

RECEIVED

Apr 26 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Case No. 2016-CP-07-1493
Marvin H. Dukes III, Master in Equity

Appellate Case No. 2020-001148

Juan Antonio Adame Tapia
and Oscar Moreno,

Appellants,

v.

Maria Walls, in her capacity
as Treasurer for Beaufort
County, Berkeley Hall Club,
Inc., Colleton River Plantation
Club, Inc., Callawassie Island
Property Owners Association,
Inc., Belfair Property Owners
Association, Inc., David
LaPorte, Karen B. Lester,
Timothy B. Hockman, Sheila
F. Hockman, Bill H.
Holshouser, Terry M. Ash,
Patricia Ash, and Corey T.
Brewer,

Defendants

Of whom Maria Walls, in her
capacity as Treasurer for
Beaufort County is

Respondent

INITIAL BRIEF OF APPELLANTS

A. TABLE OF CONTENTS AND CASES

	Page
STATEMENT OF ISSUES ON APPEAL.	3
STATEMENT OF THE CASE.	3
STANDARD OF REVIEW.	5
ARGUMENT.	6
CONCLUSION.	12
Cases and Authorities:	
<u>Arthurs v. Aiken</u> , 358 SC 253 (1999)	9
<u>Coker v. Cummings</u> , 381 S.C. 45, 671 S.E.2d 383 (Ct. App. 2008)	6
<u>Folk v Thomas</u> 344 S.C. 77 (2001)	10,12
<u>Key Corporate v. County of Beaufort</u> , 373 S.C. 55 (2007)	6, 10
<u>Quail Hill LLC v. County of Richland</u> , 387 S.C. 223 (2010)	9,10
<u>King v. James</u> , 388 S.C 16, 694 S.E. 2d 35 (Ct. App. 2010)	5
<u>Osterneck v. Osterneck</u> , 374 S.C. 573, 649 S.E.2d 127 (Ct. App. 2007)	5
<u>Parker v. Brown</u> , 195 S.C. 35, 10 S.E.2d 625 (1940)	7
<u>Reeping v. Jebbco, LLC</u> , 402 S.C. 195, 740 S.E.2d 504, (Ct. App. 2013)	5
<u>State v Jacobs</u> , 393 S.C 584 (2011)	10,12

	Page
https://www.spartanburgcounty.org/408/Tax-Procedures	7
https://www.beaufortcountytreasurer.com/bidders	9

B. STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in granting summary judgment in favor of the Respondent County of Beaufort on the issue of whether Appellants were entitled to cancel or assign their tax sale bid when such requests were made at the stipulated times.
2. Did the trial court err in granting summary judgment in favor of the Respondent County of Beaufort on the issue of whether their stipulated course of dealing regarding pre-collection of filing fees and application of amounts over bid complied with the statutory requirements of S.C. Code Section 12-51-130.

C. STATEMENT OF THE CASE

Appellants attended the October 2014 Beaufort County tax sale, together with a third party not involved in the subject litigation or appeal. Appellant Antonio Adame did not speak English or read English at the time of the tax sale. Appellant Oscar Moreno was able to read and write English on a limited basis at the time of the sale. Prior to attending the Beaufort County tax sale in 2014, neither Appellant were familiar with South Carolina tax sale procedures nor had not previously purchased tax sale property. The County Treasurer's office did not provide information at the tax sale itself regarding the properties subject to bidding, and neither Appellant received any information or regarding the bid and property acquisition process prior to sale.

At the tax sale, Mr. Adame successfully bid upon seven properties situated in private communities including Belfair Plantation, Callawassie Island and Berkeley Hall Plantation private communities in Beaufort County (hereinafter "Communities"). Mr. Moreno successfully bid on two properties located in Colleton River Plantation. The third-party associate who attended with Appellants supplied the bid funds for at least four of the properties that Mr. Adame bid upon. All of the properties bid upon were and remain undeveloped lots.

The Appellants did not receive further information from the County regarding their bids in the bidding year, being calendar year 2014. In 2015, just prior to the expiration of the redemption period, Appellants received information from one or more of the Communities regarding looming association assessments and significant initiation fees to be billed to Appellants. Thereafter, and prior to the expiration of the redemption period, Appellants contacted the County by phone, and ultimately visited the Treasurer's office in person, and expressly requested that their bids be cancelled. [Stipulation of Facts No. 5 and 6.] Appellants were informed that their bids could not be cancelled. Next, Appellants asked if they could assign their bids prior to a deed being issue and it is their recollection that they were told they could not. [Stipulation of Facts No. 5 and No. 6].

Appellants also attempted to assign or cancel their bids after the expiration of the redemption period by communication with the Treasurer by their litigation counsel, Mr. Mogil. [Stipulation of Facts No. 7].

The County recorded Tax Deeds vesting title into the Appellants in or around January 2016, before and without further contact with the Appellants. Immediately thereafter Appellants received demands for initiation fees and assessments from the various private

Communities in which the lots were located. To date, these unpaid fees and assessments have compiled and now amount to hundreds of thousands of dollars, significantly damaging Appellants and the Communities. Appellants did not occupy or visit their bid properties nor use the underlying private community facilities or clubs at any time before or after bidding. The Communities separately filed suits against Appellants to collect sums due against Appellants.

In 2016 Appellants filed suit seeking to set aside the 2014 tax sale for the reasons argued herein. Within the same suit, Appellants also filed separate claims against the private Communities, which claims are not presently before the Court of Appeals.

Prior to trial, Beaufort County filed a Motion for Summary Judgment. The remaining case and claims against the private Communities were held in abeyance pending adjudication of the County's motion. Prior to hearing on the motion Beaufort County and Appellants agreed upon stipulated facts which were accepted by the Court as the facts before the Court to adjudicate the motion, and no testimony was taken at hearing, which was conducted remotely. The Master-in-Equity for Beaufort County, the Honorable Marvin H. Dukes III, granted the County's motion for summary judgment, and denied Appellants' motion to reconsider. This appeal follows.

D. 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); Osterneck v. Osterneck, 374 S.C. 573, 577, 649 S.E.2d 127, 129 (Ct. App. 2007). Upon review of cases tried before a Master-in-Equity, the Court of Appeals may determine facts in accordance with (its) own view of the preponderance of the evidence. Reeping Id., citing King v. James, 388 S.C. 16, 694

S.E. 2d 35 (Ct. App. 2010). 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, that summary judgment is only 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.” Coker v. Cummings, 381 S.C. 45, 671 S.E.2d 383, 386 (Ct. App. 2008).

E. ARGUMENT

1. Appellants should have been permitted to cancel or assign their tax sale bids when they requested to do so.

This action is to set aside deeds is an action to quiet title and thus equitable principals should be applied to the facts at hand. However, in Key Corporate v. County of Beaufort, 373 S.C. 55 (2007) our Supreme Court held that tax sales cases are cases of statutory interpretation. The case sub judice is a hybrid case because the Appellants are not the taxpayer, and thus not the party ostensibly protected by statute, yet at the same time the statute provides protections for bidders in the realm of assignment and cancellation, as set forth below. Thus, Appellants argue that both statutory construction and equity apply.

Title to the subject property could not vest until after the expiration of the underlying taxpayers redemption period. Thus, Once the Appellants informed the Treasurer that they desired to cancel or assign their bids, prior to the expiration of the redemption period, Appellants should have been informed of their right to do so and if a form was available for that purpose, provided the form by the Treasurer. They were not. [Stipulation of Facts No. 5 and No. 6].

SECTION 12-51-90 provides: Redemption of real property; assignment of purchaser's interest.

(A) The defaulting taxpayer, any grantee from the owner, or any mortgage or judgment creditor may within twelve months from the date of the delinquent tax sale redeem each item of real estate by paying to the person officially charged with the collection of delinquent taxes, assessments, penalties, and costs, together with interest as provided in subsection (B) of this section. *If prior to the expiration of the redemption period, the purchaser assigns his interest in any real property purchased at a delinquent tax sale, the grantee from the successful bidder shall furnish the person officially charged with the collection of delinquent taxes a conveyance, witnessed and notarized. The person officially charged with the collection of delinquent taxes shall replace the successful bidder's name and address with the grantee's name and address in the delinquent tax sale book.*

Assignment forms may be furnished by the Treasurer's Office as is set forth in Spartanburg County's website: <https://www.spartanburgcounty.org/408/Tax-Procedures>.

Thus, the statute sets forth the contemplated procedure for the bidder to assign its bid. In the instant case, upon request by the Appellants, the Treasurer's office could have provided the appropriate assignment forms and should have provided those forms. Had Appellants been provided the forms, the Appellants could have sought assistance, and caused the property bids to be assigned to the party who advanced the funds for bid, or alternatively, to parties who wanted to own property in the subject private communities and whom could afford the assessments in those communities. Appellants note that the public duty doctrine as elaborated in Arthurs v. Aiken, 358 SC 253 (1999) is not simply a rule that grants immunity in tort cases—the Court in Arthurs cited South Carolina law to guide the actions of public officials in general and the special duties of public office and in such described a public interest doctrine within the public duty doctrine.

“The public duty rule was originally adopted by the South Carolina Supreme Court in Parker v. Brown, 195 S.C. 35, 10 S.E.2d 625 (1940):

The law necessarily grants certain discretion to its officers in handling the public business. In one instance it may be wise for a public officer to pursue one course, in another instance, another course. Those charged with protecting the public interest should view that interest as supreme, should consider what is best for the public, and should be free at all times to prosecute the course that appears to be in the public interest.... It is well settled that an individual has no right of action against a public officer for breach of a duty owing to the public only, even though such individual be specially injured thereby. Where a duty is owing to the public only, an officer is not liable to an individual who may have been incidentally injured by his failure to perform it. Arthurs v Aiken Id at 262

The procedure for cancellation of a bid is not as clearly described in Section 12-51-90. However, another section of the Code grants the Treasurer broad latitude to cancel a sale:

SECTION 12-51-150 provides:

“If the official in charge of the tax sale discovers before a tax title has passed that there is a failure of any action required to be properly performed, the official may void the tax sale and refund the amount paid, plus interest in the amount actually earned by the county on the amount refunded, to the successful bidder. If the full amount of the taxes, assessments, penalties, and costs have not been paid, the property must be brought to tax sale as soon as practicable.”

Indeed, counties around the state put the public on notice that a tax sale can be voided at any time prior to the issuance of a tax deed.

Significantly, Beaufort County's current website and information inform tax sale bidder's that the Treasurer may void a sale pursuant to 12-51-150.

See: <https://www.beaufortcountytreasurer.com/bidders>.

In the instant case, Appellants argue that the Treasurer's officer owed a duty to cancel the sale once she timely learned that the Appellants did not want to proceed with their purchase, and particularly under the circumstances where Appellants can demonstrate at trial that it was or should have been clear to the Treasurer officer that Appellants did not understand English, did not understand the sale process, and that Appellants were surprised by the levying of assessments against them, as well as their underlying inability to pay. The Treasurer also had discretion to void the sale. Exactly what the Appellants told the Treasurer's Office and exactly how the Office responded are fact intensive and survive summary judgment. Yet, Appellants assert that Treasurer had the authority to cancel the sale, and there are circumstances under which the Treasurer could and should have canceled the sale in the interest of equitable considerations, which would have avoided harm to both the Appellants and the Defendant private Communities. In this case Appellants argue the Treasurer had a public duty to take action that would avoid the damages that Appellants and the Communities have incurred. Respondent cited Quail Hill LLC v. County of Richland, 387 S.C. 223 (2010) for the proposition that a Treasurer does not have a duty to inform tax sale bidders of property conditions. Quail Hill is not controlling on this point because Appellants allege that the Treasurer failed to exercise due care or proper discretion in the process of completing the tax sale, i.e. not providing correct information regarding cancellation or assignment to the bidders post

sale. Appellants further argue that the tax sale statute should be interpreted narrowly and with legislative intent and taking public policy into consideration. Folk v Thomas 344 S.C. 77 (2001), Key Corporate, Supra and State v Jacobs, 393 S.C 584 (2011) for guiding principles of statutory interpretation.

Further, in the case sub judice, where there is no evidence that the Appellants knew or could have known from the tax sale information provided to bidders that purchasing the Properties would subject them to liability for assessments and initiation fees, equity compels sitting aside the Deeds. To wit, there is no evidence in the record that the tax sale listing of subject properties included the communities that the properties were situated in, or other information that would put the Appellants on notice regarding where they were purchasing and the associated costs of ownership. Indeed, the discovery in this case reflected that at some points in recent history the County permitted representatives of private communities to attend and distribute notices regarding the costs of owning properties within those communities, presumably to avoid the results manifest in this case. Yet, there is no evidence in the record before the Court that such information regarding the private communities was made available at the 2014 Beaufort County tax sale. The existence of such information or lack thereof would be a fact determination for the Court. The County argues that it has no duty to provide such information, citing Quail Hill. Appellants argue that while Quail Hill can be read to impose a caveat emptor standard on tax sale bidders, if the evidence in this case ultimately demonstrates that the County has permitted information by private communities to be posted and circulated at tax sales, the County is assuming that role and duty and circumventing Quail Hill by course of dealing.

2. Payment of recording fees.

S.C. Code Section 12-51-130 provides in pertinent part:

“The successful purchaser, or assignee, is responsible for the actual cost of preparing the tax title plus documentary stamps necessary to be affixed and recording fees. The successful purchaser, or assignee, shall pay the amounts to the person officially charged with the collection of delinquent taxes before delivery of the tax title to the clerk of court or register of deeds and, upon payment, the person officially charged with the collection of delinquent taxes is responsible for promptly transmitting the tax title to the clerk of court or register of deeds for recording and remitting the recording fee and documentary stamps cost.”

The parties stipulated that it was the County’s practice at the time to collect recording fees from the bidder at the time of the bid. However, there was no specific evidence offered pre-hearing that such fees were collected for that purpose. Thus, the Appellants did not tender their filing fees, and by not doing so did not complete the process necessary to cause recording of the Deed(s). The County alleged that the alleged bid overages were or are properly applied to substitute for the bidders tendering such fees under Section 130. However, to reach this result, the Court must undertake an analysis of statutory construction, starting with the plain language of the statute which compels a result to set aside the sale on this technicality. To reach the County’s conclusion on the issue of tendering fees, not only will the Court have to interpret the statute in a manner different from its plain language, but also undertake a factual examination regarding the legislative intent behind the statute, and the historical practices and course of dealing in Beaufort County and elsewhere. Summary

judgment is not merited on this point. State v Jacobs, Arthur v Aiken, Folk v Thomas, Supra.

Moreover, Appellants point out that the County cannot equitably argue that its course of dealing regarding applying bid funds to tax deed recording costs overrides the clear language of the statute, while at the same time argue that their prior course of dealing by allowing private communities to post information at sales to prevent the persons such as Appellants from bidding without adequate, non public information, does not create a duty for the County to inform of property conditions. To specifically comply with the statute, the County should have solicited filing fees from Appellants rather than apply over bid funds for filing fees, without notice. Had the County requested filing fees from Appellants as the statute contemplates, the result herein, with significant damages to both the Appellants and the Communities, could have been avoided.

F. CONCLUSION.

WHEREFORE, for the reasons argued above, Appellants respectfully request that the Honorable Court reverse the order of summary judgment granted by the Master-In- Equity in favor of the Respondent, remand the case for trial on the merits and other proceedings, and for such other relief as the Court deems just and proper.

Respectfully Submitted,



Michael W. Mogil #11933

Mogil Law Firm

2 Corpus Christie Place, Ste. 303

Hilton Head Island, SC 29928

Tel: (843) 785-8110

Email: mmogil@mogillaw.com

Attorney for Appellants