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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

James B. Jackson, Jr., Master in Equity for Orangeburg County

Case No. 2017-CP-38-0948

Appellate Case No. 2021-000120

Cutter & Company, LLC, Appellant,

v.

Stafford Funding Group, LLC, O & P Properties, LLC, Kathy Henderson as Delinquent Tax Collector of Orangeburg County, Defendants,

Of which Stafford Funding Group, LLC and Kathy Henderson as Delinquent Tax Collector of Orangeburg County, are Respondents and O & P Properties, LLC, is an Appellant.

BRIEF OF APPELLANTS

Leonard R. Jordan, Jr., #3221
JORDAN LAW FIRM
211 Veterans Road, Suite D
Columbia, South Carolina 29209
(803) 726-1950 Tel
(803) 726-1951 Fax
ljordan@ljordanlaw.com
Attorney for Appellant, Cutter & Company, LLC

S.R. ANDERSON
S.C. Bar No. 391
P.O. Box 12188
Columbia, SC 29211
(803) 252-2828
sraatlaw@bellsouth.net
Attorney for Appellant, O & P Properties, LLC

Other Counsel of Record:

Michael C. Tanner, Esquire
Attorney at Law
P.O. Box 1061
Bamberg, SC 29003

Jerrod A. Anderson, Esquire
Anderson Law Office, P.A.
P.O. Box 2629
Orangeburg, SC 29116

Andrew F. Lindemann, Esquire
Lindemann & Davis, P.A.
Post Office Box 6923
Columbia, South Carolina 29260

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STATEMENT OF ISSUES ON APPEAL

I. O&P PROPERTIES, LLC, WHICH HELD AN UNSATISFIED MORTGAGE ON THE TAX PARCEL, WAS NOT SENT A REDEMPTION NOTICE VIA RESTRICTED-DELIVERY, WHICH CONSTITUED A FUNDAMENTAL DEFECT IN THE TAX SALE PROCEEDINGS.

II. THE TAX COLLECTOR FAILED TO CONSIDER THE VALUE OF, AND THE CIRCUMSTANCES PRESENTED BY, THE TAX PARCEL AND IMPROPERLY SOLD MORE OF THE TAX PARCELTHAN WAS "NECESSARY TO SATISFY THE PAST-DUE TAXES," IN ACCORDANCE WITH S.C. CODE ANN. §12-51-40, SUBSECTIONS (B) AND (D), WHICH FAILURE CONSITUTED A FUNDAMENTAL DEFECT IN THE TAX SALE PROCEEDINGS.

III. THE TAX PARCEL WAS SUBDIVIDED INTO PLATTED LOTS AND WAS BI-SECTED BY A PUBLIC ROAD AND WAS THEREFORE "DIVISIBLE" (WITHOUT SPECIAL EFFORT) FOR TAX SALE PURPOSES, IN ACCORDANCE WITH S.C. CODE ANN. §12-51-40(D), AND THE VIOLATION OF SAID STATUTE CONSTITUTED A FUNDAMENTAL DEFECT IN THE TAX SALE PROCEEDINGS.

IV. THE REDEMPTION NOTICES SENT TO APPELLANTS CONTAINED ERRONEOUS AND MISLEADING INFORMATION, WHICH CONSTITUTED A FUNDAMENTAL DEFECT IN THE TAX SALE PROCEEDINGS.

STATEMENT OF THE CASE

This case involves tax sales conducted by Respondent, Kathy Henderson, as Tax Collector for Orangeburg County (hereinafter "Henderson"), on December 7, 2015, whereby two tax parcels of real property owned by Appellant, Cutter & Company, LLC (hereinafter "Cutter"), were sold.

Both tax parcels were purchased at the tax sale by Respondent, Stafford Funding Group, LLC (hereinafter "Stafford"), which received deeds (Delinquent Tax Titles to Real Estate) from Henderson. (R.pp. 59 and 61)

The present suit, the purpose of which was to overturn the tax sales and set aside the tax deeds, was filed by Cutter on July 17, 2017.

The important pleadings are as follows:

a. Cutter filed an Amended Complaint on October 24, 2017 (R.p. 18);

b. Stafford filed an Amended Answer and Counterclaim on October 31, 2017

(R.p. 33);

c. Cutter filed a Reply (to said Counterclaim) on November 8, 2017 (R.p. 37);

d. Appellant, O & P Properties LLC (hereinafter "O&P"), filed a Cross-Complaint of Defendant O & P Properties, LLC on November 13, 2017 (R.p. 39);

e. O&P filed Defendant O & P Properties, LLC's Reply to Counterclaim of Stafford Funding Group, LLC on November 13, 2017 (R.p. 43);

f. Henderson filed an Answer to Amended Complaint on December 4, 2017 (R.p. 44); and

g. Stafford filed an Answer to Cross-Complaint of Cross-Defendant Stafford Stafford Funding Group, LLC on December 21, 2017 (R.p. 46).

The case was referred to the Master in Equity for Orangeburg County, who conducted a trial of this case on September 16, 2020, with all parties participating.

Following the trial, the Honorable James B. Jackson, Jr., Master in Equity, issued a Final Order, which was filed on November 9, 2020 (R.p. 2).

Appellants served Plaintiff's Motion to Reconsider, Alter or Amend Final Order, which was filed on November 19, 2020 (R.p. 14). This Motion was denied by the Master in Equity, without hearing, by Order filed on January 13, 2021 (R.p. 1).

On February 3, 2021, Appellants served a Notice of Appeal, which was filed on February 3, 2021 (R.p. 48).

STANDARD OF REVIEW

An action to set aside a tax deed is in equity. *S.C. Fed. Sav. Bank v. Atl. Land Title Co., Inc.*, 314 S.C. 292, 294, 442 S.E.2d 630, 631 (Ct.App. 1994). Therefore, this Court may take its own view of the preponderance of evidence. *Townes Assoc., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775-76 (1976).

STATEMENT OF THE FACTS

The tax sale of one of the properties, to wit: Parcel A, containing 1.0 acre, assigned Tax Map No. 0153-10-02-002.000, is not involved in this appeal, as the Master in Equity reversed the tax sale of that tax parcel, as requested by Appellants.

This appeal involves only one tax parcel, to wit: Lot Nos.: 24, 25, 26 and 31 on a Plat of Rolling Acres Subdivision, containing 3.7 acres, and recorded in the Register of Deeds Office for Orangeburg County in Plat Book 41 at page 134, assigned Tax Map No. 0140-00-11-014.000.

This tax parcel, which was referred to in the pleadings as "Parcel II" and in the trial transcript as "Parcel 2," was purchased by Cutter in 2012 from O&P. (R.p. 77) O&P took a Mortgage on this tax parcel to secure the unpaid balance of the purchase price, which Mortgage remains of record in Book 2200 at page 16. (R.p. 69)

As indicated in the abbreviated legal description above, the tax parcel is composed of four (4) individual lots, as shown on a recorded plat. Attention is called to the plat. (R.pp. 79 and 80)

In addition to being composed of four (4) platted lots, this tax parcel is bi-sected by a public road, which divides it into two, non-contiguous parcels, each containing two (2) platted lots. Attention is called to the tax map sheet showing this tax parcel as two parcels. (R.p. 81)

Notwithstanding its already being subdivided (by a recorded plat and by a public road) when the deed to Cutter was recorded, this grouping of lots/non-contiguous parcels was assigned a single tax map number.

This tax parcel was assigned a value (for tax purposes) of $75,000.00.[1]

The real property taxes on this tax parcel were not paid for tax year 2014, and Henderson purported to execute and levy on this parcel; and on or after April 1, 2015, Henderson sent an

[1] $75,000.00 x .06 = 4,500, which is the assessment reflected on Plaintiff's Exhibit 4 (R.p. 63)

Execution Notice to Cutter. Cutter received this Notice, as indicated by a postal return receipt (green card) signed by Jamie Cutter on May 11, 2015. (R.p. 84) The Notice indicated that, if the taxes were not paid, the tax parcel would be sold on December 7, 2015. (R.p. 86)

The tax parcel was advertised for sale in the local newspaper, and it was auctioned-off by Henderson on December 7, 2015. The sale resulted in the purchase thereof by Stafford with a high bid of $17,000.00, which bid was complied with by Stafford.

The following year, as required by statute, Henderson purportedly sent Redemption Notices as follows: (1) to Cutter dated October 31, 2016, which appears to have been sent certified mail, return receipt requested – restricted delivery (R.p. 90); and (2) to O&P dated October 31, 2016, which appears to have been sent certified mail, return receipt requested, but <u>not restricted delivery</u>. (R.p. 92) Both of these notices were returned undeliverable.

These Redemption Notices claimed, and purportedly informed Appellants, that the amount required to redeem the tax parcel was $6,642.93 (which included the 2015 taxes and other charges). (R.pp. 90 and 92)

There is no evidence that either of these addressees were aware that the tax sale had been held on December 7, 2015, or that the redemption period expired on December 8, 2016.

When the redemption period ended without the taxes being paid, Henderson issued a Delinquent Tax Title to Real Estate conveying this tax parcel to Stafford, which deed was dated December 8, 2016, and was recorded in the Office of the Register of Deeds for Orangeburg County on March 31, 2017, in Book 1731 at page 269. (R.p. 61)

ARGUMENTS

FUNDAMENTAL DEFECT

The following ARGUMENTS discuss several Factual Issues, each of which constitutes a

FUNDAMENTAL DEFECT in the tax sale proceedings. Each ARGUMENT is supported by the following authorities:

". . . [A]ll requirements of the law leading up to tax sales which are intended for the protection of the taxpayer against surprise or the sacrifice of his property are to be regarded [as] mandatory and are to be strictly enforced." *Donohue v. Ward*, 298 S.C. 75, 83, 378 S.E.2d 261, 265 (Ct.App. 1989) (citing *Osborne v. Vallentine*, 196 S.C. 90, 94, 12 S.E.2d 856, 858 (1941)).

"All requirements of a tax sale . . . are regarded to be mandatory and are to be strictly enforced." *Hawkins v. Bruno Yacht Sales, Inc.*, 335 S.C. 31, 15, 577 S.E.2d 202, 207 (2003); *King vs. James,* 388 S.C. 16, 25, 694 S.E.2d 35, 40-41 (Ct.App. 2010); and *Rives v. Bulsa,* 325 S.C. 287, 293, 478 S.E.2d 878 (Ct.App. 1996).

Moreover, "failure to give the required notice of a tax sale is a fundamental defect in the tax sale proceedings that renders the proceedings absolutely void." *Hawkins v. Bruno Yacht Sales, Inc.,* 353 S.C. 31, 577 S.E.2d 202, 205 (2003).

"Tax sales must be conducted in strict compliance with statutory requirements." *In re Ryan Inv. Co., Inc.*, 335 S.C. 392, 395, 517 S.E.2d 692, 693 (1999).

South Carolina courts will set aside sales where public officials have failed to strictly comply with the requirements of §12–51–40. See *Tanner v. Florence Cnty. Treasurer*, 336 S.C. 552, 521 S.E.2d 153, 159 (S.C. 1999).

"Because notice under the tax sale is constructive rather than actual, [The Supreme Court] has consistently held that tax sales must be conducted in strict compliance with statutory requirements." *Johnson v. Arbabi*, 355 S.C. 64, 69, 584 S.E.2d 113, 115-16 (2003).

The failure to mail a redemption notice by restricted delivery mail is grounds to invalidate a tax sale. See *Manji v. Blackwell*, 323 S.C. 91, 473 S.E.2d 837 (Ct.App. 1996).

I. O&P PROPERTIES, LLC, WHICH HELD AN UNSATISFIED MORTGAGE ON THE TAX PARCEL, WAS NOT SENT A REDEMPTION NOTICE VIA RESTRICTED-DELIVERY, WHICH CONSTITUED A FUNDAMENTAL DEFECT IN THE TAX SALE PROCEEDINGS.

O&P's Mortgage remains open of record as a lien upon the tax parcel. According to Jamie Cutter's testimony, the mortgage debt has not been paid in full and remains outstanding. (R.p. 169)

Appellants' argument is that, by the Redemption Notice to O&P (R.p. 92), Henderson failed to comply with S.C. Code Ann. §12-51-120, which provides, in relevant part, that,

> . . . the person officially charged with the collection of delinquent taxes shall mail a notice by *certified mail, return receipt requested – restricted delivery* as provided in Section 12-51-40(b) to the . . . mortgagee . . . of the property of record in the appropriate public records of the county. (emphasis added)

Henderson asserted on direct examination, that a Redemption Notice to O&P was sent "certified return receipt, restricted delivery." (R.p. 255, lines 8 and 9; p. 264, lines 2-7; p. 283, lines 3-8) Then, on cross-examination, upon reviewing the green card, Henderson admitted that the redemption notice to O&P was <u>not sent restricted</u>. (R.p. 334, lines 1-4) Appellants assert that, by her testimony, Henderson indicated a belief that the Redemption Notice sent to O&P should have been sent by certified mail-restricted delivery, and she was surprised that the Notice was not sent restricted delivery.

Interestingly, notwithstanding Henderson's admissions regarding the Redemption Notice not being sent to O&P via restricted delivery, the Master in Equity's Final Order specifically found, without explanation, that the Redemption Notice to O&P ". . . was sent by certified, return receipt requested delivery mail . . . ." (R.p. 5) Moreover, the Master in Equity's last Order made no direct comment about the lack of "restricted delivery" (although the Plaintiff's Motion to Reconsider, Alter or Amend Final Order specifically pointed-out this error (R.p. 14)). The Order, instead, stated

or implied that the failure to send the Notice by restricted delivery was inconsequential as there was no testimony that the notice "would have been received had it been sent by restricted delivery." (R.p. 1)

Because this Redemption Notice was not sent to O&P via certified mail return receipt requested-restricted delivery, according to the authorities cited on page 5, *supra*, it was statutorily inadequate (i.e. fundamentally defective).

In addition to the aforesaid fundamental defect, Appellants also assert:

a. The Redemption Notice purportedly sent to O&P failed to cite the correct Book and Page where O&P's Mortgage was recorded, which error appears twice in the Notice. O&P's Mortgage was recorded in Book 2200 at Page 13, and the Notice incorrectly recited twice that the Mortgage was recorded in Book 1456 at page 93, which was the Book/page of the Deed conveying the properties comprising the tax parcel to Cutter (R.pp. 77 and 92); and

b. The Notice also failed to describe properly the real property in question. It described same as "Lot 24, 25 and 2 G ACRES," whereas the proper description is Lots 24, 25, 26 and 31, Rolling Acres Subdivision. (R.p. 63)

On cross-examination, upon reviewing a copy of the Redemption Notice sent to O&P, Henderson admitted that the Redemption Notice to O&P erroneously references the wrong Book/page and improperly describes the lots and subdivision.

Q: It is not there. So, you . . . have the wrong book and page number for the mortgage?

A: That is correct.

Q: And you improperly described the property that is to be redeemed and you cite G acres, which has no reference to the deed?

A: That is . . . that is showing in the description of the property, yes." (R.p. 333, lines 13-17)

Henderson also confirmed that this erroneous Redemption Notice failed to provide O&P with the opportunity to protect its Mortgage, as follows:

Q: Just like the owner of the property, the mortgagee is entitled to protect his interest?

A: That is correct.

Q: . . . the documents that we just went over, don't allow him to protect his interests, do they?

A: There is an error on that document, yes. (R.p. 334, line 25 – p. 335, line 6)

The Master in Equity's last Order did state that "[t]he Court finds there were errors on the Notice sent to O and P Properties, LLC." (emphasis added) (R.p. 1) Such errors constitute fundamental defects, which invalidate the sale. See the authorities cited on page 5, *supra*.

II. THE TAX COLLECTOR FAILED TO CONSIDER THE VALUE OF, AND THE CIRCUMSTANCES PRESENTED BY, THE TAX PARCEL AND IMPROPERLY SOLD MORE OF THE TAX PARCEL THAN WAS "NECESSARY TO SATISFY THE PAST-DUE TAXES," IN ACCORDANCE WITH S.C. CODE ANN. §12-51-40, SUBSECTIONS (B) AND (D), WHICH FAILURE CONSITUTED A FUNDAMENTAL DEFECT IN THE TAX SALE PROCEEDINGS.

The 2014 taxes and penalties plus the 2015 taxes and the costs of collection amounted to only $3,623.32,[2] while the tax parcel had an assessed value of $75,000.00, which was more than twenty (20) times the amount of taxes due.

Henderson admitted that she didn't consider that making an evaluation of the property

[2] This figure is calculated using Plaintiff's Exhibit 13 (R.pp. 75 and 76), as follows:

2014:	Tax Amount	$1,592.10
	Penalties	238.82
	Collection Fees	95.00
2015:	Tax Amount	1,697.40
TOTAL:		$3,623.32

value vis-à-vis the amount of taxes to be collected was a part of her duties, so she didn't make any such evaluation in this case. (R.p. 305, lines 13-21) This failure to evaluate the individual circumstances of this tax sale is contrary to S.C. Code Ann. §12-51-40(b), which provides, in relevant part, that ". . . the officer to which the execution is directed *shall*: . . . take exclusive possession of the property *necessary to satisfy* the payment of the taxes, assessments, penalties, and costs." (emphasis added).

The clear intention of this statute is not that the county would just *take possession of the (any) tax parcel*, it is that the county *shall take possession of only so much of the tax parcel as is necessary to satisfy the tax indebtedness*. "A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute." *Hay v. South Carolina Tax Comm'n*, 273 S.C. 269, 273, 255 S.E.2d 837, 840 (1979).

Some smaller amount of property could easily have been enough property *necessary to satisfy* the tax indebtedness. A single lot within the tax parcel would have a value of approximately $18,750.00 (one-quarter of $75,000.00), which value is more than five (5) times the taxes due ($3,623.32). Based upon the actual bid received at the tax sale ($17,000.00), a single lot would likely have sold for $4,250.00 (one-quarter of $17,000.00), which amount would have covered the taxes due. Also, one of the two, non-contiguous parcels (each consisting of two (2) lots) could have been sold. It would have a value of $37,500.00 (one-half of $75,000.00), which is more than ten (10) times the tax debt. One parcel would likely have sold for $8,500.00 (one-half of $17,000.00), which amount would have easily covered the taxes due. Selling the entirety of the tax parcel was therefore excessive.

The case of *South Region Industrial Realty, Inc. v. Timmerman*, 285 S.C. 142, 328 S.E.128 (Ct. App. 1985), is instructive, as its facts are similar to the facts in the present case. In that case,

the Court of Appeals upheld the trial judge's ruling that the levy and sale of a six acre tract, which was comprised of two (or more) parcels (including parcels containing 3.86 acres and 0.67 acre) separated by a public road, was excessive, "as there was evidence that even the smaller tract [0.67 acre] was worth several times the amount of the taxes due and since both tracts combined actually sold for approximately four times the amount of the taxes due . . . . "

The individual lots could (should) have been assigned separate tax map numbers in anticipation of the tax sale, so one or more lots (less than all) could be sold. S.C. Code Ann. §12-51-40(d) also comes into play, and Henderson failed to consider this sub-section before offering the subject tax parcel for sale. This statutory subsection is the focus of Argument III, *infra*.)

Henderson admittedly exercised no discretion with regard to evaluating the circumstances to determine if it would be an excessive sale to sell the entirety of the tax parcel. (R.p. 304, line 12 – p. 305, line 21) Henderson also admitted that the statutory tax sale procedures are for the protection of the taxpayer and the mortgagee. (R.p. 302, lines 21-25; p. 334, line 25 – p. 335, line 6)

Q: . . . Your job is also to follow the statutes.

A: Yes, it is.

Q: Okay. And the statutes are there for one purpose.

A: Yes, it is.

Q: And that – that is to protect the taxpayer.

A: That is - - that is correct." (R.p. 302, lines 19-25)

It was error (and directly adverse to the taxpayer's and the mortgagee's interests) to sell the entirety of the tax parcel when significantly less than the entire tax parcel could have been sold to successfully collect the relatively small tax obligation. This is a fundamental defect in the tax

sale proceedings, which renders the proceedings absolutely void. See the authorities cited on page 5, *supra*.

III. THE TAX PARCEL WAS SUBDIVIDED INTO PLATTED LOTS AND WAS BI-SECTED BY A PUBLIC ROAD AND WAS THEREFORE "DIVISIBLE" (WITHOUT SPECIAL EFFORT) FOR TAX SALE PURPOSES, IN ACCORDANCE WITH S.C. CODE ANN. §12-51-40(D), AND THE VIOLATION OF SAID STATUTE CONSTITUTED A FUNDAMENTAL DEFECT IN THE TAX SALE PROCEEDINGS.

A. The property was already subdivided, and a new tax map number could easily be assigned.

S.C. Code Ann. §12-51-40(d) provides, in relevant part, as follows:

> . . . *When the real property is divisible*, the tax assessor, county treasurer, and county auditor may ascertain that portion of the property that is sufficient to realize a sum upon sale sufficient to satisfy the payment of the taxes, assessments, penalties, and costs. In those cases, *the officer may partition the property* and furnish a legal description of it. (emphasis added)

Although assigned a single tax map number and assessed and taxed by Orangeburg County in the same fashion as unsubdivided, unimproved acreage, the property comprising this tax parcel was subdivided into four (4) individual lots. Attention is called to the subdivision plat. (R.pp. 79 and 80) Importantly, the tax parcel was identified, for tax assessment purposes, as containing Lot Nos. 24, 25, 26 and 31. It was <u>not just divisible</u>, it was, in fact, <u>already divided</u>.

The tax map shows that the tax parcel was, in addition to being subdivided into four (4) lots, actually composed of <u>two separate, non-contiguous parcels</u>, due to its being bi-sected by a public road. Attention is called to the tax map sheet showing this tax parcel. (R.p. 81)

Orangeburg County Assessor James McLean (hereinafter "McLean") testified that, under today's practices, his office would have assigned individual tax map numbers to each of the platted lots but that this was not done years ago. (R.p. 241, line 14 – p. 242, line 1)

McLean further testified that, when a property is "split" ("where the new owner doesn't

acquire everything that the prior owner had"), "a new account number and a new map number" would be created for the new parcel. He further testified that, if done today, the GIS Department "would assign a map number for each individual lot," but he pointed out that that was not the routine years ago. (R.p. 241, lines 1-20)

McLean agreed that it would be a simple matter to assign a separate map number but that "we didn't go back and retroactively do stuff on old subdivisions." (R.p. 244, lines 9-13)

McLean further agreed that, if Cutter "had decided to deed out one of the lots of those four parcels, . . . we would've separated it on . . . our records." (R.p. 244, line 24 – p. 245, line 1) He further testified that his office would "be able to" reassign a tax map number to part of this parcel if one or two lots were sold. (R.p. 246, lines 5-12)

Importantly, McLean asserted that "there wouldn't be any issues" to deal with any subdivision requirements when carving off an already platted lot and that a new tax map number would be automatically assigned. (R.p. 245, line 5 – p. 246, line 12)

Finally, McLean testified that Henderson had not requested that his office subdivide properties in anticipation of a tax sale. (R.p. 247, lines 1-11)

From its abbreviated legal description of the tax parcel (Lot Nos. 24, 25, 26 and 31), Henderson knew, or should have known, that the tax parcel was composed of (divided into) four individual parcels. From the tax map depiction of the tax parcel, Henderson knew, or should have known, that the tax parcel was made up of two, non-contiguous parcels.

In order that the taxpayer not be deprived of more of its property than that needed to satisfy the taxes, penalties and costs, Henderson **should have determined** if a portion of the tax parcel (such as one or more lots or one parcel) would be ". . . sufficient to realize a sum upon the sale sufficient to satisfy the payment of the taxes . . . . ," pursuant to S.C. Code Ann. §12-51-40(d). As

indicated in her testimony, on cross-examination, Henderson failed to consider the circumstances of the tax parcel in light of said code section.

Q: But the . . . bottom line is you made no effort to – to evaluate the property to see what was necessary. To see if . . . a lesser amount of property could be sold than to . . . effectively take all of the taxpayer's property to pay such a minor amount of money.

A: No, sir. Our office does not bear the responsibility of that." (R.p. 305, lines 13-21)

. . .

Q: . . . based on what you've heard from the Assessor, you would agree that the properties are already divided? Parcel 2.

A: I see that one side - - one piece of the property is on one side of the road and the other one is on the other side of the road, sir.

Q: Okay. And you see . . . the platted lots, the four lots that have been . . . subdivided and approved by the County.

A: Uh-huh.

Q: . . . isn't that dividing up the property?

A: It is. Yes, it is." (R.p. 324, line 23 – p. 325, line 12)

B. *Folk v. Thomas*

The most important case involving "divisibility" of real property before a tax sale is *Folk v. Thomas*. That case, however, is distinguishable from the present case.

The Court of Appeals, at 336 S.C. 466, 520 S.E.2d 327 (Ct.App. 1999), reversed the trial court's decision to uphold the tax sales of two contiguous properties owned by Folk, holding that, the County failed to ascertain whether one of the two parcels was divisible before the sale as the plat reflected that, facially, the tract may be divisible. The two parcels were shown on a recorded plat as Parcels A and B. Parcel A is a one acre parcel containing Folk's home and other buildings. Parcel B is an 11.47 acres parcel of unimproved land with one building. Folk argued Code Section

12-51-40(d) required the County to partition the property prior to sale. Both parcels were ultimately sold by the County. Parcel B brought a bid of $1,000, and Parcel A was purchased from the Forfeited Land Commission for $1,746.98. Together, these parcels had an estimated value of between $140,000.00 and $150,000.00.

In construing §12-51-40(d), the Court of Appeals found that, "[a] common sense reading of Section 12-51-40(d) mandates (1) a determination *prior to sale* of the property's divisibility; and (2) partition of divisible property, with only as much of the property sold as is necessary to satisfy the tax debt." (at 470).

In light of the Master in Equity's ruling, it is curious that this Court of Appeal's decision was cited in his Final Order, for two reasons: (1) the decision that the property's divisibility must be determined prior to the tax sale; and (2) the Supreme Court, at 344 S.C. 77, 543 S.E.2d 566 (2001), reversed this decision.

The Supreme Court held that, ". . . the defaulting taxpayer bears the initial burden of requesting a determination of divisibility before a county is required to *undertake a divisibility study*." (emphasis added) (at 83)

Going further, the Supreme Court made it clear that "[p]olicy considerations weigh heavily in favor of finding section 12-51-40(d) does not require the county to self-start a divisibility study. As the amici argue, the *divisibility* of property must be determined according to many statutes and regulations. For example, such regulations as county zoning restrictions, city, town or municipality restrictions, special land use restrictions, conservation easements, development restrictions such as covenants and bylaws, ingress and egress restrictions, availability of public utilities, minimum roadway frontage requirements, and coastal and wetlands restrictions all must be taken into account before a parcel can be divided." (at 82) (emphasis added)

The present case is distinguishable from *Folk v. Thomas*, as here, no divisibility study was required. A determination of divisibility had already been made, as the tax parcel had already been subdivided into four (4) individual lots as shown on a recorded plat. No divisibility study or any special effort was needed to partition these lots. The only effort needed was to assign a new tax map number. See the Assessor's comments earlier in this Argument III.

Without the necessity of a divisibility study, which was the controlling reason that the Supreme Court reversed the Court of Appeals' decision in *Folk v. Thomas*, the holding of the Court of Appeals should stand.

The tax parcel was already subdivided (it was "divisible;" no divisibility study was needed). Henderson should have partitioned the tax parcel. The sale of as few as one lot, but certainly some number of the lots not to exceed two lots (or one of the distinct, divided parcels) would have been of sufficient value to realize sale proceeds sufficient to satisfy the alleged tax debt. Her failure to do so constitutes a fundamental defect, which renders the proceedings absolutely void. See the authorities cited on page 5, *supra*.

IV. THE REDEMPTION NOTICES SENT TO APPELLANTS CONTAINED ERRONEOUS AND MISLEADING INFORMATION, WHICH CONSTITUTED A FUNDAMENTAL DEFECT IN THE TAX SALE PROCEEDINGS.

The Redemption Notices sent to Appellants failed to notify them (or provide constructive notice) of the amount required to be paid to redeem the tax parcel in accordance with S.C. Code Section 12-51-120, which provides, in relevant part, that:

> . . . the real property described in the notice has been sold for taxes and if not redeemed by paying taxes, assessments, penalties, costs, and interest at the applicable rate on the bid price *in the total amount of* ________________ *dollars* on or before ____________________ (twelve months from date of sale) (date) ______________, a tax title must be delivered to the successful purchaser at the tax sale. (emphasis added)

The Redemption Notices issued to Appellants state that the amount required to redeem the tax parcel from the tax sale was $6,042.93. (R.pp. 65 and 72) The correct amount, including interest, was only $5,663.32. This amount is calculated as follows:

Pre-tax-sale Amount Due (including penalties and collection costs)	$1,925.92
2015 Taxes	1,697.40
Interest (12%) on Bid ($17,000.00)	2,040.00
TOTAL	$5,663.32

(This accounting is derived from information found online on the Orangeburg County Treasurer's website. (R.pp. 75 and 76))

These Notices were, at the very least, misleading. By quoting an erroneous, significantly higher amount to redeem the tax parcel from the tax sale, O&P and Cutter were not afforded a fair opportunity to redeem this tax parcel from the tax sale.

The Redemption Notices, which are intended to be constructive notices rather than actual notices to the respective addressees, and which contained a not-insignificant error in the cited redemption amount, fail to constitute proper notices.

This was not the only error committed by the County. Henderson also sent a Notice to Cutter on April 1, 2016 – four months after the tax sale – which stated or implied that only the 2015 taxes were due and payable. (R.p. 82) In this Notice, there was no mention whatsoever of the 2015 tax sale (the purpose of which was to collect the 2014 and 2015 taxes) or of the absolute deadline by which timely payment of the 2014 and 2015 taxes (plus penalties, costs and interest) was required.

This "extra" Notice, which was not a statutorily-required notice, was nevertheless misleading. It established artificial deadlines. In addition to not mentioning the deadline to redeem the property from the 2015 tax sale, it provided amounts due, on a specific schedule, to satisfy the

2015 taxes to avoid a tax sale of the property on December 5, 2016. The impression given by this Notice is that there is significant time (April to December 2016) to take care of the 2015 taxes – with no specific mention of the 2014 taxes or the 2015 tax sale. See *Hawkins v. Bruno Yacht Sales*, 353 S.C. 31, 37-38, 577 S.E.2d 202, 206 (2003), wherein the Supreme Court affirmed the ruling of the Court of Appeals that, "... deadlines were artificial, and gave the impression that [taxpayer] had to pay the taxes... " in a different amount and within a different time frame than was actually the case.

These errors were serious enough to constitute fundamental defects in the tax sale proceedings. See the authorities cited on page 5, *supra*.

CONCLUSION

Based upon the fundamental defects in the tax sale proceedings discussed herein, the tax sale of the subject tax parcel should be vacated, the tax deed should be voided and the title to the tax parcel should be confirmed and quieted in the name of Cutter & Company, LLC, with the mortgage of O & P Properties, LLC retaining its lien on the property.

s/Leonard R. Jordan, Jr.
Leonard R. Jordan, Jr., #3221
JORDAN LAW FIRM
211 Veterans Road, Suite D
Columbia, South Carolina 29209
(803) 726-1950 Tel
(803) 726-1951 Fax
ljordan@ljordanlaw.com
Attorney for Appellant, Cutter & Company, LLC

Columbia, South Carolina
July 29, 2021

s/S.R. Anderson
S.R. ANDERSON
S.C. Bar No. 391
P.O. Box 12188
Columbia, SC 29211
(803) 252-2828
sraatlaw@bellsouth.net
Attorney for Appellant, O & P Properties, LLC

Columbia, South Carolina
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