief at length, insofar as the Circuit Court were to consider the argument, which was not noticed in the pending motions before it, the Court should have allowed the Appellant to cure the purported error by amendment. Instead, the Circuit Court erred by dismissing the complaint at a hearing on two motions to dismiss thereby depriving this Court and the parties of a complete record and opportunity to be heard.

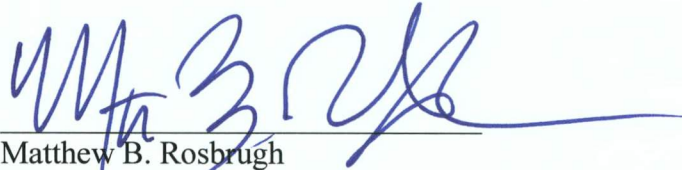
Because the Circuit Court improperly denied Appellants the opportunity to amend the pleadings and instead dismissed the matter, the Court's Order should be reversed.

CONCLUSION

The record is clear that the tax sale at issue in this matter was void *ab initio* for Respondent York County's failures to strictly comply with the statutory requirements for delinquent tax sales, the Appellant has standing to assert its claims, and dismissal at a Rule 12(b)(6), SCRCF, motion to dismiss was error. Therefore, Appellants are entitled to reversal of the Circuit Court's dismissal

and reinstatement of this matter.

Respectfully submitted,



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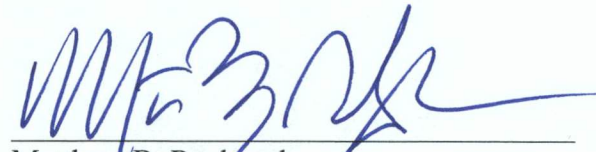
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Reply Brief of Appellant complies with Rule 211(b) of the South Carolina Appellate Court Rules. Counsel further certifies that the reply brief of appellant complies with the Order of the Supreme Court of South Carolina, *Re Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings*, 407 S.C. 607, 757 S.E. 2d 421 (April 15, 2014).



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