

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

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Appellate Case No. 2020-000390

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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.

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RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL DISTRICT
COUNTY OF GREENVILLE	)	
Francisco Nicolas Miguel,	)	
	)	
Plaintiff,	)	<b>ORDER GRANTING PLAINTIFF'S</b>
	)	<b>MOTION FOR SUMMARY</b>
	)	<b>JUDGMENT</b>
v.	)	<b>C.A. NO: 2018-CP-23-03713</b>
	)	
Palmetto Asset Investments, LLC,	)	
Gabriel Angel Prestegui Gomez, and	)	
A. Kevin Hunter, II, Greenville County Tax	)	
Collector,	)	
	)	
Defendants.	)	
	)	

Hearing Date:	November 14, 2019, at 10:00 a.m.
Hearing Judge:	Charles B. Simmons, Jr.
Counsel for Plaintiff:	Ryan E. Gaylord
Counsel for Defendants:	C. Richard Stewart
	Jeffrey D. Wile
Court Reporter:	Danette Hanks

This matter was before the Court on Thursday, November 14, 2019 in Greenville County, South Carolina upon Plaintiff's Motion for Summary Judgment. Attorney Ryan E. Gaylord of Hyde Law Firm, PA, was present representing the interests of the Plaintiff. Attorney C. Richard Stewart was present representing the interests of Defendant, Palmetto Asset Investments, LLC. Attorney Jeffrey D. Wile was present representing the interests of Defendant, A. Kevin Hunter, II, Greenville County Tax Collector. Defendant, Gabriel Angel Prestegui Gomez, is not represented and did not attend the hearing.

### **PROCEDURAL BACKGROUND**

This action was commenced by the filing of a Summons and Complaint on July 11, 2018 seeking to set aside a tax sale and subsequent instruments of title and reinstate Plaintiff's right of redemption. Gabriel Angel Prestegui Gomez was properly served with the Summons and Complaint on July 12, 2018 as demonstrated by that Affidavit of Service filed July 13, 2018, but has not filed any responsive pleadings or appeared in this action. Palmetto Asset Investments, LLC was properly served with the Summons and Complaint on July 12, 2018 as demonstrated by that Affidavit of Service filed July 13, 2018, and filed an Answer on August 10, 2018. Palmetto Asset Investments, LLC thereafter filed an Amended Answer on August 30, 2018 and Second Amended Answer, Counterclaim and Cross Claim on November 13, 2019. A. Kevin Hunter, II, Greenville County Tax Collector was properly served with the Summons and Complaint on July 13, 2018 as demonstrated by that Affidavit of Service filed July 20, 2018, and filed an Answer on July 17, 2018. The Plaintiff filed a Motion for Summary Judgment on September 25, 2019. The parties were before the Court regarding the Motion for Summary Judgment on November 14, 2019.

### **FACTUAL BACKGROUND**

This is an action seeking to set aside as defective a delinquent property tax sale conducted in 2016 for certain property in Greenville County, South Carolina located at 1 Hilltop Avenue, Greenville, South Carolina and subsequent instruments of title. Plaintiff was the owner of the property subject to the tax sale that is the subject of this action at the time of the sale. Palmetto Asset Investments, LLC was the purchaser of the property through the tax sale that is the subject of this action. Gabriel Angel Prestegui Gomez claims an interest in the property by an instrument of title entered with Palmetto Asset Investments, LLC subsequent to the tax sale.

A. Kevin Hunter, III is the Tax Collector for Greenville County, South Carolina and was responsible for administration of the delinquent property tax sale that is the subject of this action.

By deed dated August 29, 2013 and recorded on September 3, 2013 in the Office of the Register of Deeds for Greenville County, South Carolina, Ralph E. Scopa, Jr., as Trustee of the U.R. Home Trust conveyed certain real property in Greenville County, South Carolina located at 1 Hilltop Avenue, Greenville, South Carolina to Plaintiff. The deed conveying the Property to Plaintiff identified his address as 1 Hilltop Avenue, Greenville, SC 29609. In about October, 2014, the Plaintiff moved to 117 Odom Circle, Greenville, SC 29611.

Greenville County uses a mail service vendor to print and mail its property tax bills. 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 try to save the County money on postage. The mail service vendor sends the tax bill to the updated address, and reports the discovery of any possible new address to Greenville County. The existence and record of a possible new address is then available to and accessible by the Greenville County Tax Collector's Office. Kevin Hunter, Greenville County's Tax Collector, stated in his deposition that his office also relies on either the taxpayer or the tax assessor for changes of addresses, because "... a lot of people, they change their addresses all the time." (Hunter depo., P. 13, ll. 19-22)

During the compilation and mailing of the 2015 property tax bills Greenville County's mail service vendor discovered a possible new address for Plaintiff through the NCOA system. The new address was 117 Odom Circle, Greenville, SC 29611.

The vendor mailed the 2015 tax bill to 117 Odom Circle and notified Greenville County of the discovery of the new address. The vendor also mailed Plaintiff a postcard asking Plaintiff to reply and confirm his mailing address.

Plaintiff 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 at 1 Hilltop Avenue to note the discovery of a possible new address by the vendor. The Tax Collector's Office, however, did not update its address records since the postcard was never returned by Plaintiff.

Plaintiff 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 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 Plaintiff at 1 Hilltop Avenue, Greenville, SC 29609. None of the notices mailed by Greenville County in conducting the tax 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. § 12-51-40(b) (1976) to Plaintiff at 1 Hilltop Avenue, Greenville SC 29609 by certified mail, return receipt requested – restricted delivery. The notice was signed and returned; however, the signature on the notice was illegible. Plaintiff did not receive the notice and no notice of the tax sale was posted at 1 Hilltop Avenue, Greenville, South Carolina.<sup>1</sup>

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<sup>1</sup> Employees of the Tax Collector's Office stated that under the facts of this case, the property probably should have been posted. See, Depo. D. Henderson (p. 17: 17-24) and Depo. A. Hunter (p. 28:16-29:1).

On October 24, 2016, after due advertisement, Greenville County conducted an auction and sold 1 Hilltop Avenue, Greenville, South Carolina to Palmetto Asset Investments, LLC. Plaintiff's right to redeem the property expired on October 24, 2017.

On November 4, 2016 Greenville County's mail service vendor mailed the 2016 tax bill for 1 Hilltop Avenue, Greenville, South Carolina to Plaintiff at 117 Odom Circle, Greenville, SC 29611-2957. On the payment stub attached to this tax bill, there is 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 Collectors Office as this property may be sold for delinquent taxes" (hereafter, the delinquent taxes note). Plaintiff did not pay 2016 taxes, nor did he respond to this note in any way. On November 8, 2016 another entry was made in Greenville County Real Property Service's records for the property at 1 Hilltop Avenue to note Plaintiff's possible address change to 117 Odom Circle, Greenville, SC 29611-2957.

On September 15, 2017 Greenville County mailed notice of the approaching end of the redemption period pursuant to S.C. Code Ann. § 12-51-120 (1976) to Plaintiff at 1 Hilltop Avenue, Greenville, SC 29609 by certified mail, return receipt requested – restricted delivery. The notice was returned to Greenville County as "Unclaimed – Unable to Forward". Plaintiff did not receive this notice of his right to redeem the property and did not redeem the property.

On October 18, 2017 Greenville County's mail service vendor mailed the 2017 tax bill for 1 Hilltop Avenue, Greenville, South Carolina to Plaintiff at 117 Odom Circle, Greenville, SC 29611-2957. The tax bill made no notice of mention that 1 Hilltop Avenue had been auctioned for delinquent taxes or that Plaintiff's right to redeem would expire October 24, 2017.

On October 20, 2017 another entry was made in Greenville County Real Property Service's records for the property at 1 Hilltop Avenue to note Plaintiff's possible address change to 117 Odom Circle, Greenville, SC 29611-2957.

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, South Carolina. Thereafter, on February 5, 2018, Palmetto Asset Investments, LLC and Gabriel Angel Prestegui Gomez entered an Installment Contract for Sale of Real Estate which was recorded on February 8, 2018 in Deed Book 2531, Page 2233 in the Office of the Register of Deeds for Greenville County, South Carolina.

#### **LAW AND DECISION OF THE COURT**

Summary Judgment is appropriate only when it is perfectly clear that no genuine issue of material fact exists; further inquiry into the facts is not necessary to clarify the application of the law; and the moving party is entitled to judgment as a matter of law. *Folkens v. Hunt*, 290 S.C. 194, 195, 348 S.E.2d 839, 841 (Ct. App. 1986). In this matter the parties agree that no genuine issue of material fact exists and that the record as developed by the pleadings filed in support of and in opposition to Plaintiff's Motion for Summary Judgment is complete.

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 (S.C. App. 1986), citing 72 Am.Jur.2d State and Local Taxation Section 1010 (1974); accord, 85 C.J.S. Taxation Section 868 (1954). The 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). *Good v. Kennedy*, 291 S.C. 204, 207, 352 S.E.2d 708, 711 (S.C. App. 1986).

Section 12-51-40(a) of the South Carolina Code dictates 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. § 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.

“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 v. Kennedy*, 291 S.C. 204, 207-08 (S.C. App. 1986), *Benton v. Logan*, 323 S.C. 338, 340 - 43, 474 S.E.2d 446, 447-48 (S.C. App. 1996).

The Greenville County Tax Collector’s Office handles an extremely high volume of delinquent tax matters and does an admirable job protecting the rights of taxpayers. However, under the unique facts of this case and even though Plaintiff did not avail himself of

opportunities to formally provide a change of address, the notice herein was not given to Plaintiff at the best address. Greenville County's mail service vendor had notice of Plaintiff's possible new address through the NCOA system and provided notice of the new address to Greenville County. Greenville County Real Property Service's records were updated to note the possible address change, and the tax bills for 2015, 2016 and 2017 were mailed to the new address. The Greenville County Tax Collector's Office had access to both the possible address change notes within County records and the address used for the mailing of tax bills. The return of the green card from the June 6, 2016 notice with an illegible signature and the return of the September 15, 2017 notice with the notation "Return to Sender – Unclaimed – Unable to Forward" together with notice of the address change derived from the NCOA system should have prompted further inquiry and provision of tax sale notices to Plaintiff at the 117 Odom Circle address.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The 2016 tax sale of the property located at 1 Hilltop Avenue, Greenville, South Carolina was not conducted in strict compliance with statutory requirements and is set aside.
2. The Tax Deed recorded on December 8, 2017 in Deed Book 2527, Page 3023 in the Office of the Register of Deeds for Greenville County, South Carolina and the Installment Contract for Sale of Real Estate which was recorded on February 8, 2018 in Deed Book 2531, Page 2233 in the Office of the Register of Deeds for Greenville County, South Carolina are voided.
3. Plaintiff's right to redeem the property is reinstated and Plaintiff shall pay to Greenville County all delinquent taxes owed from 2015, together with statutory interest and

penalties, and all taxes assessed against property for 2016, 2017, 2018 and 2019. Payment shall be made to the County of Greenville within forty-five (45) days of the date of this Order. Upon receipt of an Affidavit from Mr. Wile, as attorney for Defendant Tax Collector, that payment has not been made within forty-five (45) days of the date of this Order, this Order shall be voided and the tax sale that is the subject of this action shall be deemed valid.

4. Upon payment noted above, Palmetto Asset Investments, LLC shall receive a refund of all amounts paid to Greenville County for the property a 1 Hilltop Avenue, Greenville, South Carolina, together with the statutory interest accruing on such amounts, from Greenville County upon Plaintiff's redemption of the property.

AND IT IS SO ORDERED.

**Judge's Signature on Following Page**



Greenville Common Pleas

**Case Caption:** Francisco Nicolas Miguel vs. Palmetto Asset Investments LLC ,  
defendant, et al  
**Case Number:** 2018CP2303713  
**Type:** Order/Summary Judgment

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

Electronically signed on 2020-01-06 15:52:43 page 10 of 10

ELECTRONICALLY FILED - 2020 Jan 07 3:28 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303713

000011

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF GREENVILLE  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2018CP2303713

ELECTRONICALLY FILED - 2020 Jan-29 2:53 PM - GREENVILLE - COMMON PLEAS - CASE # 2018CP2303713

Francisco Nicolas Miguel		Palmetto Asset Investments LLC Gabriel Angel Prestegui Gomez	A Kevin Hunter II Greenville County Tax Collector
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
---------------	---

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order; (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

Palmetto Asset Investments, LLC Motion to Alter or Amend filed January 17, 2020 was heard via telephone conference on January 28, 2020. The Court finds that the Order filed January 7, 2020 addresses all the issues raised in the Motion to Alter or Amend. Accordingly, the Motion to Alter or Amend is denied.  
 And It is So Ordered.

This order  ends  does not end the case.  
 Additional Information for the Clerk: \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

**Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

3023

1/29/2020

Circuit Court Judge

Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

**Ryan Edward Gaylord Hyde Law Firm, P.A.** 753 East Main Street, Suite One Spartanburg, SC 29302

**Jeffrey D. Wile** 301 University Ridge Ste. 2400 Greenville, SC 29601-3681

**John Underwood** 1 Landing Ferry Way Greer, SC 29650

**C. Richard Stewart** 11 Whitsett St. Greenville, SC 29601

\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
Court Reporter

\_\_\_\_\_  
- Clerk of Court

**Court Reporter:**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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Greenville Common Pleas

**Case Caption:** Francisco Nicolas Miguel vs. Palmetto Asset Investments LLC ,  
defendant, et al  
**Case Number:** 2018CP2303713  
**Type:** Master/Order/Form 4

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

Electronically signed on 2020-01-29 13:24:26 page 3 of 3

ELECTRONICALLY FILED - 2020 Jan 29 2:53 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303713

000014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL DISTRICT
COUNTY OF GREENVILLE	)	
Francisco Nicolas Miguel,	)	
	)	
Plaintiff,	)	<b>COMPLAINT</b>
	)	(Set Aside Tax Sale, Tax Deed and
	)	Subsequent Conveyance)
v.	)	<b>C.A. NO: 2018-CP-23-</b>
	)	
Palmetto Asset Investments, LLC,	)	
Gabriel Angel Prestegui Gomez, and	)	
A. Kevin Hunter, II, Greenville County Tax	)	
Collector,	)	
	)	
Defendants.	)	
_____	)	

NOW COMES Plaintiff, Francisco Nicolas Miguel (hereinafter “Nicolas”), complaining of Defendants Palmetto Asset Investments, LLC (hereinafter “Palmetto”), Gabriel Angel Prestegui Gomez (hereinafter “Prestegui”) and A. Kevin Hunter, II, Greenville County Tax Collector (hereinafter “Hunter”), and alleges as follows:

**PARTIES AND JURISDICTION**

1. Nicolas is a citizen and resident of Greenville County, South Carolina, is above the age of eighteen (18) years and is competent to bring this action.
2. Palmetto is a limited liability company existing and organized under the laws of the State of South Carolina with its principal office located in Greenville County, South Carolina.
3. Upon information and belief, Prestegui is a citizen and resident of Greenville County, South Carolina, is above the age of eighteen (18) years and suffers no incompetency or disability.

4. Hunter is the Tax Collector for Greenville County, South Carolina and is responsible for the proper administration of delinquent property tax sales in Greenville County, South Carolina.

5. This is an action seeking to establish the invalidity of a delinquent property tax sale related to a parcel of real property in Greenville County, South Carolina undertaken to satisfy delinquent property taxes and to restore Plaintiff's right of redemption relating to such property. This Court has jurisdiction over the dispute and is the proper venue for the matter.

#### GENERAL ALLEGATIONS

6. By deed dated August 29, 2013 and recorded on September 3, 2013 in the Office of the Register of Deeds for Greenville County, South Carolina, Ralph E. Scopa, Jr., as Trustee of the U.R. Home Trust conveyed certain real property in Greenville County, South Carolina which is the subject of this action to Nicolas. Such real property is hereinafter referenced as "the Property" and is described as follows:

**All that piece, parcel or lot of land, situate, lying and being in Greenville County, State of South Carolina, being known and designated as Lots 9 and 10, being more fully described in Plat Book G, Page 139 recorded in the RMC Office for Greenville County. Reference is hereby made to said plat for a more complete description of metes and bounds thereof.**

**This being the same property conveyed to Ralph E. Scopa, Jr. as Trustee of the UR Home Trust by deed of Dorothy E. McCall, dated December 7, 2012 and recorded on December 12, 2012 in Book 2416, Page 1349 in the RMC Office for Greenville County.**

**TMS# 0156000801100**

7. The deed conveying the Property to Nicolas identified his address as 1 Hilltop Avenue, Greenville, SC 29609.

8. On or about November 13, 2015 Nicolas provided, or caused to be provided, to the Real Property Services Department for Greenville County, South Carolina and the Tax

Collector for Greenville County notification of his change of address. The notification advised that Nicolas's new address was 117 Odom Circle, Greenville, SC 29611-2957. Accordingly, all subsequent tax notices and other correspondence relating to the property should have been mailed or otherwise delivered to Nicolas at 117 Odom Circle, Greenville, SC 29611-2957.

9. The ad valorem property taxes assessed against the Property for 2015 were not paid and Hunter was directed to take possession of and sale the Property to satisfy the unpaid assessment in accordance with S.C. Code Ann. §12-51-40 et. seq.

10. All delinquent tax notices and other notices relating to the sale of the Property for delinquent taxes provided by Hunter were mailed to the address, 1 Hilltop Avenue, Greenville, SC 29609, instead of 117 Odom Circle, Greenville, SC 29611-2957.

11. No delinquent tax notices or notices relating to the sale of the Property for delinquent taxes were mailed to the address, 117 Odom Circle, Greenville, SC 29611-2957.

12. Nicolas was not provided with proper notice of the sale of the Property to satisfy the 2015 delinquent property taxes conducted by Hunter on October 24, 2016 and such sale of the Property is invalid.

13. Palmetto provided the high bid for the Property at the auction conducted by Hunter on October 24, 2016 and received from Hunter a Tax Deed dated December 5, 2017 that was recorded on December 8, 2017 in Book 2527, Page 3073.

14. On or about February 5, 2018 Palmetto and Prestegui entered an Installment Contract for Sale of Real Estate which was recorded on February 8, 2018 in Deed Book 2531, Page 2233 in the Office of the Register of Deeds whereby Prestegui agreed to purchase from Palmetto the Property on an installment payment basis.

**FOR A FIRST CAUSE OF ACTION**

(Set Aside Tax Sale, Tax Deed and Subsequent Contract with Third Party)

15. The foregoing allegations of this Complaint are incorporated herein by reference and re-asserted.

16. Nicolas failed to pay the 2015 ad valorem taxes assessed against the Property when due, but was not provided notice of the delinquent taxes or of the tax sale conducted by Hunter as required by SC Code Ann. 12-5140 and 12-51-120.

17. Nicolas is ready, willing and able to pay Hunter a sum of money sufficient to pay the delinquent taxes and redeem the property from the tax sale.

18. Therefore, the tax sale, the conveyance to Palmetto from Hunter and the Contract between Palmetto and Prestegui should be set aside and should be declared to be void and of no effect.

WHEREFORE, Plaintiff prays of this Honorable Court for the following relief:

a. That the tax sale of the Property conducted to satisfy the delinquent 2015 taxes be set aside and be declared to be void and of no effect.

b. That the tax deed described in Paragraph No. 13 be set aside and be declared to be void and of no effect.

c. That the Installment Contract for Sale of Real Estate described in Paragraph No. 14 be set aside and be declared to be void and of no effect.

d. That Nicolas's right to redeem the Property upon payment of the delinquent taxes, together with any applicable penalties and interest, be restored.

e. That the costs of this action, including a reasonable attorney's fee be assessed against Defendants.

f. For such other and further relief as this Court deems just and reasonable.

July 11, 2018  
Spartanburg, South Carolina

s/ Ryan E. Gaylord  
Max T. Hyde, Jr. (SCB 17014)  
Ryan E. Gaylord (SCB 101946)  
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ATTORNEYS FOR PLAINTIFF

ELECTRONICALLY FILED - 2018 Jul 11 1:14 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303713

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL DISTRICT
COUNTY OF GREENVILLE	)	
Francisco Nicolas Miguel,	)	
	)	
Plaintiff,	)	<b>MOTION FOR SUMMARY</b>
	)	<b>JUDGMENT</b>
	)	
v.	)	<b>C.A. NO: 2018-CP-23-03713</b>
	)	
Palmetto Asset Investments, LLC,	)	
Gabriel Angel Prestegui Gomez, and	)	
A. Kevin Hunter, II, Greenville County Tax	)	
Collector,	)	
	)	
Defendants.	)	
_____	)	

NOW COMES, Plaintiff, Francisco Nicolas Miguel, by and through his undersigned counsel, and pursuant to Rule 56 of the South Carolina Rules of Civil Procedure moves for summary judgment declaring the 2016 tax sale (hereinafter “the Sale”) of 1 Hilltop Avenue, Greenville, South Carolina (hereinafter “the Property”) to be defective and setting aside the Sale and the subsequent instruments of title regarding the Property. In support of this motion, Plaintiff shows unto the Court:

1. There is no genuine issue of material fact with regard to the process followed and actions taken by the Office of the Greenville County Tax Collector in furtherance of the Sale, and Plaintiff is entitled to judgment as a matter of law. S.C. R. Civ. P. 56(c).
  
2. “..(A)ll requirements of the law leading up to tax sales are to be regarded as mandatory and strictly enforced. They are intended for the protection of the taxpayer against surprise of the sacrifice of his property.” *Leysath v. Leysath*, 209 S.C. 342, 40 S.E.2d 233, 235 (1946).

3. To take exclusive possession of real property to effect a tax sale for delinquent taxes the tax collector must mail “a notice of delinquent property taxes, assessments, penalties and costs to the defaulting taxpayer... at the address shown on the tax receipt or to an address of which the officer has actual knowledge, by ‘certified mail, return receipt requested-restricted delivery” pursuant to the United States Postal Service ‘Domestic Mail Manual Section S912’”. S.C. Code Ann. § 12-51-40(b) (1976).

4. “If the ‘certified mail’ notice has been returned, (the tax collector must) take exclusive physical possession of the property against which the taxes, assessments, penalties, and costs were assessed by posting a notice at one or more conspicuous places on the premises...” S.C. Code Ann. § 12-51-40(c) (1976).

5. Following the sale and prior to the end of the one-year redemption period for real estate sold for delinquent taxes, the tax collector must “mail a notice by ‘certified mail, return receipt requested-restricted delivery’ as provided in Section 12-51-40(b) to the defaulting taxpayer... The notice must be mailed to the best address of the owner available to (the tax collector)...” S.C. Code Ann. § 12-51-120 (1976).

6. “(W)here a statute requires a condition precedent to foreclosing a taxpayer’s rights in property sold for taxes that he be given notice of his right to redeem, such requirement is ‘generally regarded as jurisdictional, and therefore, the owner’s right of redemption cannot be cut off unless the required notice is given’”. *Good v. Kennedy*, 291 S.C. 204, 207, 352 S.E.2d 708, 711 (S.C. App. 1986), quoting 72 Am.Jur.2d State and Local Taxation Section 1010 (1974); accord, 85 C.J.S. Taxation Section 859 (1954). “Moreover, where a statute permits the giving of such notice by mail, the person authorized to send the notice must exercise diligence to ascertain

the correct address of the property owner.” *Good v. Kennedy*, 291 S.C. 204, 207-08, 352 S.E.2d 708, 711 (S.C. App. 1986), citing 85 C.J.S. Taxation Section 868 (1954).

7. A tax collector’s receipt of information that indicates the existence of a new, updated address for a taxpayer requires further inquiry. *Good v. Kennedy*, 291 S.C. 204, 207-08 (S.C. App. 1986), *Benton v. Logan*, 323 S.C. 338, 340 - 43, 474 S.E.2d 446, 447-48 (S.C. App. 1996).

8. Greenville County uses a mail service vendor to print and mail its property tax bills. (Depo. D. Adkins 6:15 – 7:4). Prior to mailing tax bills, the mail service vendor verifies taxpayer addresses through the NCOA system, a database coordinated by the Postal Service and other addressing entities. (Depo. D. Adkins 9:1-13) (Depo. A. Hunter 9:14-18). The mail service vendor sends the tax bill to the verified address, and only to the verified address, as determined through the NCOA system and reports any new, verified address to Greenville County. (Depo. D. Adkins 9:1-22). The existence and record of a new, NCOA verified address is available to and accessible by the Greenville County Tax Collector’s Office. (Depo. A. Hunter 13:11-13).

9. Greenville County’s mail service vendor discovered a new, verified address for Plaintiff when mailing the 2015 tax bill. (Depo. D. Adkins 13:22 – 14:15). The 2015 tax bill was mailed to the new, verified address, and Greenville County Records were updated on November 13, 2015 to note the discovery of the new, verified address by the mail service vendor. (Depo. D. Adkins 13:22 – 14:15, 17:11-13, Ex. 1, Ex. 3).

10. Greenville County endeavors to send tax bills to the “best known available address”. (Depo. D. Adkins 11:21-23). The tax bills mailed to Plaintiff for years 2015, 2016, and 2017, which was mailed only a few days prior to the end of the one-year redemption period,

were all mailed to the NCOA verified address, 117 Odom Circle, Greenville, SC 29611-2957. (Depo. D. Adkins, Ex. 1) (Depo A. Hunter, Ex. 5, Ex. 6).

11. All notices mailed to Plaintiff by the Greenville County Tax Collector's Office in furtherance of the Sale were mailed to 1 Hilltop Avenue, Greenville, SC 29609. (Resp. to Req. for Prod. of Docs. of A. Hunter). The notice mailed pursuant to S.C. Code Ann. § 12-51-40(b) was delivered; however, the signature on the return receipt green card was illegible and provides no confidence to the Greenville County Tax Collector's Office that it was delivered to Plaintiff. (Depo. D. Henderson 17:25 – 18:6). The Greenville County Tax Collector's Office believes the property probably should have been posted. (Depo. D. Henderson 17:17-24) (Depo. A. Hunter 28:16 – 29:1). The notice mailed pursuant to S.C. Code Ann. § 12-51-120 was returned. (Resp. to Req. for Prod. of Docs. of A. Hunter).

12. Despite the fact that Greenville County only mails tax bills to NCOA verified addresses, the Tax Collector's Office ignores that source of information in conducting tax sales. (Depo. A. Hunter 13:11-15, 15:7-18).

13. Ultimately, Plaintiff received no notice of the Sale at his home address, 117 Odom Circle, Greenville, SC 29611-2957, and was not afforded the opportunity to avoid the Sale or redeem the Property. (Aff. F. Nicolas).

14. The receipt of a new, verified address through Greenville County's mail service vendor together with the inability to confirm delivery of tax sale notices to Plaintiff at 1 Hilltop Avenue, Greenville, SC 29609 should have caused the Greenville County Tax Collector's Office to investigate further the best address of Plaintiff and mail notice of the Sale to the new, verified address.

15. The Greenville County Tax Collector's Office did not exercise diligence in conducting the Sale. It ignored relevant information regarding Plaintiff's address and failed to provide proper notice of the Sale to Plaintiff.

16. The Sale should be set aside for failure to comply with S.C. Code Ann. § 12-51-40(b) and S.C. Code Ann. § 12-51-120 in that the notices required by those sections were not mailed to Plaintiff at the best address available.

17. Further, as admitted by the Greenville County Tax Collector's Office, this property should have been posted because of the inability to confirm delivery of the notice mailed pursuant to S.C. Code Ann. § 12-51-40(b). The Sale should be set aside for failure to competently take exclusive possession of the Property by posting pursuant to S.C. Code Ann. § 12-51-40(c).

NOW THEREFORE, for the reasons set forth, Plaintiff prays of this Court for an Order declaring the tax sale to be defective and setting aside the Sale and the subsequent instruments of title regarding the Property.

Respectfully submitted this 25<sup>th</sup> day of September, 2019.

s/ Ryan E. Gaylord  
Max T. Hyde, Jr. (SCB 17014)  
Ryan E. Gaylord (SCB 101946)  
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ATTORNEYS FOR PLAINTIFF

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS  
 2 COUNTY OF GREENVILLE  
 3 FRANCISCO NICOLAS MIGUEL,  
 4 Plaintiff,  
 5 vs. CASE NO. 2018-CP-23-03713  
 6 PALMETTO ASSET INVESTMENTS, LLC, GABRIEL ANGEL  
 7 PRESTEGUI GOMEZ, and A. KEVIN HUNTER, II,  
 8 Greenville COUNTY TAX COLLECTOR,  
 9 Defendants.

10 DEPOSITION OF: DEBBIE H. ADKINS  
 11 DATE: March 13, 2019  
 12 TIME: 10:33 a.m.  
 13 LOCATION: Greenville County Administrative  
 14 Building  
 15 301 University Ridge  
 16 Greenville, SC  
 17 TAKEN BY: Counsel for the Plaintiff  
 18 REPORTED BY: MINDY VISLAY

18 A. WILLIAM ROBERTS, JR., & ASSOCIATES

19 A. WILLIAM ROBERTS, JR. & ASSOCIATES (800) 743-DEPO  
 Fast, Accurate & Friendly

20  
 21 Charleston, SC Hilton Head, SC Myrtle Beach, SC  
 (843) 722-8414 (843) 785-3263 (843) 839-3376  
 22 Columbia, SC Greenville, SC Charlotte, NC  
 (803) 731-5224 (864) 234-7030 (704) 573-3919  
 23 Asheville, NC  
 24 (828) 785-5699  
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ALSO PRESENT: John Underwood  
Diane Henderson  
A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO  
@w704192.com  
A. Kevin Hunter, II

(INDEX AT REAR OF TRANSCRIPT)

1 properties, assisting with the tax billing, allocation  
2 of taxes, are some of the ones we do.

3 Q. Now, assisting with tax billing, who would  
4 send out the actual tax bill for Spartanburg County?

5 A. I don't know for Spartanburg County.

6 Q. Excuse me. For Greenville County. Thank  
7 you.

8 A. Who -- okay. Can I ask questions if I  
9 don't understand your question?

10 Q. Yes, ma'am. If you don't understand,  
11 please let me --

12 A. Are you talking about the preparation of  
13 the bill or who actually puts it in the mail or --  
14 which phase?

15 Q. Okay. Well, walk me through that process.  
16 You've got a piece of property that's being assessed  
17 for taxes for Greenville County. You're going to send  
18 the owner a bill personally as a person or an entity.  
19 Walk me through the process to prepare and ultimately  
20 mail that bill.

21 A. The whole preparation is more than just  
22 real estate. We assemble the entire tax file. The  
23 auditor has personal property. Real property services  
24 has real estate. All of that has to assemble into a  
25 tax file. Once that is prepared then the tax file

1 is -- well, once it is prepared, the tax file is then  
2 sent to a company vendor called Laser Print that is  
3 our vendor for printing purposes, and they mail the  
4 bills out.

5 Q. And as far as the tax file, is that  
6 compiled by -- what offices participate in the  
7 compilation of information for that file?

8 A. The assessor or real property services with  
9 the real estate. The auditor's office would have the  
10 personal property, like boats and motors, business  
11 personal property, manufacturing personal property.  
12 There are files that are even in the tax collector's  
13 office that would control penalty dates, penalty  
14 amounts. So all of those go into the preparation of  
15 the file.

16 Q. Is this a paper file? Is it an electronic  
17 file? How is it maintained?

18 A. Electronic.

19 Q. And is that A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO  
scheduledepo.com then accessible -- at  
20 least I'm understanding you that each of these three  
21 offices potentially would have information to  
22 contribute to that file so that it can then go to the  
23 vendor for the bill itself to be prepared and mailed.  
24 Then do each of these offices have equal access to  
25 that system in that file?

1           A.    Okay. Preparation of tax bill, the vendor  
2 sends all names through what -- and I'm not going to  
3 be able to recall what the initials are. It's NCOA.  
4 National something of addresses. It's a database.  
5 They are required to send all names through this  
6 database to see if there is a better address. That  
7 gives us a reduced postage if they do that. They send  
8 it through. If they find a better address for that  
9 person than what we have, then the tax bill will be  
10 mailed to that address. But nothing is changed on the  
11 tax file, the online services that we maintain  
12 inhouse. It's just the mailing of the bill goes to  
13 that address.

14           Q.    Is that information that it was mailed to a  
15 different address, that this NCOA system required a  
16 new address, is that communicated or shared back with  
17 your office?

18           A.    Yes. Because they let -- let me answer  
19 that two ways. It is A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO shared back with me because I am  
20 the person that puts it on the tax file and put a  
21 message on the tax file online that there has been an  
22 address change or address update for the bill.

23           Q.    Okay.

24           A.    It is not communicated back to our office  
25 to change our permanent online files that we maintain

1 permanent online files that would reflect that that  
2 new address was determined through the NCOA system?

3 A. Maybe. The tax payer has to do something  
4 in order for us to update it. Okay? We turn right  
5 around and send the taxpayer a postcard saying we're  
6 showing two addresses for you, old address new  
7 address, which one is correct? And it's just  
8 basically a checkoff, please update to this address.  
9 If they send that postcard back to us, then we update  
10 the address. If they pay their tax bill with the stub  
11 that's at the bottom of the original bill, it has that  
12 new address on it, and by them paying their bill with  
13 that stub we will update the address to -- because  
14 it's telling them this is an updated address, they  
15 haven't marked it out, they haven't changed it or  
16 anything, so we will update it once that is paid.

17 Q. Is there -- the postcard that you mentioned  
18 that you mailed out, is that something that y'all keep  
19 a copy of?

A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO  
scheduledepo.com

20 A. No, sir.

21 Q. To your knowledge, is there any statute  
22 that defines to what address a tax bill would be sent?

23 A. Just best known available address.

24 Q. Is there any regulation that you would be  
25 aware of that would prescribe what address should be

1 Q. And, so, then the best address, by your  
2 definition, as I understand it, would be the address  
3 that's derived from NCOA to the extent that there is  
4 an update through that NCOA system?

5 A. No. That's the same question you just  
6 asked, I believe. No, it's not necessarily the best  
7 address. If the taxpayer requests me to update it I  
8 will. That's just -- you know, that's just a database  
9 that said here's another address for these folks,  
10 let's send it there. We get a reduced postage rate  
11 because they said that may be a better -- may be a  
12 better address, don't know.

13 Q. Help me understand though. If it may be a  
14 better address, then you would send out two bills it  
15 would seem, right?

16 A. We're not required to send two bills.

17 Q. I'm going to hand you --

18 (PLF. EXH. 1, 2015 Greenville County

19 Consolidated Tax Notice, A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO  
scheduledepo.com was marked for  
20 identification.)

21 BY MR. GAYLORD:

22 Q. Ms. Adkins, we've marked as Plaintiff's  
23 Exhibit 1 a copy of the tax bill and what I understand  
24 to be perhaps a printout from the NCOA system related  
25 to a property that's the subject of this lawsuit at 1

1 Hilltop Avenue. What I'd ask you is, and really on  
2 this second one, what is the address identified for  
3 this tax notice to which the bill was mailed?

4 A. 117 Odom Circle, Greenville, South Carolina  
5 29611.

6 Q. Then on what is the second page of this  
7 Exhibit 1, could you tell me what that is?

8 A. That's the message that we put on the  
9 inhouse tax system where Laser Print, our vendor,  
10 found this better address -- or another address. I'm  
11 not going to say it's better -- another address for  
12 this person at the 117 Odom Circle. This is just a  
13 comment we put on the tax file to let us know that the  
14 MailCo indicates that the vendor sent it to the 117  
15 Odom Circle.

16 Q. Now, is this -- we discussed earlier these  
17 two systems, the tax file and the permanent online  
18 file.

19 A. Uh-huh. A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO  
scheduledepo.com

20 Q. Is this included in one or both of those  
21 files, this message that's on page 2 of Exhibit 1?

22 A. This is only included in our inhouse files  
23 not on the tax file that -- the original tax file that  
24 creates tax bills.

25 Q. Now, is that information accessible by the

1 A. Yes.

2 Q. What is the address identified for this  
3 parcel on the property card?

4 A. 117 Odom Circle. 29611.

5 Q. And that is the mailing address. What is  
6 the property address itself?

7 A. 117 Odom Circle.

8 Q. This is the property address card for 117  
9 Odom Circle and not Hilltop Avenue; is that correct?

10 A. Yes.

11 Q. And then Exhibit 3. What are we looking at  
12 in Exhibit 3?

13 A. That is a tax file by year for that  
14 property number. The tax map number.

15 Q. Okay. And what -- is this set for a  
16 specific year or -- you said tax file by year for that  
17 tax map number?

18 A. Uh-huh.

19 Q. Is this A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO  
scheduling@depo.com specific information from that tax  
20 file or is it a certain page from that tax file or is  
21 it the entire tax file?

22 A. It's like an index. It's got your  
23 different years 2014 through 2017 on this one  
24 particular page, and, like I said, it's just an index  
25 of name and address per tax year for that property.

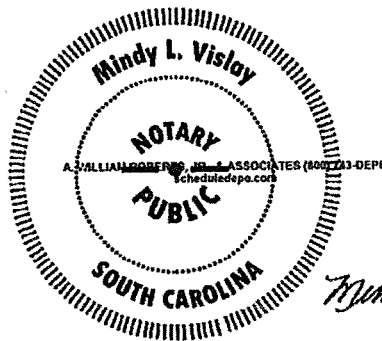
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I, Mindy Vislay, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 25th day of March, 2019 at Greenville, Greenville County, South Carolina.



Mindy Vislay,  
Court Reporter  
My Commission expires  
August 29, 2027

2015

GREENVILLE COUNTY CONSOLIDATED TAX NO. www.greenvillecounty.org

129687

DIST	TOTAL TAX VALUE	RATIO	ASSESSED VALUE	MILLAGE
235	23240	6%	1400	.34970

ACCT #: 1500016698177  
 DATE PRINTED: 11/10/2016  
 MAP #: 0156.00-08-011.00

58541 1 AV 0.388 P:58541 / T:228 / 8:  
 MIGUEL FRANCISCO NICOLAS  
 117 ODOM CIR  
 GREENVILLE SC 29611-2957

**CURRENT YEAR**

TAXABLE MARKET VALUE:	23,240
ASSESSED VALUE:	1,400
TOTAL TAX	\$ 489.58
SANITATION	\$ 150.00
PARKER SEWER REHAB FEE	\$ 75.00
COUNTY STORMWATER	\$ 22.80
CITY STORMWATER	
HOUSTEAD LESS SCHOOL OPERATIONS	
SCHOOL TAX CREDIT SAVINGS	

PAY THIS AMOUNT ON OR BEFORE JANUARY 16, 2016	\$ 737.38
PAY JAN 16, 2016 - FEB 01, 2016 (INCLUDES ADDITIONAL 3% PENALTY)*	\$ 752.06
PAY FEB 02, 2016 - MAR 16, 2016 (INCLUDES ADDITIONAL 7% PENALTY)*	\$ 786.33
PAY AFTER MAR 16, 2016 (INCLUDES ADDITIONAL 6% PENALTY PLUS \$40.00 COST)*	\$ 850.81

MIGUEL FRANCISCO NICOLAS  
 YOUR PROPERTY IS ASSESSED AT 6%  
 IF THIS IS YOUR LEGAL RESIDENCE  
 CONTACT REAL PROPERTY SERVICES  
 AT 864-467-7300.

1 HILLTOP AVE  
 LOT/TRACT/UNIT 8 10

**ALLOCATION OF TAX MONEY**

GREENVILLE SCHOOL	53%	258.86
PARKER SEWER AND FIRE	24%	115.64
GREENVILLE COUNTY	15%	72.66
GREATER GREENVILLE SANITATION	4%	20.72
LIBRARY	2%	11.90
GREENVILLE TECH	2%	7.42
ART MUSEUM	%	1.68
ARENA DEBT SERVICE	%	.70
SANITATION FEE		\$ 150.00
PARKER SEWER REHAB FEE		\$ 75.00
COUNTY STORMWATER FEE		\$ 22.80
<b>TOTAL TAX AND FEES</b>		<b>\$ 737.38</b>



Scan And Pay  
Your Bill Now

Please allow at least 3 weeks for processing

AVOID LINES PAY BY CERTIFIED U.S. MAIL, REGULAR MAIL OR INTERNET

(http://www.greenvillecounty.org/Tax\_Collector/OnlineTax.asp), or use our lobby kiosk or DROP BOX (located outside of office)

SAVE TIME - Please read Both sides of bill before calling.

After Mar 31, 2016 send Payment to:

Greenville County Tax Collector  
 301 University Rldge, Suite 700  
 Greenville, SC 29601

**INFORMATION ONLY** - PAY AMOUNT LISTED ABOVE, NOT BELOW

PRIOR YEAR TAX AMOUNT: \$867.68

**FOR QUICKER PROCESSING, USE ONE CHECK PER PAYMENT STUB**

\* If the Tax Collector's Office is closed on the due date, then the due date is extended until the close of the next business day

KEEP THIS STATEMENT FOR YOUR RECORDS

PLEASE DO NOT STAPLE, CLIP, TAPE, FOLD OR MUTILATE

DETACH AND RETURN THIS STUB WITH PAYMENT

Make all checks payable to Greenville County Tax Collector

IF YOUR ADDRESS IS NOT CORRECT PLEASE MAKE CHANGES IN THE BOX BELOW

1500016698177	737.38
MAP #: 0156.00-08-011.00	752.06
MIGUEL FRANCISCO NICOLAS	786.33
	850.81

MIGUEL FRANCISCO NICOLAS  
 117 ODOM CIR  
 GREENVILLE SC 29611-2957

**TAX COLLECTOR'S COPY**

Greenville County Tax Collector  
 Department 390  
 PO Box 100221  
 Columbia SC 29202-3221

EXHIBIT  
 3-13-19  
 Plaintiff's

1500016698177800000073738000000752060000007863300000085081

000035

ELECTRONICALLY FILED - 2016 Sep 25 12:26 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303713

7/17/18  
2015-000166981 77 001

TAX Address Changes

13:50:00  
TX014R

MAILCO

11/13/2015 12:31:42

From: MIGUEL FRANCISCO NICOLAS  
1 HILLTOP AVE

GREENVILLE

SC 29609

To: 117 ODOM CIR

GREENVILLE

SC 29611 2957

F3=Exit

Rollup/Rolldown

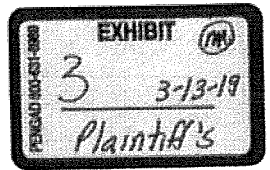
6/15/18 Acct# Alpha Inquiry Screen SCDOR REF ID#:
Rcpt#: Prmt: SID: CBP:
TMS#: Name: Unpaid:

Opt: 2=Change 5=Inq C=Abate R=Route P=Print Title: (B/M/A)
P Printer: TXCOLPRT03 Email: DHENDERSON@GREENVILLECOUNTY.ORG Bal-Due

T Receipt Number Dist Assessmnt Total-Taxes Amount-Paid

Table with columns: Name, Address, Loc, Assesmnt, Total-Taxes, Amount-Paid, Date, and Description. Includes entries for MIGUEL FRANCISCO NICOLAS with various tax assessments and payments.

F=Exit F=Fee Letter M=E-Mail F4=Forms Rollup/Rolldown More... TX012R



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18 ALSO PRESENT: John Underwood  
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20 (INDEX AT REAR OF TRANSCRIPT)  
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jwile@greenvillecounty.org

ALSO PRESENT: John Underwood

(INDEX AT REAR OF TRANSCRIPT)



ELECTRONICALLY FILED - 2019 Sep 25 12:26 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303713

1 case, I'll try to look it up, and I'll do some  
2 research within the system. I'll contact the  
3 assessor's office, for example, and say person X says  
4 they live on this street, why are the notices going to  
5 another street? Something like that.

6 Q. Will you ask if there's been any update  
7 from what we've referred to as the NCOA system that  
8 the bill vendor uses?

9 A. No, sir.

10 Q. Are you aware of the NCOA system?

11 A. Somewhat. Yes, sir.

12 Q. Would you describe for me to the extent  
13 that you are aware of it?

14 A. To my knowledge, the NCOA system is a  
15 system that's coordinated with the U.S. Postal Service  
16 and other I guess addressing entities, and it's a  
17 database that's used which our printer or mail company  
18 uses to verify addresses.

19 Q. The printer, the mail company, the vendor  
20 that prints and mails the tax bills themselves -- is  
21 that correct, that that's who -- that there's a vendor  
22 that prints and names the tax bills themselves?

23 A. Yes, sir.

24 Q. Is that vendor hired by you in your office?

25 A. No. They're part of the county contract,

1 BY MR. GAYLORD:

2 Q. Do you recognize this sheet No. 2 of  
3 Exhibit 1?

4 A. Yes.

5 Q. What is it?

6 A. It's where somebody put in an address  
7 change.

8 Q. Okay. And who would have put in the  
9 address change? Do you know?

10 A. I really don't know.

11 Q. Okay. Would this information be accessible  
12 by your office?

13 A. Yes, sir.

14 Q. Do you give it any weight?

15 A. No, sir, not really, because I generally  
16 wouldn't have a reason to look at it.

17 Q. And why is that?

18 A. The bill has generally gone out. It's  
19 already gone out, so it wouldn't matter to me. And a  
20 lot of people, they change their addresses all the  
21 time. And I accept the addresses either from the  
22 person or the assessor. So if their records don't  
23 reflect a different address I pay no attention to it.

24 Q. The tax bill that goes out, I mean,  
25 ultimately, in my reading of it, it seems to go out

1 lawsuit?

2 A. Yes, sir.

3 Q. And what address was used for the taxpayer  
4 in both of these notices?

5 A. 117 Odom Circle, Greenville, South  
6 Carolina.

7 Q. Okay. Dr. Hunter, can you reconcile for me  
8 my confusion as to why your office would be engaging  
9 in a tax sale and using one address for a taxpayer and  
10 at the same time concurrently sending him tax notices  
11 to another address?

12 A. Could I reconcile it? The only thing I  
13 can -- I could not reconcile that in your mind. I  
14 could just -- the only thing I could tell you is that  
15 that's the address that the mailing company found. We  
16 still submitted the Hilltop Circle -- or Hilltop  
17 Avenue address, and the mailing company modified it to  
18 the 117 Odom Drive.

19 Q. Do you have any agreement with the mail  
20 company about what address they should use?

21 A. Not to my knowledge. No, sir. I don't.  
22 My office does not.

23 Q. As it relates specifically to the mailing  
24 of a tax notice, the tax bill, if you will --

25 A. Yes, sir.

1 me.

2 Q. And are you aware from having looked at the  
3 file whether Mr. Francisco Nicolas Miguel ever  
4 provided your office with a notice of change of  
5 address?

6 A. No, sir. No.

7 Q. All right, sir.

8 A. I don't know this person.

9 Q. All right, sir. Thank you. That's all the  
10 questions I have.

11 MR. WILE: I don't have any questions.

12 FURTHER EXAMINATION

13 BY MR. GAYLORD:

14 Q. Dr. Hunter, a couple follow-ups.

15 A. Yes, sir.

16 Q. As we discussed earlier, you were present  
17 during Ms. Henderson's ~~testimony~~, her deposition. Did  
18 you hear her express her concerns about the signature  
19 on this card and whether the property should have been  
20 posted based upon the form of that card having been  
21 returned?

22 A. Yes, sir, I heard it.

23 Q. Do you share that concern with her?

24 A. Did I?

25 Q. Do you share that concern with her?

1 A. Yeah. Yeah. I do.

2 Q. Okay.

3 MR. GAYLORD: No other questions.

4 (The witness, after having been advised of  
5 his right to read and sign this transcript, waives  
6 that right.)

7 (Deposition was concluded at 12:15 p.m.)  
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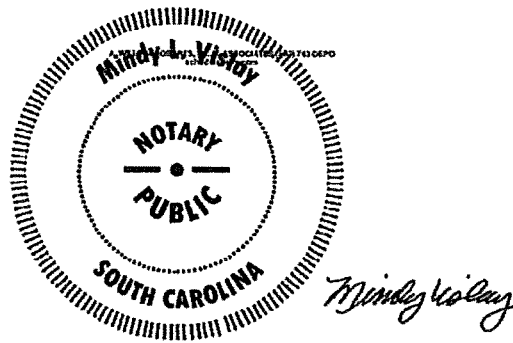
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CERTIFICATE OF REPORTER

I, Mindy Vislay, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 25th day of March, 2019 at Greenville, Greenville County, South Carolina.



Mindy Vislay,  
Court Reporter  
My Commission expires  
August 29, 2027



7/17/18  
2016 000170052 77 001

TAX Address Changes

13:50:16  
TX014R

MAILCO 11/08/2016 18:00:06  
From: MIGUEL FRANCISCO NICOLAS  
1 HILLTOP AVE  
To: 117 ODOM CIR

GREENVILLE  
GREENVILLE

SC 29609  
SC 29611 2957

F3=Exit

Rollup/Rolldown

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7/17/18

TAX Address Changes

13:50:35

017:000169617 77 001

TX014R

MAILCO

10/20/2017 14:24:53

From:

MIGUEL FRANCISCO NICOLAS  
1 HILLTOP AVE

GREENVILLE

SC 29609

To:

117 ODOM CIR

GREENVILLE

SC 29611 2957

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F3=Exit

Rollup/Rolldown

ELECTRONICALLY FILED -- 2019 Sep 25 12:26 PM -- GREENVILLE -- COMMON PLEAS -- CASE#2018CP2303713

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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

FRANCISCO NICOLAS MIGUEL,

Plaintiff,

vs.

CASE NO. 2018-CP-23-03713

PALMETTO ASSET INVESTMENTS, LLC, GABRIEL ANGEL  
PRESTEGUI GOMEZ, and A. KEVIN HUNTER, II,  
GREENVILLE COUNTY TAX COLLECTOR,

Defendant.

DEPOSITION OF: DIANE A. HENDERSON

DATE: March 13, 2019

TIME: 11:04 a.m.

LOCATION: Greenville County Administration  
Building  
301 University Ridge  
Greenville, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: MINDY VISLAY

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Charlotte, NC (704) 573-3919

Asheville, NC (828) 785-5699

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APPEARANCES OF COUNSEL:

ATTORNEYS FOR PLAINTIFF  
FRANCISCO NICOLAS MIGUEL:

HYDE LAW FIRM, P.A.  
BY: RYAN E. GAYLORD  
753 East Main Street  
Suite ONE  
Spartanburg, South Carolina 29302  
864-804-6330  
ryan@maxhydelawfirm.com

ATTORNEYS FOR DEFENDANT  
PALMETTO ASSET INVESTMENTS, LLC:

LAW OFFICE OF C. RICHARD STEWART  
BY: C. RICHARD STEWART  
11 Whitsett Street  
Greenville, South Carolina 29601  
864-235-2019  
dstewart@sttorneyrichardstewart.com

ATTORNEYS FOR THE DEFENDANT  
A. KEVIN HUNTER, II, Ph.D., GREENVILLE  
COUNTY TAX COLLECTOR:

COUNTY OF GREENVILLE  
BY: JEFFREY D. WILE  
301 University Ridge  
Suite 2400  
Greenville, South Carolina 29601  
864-467-7110  
jwile@greenvillecounty.org

ALSO PRESENT: ~~A. William Roberts, Jr., Ph.D., Greenville, SC  
awilliamroberts@scheduledepo.com~~  
A. Kevin Hunter, II, Ph.D.

(INDEX AT REAR OF TRANSCRIPT)

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1 office have any transactions or do y'all communicate  
2 in any way with NCOA?

3 A. No, sir, we do not.

4 Q. And then I heard the name MailCo.

5 A. I think --

6 Q. What is MailCo?

7 A. -- that's the same thing.

8 Q. You think MailCo is the same thing as NCOA?

9 A. Yes, sir, I think so.

10 Q. All right. Okay. Thank you. I don't have  
11 any other questions.

12 MR. WILE: I don't have any questions.

13 FURTHER EXAMINATION

14 BY MR. GAYLORD:

15 Q. I have a couple follow-up questions  
16 regarding this Exhibit 1 of Defendant Palmetto.

17 As Mr. Stewart noted, the tax deed reflected that  
18 this notice was illegible. What steps does your  
19 office undertake to © WILLIAM ROBERTS, JR. & ASSOCIATES (800) 743-DEPO  
17 scheduledepo.com verify a signature of a --  
20 a signature on a green card?

21 A. We can't confirm a signature on the green  
22 card. There's no way for us to do that. In this  
23 case, that was illegible. It probably should have  
24 been posted.

25 Q. Okay. So then my understanding then of

18  
1 your testimony, and please correct me if I'm wrong, is  
2 that this does not give you any -- this does not give  
3 you confidence that this notice was received by Miguel  
4 Francisco Nicolas?

5 A. Well, it is -- we don't know who that is,  
6 but, no, it does not.

7 Q. Okay. Thank you, ma'am.

8 A. You're welcome.

9 (The witness, after having been advised of  
10 her right to read and sign this transcript, waives  
11 that right.)

12 (Deposition was concluded at 11:29 a.m.)  
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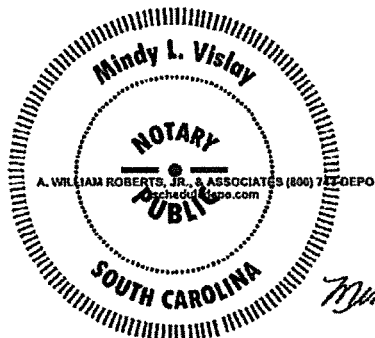
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CERTIFICATE OF REPORTER

I, Mindy Vislay, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 25th day of March, 2019 at Greenville, Greenville County, South Carolina.



*Mindy Vislay*

\_\_\_\_\_  
Mindy Vislay,  
Court Reporter  
My Commission expires  
August 29, 2027



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
Francisco Nicolas Miguel, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Palmetto Asset Investments, LLC, Gabriel )  
Angel Prestegui Gomez, and A. Kevin )  
Hunter, II, Greenville County Tax )  
Collector, )  
 )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

Civil Action No. 2018-CP-23-03713

**RESPONSES OF DEFENDANT  
A. KEVIN HUNTER, II,  
GREENVILLE COUNTY TAX  
COLLECTOR, TO PLAINTIFF'S FIRST  
SET OF REQUESTS FOR PRODUCTION  
OF DOCUMENTS**

**TO: RYAN E. GAYLORD, ATTORNEY FOR FRANCISCO NICOLAS MIGUEL**

**YOU WILL PLEASE TAKE NOTICE** that Defendant A. Kevin Hunter, II, Greenville County Tax Collector ("Tax Collector"), pursuant to Rule 34 of the South Carolina Rules of Civil Procedure ("SCRCP"), hereby responds to Plaintiff's First Set of Requests for Production of Documents as follows:

Defendant Tax Collector objects to the Requests for Production to the extent they purport to require responses beyond those required by the SCRCP. Notwithstanding this objection and any other objections available to it now or at trial, and without waiving them, Defendant Tax Collector responds as follows:

**Request No. 1:**

All documents that Defendant proposes to introduce into evidence at trial or use at trial for any purpose.

**Response:**

Enclosed.

**Request No. 2:**

All photographs, plats, sketches or other prepared documents in Defendant's possession or control which relate in any way to its claims.

**Response:**

See response to Request No. 1.

**Request No. 3:**

All documents identified in response to the Interrogatories provided herewith or which Defendant used to formulate said responses.

**Response:**

See response to Request No. 1.

**Request No. 4:**

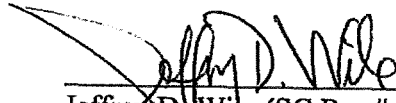
A copy of the complete tax sale file maintained with regard to the Delinquent Property Tax Sale conducted by Defendant in October, 2016 regarding the property that is the subject of this action.

**Response:**

Included with response to Request No. 1.

**[Signature on Following Page]**

Respectfully submitted,



Jeffrey D. Wile (SC Bar # 6102)  
Assistant County Attorney  
301 University Ridge, Suite 2400  
Greenville, SC 29601  
(864) 467-7110  
[jwile@greenvillecounty.org](mailto:jwile@greenvillecounty.org)

**Attorney for Defendant A. Kevin Hunter, II,  
Greenville County Tax Collector**

Greenville, South Carolina

September 6, 2018

**SENDER INFORMATION SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

**MIGUEL FRANCISCO NICOLAS**  
**1 HILLTOP AVE**  
**GREENVILLE SC 29609-0000**  
**MAP NUMBER:0156,00-08-011,00**  
**ITEM:16804**

2. Article Number

92154969009997901726515166

PS Form 3811, April 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 X- *[Signature]*  Addressee  
 B. Received by (Printed Name)  Date of Delivery  
 C. *[Signature]*  
 D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (Over \$500)
- Priority Mail Express
- Registered Mail
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation
- Signature Confirmation Restricted Delivery

Domestic Return Receipt



OFFICE OF TAX COLLECTOR

DIANE HENDERSON  
ASSISTANT TAX COLLECTOR  
dhenderson@greenvillecounty.org  
864-467-7441

OWNER LETTER

9-15-17  
ITEM 16804  
MIGUEL FRANCISCO NICOLAS  
1 HILLTOP AVE  
GREENVILLE SC 29609

PREVIOUS OWNER U R HOME TRUST

MAP # 0156000801100

DESCRIPTON 1 HILLTOP AVE

THIS PROPERTY WAS SOLD FOR UNPAID 2015 TAXES IN OUR OCTOBER 24 2016  
TAX SALE.

OUR RECORD INDICATE YOU CURRENTLY OWN SAID PROPERTY , AS RECORDED IN  
THE R. O. D. OFFICE FOR GREENVILLE COUNTY IN  
DDBK DDPG DATE  
2430 4393 20130903

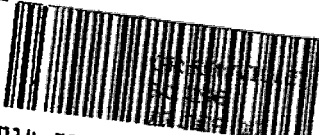
THE AMOUNT TO REDEEM IS \$ 2135.81

AFTER OCTOBER 24 2017, YOU WILL NO LONGER HAVE THE OPTION OF  
REDEEMING THIS PROPERTY AS IT WILL BE DEEDED TO THE SUCCESSFUL BIDDER  
AT THE TAX SALE.

FOR FUTHER INFORMATION CONTACT:

KIM 864-467-7427 - [ktaylor@greenvillecounty.org](mailto:ktaylor@greenvillecounty.org)  
MARY 864-467-7428 - [mbradberry@greenvillecounty.org](mailto:mbradberry@greenvillecounty.org)

GREENVILLE COUNTY TAX COLLECTOR  
301 UNIVERSITY RIDGE #700  
GREENVILLE SC 29601  
ATT D HENDERSON



7014 0150 0001 5622 1775

9/26

OWNER LETTER

9-16-17  
ITEM 16804  
MIGUEL FRANCISCO NICOLAS  
1 HILLTOP AVE  
GREENVILLE

SC 29609



29601  
29609-413

KEY RETURN

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RETURN TO SENDER  
UNCLAIMED  
UNABLE TO FORWARD  
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SC: 29601364499 \*2954-04881-15-41

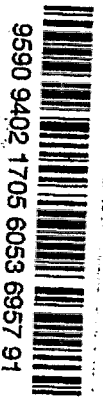
090000

THE TIME DELIVERER

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. ITEM 16804  
 MIGUEL FRANCISCC NICOLAS  
 1 HILLTOP AVE  
 GREENVILLE SC 29609



2. Article Number (Transfer from service label)

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

- A. Signature  X  Agent
- B. Received by (Printed Name)  Addressee
- C. Date of Delivery
- D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type
- Adult Signature Restricted Delivery
  - Adult Signature Restricted Delivery Certified Mail®
  - Certified Mail Restricted Delivery
  - Collect on Delivery Restricted Delivery
  - Insured Mail Restricted Delivery (over \$500)
  - Priority Mail Express®
  - Registered Mail™
  - Registered Mail Restricted Delivery
  - Return Receipt for Merchandise
  - Signature Confirmation™
  - Signature Confirmation Restricted Delivery

Domestic Return Receipt

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
  
Francisco Nicolas Miguel, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Palmetto Asset Investments, LLC, )  
Gabriel Angel Prestegui Gomez, and )  
A. Kevin Hunter, II, Greenville County Tax )  
Collector, )  
 )  
Defendants. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL DISTRICT

**AFFIDAVIT**

**C.A. NO: 2018-CP-23-03713**

NOW COMES, Plaintiff, Francisco Nicolas Miguel, and being duly sworn states as follows:

1. I am above the age of eighteen (18) years, and competent to give this Affidavit.
2. In or about October, 2014 I moved to 117 Odom Circle, Greenville, SC 29611-2957, and have continued to reside at that address since that time.
3. I received no notice relating to the 2016 tax sale for 1 Hilltop Avenue, Greenville, South Carolina, prior to the expiration of the one-year redemption period.

Francisco Nicolas Miguel  
Francisco Nicolas Miguel

STATE OF SOUTH CAROLINA  
SPARTANBURG COUNTY

Sworn and subscribed before me this 18<sup>th</sup> day of September, 2019.

Mary H. Willis  
Notary Public  
Commission Expires: 8-29-2027

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Case Number: 2018- CP - 23-03713
COUNTY OF GREENVILLE	)	
	)	
Francisco Nicolas Miguel,	)	
Plaintiff,	)	
	)	
vs.	)	Memorandum
	)	
Palmetto Asset Investments, LLC, et al	)	
	)	
<u>    Defendants.</u>	)	

Defendants Palmetto Asset Investments, LLC and A. Kevin Hunter, II, Greenville County Tax Collector, jointly submit the following memorandum in opposition to the Plaintiff's Motion for Summary Judgment.

Plaintiff's motion is directed toward the County of Greenville's sale of the property at 1 Hilltop Avenue, Greenville, South Carolina (hereafter, the subject property) in November, 2016, for unpaid property taxes for the year 2015. Plaintiff listed his address as 1 Hilltop Avenue on the deed by which he received this property on August 29, 2013 (Exhibit 1) but alleges that he moved to a new address on or about October, 2014. Although he claims in his pleadings that he notified the County of his change of address, there is no evidence that this occurred.

Debbie Adkins, the director of Real Property Services for Greenville County, testified that the 2015 tax notice (Exhibit 2) was sent to Plaintiff at an address (117 Odom Circle, Greenville, South Carolina) which was identified by a third-party vendor which the County employs to mail out the tax notices. The vendor also sent a postcard to Plaintiff asking him to confirm whether or not his address had changed. An example of what this postcard looks like is attached as Exhibit 3. Plaintiff did not reply to this request for address verification. The County, which relies on the

property owner to notify it of an address change, thus had no actual knowledge that Plaintiff's address had changed. (Adkins depo., p. 11, ll. 3-16; Adkins affidavit)

Although Plaintiff received the tax notice, he did not pay the tax. The Tax Collector's office sent a delinquent tax notice to the address of which it had actual knowledge (1 Hilltop Avenue), by certified mail, return receipt requested, restricted delivery; the return receipt was signed for and was received by the County (Exhibit 4).

The County thus complied with the requirements of Section 12 – 51 – 40 (a) and (b), SC Code. This statute requires that the delinquent notice be sent certified, return receipt requested, restricted to the best address available, which is defined as “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... The return receipt of the ‘certified mail’ notice is equivalent to ‘levying by distress’.”

The County proceeded to sell the subject property at tax sale on October 24, 2016. The notice of right of redemption was sent, by certified mail, return receipt requested – restricted delivery to the 1 Hilltop Avenue address on September 15, 2017 (Exhibit 5). The letter was returned “Unclaimed Unable to Forward” (Exhibit 6).

The County thus complied with the requirements of Section 12 – 51 – 120, SC Code, which sets out the requirements for mailing the notice of right of redemption. This statute

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specifically states that the return of the notice of right of redemption sent certified mail "undelivered" is not grounds for a tax title to be withheld or to be found defective and ordered set aside or canceled of record.

In addition, the 2016 and 2017 tax notices (Exhibits 7 and 8), which were also sent to the 117 Odom Circle address, contained the following language:

**"On (11/04/2016) (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."**

The controlling case is Smith v Barr, 375 SC 157, 650 SE 2d 486 (SC App., 2007). In that case, the Smiths were the defaulting taxpayers. Although they had one address at the time they purchased the subject property, they subsequently moved and Mr. Smith testified that he sent a letter to the Greenville County Tax Office, informing it of his new address and asking that all further tax notices be sent to the new address. The County failed to update its records and sent the tax notices to the Smiths' previous address. There was also testimony that the County failed to post a delinquent tax sale notice on the subject property. The Smiths failed to pay their property taxes and their property was sold at the tax sale.

The Master – in – Equity's decision voiding the tax sale, which was upheld by the appellate court, focused on the failure to properly post the property. However, the Smith case is distinguishable from the present case in several ways. First, there is no evidence, by testimony or otherwise, that Plaintiff Miguel ever informed Greenville County of his change of address. Even though the vendor who mails out the tax notices on behalf of the County was aware that Plaintiff's address may have changed, they performed their due diligence by sending Plaintiff a postcard asking for verification of his address, to which Plaintiff did not reply. Also, according

000064

to Debbie Adkins' affidavit, the County website includes an application through which property owners can inform the County of a change of address. Plaintiff did not inform the County of the change of address through any of these avenues. Absent notification by the Plaintiff, the County was under no obligation to change the official address to which they sent the delinquent tax notices.

Second, the present case is distinguishable from Smith because, in the present case, the County received back the signed return receipt to the notice of delinquent taxes which was sent in June, 2016. This notice was properly sent certified mail, return receipt requested – restricted delivery. Although the signature on the card is illegible, the County is not required to verify the signature. The County's receipt of this return receipt constitutes "levying by distress", making posting of the property unnecessary.

For the foregoing reasons, Plaintiff's Motion for Summary Judgment should be denied.

Respectfully Submitted:

s/C. Richard Stewart (Bar # 5346)  
Attorney for Palmetto Asset Investments, LLC  
11 Whitsett St.  
Greenville, SC 29601  
(864) 235 – 2019  
[dstewart@attorneyrichardstewart.com](mailto:dstewart@attorneyrichardstewart.com)

s/Jeffrey D. Wile (Bar #6102)  
Assistant Greenville County Attorney  
301 University Ridge, Suite 2400  
Greenville, SC 29601  
(864) 467 – 7102  
[jwile@greenvillecounty.org](mailto:jwile@greenvillecounty.org)

000065

**Exhibit 1**  
Recording Requested By and  
When Recorded Mail to:  
Granville Adams  
1 HILLTOP AVE  
GREENVILLE, SC 29609



2013074389 QCD  
2 PGS  
Book DE 2430 Page 4393-4394  
September 03, 2013 10 56 18 AM Cons \$1 00  
Rec \$10 00 Cnty Tax EXEMPT State Tax EXEMPT

**FILED IN GREENVILLE COUNTY, SC**  
Recording Time, Book & Page

**SOUTH CAROLINA QUITCLAIM DEED ( Title not Examined)**

COUNTY: GREENVILLE  
CITY: GREENVILLE

TAX MAP NUMBER: 0156000801100  
DATE: AUGUST 29, 2013

Grantor

Grantee

RALPH E. SCOPA, JR  
AS TRUSTEE OF THE U. R. HOME TRUST

FRANCISCO NICOLAS MIGUEL

The designation Grantor and Grantee as used herein shall include the named parties and their heirs, successors and assigns and shall include singular, plural, masculine, feminine or neuter as required by context

KNOW ALL MEN BY THESE PRESENTS, that Grantor, for and in consideration of the sum of ONE and 0/100 Dollars (\$1.00) LOVE AND AFFECTION, the receipt and sufficiency of which is hereby acknowledged, to Grantor paid by Grantee, does hereby remise, release and forever quitclaim unto Grantee all of Grantor's right, title and interest, if any, in and to the real estate (the "Premises") described as follows:

ALL THAT PIECE, PARCEL, OR LOT OF LAND, SITUATE, LYING AND BEING IN GREENVILLE COUNTY, STATE OF SOUTH CAROLINA, BEING KNOWN AND DESIGNATED AS LOTS 9 AND 10, BEING MORE FULLY DESCRIBED IN PLAT BOOK G, PAGE 139 RECORDED IN THE RMC OFFICE FOR GREENVILLE COUNTY. REFERENCE IS HEREBY MADE TO SAID PLAT FOR A MORE COMPLETE DESCRIPTION OF METES AND BOUNDS THEREOF.

THIS BEING THE SAME PROPERTY CONVEYED TO RALPH E. SCOPA, JR AS TRUSTEE OF THE UR HOME TRUST BY DEED OF DOROTHY E. MCCALL , DATED 12/7/12, RECORDED 12/12/12 IN BOOK 2416, PAGE 1349 IN THE RMC OFFICE FOR GREENVILLE COUNTY.

TMS# 0156000801100

TO HAVE AND TO HOLD unto Grantee and Grantee's heirs, successors and assigns forever, the Premises and the appurtenances thereto belonging or in anywise appertaining, and all the estate, right, title, interest and claim whatsoever of Grantor, if any

000066

29

IN WITNESS WHEREOF, Grantor has caused this Quitclaim Deed to be executed under seal this 29 day of August, 2013  
SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

[Signature]  
Witness #1

[Signature]  
Witness #2

GRANTOR:  
Signature of individual Grantor

[Signature] (SEAL)  
RALPH E. SCOPA, JR AS TRUSTEE OF THE UR HOME TRUST

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

Acknowledgment for Individual Grantor

I, a Notary Public for South Carolina, do hereby certify that THE ABOVE SIGNED Grantor, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 29 day of August, 2013

[Signature]  
Notary Public for South Carolina

My Commission Expires:  
1/4/20

FILED FOR RECORD IN GREENVILLE COUNTY, SC ROD  
2013074389 Book:DE 2430 Page:4393-4394  
September 03, 2013 10 56 18 AM

Timothy J. Henney

000067

2015

GREENVILLE COUNTY CONSOLIDATED TAX NO. www.greenvillecounty.org

129667

Exhibit 2

DIST	TOTAL TAX VALUE	RATIO	ASSESSED VALUE	MILLAGE
235	23240	6%	1400	.34970

ACCT #: 1500016698177  
 DATE PRINTED: 11/10/2015  
 MAP #: 0156.00-08-011.00



58541 1 AV 0.388 P:58541 / T:228 / S:  
 77 MIGUEL FRANCISCO NICOLAS  
 117 ODOM CIR  
 GREENVILLE SC 29611-2957



CURRENT YEAR	
TAXABLE MARKET VALUE:	23,240
ASSESSED VALUE:	1,400
TOTAL TAX	\$ 489.58
SANITATION	\$ 150.00
PARKER SEWER REHAB FEE	\$ 75.00
COUNTY STORMWATER	\$ 22.80
CITY STORMWATER	
HOMESTEAD LESS SCHOOL OPERATIONS	
SCHOOL TAX CREDIT SAVINGS	
<b>PAY THIS AMOUNT ON OR BEFORE JANUARY 15, 2016*</b>	<b>\$ 737.38</b>
PAY JAN 16, 2016 - FEB 01, 2016 (INCLUDES ADDITIONAL 3% PENALTY)*	\$ 752.06
PAY FEB 02, 2016 - MAR 15, 2016 (INCLUDES ADDITIONAL 7% PENALTY)*	\$ 786.33
PAY AFTER MAR 16, 2016 (INCLUDES ADDITIONAL 5% PENALTY PLUS \$40.00 COST)*	\$ 850.81

ALLOCATION OF TAX MONEY		
GREENVILLE SCHOOL	53%	258.86
PARKER SEWER AND FIRE	24%	115.64
GREENVILLE COUNTY	15%	72.66
GREATER GREENVILLE SANITATION	4%	20.72
LIBRARY	2%	11.90
GREENVILLE TECH	2%	7.42
ART MUSEUM	%	1.68
ARENA DEBT SERVICE	%	.70
SANITATION FEE		\$ 150.00
PARKER SEWER REHAB FEE		\$ 75.00
COUNTY STORMWATER FEE		\$ 22.80
<b>TOTAL TAX AND FEES</b>		<b>\$ 737.38</b>



Scan And Pay Your Bill Now

MIGUEL FRANCISCO NICOLAS  
 YOUR PROPERTY IS ASSESSED AT 6%  
 IF THIS IS YOUR LEGAL RESIDENCE  
 CONTACT REAL PROPERTY SERVICES  
 AT 864-467-7300.

1 HILLTOP AVE  
 LOT/TRACT/UNIT 9 10

Please allow at least 3 weeks for processing

AVOID LINES PAY BY CERTIFIED U.S. MAIL, REGULAR MAIL OR INTERNET

(http://www.greenvillecounty.org/Tax\_Collector/OnlineTax.asp), or use our lobby kiosk or DROP BOX (located outside of office)

SAVE TIME - Please read Both sides of bill before calling.

After Mar 31, 2016 send Payment to:  
 Greenville County Tax Collector  
 301 University Ridge, Suite 700  
 Greenville, SC 29601

**INFORMATION ONLY** - PAY AMOUNT LISTED ABOVE, NOT BELOW  
 PRIOR YEAR TAX AMOUNT: \$867.68

FOR QUICKER PROCESSING, USE ONE CHECK PER PAYMENT STUB

\* If the Tax Collector's Office is closed on the due date, then the due date is extended until the close of the next business day

KEEP THIS STATEMENT FOR YOUR RECORDS

PLEASE DO NOT STAPLE, CLIP, TAPE, FOLD OR MUTILATE

Make all checks payable to Greenville County Tax Collector

1500016698177 737.38  
 MAP #: 0156.00-08-011.00 752.06  
 MIGUEL FRANCISCO NICOLAS 786.33  
 850.81

IF YOUR ADDRESS IS NOT CORRECT PLEASE MAKE CHANGES IN THE BOX BELOW

MIGUEL FRANCISCO NICOLAS  
 117 ODOM CIR  
 GREENVILLE SC 29611-2957

**TAX COLLECTOR'S COPY**

Greenville County Tax Collector  
 Department 390  
 PO Box 100221  
 Columbia SC 29202-3221

000068

1500016698177800000073738000000752060000007863300000085081

ELECTRONICALLY FILED - 2019 Nov 07 9:45 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303713

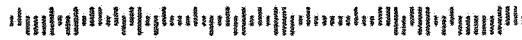
GREENSC-NCOA REAL



Exhibit 3

REAL PROPERTY SERVICES  
301 University Ridge, Suite 1000  
Greenville SC 29601

PRESORTED  
FIRST-CLASS MAIL  
US POSTAGE  
PAID  
LPP  
29292



\*\*\*\*\*AUTO\*\*5-DIGIT 29681  
MOORE STEVEN W  
100 ACACIA DR  
SIMPSONVILLE SC 29681-1973

2516  
11

Current County Records Indicate Following address:

MOORE STEVEN W  
206 CATALAN ST  
GREENVILLE SC 29607-0000  
1500017104310

New Change of Address:

MOORE STEVEN W  
100 ACACIA DR  
SIMPSONVILLE SC 29681-1973

I \_\_\_\_\_ here by allow Greenville County to change mailing address in the system

\_\_\_\_\_  
Sign

\_\_\_\_\_  
Date

ELECTRONICALLY FILED - 2019 Nov 07 9:45 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303713

000069

**REAL PROPERTY SERVICES**

301 University Ridge, Suite 1000  
Greenville SC 29601

Greenville County records show your current mailing address to be the following:

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:

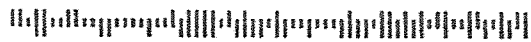
Greenville County is proactively trying to make sure your upcoming tax bill is received at the correct address. Please sign as indicated below, giving us permission to make this change in our system.

Thank you,  
Greenville County Tax Collector

MOORE STEVEN W  
100 ACACIA DR  
SIMPSONVILLE SC 29681-1973



PLACE  
STAMP  
HERE



**REAL PROPERTY SERVICES**  
301 UNIVERSITY RDG STE 1000  
GREENVILLE SC 29601-3659

06937 #

000070

Exhibit 4

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>Complete items 1, 2, and 3. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece or on the front if space permits.</p> <p>1. Article Addressed to:</p> <p><b>MIGUEL FRANCISCO NICOLAS</b>  <b>1 HILLTOP AVE</b>  <b>GREENVILLE SC 29609-0000</b>  <b>MAP NUMBER: 01566-00-00-110-00</b>  <b>ITEM: 16804</b></p> <p>2. Article Number  <b>92154969009997901726515166</b>  PS Form 3811, April 2015 PSN 7530-02-000-9053</p>		<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/>  <b>X</b> <i>Miguel</i> <input type="checkbox"/> Addressee <input type="checkbox"/></p> <p>B. Received by (Printed Name) <input type="checkbox"/> Date of Delivery <b>6-11-16</b></p> <p>C. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>D. If YES, enter delivery address below: <input type="checkbox"/></p>	
<p>3. Service Type</p> <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail <input checked="" type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (Over \$500) <input type="checkbox"/> Priority Mail Express <input type="checkbox"/> Registered Mail <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation <input type="checkbox"/> Signature Confirmation Restricted Delivery <input type="checkbox"/> Domestic Return Receipt			



OFFICE OF TAX COLLECTOR  
DIANE HENDERSON  
ASSISTANT TAX COLLECTOR  
dhenderson@greenvillecounty.org  
864-467-7441

Exhibit 5

OWNER LETTER

9-15-17  
ITEM 16804  
MIGUEL FRANCISCO NICOLAS  
1 HILLTOP AVE  
GREENVILLE SC 29609

PREVIOUS OWNER U R HOME TRUST

MAP # 0156000801100

DESCRIPTON 1 HILLTOP AVE

THIS PROPERTY WAS SOLD FOR UNPAID 2015 TAXES IN OUR OCTOBER 24 2016 TAX SALE.

OUR RECORD INDICATE YOU CURRENTLY OWN SAID PROPERTY , AS RECORDED IN THE R. O. D. OFFICE FOR GREENVILLE COUNTY IN  
DDBK DDPG DATE  
2430 4393 20130903

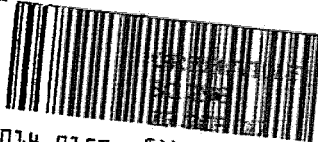
THE AMOUNT TO REDEEM IS \$ 2135.81

AFTER OCTOBER 24 2017, YOU WILL NO LONGER HAVE THE OPTION OF REDEEMING THIS PROPERTY AS IT WILL BE DEEDED TO THE SUCCESSFUL BIDDER AT THE TAX SALE.

FOR FUTHER INFORMATION CONTACT:  
KIM 864-467-7427 - [ktaylor@greenvillecounty.org](mailto:ktaylor@greenvillecounty.org)  
MARY 864-467-7428 - [mbradberry@greenvillecountv.org](mailto:mbradberry@greenvillecountv.org)

Exhibit 6

GREENVILLE COUNTY TAX COLLECTOR  
301 UNIVERSITY RIDGE #700  
GREENVILLE SC 29601  
ATT D HENDERSON



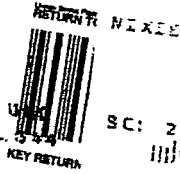
7014 0150 0001 \*5622 1775

9160

OWNER LETTER

9-15-17  
ITEM 16804  
MIGUEL FRANCISCO NICOLAS  
1 HILLTOP AVE  
GREENVILLE

SC 29609



29601  
29609-413

KEY RETURN

296 DE 1  
RETURN TO SENDER  
UNCLAIMED  
UNABLE TO FORWARD

0916/09/17

SC: 29601364499 \*2954-04881-15-41

**THE TIME DELIVERER**

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. ITEM #6804  
 MIGUEL FRANCISCC NICOLAS  
 1 HILLTOP AVE  
 GREENVILLE SC 29609

9590 9402 1705 6053 6957 91



2. Article Number (Transfer from service label)

**COMPLETE THIS SECTION ON DELIVERY**

- A. Signature  Agent
- X**  Addressee
- B. Received by (Printed Name) C. Date of Delivery
- D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type
- Adult Signature
  - Adult Signature Restricted Delivery
  - Certified Mail®
  - Certified Mail Restricted Delivery
  - Collect on Delivery
  - Collect on Delivery Restricted Delivery
  - Insured Mail
  - Insured Mail Restricted Delivery (over \$500)
  - Priority Mail Express®
  - Registered Mail™
  - Registered Mail Restricted Delivery
  - Return Receipt for Merchandise
  - Signature Confirmation™
  - Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

000074



STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS

Francisco Nicolas Miguel, )  
Plaintiff, )  
-vs- )  
Palmetto Asset Investments, )  
LLC, )  
Defendants. )

---

Case No. 2018-CP-23-03713

TRANSCRIPT OF RECORD

November 14, 2019

BEFORE: THE HONORABLE CHARLES B. SIMMONS, JR.

APPEARANCES:

Ryan Gaylord, Esquire  
Attorney for the Plaintiff

Dick Stewart, Esquire  
Attorney for the Defendant

Jeff Wile, Esquire  
Attorney for Greenville County

Danette P. Hanks, CCR  
Court Reporter

000076

1 THE COURT: All right, gentlemen, appreciate y'all  
2 being here bright and early and ready to go. This is 2018-3713;  
3 Miguel versus Palmetto Asset. Here today on Plaintiff's Motion  
4 for Summary Judgment. And I obviously understand that under the  
5 rules Plaintiff has the burden of proof.

6 Let me ask right off the bat, why is it this is a factual  
7 issue because there's an Affidavit from Diane Henderson saying  
8 that there's no record of any kind of address change, and  
9 they're saying they complied with the statute. So let me hear  
10 from you.

11 MR. GAYLORD: Yes, Your Honor. Your Honor, Ryan  
12 Gaylord from Spartanburg on behalf of the Plaintiff. And I have  
13 Mr. Francisco Nicolas Miguel with me today.

14 Your Honor, in answer to your question, I'm going to sort of  
15 set the stage with what occurred here with ---

16 THE COURT: I'm pretty familiar with the stage, so you  
17 can give me the short version of the stage.

18 MR. GAYLORD: All right. That's fine. Your Honor, I  
19 tell you, one, it's really not a factual issue because there's  
20 really not a factual dispute. The question is ultimately did,  
21 one, did the county adequately and competently take possession of  
22 the property as defined by the statute? Two, did they use the  
23 best address available as defined by the statute?

24 Now, whether or not there was a response to that mailing as  
25 identified in Ms. Atkins' Affidavit, I think that's really an

1 irrelevant factor. The reason I would say that is this. As you  
2 look through the statute, there's no method by which -- there's  
3 no method prescribed for providing notice to a tax collector. It  
4 simply says, to an address of which the tax collector has actual  
5 knowledge.

6 Now, Greenville County had received knowledge of this  
7 updated address. The updated address being the 117 Odom Circle,  
8 through its agent. They had gone through the process of  
9 inserting that information on their records. Those records were  
10 available to the real property services department, as well as  
11 the tax collector. And the tax collector simply chose not to  
12 review those records.

13 Now, when the tax collector sent that initial delinquent --  
14 sent the delinquent notice, final delinquent notice certified  
15 mail return receipt requested, and received the green card back  
16 with the -- what they deemed -- what Dr. Hunter and Ms.  
17 Henderson, who is the chief assistant for ---

18 THE COURT: All right. Let me back up because I want  
19 to make sure that the record is clear and also I understand.

20 The address that you contend the county had notice of was  
21 the address located by the third party vendor?

22 MR. GAYLORD: Correct. The address identified by the  
23 third-party vendor which was then provided over to the county and  
24 the address that the county used to mail the tax bills for 2015,  
25 2016 and 2017.

1 I further point out that in those tax bills there is no  
2 notice to the owner -- to the taxpayer that there is a tax sale  
3 in process. There's a notice that's pointed out in the  
4 Defendant's memo that this property has been declared delinquent  
5 property, it may be subject to tax sale. But nothing was in the  
6 notice that says this is subject to a tax sale. Nothing that  
7 says that you have a right to redeem it. It's expiring.

8 Now, I'll note that the 2017 tax notice sent by the county,  
9 which the county, when I asked Ms. Atkins, I said, well what is  
10 your standard, what is your standard for sending to an address?  
11 She said, we use the best address available. So the county is on  
12 one hand saying we're using the best address available to send  
13 the tax bill to the taxpayer, but on the other hand saying, well,  
14 that's not the best address available when it comes to the tax  
15 collector's office.

16 But the 2017 tax notice, which was mailed to 117 Odom Circle  
17 six days before the right of redemption would have expired says  
18 nothing about, hey, you've got six days. In fact, the tax bill  
19 provides that if you pay this bill after March of 2018, send it  
20 to this address.

21 So beyond the fact that there's nothing that suggests to the  
22 owner, hey, you've got a dwindling window here. There's actually  
23 information that the county has provided to the owner that  
24 suggests that they have an additional five months to address this  
25 issue before even any kind of tax sale was undertaken.

000073

1 I cited in my motion the *Good* case and the *Benton* case. In  
2 both of those cases, the Court of Appeals had determined that  
3 when a tax collector has received information that's suggestive,  
4 implies that there may be a better address available, that they  
5 have to exercise diligence in pursuing and investigating matters.  
6 In those cases what had been deemed by the Court of Appeals to be  
7 information that suggested they needed to engage in further  
8 investigation was a return receipt that came back undelivered,  
9 that came back unclaimed. Or that came back with no forwarding  
10 address available. And in both those cases, the Court of Appeals  
11 said you need to go further. You need to contact the postal  
12 service and confirm what address the postal service has for this  
13 individual.

14 And here we have -- the vendor had done that; had run it  
15 through that system and it had come back with his address and the  
16 address was -- and that information was just simply ignored  
17 except for the fact that the county thought it was a good enough  
18 address to continue to send the tax bill.

19 THE COURT: What's the impact of the green card being  
20 signed. And I think everybody agrees that it was illegible. But  
21 the county contends legible, illegible, that provides all that is  
22 required under the statute and we get that green card back and we  
23 don't need to go behind that.

24 MR. GAYLORD: Well, Your Honor, I'll ask the Court if  
25 Dr. Hunter himself and Ms. Henderson both testified that they

1 thought that that was a problem, that they thought the property  
2 should -- when they received that card that what should have  
3 happened is the property should have been posted because they did  
4 not think the fact that they didn't have any kind of adequate  
5 assurance that the property was in fact -- excuse me -- that the  
6 notice was in fact delivered to Mr. Nicholas.

7 And so I think that's -- we started on this case looking at  
8 the address issue. And as it comes out, I think frankly the fact  
9 that Dr. Hunter and Ms. Henderson each agreed that the process to  
10 take possession of the property was not adequately completed is  
11 frankly the stronger argument.

12 THE COURT: The property was never posted; correct?

13 MR. GAYLORD: Correct.

14 THE COURT: All right. Mr. Wile, you were anxiously  
15 awaiting to ---

16 MR. WILE: I was, Your Honor.

17 THE COURT: --- deliver your fine argument.

18 Before we get to your fine argument, let me ask you, ---

19 MR. WILE: Okay.

20 THE COURT: --- what's the Court to do with the  
21 testimony of Ms. Henderson and Dr. Hunter, who are two  
22 wonderfully qualified ---

23 MR. WILE: They are, Your Honor, but there is not ---

24 THE COURT: Hold on. Let me finish. --- with both of  
25 them saying, hey, you know what, looking at all of this maybe

1 posting should have done. Now I'll let you answer.

2 MR. WILE: Okay. And that's -- I mean they are,  
3 they're wonderful people, Your Honor. But that's not what the  
4 statute requires. The statute says if the notice is returned  
5 then you post. In this case the notice was not returned. The  
6 green card was returned and signed. That's all that's required.  
7 It's the post office's responsibility to see whether or not the  
8 proper person signs it. But it's not up to the tax collector's  
9 office to determine the signature on a card. All that's required  
10 is that if the notice is returned then you post.

11 THE COURT: All right. But with the statute saying  
12 what it says, then what's the Court to do with the two people  
13 with Greenville County who are most familiar, most responsible  
14 for the tax sales saying, you know what, we probably should have  
15 posted it.

16 MR. WILE: They go above and beyond what's required by  
17 the statute, Your Honor.

18 THE COURT: But if their duty is to make sure that the  
19 defaulting taxpayer has some kind of notice -- so you're saying  
20 that even though they said that, the statute sets a little bit of  
21 a lower standard ---

22 MR. WILE: We have to strictly comply with the statute,  
23 Your Honor. We have strictly complied with the statute. The  
24 statute says if the notice is returned you post. In this case  
25 the notice was not returned.

1 THE COURT: All right. Talk with me on the different  
2 addresses ---

3 MR. WILE: Okay.

4 THE COURT: --- that are involved because clearly the  
5 county is using one address to contact Mr. Miguel on certain  
6 years' taxes and a different address when it comes to taking this  
7 1 Hilltop Avenue property.

8 MR. WILE: Right. They did, they sent the tax notices  
9 and the tax bill itself to the other, to the other address. They  
10 sent it to what is now known as his new address. But at that  
11 time it was not known if that was in fact his new address because  
12 what the county did -- what the county does is -- they were  
13 provided by this vendor a notice that there may be another  
14 address.

15 Okay. So then we go above and beyond and we do our due  
16 diligence and we send this postcard saying, please confirm that  
17 this is your new address. That was never returned. So we used  
18 the old -- so we send the delinquent notices to the old address,  
19 to the address that is on the books and to which we have not been  
20 instructed to change.

21 THE COURT: So again, what's the Court to do when you  
22 have a third party vendor who says, hey, Greenville County, it  
23 looks like Mr. Miguel is now at a different address.

24 MR. WILE: We sent him a notice. We sent him a card, a  
25 postcard saying, is this -- you know, is this your address?

000083

1 Because people don't -- you know, there has to be some positive  
2 step on the part of the Plaintiff. The Plaintiff didn't do  
3 anything in this case to change his address to notify the county  
4 that he had another address.

5 THE COURT: So are you ---

6 MR. WILE: We did that on our own.

7 THE COURT: Are you saying that Greenville County  
8 complied with the statute, went above and beyond that to say, Mr.  
9 Miguel, if something is changed we're going to pursue you. But  
10 since you didn't tell us anything that we tried to get in touch  
11 with you about, you can't now come into Court and claim the whole  
12 thing should be set aside because you took no affirmative action  
13 to help us help you.

14 MR. WILE: Yes.

15 THE COURT: All right. What's wrong with that argument  
16 if -- what did Greenville County not do other than try to reach  
17 out to Mr. Miguel a couple of times, it looks like, and never got  
18 any response from him?

19 MR. GAYLORD: Yes, Your Honor. Well, what Greenville  
20 County did not do on the first issue of taking possession of the  
21 property, Mr. Wile's argument is ultimately that, well, we went  
22 above and beyond because the statute says that if the notice  
23 itself comes back as opposed to the green card -- I don't agree  
24 with that argument; I don't buy into it. The reason I don't is  
25 because we've got Dr. Hunter and Ms. Henderson each acknowledging

1 that they should have -- they should have realized the post  
2 office made a mistake. Right? Because they're saying that,  
3 yeah, the post office shouldn't have delivered this.

4 THE COURT: All right. Let's talk practically.  
5 Because a county the size of Greenville has a lot of delinquent  
6 tax sales. How many; I don't know. But the statute says, hey,  
7 tax collector, if the card is signed and it comes back, that is  
8 defacto that you have provided the property owner with notice.  
9 That's what the statute seems to say. Are you then suggesting  
10 that the tax collector, being Greenville or any other place, now  
11 has a duty to look at the signature on every green card and say,  
12 well, we're not sure who signed this and since we're not sure,  
13 even though the statute doesn't expressly require this, we've  
14 got to go to level two to try to find out additional information?

15 MR. GAYLORD: Absolutely.

16 THE COURT: That's really a long run-on sentence, so I  
17 apologize.

18 MR. GAYLORD: Absolutely, Your Honor. And Dr. Hunter  
19 and Ms. Henderson seem to agree with that, too. And to relate  
20 that to my practice, right, you know, I frankly have gotten to  
21 the point where I don't like to provide notice in any service  
22 unless I feel pretty confident, like in this case, where I'm  
23 sending it to the county I know that even if there's an issue in  
24 delivery that somebody like Mr. Wile is going to give me a call  
25 and I can get service accepted. I just -- I don't know that,

1 frankly, the post office knows how to treat restricted delivery.  
2 It's my observation.

3 But in any event, more importantly, Dr. Hunter and Ms.  
4 Henderson also agreed that there's something more that's required  
5 there. When it comes back and it should be apparent from that  
6 the post office made a mistake that some other action needs to be  
7 taken.

8 THE COURT: Where is that in the statute? Because the  
9 county is saying that additional step is not statutorily  
10 required.

11 MR. GAYLORD: Well, I think that would be within the  
12 reference ultimately to -- the mailing had to be provided  
13 pursuant to the post office guidelines. The post office  
14 guidelines are going to say who's able to receive on a restricted  
15 delivery and that that's the person that's supposed to receive  
16 it.

17 THE COURT: All right. Then why couldn't the county  
18 accept that at face value where when they do -- when the county  
19 does what the statute says that they're supposed to do, they then  
20 get the green card back. Does the county have a duty to check  
21 behind the postal service and say, we don't think you've done  
22 your job that you're supposed to do, so we're going to double  
23 check what you're now sending us?

24 MR. GAYLORD: Well, I'd say if you don't think that  
25 they've done their job and they've not done what they're supposed

1 to do, what they should do is post the property.

2 THE COURT: All right. Mr. Stewart, I'm going to give  
3 you your chance to be involved here. How about where is the  
4 balance? Is the -- does the duty end at the time the Greenville  
5 County or any tax collector gets the signed green card back, or  
6 is there a duty or an obligation for the county to look at the  
7 green card and say, I don't know if the postal service has done  
8 what they're supposed to do, so we're going to go further?

9 MR. STEWART: Your Honor, I think if the legislature  
10 had intended for the county to make sure that the post office did  
11 what it was supposed to do and the property owner did what he or  
12 she was supposed to do, they would have put that in the statute.  
13 The statute -- the county is required to follow the statute  
14 strictly, that's no more and that's no less. So I would submit  
15 to the Court that considering the extra expense that the county  
16 would go to to verify every signature that it received back on a  
17 green card, I think the legislature probably took that into  
18 account and said, look, send it registered, certified, return  
19 receipt requested, restricted. The county did that. It was  
20 returned. The signature -- you can't tell who signed it. But  
21 that's not required.

22 THE COURT: Is the county entitled to rely upon the  
23 green card as sufficient proof that their statutory duty has been  
24 complied with?

25 MR. STEWART: Yes, sir. That's what the statute says.

1           THE COURT: All right. What's the Court to do with the  
2 testimony of Ms. Henderson and the doctor who say, you know,  
3 looking at this, it should have been posted.

4           MR. STEWART: Your Honor, if you look at Ms.  
5 Henderson's testimony, she's answering a hypothetical. She  
6 doesn't know what the signature says. And she says, I don't  
7 have any confidence that Mr. Miguel signed this. But she  
8 doesn't have to have any confidence, Your Honor. That's not  
9 what is required. What is required is that a green card is  
10 received.

11           THE COURT: All right. Then talk, Mr. Stewart, on the  
12 third-party vendor who provides enough notice to Greenville  
13 County to where Greenville County sends notices out to a  
14 different address that they haven't previously been aware of to  
15 attempt to contact Mr. Miguel.

16           MR. STEWART: Well, Ms. Atkins speaks to that both in  
17 her deposition and in her Affidavit, Your Honor. The statute  
18 says send the notice to the address on the deed or the address on  
19 -- the property address. Or if you have actual knowledge of a  
20 corrected address, send it to that. Well, they sent it to both  
21 the address on the deed and the property address. So they  
22 fulfilled two of the orders.

23           The other one, they don't have actual knowledge. And if  
24 you read Ms. Atkins' testimony, that's what she says, that we  
25 didn't know. Yeah, we got an indication that the address may

1 have changed. That's why we sent them the post card. We said,  
2 you've got some -- Mr. Miguel, you've got some duty to let us  
3 know where you are. And he did not fulfil that. There is a  
4 responsibility on the taxpayer to, if you moved, let us know  
5 that. Give us actual knowledge that you moved. They did not  
6 have actual knowledge that his address had changed. There was a  
7 suggestion, and that's why they sent the postcard. And we submit  
8 that was all they were required to do. Plus they sent him the  
9 future tax bills for '16 and '17, and they said, look there are  
10 delinquent taxes on this property. So he received notice that  
11 way.

12 THE COURT: Did they send that to the Hilltop property  
13 and the other property or just to what's called the new address?

14 MR. STEWART: The '16 and '17 bills?

15 THE COURT: Yes, sir.

16 MR. STEWART: That was sent to the Hilltop property.

17 MR. WILE: No. The tax bills were sent to the new  
18 address.

19 MR. STEWART: No, I'm sorry, the Odom. I had my  
20 address ---

21 THE COURT: Oh, that's fine.

22 MR. STEWART: But they sent it to what he says was his  
23 actual address.

24 THE COURT: All right. So when does Odom become the  
25 actual address?

1 MR. STEWART: Well, Your Honor, we don't know for sure.  
2 On the pleadings, I believe Mr. Miguel says he moved in October  
3 of '14.

4 THE COURT: All right. But Mr. Wile, when does  
5 Greenville County receive notification that Odom Street is now  
6 the proper address as opposed to Hilltop?

7 MR. WILE: Well, we never received notice that it was  
8 the proper address. We received notice that there may be another  
9 address. We received that in November, I believe, of 2015.

10 THE COURT: Then why didn't Greenville County send the  
11 notice to Hilltop and Odom? It appears it was sent only to Odom  
12 and not Hilltop.

13 MR. WILE: The tax notices were, Your Honor, they were  
14 sent to the Odom address.

15 THE COURT: All right. Well why not Hilltop if they're  
16 not sure -- if they didn't have some actual notice that he wasn't  
17 living at Hilltop any longer?

18 MR. WILE: The answer I got, Your Honor, was that we  
19 only send one tax notice out.

20 THE COURT: But they thought enough about Odom ---

21 MR. WILE: To send the tax bills. But ---

22 THE COURT: To the exclusion of the Hilltop address.

23 MR. WILE: But then we sent the delinquent notices,  
24 which are covered in the statute, to the Hilltop address because  
25 we didn't get any response from the Odom address.

1 THE COURT: All right.

2 MR. WILE: And supposedly, if it was the Odom address,  
3 he got those tax notices and didn't pay the taxes.

4 THE COURT: All right. Mr. Gaylord, let me -- what's  
5 your client's response to the argument by Greenville County and  
6 Palmetto that Mr. Miguel never gave any kind of notice of a  
7 change of address?

8 MR. GAYLORD: Your Honor, he obviously took some action  
9 that the vendor picked up on that changed the address. But also  
10 beyond that, there's nothing in the statute that prescribes that  
11 the owner has to do something. I think that's probably presumed  
12 that that is likely what's going to happen. But the statute  
13 simply reads that the tax -- tax collector has notice of this  
14 address. The county's record are clear that they had notice of  
15 the 117 Odom Circle ---

16 THE COURT: All right. Let me back up and go back to  
17 my question that you artfully did not answer. Did Mr. Miguel  
18 provide any affirmative notice to Greenville County that, hey,  
19 don't use Hilltop; start using Odom?

20 MR. GAYLORD: I don't think he came to the county and  
21 did anything -- I don't think he returned that postcard or came  
22 in and otherwise did that, Your Honor.

23 THE COURT: And you can also do that online; correct?

24 MR. GAYLORD: I understand from Ms. Atkins' Affidavit  
25 that's the case, but I would ---

1 THE COURT: All right. And let me hear, how do you  
2 respond -- what's your argument that at some point Greenville  
3 County stops using Hilltop and starts using Odom?

4 MR. GAYLORD: Correct.

5 THE COURT: Is that some type of indication that, hey,  
6 you believed Odom enough to start using it now and not using  
7 Hilltop, so you can't now come into Court and say, well, we  
8 didn't know exactly what was going on with Odom. How do you --  
9 give me your thoughts.

10 MR. GAYLORD: Precisely. And Your Honor, Mr. Wile and  
11 Mr. Stewart in their memorandum have cited the *Smith* case. In  
12 the *Smith* case the Court states that the reason, the reason we  
13 require this heightened standard for these tax sales; right, is  
14 we want to avoid surprise, we want to avoid sacrifice of the  
15 property.

16 Well, as I pointed out, you've got the 2017, the 2016, 2015  
17 tax bills all going to 117 Odom Circle. The recipient receives  
18 those, looks at the tax bills, receives and sees what the county  
19 is telling them that there may be delinquent notices, but you've  
20 got at least until, again, six days before the right to redeem  
21 would have expired. Six days. They're sending a notice that  
22 says you've got until March, at least, to pay this bill. That is  
23 a surprise. When you then show up and you say, you're there to  
24 pay your taxes, albeit late, and find out, well, I'm sorry, we  
25 sold it. And you say, well, I've got a bill right here that says

1 I've got till March to pay it. What happens? What happened?

2 I just can't believe that the county would on one hand say,  
3 you know, we sent this to the best address available. And then  
4 on the other hand say, it wasn't the best address available. And  
5 that that would satisfy the obligation of diligence.

6 Looking at the other issue, in exercising diligence you  
7 can't just simply ignore, you can't just simply ignore what you  
8 can plainly see to be wrong or incomplete. That's still -- it  
9 makes -- the statute may say this, this and this. But you've got  
10 to exercise diligence in performing and meeting those standards,  
11 which sometimes is going to say, well, you know, I don't have any  
12 confidence in this. I need to go to this next step.

13 THE COURT: All right. Mr. Wile.

14 MR. WILE: Yes, sir.

15 THE COURT: Let's go back to the Odom versus Hilltop.

16 MR. WILE: Okay.

17 THE COURT: The notice that's sent to Odom clearly sets  
18 out -- what is it -- whatever the two years are.

19 MR. WILE: '16, '17.

20 THE COURT: But they don't mention anything about the  
21 taxes that are -- the six days that are getting ready to run on  
22 ---

23 MR. WILE: Your Honor, because that's not delinquent  
24 notice. The delinquent -- see, what happens is that Ms. Atkins'  
25 office, if they get the confirmation that the address has

1 changed, will change the record so that the tax collector sees  
2 it.

3 Now what happened, they -- the real property search division  
4 does not change the screen for the tax collector. So he sends  
5 the notices to the address until he is informed that there is  
6 another address to send the delinquent notices to. And he never  
7 received that notice. And the Plaintiff here didn't take any  
8 steps. He didn't pay -- when he got the bills, supposedly at the  
9 right address, he didn't pay that, so we didn't know that his --  
10 you know, there was still no confirmation that the address had  
11 changed.

12 THE COURT: Well, how about Mr. Miguel's argument now  
13 that when he received that letter at Odom Street ---

14 MR. WILE: We don't know he received it.

15 THE COURT: Well, he says that now.

16 MR. WILE: Well, he says it now. But we don't know he  
17 received it. We sent the redemption notice to the address that  
18 was on file and to which he had not requested a change of  
19 address at that point. He still hasn't requested a change of  
20 address.

21 THE COURT: But yet the third party vendor picks up on  
22 Odom Street.

23 MR. WILE: It does. And it says it may be but it  
24 doesn't say it necessarily is. That's why we go the extra step,  
25 send the postcard and ask him to confirm that that is his

1 address. And he does nothing.

2 THE COURT: But yet Greenville County is confident  
3 enough in Odom that they start sending -- using that to the  
4 exclusion of Hilltop.

5 MR. WILE: But not for the -- Your Honor, but not for  
6 the delinquent notices. We don't know -- okay. The delinquent  
7 notices go to the address which we are sure of and which is on  
8 the deed saying send notices to me or send -- yeah, notices to me  
9 at the Hilltop address. And it doesn't take any other steps to  
10 say change it.

11 Now, the vendor did give us another address and the tax  
12 bills went to the other address.

13 THE COURT: But it's tax bills on the Hilltop property?

14 MR. WILE: The tax bills on the Hilltop property.

15 THE COURT: Okay. And the 2015 and '16 letter that  
16 goes to Odom Street says, hey, you owe 2015, '16?

17 MR. WILE: And it gives him -- and it gets him also the  
18 redemption letter saying you've got to pay this.

19 THE COURT: But it doesn't say, and by the way you're  
20 in the period of in a few more days you're going to lose this  
21 property ---

22 MR. WILE: It does in the delinquent notices; it says  
23 you're going to lose it.

24 THE COURT: All right. But the delinquent goes to  
25 Hilltop.

1 MR. WILE: Delinquent notices go to Hilltop.

2 THE COURT: Okay. All right.

3 MR. WILE: And those are the notices that are set forth  
4 in the statute.

5 THE COURT: All right. So, Mr. Wile, while you're  
6 standing up, anything else you want to state on the record before  
7 we wrap up?

8 MR. WILE: Well, Your Honor, I would say it would be an  
9 undue burden on the county to require them to look at every  
10 single green card that comes back as far as signature.

11 THE COURT: All right. Mr. Stewart?

12 MR. STEWART: I concur with that, Your Honor. Also,  
13 there's a case that's not precisely on point, but I just wanted  
14 to call it to the Court's attention, *Taylor versus Mills*. This  
15 was a case involving a man that bought a property at a federal  
16 tax sale and then it was later sold for county taxes. And he did  
17 not take any action to notify the county that he had bought the  
18 property or to let them know anything. But he says, hey, I had  
19 the deed. I had it before the county made all their  
20 advertisements and their sale. They should have been on notice  
21 that somebody probably bought this property at the federal tax  
22 sale.

23 And on the second page, I've underlined the relevant  
24 language. It says, Taylor -- that's the man that bought it at  
25 the federal tax sale -- failed to either notify Lexington County

1 that he was the grantee of the delinquent taxpayer Goldberg, or  
2 to record his deed. Lexington County, therefore, had no  
3 obligation to notify Taylor of the county tax sale under 12-51-  
4 40.

5 So that's another case where the Court recognized there is a  
6 duty on the taxpayer to let the county know what's going on. You  
7 don't move around and not let somebody know where you are and  
8 then come back later and try to blame the county for not hiring a  
9 private detective to locate you.

10 So I think based on that case and the *Smith* case, which is a  
11 Greenville County case, I think Your Honor probably had that  
12 case, there the taxpayer notified the county, said, look, my  
13 address has changed. And that was a key part of that case.

14 So there's a duty. It's not in the statute, but it's  
15 recognized just for common sense that if you're moving and you  
16 expect the county to provide you with proper notice, you've got  
17 to let the county know that you moved. And Mr. Miguel just  
18 didn't do that in this case.

19 THE COURT: All right. Anything else for the record?

20 MR. GAYLORD: Yes, Your Honor. Mr. Wile's assertion  
21 that the undue -- that the burden we would be trying to impose  
22 upon Greenville County is undue. I disagree with that statement.  
23 More importantly, I think the Court of Appeals disagrees with  
24 that statement. The Court of Appeals has set forth in *Good* and  
25 the *Benton* cases, said, listen, if you have some kind of return

1 notice which the notice at the end of redemption period, it came  
2 back unclaimed. These are all facts that should have been  
3 considered, that should have been factored in to what the county  
4 ultimately did.

5 And also, it doesn't seem to be too much of a burden from  
6 the perspective of Dr. Hunter and Ms. Henderson who agreed and  
7 said they should have done that and would have done that. So I  
8 disagree with that position.

9 THE COURT: You trying to take another bite of the  
10 apple, Mr. Wile?

11 MR. WILE: He came up with something new and I was just  
12 trying to ...

13 THE COURT: Make it brief, Mr. Wile.

14 MR. WILE: Huh?

15 THE COURT: If there's anything else you want to add,  
16 make it brief.

17 MR. STEWART: I'll just say that the amount of argument  
18 here shows there's a question of fact.

19 THE COURT: Or it may just show really good lawyering  
20 from all three of you. This is a great issue. And it's really  
21 some interesting, competing policy questions that the folks down  
22 in Columbia love dealing with.

23 So at this point I'm going to take this under advisement.

24 I do want to chat, if I could, back in chambers just for a  
25 few moments with the lawyers.

1

END OF REQUESTED TRANSCRIPT OF TESTIMONY

000099



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Case Number: 2018- CP - 23-03713
COUNTY OF GREENVILLE	)	
	)	
Francisco Nicolas Miguel,	)	
Plaintiff,	)	
	)	
vs.	)	Affidavit of Debbie Adkins
	)	
Palmetto Asset Investments, LLC, et al	)	
	)	
Defendants.	)	

Comes now Affiant and swears and affirms that she has been, at all times relevant to this lawsuit, the Manager of Real Property Services for Greenville County. Greenville County contracts with a third party vendor (hereafter, the vendor) to mail out property tax notices. In this case, the vendor received information that Plaintiff's mailing address may have changed, and informed Affiant's office of this possibility. The vendor sent Plaintiff a postcard asking him to reply and confirm his mailing address. There was no response.

When Affiant's office receives information from the vendor that the original address of an owner of real property in Greenville County may have changed, her office does not assume that the address has changed. Unless the property owner replies to this postcard, or otherwise communicates with her office notifying it of a change of address, the original address is regarded as the correct address. In fact, Affiant's office also has a web application which allows property owners to submit address corrections. That was not done in this case.

The Greenville County Tax Collector's office relies on the information obtained by Real Property Services as to the property owner's address, in determining what address to use in sending out notices of delinquent taxes and right of redemption after tax sales. It is the property owner's responsibility to inform Greenville County of a change in address.

000101

FURTHER AFFIANT SWEARS NOT.

Debbie Adkins  
Debbie Adkins

Sworn to before me this 6<sup>th</sup>

day of November, 2019

Gloria Berry  
Notary Public for South Carolina

My commission expires: 9-7-2026

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

July 12, 2020

s/Jeffrey T. Spell  
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**RECEIVED**  
**Aug 06 2020**  
**SC Court of Appeals**

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