

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 Cutter & Company, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 Stafford Funding Group LLC, O & P)
 Properties, LLC, Kathy Henderson as)
 Delinquent Tax Collector of Orangeburg)
 County,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 CASE NO. 2017-CP-38-0948

FINAL ORDER

RECEIVED
Feb 03 2021
SC Court of Appeals

This Court acquired full jurisdiction of this case by Consent Order of Reference enrolled on December 13, 2018. Jamie Cutter was present on behalf of Plaintiff Cutter & Company, LLC, along with Attorney Leonard R. Jordan, Jr. Paul W. Parsons, Jr. was present on behalf of Defendant O & P Properties LLC, along with Attorney S. R. Anderson. Tom Gasque on behalf of Defendant Stafford Funding Group, LLC was present along with Attorney Michael Tanner. Defendant Kathy Henderson, solely in her capacity as Orangeburg County Delinquent Tax Collector, attended along with Attorney Jerrod A. Anderson.

After due deliberation upon the record, all of the evidence and argument all of the parties presented, and the applicable law, this Court finds and concludes that the tax sale as to the parcel with Tax Map Number 0140-00-11-014 (herein after Parcel 2) is proper and should not be voided, and the Tax Sale as to the parcel with Tax Map Number 0153-10-02-002 (herein after Parcel 1) is improper and should be voided.

FINDING OF FACT

This lawsuit is an action to void the tax sale of real property located in Orangeburg County, that was owned by the Plaintiff Cutter & Company, LLC at the time of sale. The Amended Complaint contains the legal descriptions of both Parcel 1 and Parcel 2.

1. Cutter & Company, LLC received title to Parcel 1 by deed of Jamie O'Neal Cutter dated December 24, 2008, and recorded December 29, 2008, in the Orangeburg County office of the Register of Deeds in Deed Book 1296 at page 81.

2. Parcel 1 property was sold to Stafford Funding Group, LLC during Orangeburg County, South Carolina, Delinquent Property Tax Sale on December 8, 2016.

3. Parcel 1 property came into the possession of Stafford upon the issuance of an Orangeburg County Tax Deed on December 8, 2016, and such Tax Deed was duly recorded on March 31, 2017, in Book 1731 at page 331 in the Orangeburg County office of the Register of Deeds.

4. Cutter & Company, LLC received title to Parcel 2 by deed of O & P Properties, LLC dated April 19, 2012, and recorded April 25, 2012, in the Orangeburg County office of the Register of Deeds in Deed Book 1456 at page 93.

5. Parcel 2 property was sold to Stafford Funding Group, LLC during Orangeburg County, South Carolina, Delinquent Property Tax Sale on December 8, 2016.

6. Parcel 2 property came into the possession of Stafford upon the issuance of an Orangeburg County Tax Deed on December 8, 2016, and such Tax Deed was duly recorded on March 31, 2017, in Book 1731 at page 269 in the Orangeburg County office of the Register of Deeds.

7. As to Parcel 1, the Delinquent Tax Office failed to send the notice of levy described in S.C. Code Ann. § 12-51-40(b) or “Final Notice”, by certified mail to the Plaintiff.

8. As to Parcel 2, the first notice the Delinquent Tax Office sent in conducting the Tax Sale of the Property was the notice of delinquent taxes described in S.C. Code Ann. § 12-51-40(a). This “Execution Notice” was sent to Cutter & Company, LLC by regular mail addressed to 3430 Mill Stream Lane SW, Marietta, GA 30060-6218. This notice specified that if the taxes, penalties, assessments, and costs were not paid, the Property would be advertised and sold to satisfy the delinquency.

9. As to Parcel 2, the next notice the Delinquent Tax Office sent in conducting the Tax Sale of the Property was the notice of levy described in S.C. Code Ann. § 12-51-40(b). On or about May 7, 2015, the Delinquent Tax Office sent this “Final Notice” to Cutter & Company, LLC by certified, return receipt requested-restricted delivery mail addressed to 3430 Mill Stream Lane SW, Marietta, GA 30060-6218. The United States Postal Service returned the certified receipt, signed May 11, 2015 by Jamie Cutter, a managing member.

10. As to Parcel 2, the Delinquent Tax Office obtained exclusive possession of the Property by posting notice of the Tax Sale upon the Property, as provided in S.C. Code Ann. § 12-51-40(c). Notice of the Tax Sale was posted upon Parcel 2 on July 11, 2015.

11. As to Parcel 2, the Delinquent Tax Office next advertised the Property for sale at public auction in The Times and Democrat on November 15, November 22, and November 29, 2015. It is my opinion that The Times and Democrat is a newspaper of general circulation within the Town of Orangeburg, as well as Orangeburg County.

12. As to Parcel 2, at the Tax Sale, Stafford Funding Group, LLC purchased the Property with a bid of Seventeen Thousand and no/100 Dollars (\$17,000.00) and paid its bid on

the day of the Tax Sale.

13. As to Parcel 2, The Delinquent Tax Office provided Cutter & Company, LLC with the notice of approaching end of redemption period described in S.C. Code Ann. § 12-51-120 (the "Redemption Notice"). The "Redemption Notice" is dated October 31, 2016, and was sent by certified, return receipt requested-restricted delivery mail addressed to 3430 Mill Stream Lane SW, Marietta, GA 30060-6218. The United States Postal Service returned the certified mailing, assumed to be unclaimed.

14. As to Parcel 2, The Delinquent Tax Office provided O & P Properties, LLC with the notice of approaching end of redemption period described in S.C. Code Ann. § 12-51-120 (the "Redemption Notice"). The "Redemption Notice" is dated October 31, 2016, and was sent by certified, return receipt requested-restricted delivery mail addressed to 213 Valley Drive, Orangeburg, SC 29115 (address found in mortgage). The United States Postal Service returned the certified mailing, marked as unclaimed.

15. As to Parcel 2, The Delinquent Tax Office provided Cutter & Company, LLC with a notice of overages in accordance with S.C. Code Ann. § 12-51-120 ("Notice of Overage"). The Notice of Overage was sent certified, return receipt-restricted delivery mail addressed to 3430 Mill Stream Lane SW, Marietta, GA 30060-6218. The United States Postal Service returned the certified mailing, assumed to be unclaimed.

16. As to Parcel 2, Cutter & Company, LLC did not request the Delinquent Tax Office or any other department of Orangeburg County divide Parcel 2 to take and auction enough property to satisfy outstanding property taxes, assessments, penalties, and cost for the 2014 and 2015 tax years.

CONCLUSIONS OF LAW

17. This Court has jurisdiction over all the parties, all of the subject matter, and all of the real property this lawsuit involves.

18. Plaintiff argues that the tax sales of both Parcel 1 and Parcel 2 should be void because the Delinquent Tax Collector failed to comply strictly with provisions of Sections 12-51-120, 12-51-40, and 12-51-50 of the Code of Laws of South Carolina (1976), as amended. Plaintiff argued that some notices were insufficient in content to give the owner sufficient notice under Section 12-51-40; and the notices were not mailed to the best address available for the owner in accordance with Section 12-51-120.

19. As I found above with Parcel 1, the Delinquent Tax Office failed to send the notice of levy described in S.C. Code Ann. § 12-51-40(b) or “Final Notice”, by certified mail to the Plaintiff. As such the defendant failed to comply strictly with provisions of said statute, so the tax sale as to Parcel 1 is voided by the Court.

20. The Court had the opportunity to evaluate the demeanor and veracity of the witnesses who testified in this matter. As I found above with Parcel 2, I believe Orangeburg County complied with all the statutory requirements regarding notice to Cutter & Company, LLC and O & P Properties, LLC. Jamie Cutter testified for Cutter & Company, LLC. I find Jamie Cutter testified that he had gone online and downloaded a change of address form in October 2014. He testified that he faxed this change of address form to Orangeburg County however, no one from Orangeburg County acknowledged ever receiving the fax.

21. Jamie Cutter also testified that based upon a fax call log, he had an interaction with Orangeburg County employees regarding this change of address form. However, I find on cross examination it was shown that this call allegedly occurred on October 12, 2014 at 11:55 p.m. I

find this date was also a Sunday which strains the credibility of the truthfulness of his testimony. I further find that Jamie Cutter then changed his testimony on cross examination and stated that he listened to the voice prompts before he later had a follow up call.

22. I also find Jamie Cutter testified he had paid some taxes personally and was present in Orangeburg County on October 10, 2014, however, then traveled back to the Atlanta, Georgia area without leaving a hard copy of the change of address form at the tax office in Orangeburg. Mr. Cutter also reportedly has medidata computer records however, he was not qualified as an expert witness on medidata and offered no other expert witnesses regarding the veracity of these computer records. He also was unable to give any specific names of individuals the Orangeburg Tax Assessor's office that he spoke to despite his earlier assertion that he called the office on a weekly basis. He did acknowledge signing several tax documents from the Orangeburg County Tax Collector's office and further testified he had abandoned other parcels of property sold through the delinquent tax collection process without filing a lawsuit.

23. The testimony of Jamie Cutter regarding his alleged phone call of October 12, 2014, also strains his credibility. The Court takes judicial notice that Orangeburg County employees do not work on Sundays and certainly would not be working close to midnight. It is also constrained to believe that he was calling several days later for something that happened on a form dated October 10, 2014, which is according to his exhibit. Jamie Cutter then testified that was merely a date error however, it shows a pattern in which concerns the Court evaluating his candor, demeanor, and veracity. Additionally, Mr. Cutter could not have paid the 2014 taxes on October 10, 2014, because the tax bills for 2014 had not yet been issued. It is clear that Mr. Cutter never paid the 2014 taxes on Parcel 2.

24. The Court heard from Jim McClain of Orangeburg County who testified that

throughout this time, no change of address form was located by anyone employed by Orangeburg County. This testimony was corroborated by Kathy Henderson, also of Orangeburg County, regarding the fact that they did not have any valid change of address form completed by Defendant Cutter & Company, LLC. I also find there is no disputing that the subject matter property was properly posted and advertised for sale in accordance with the statutory framework. The Court finds that the testimony of Jamie Cutter to not be credible regarding his alleged completion and delivery by fax of the change of address form. As such, the Court finds that Orangeburg County used the best, proper address on file when it sent all appropriate tax notices to Cutter & Company, LLC. The Court further finds that the address used was valid since Mr. Cutter signed for the Final Notice on May 11, 2015.

25. The Court did not hear any testimony creating an issue that the mortgage holder, O&P Properties, LLC, did not receive proper notice of its statutory redemption due to its security interest in the property. It appears this notice was properly sent to the best address that Orangeburg County had on file and was not redeemed within the statutory time period by O&P Properties, LLC. While there were errors in the notice that was sent, those errors were immaterial since the notice was never received by O&P Properties, LLC, as it was returned to the Delinquent Tax Office.

26. The Court elected to bifurcate the issue of the escrow account for rents and property taxes between Stafford Funding and Cutter & Company, LLC. Based upon the ruling of the Court, the Court shall reserve jurisdiction to conduct a further hearing and testimony on the issue of the rents and taxes paid, ownership of, and other proceeds paid during the litigation if the parties cannot resolve this issue. The Court specifically reserves jurisdiction to issue a separate ruling on the issue of the ownership and distribution of these funds.

27. As to Parcel 2, Cutter & Company, LLC did not request the Delinquent Tax Office or any other department of Orangeburg County divide Parcel 2 to take and auction enough property to satisfy outstanding property taxes, assessments, penalties, and cost for the 2014 and 2015 tax years. As such, Section 12-51-40(d) does not place a pre-sale burden on the County or tax collector to determine divisibility. Plaintiff has the initial burden of requesting the County to determine divisibility prior to the sale. *H. Daniel Folk, Jr. v. W.O. Thomas, Jr. et.al.*, 336 S.C. at 82, 543 S.E.2d 556.

28. Since the tax sale of Parcel 1 has been voided by this Court, an obligation for the County under Section 12-51-50 is now moot.

29. The sales price of \$17,000.00 does not shock the conscience of the Court. Mr. Cutter testified that the tax assessed value of Parcel #2 was \$75,000.00 but he felt the property was worth \$120,000.00. I find Mr. Cutter's value is not credible.

IT IS THEREFORE ORDERED:

1. The Orangeburg Delinquent Tax Sale for parcel with TMS # 0153-10-02-002 (Parcel 1) is improper and void and the Tax Deed recorded at Book 1731, Page 331 to Stafford Funding shall be voided and shall be of no force and effect. Cutter and Company shall pay to Stafford Funding all bid amounts, penalties and interest and taxes paid by Stafford Funding since the tax sale of December 8, 2016, within thirty days of this Order. The Court shall retain jurisdiction to hear any further testimony on these amounts if this cannot be resolved by the parties.

2. The tax sale as to Parcel 2 with TMS number 0140-00-11-014 is proper and the Court confirms title has properly vested to Stafford Funding, as evidenced by the Deed recorded on March 31, 2017, in Book 1731, Page 269 filed with the Orangeburg RMC.

3. The Court shall reserve jurisdiction to conduct a further hearing and testimony on the issue of the rents and taxes paid, ownership of, and other proceeds paid during the litigation if the parties cannot resolve this issue. The Court specifically reserves jurisdiction to issue a separate ruling on the issue of the ownership and distribution of these funds.

AND IT IS SO ORDERED.

November ____, 2020

Orangeburg, SC

JUDGE JAMES B. JACKSON, JR.
MASTER IN EQUITY FOR ORANGEBURG COUNTY



Orangeburg Common Pleas

Case Caption: Cutter & Company, Llc VS Stafford Funding Group Llc, , defendant,
et al
Case Number: 2017CP3800948
Type: Master/Order/Form 4

So Ordered

James B. Jackson, Jr. 3077 Master in Equity