THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
James B. Jackson, Jr., Master-In-Equity

Appellate Case No. 2021-000120
Case No. 2017-CP-38-0948

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 RESPONDENTS

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STATEMENT OF THE CASE

This is an action brought by the Appellant Cutter & Company, LLC to set aside two tax sales conducted by the Respondent Kathy Henderson, as the Delinquent Tax Collector for Orangeburg County. The two parcels – referred to in lower court as "Parcel 1" (Tax Map Number 01-53-10-02-002) and "Parcel 2" (Tax Map Number 0140-00-11-014) – were owned by Cutter & Company. The Appellant O&P Properties, LLC held a mortgage on Parcel 2.

This appeal involves only Parcel 2 which was sold at a tax sale held on December 7, 2015, to the Respondent Stafford Funding Group, LLC.[1] After the redemption period expired, the Delinquent Tax Collector issued a Tax Deed to Stafford Funding Group on December 8, 2016. (R. 61-62).

On July 17, 2017, the Appellant Cutter & Company filed this lawsuit to set aside the tax sales. That lawsuit was filed against the Delinquent Tax Collector, Stafford Funding Group, and O&P Properties, LLC. (R. 18-32). The Appellant O&P Properties, LLC filed a Cross-Complaint against Stafford Funding Group but did not sue the Delinquent Tax Collector. (R. 39-42).

By Order of Reference filed December 13, 2018, the matter was referred to Judge James B. Jackson, Jr., the Master-in-Equity for Orangeburg County. (R. 12-

[1] The Master-in-Equity ruled that the tax sale as to Parcel 1 was improper and thus was voided. (R. 9). None of the parties have appealed the Master's rulings as to Parcel 1.

13). A bench trial was held on September 16, 2020. Thereafter, on November 9, 2020, the Master issued a Final Order decreeing that "[t]he tax sale as to parcel 2 with TMS number 0140-00-11-014 is proper and the Court confirms title has properly vested to Stafford Funding, as evidenced by the Deed recorded on March 31, 2017, in Book 1731, Page 269 filed with the Orangeburg RMC." (R. 9). As to Parcel 2, the Master ruled that "Orangeburg County complied with all statutory requirements regarding notice to Cutter & Company, LLC and O&P Properties, LLC." (R. 6).

The Appellant Cutter & Company thereafter filed a motion to alter or amend pursuant to Rule 59(e), SCRCP. (R. 14-17). The Appellant O&P Properties, LLC did not file a Rule 59(e) motion. By Order filed January 13, 2021, the Master-in-Equity issued an order denying the motion filed by Cutter & Company. (R. 1). The Appellants thereafter filed an appeal to this Court.

STANDARD OF REVIEW

An action to set aside a tax deed is in equity. *South Carolina Federal Savings Bank v. Atlantic Land Title Co., Inc.*, 314 S.C. 292, 442 S.E.2d 630, 631 (Ct. App. 1994). "When reviewing an equitable action heard first by a master-in-equity and appealed directly to an appellate court, the court should review the facts in accordance with its own view of the preponderance of evidence in the record." *Osterneck v. Osterneck*, 374 S.C. 573, 649 S.E.2d 127, 129 (Ct. App. 2007). However, "[t]his broad scope of review does not require the appellate court to ignore the fact that the master was in a better position to assess the credibility of witnesses and assign weight to their testimony." *Id.*

ARGUMENTS

I. The Master-in-Equity correctly ruled that the Delinquent Tax Collector complied with the statutory requirements for the mailing of the Redemption Notice to O&P Properties, LLC.

As their initial issue on appeal, the Appellants contend that O&P Properties, LLC, the holder of the mortgage on the subject property, was not sent a redemption notice by "certified mail, return receipt requested-restricted delivery," and that failure constitutes a fundamental defect in the tax sale proceedings. The Appellants' position lacks merits both on substantive and procedural bases.

The Master-in-Equity made the following finding of fact:

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

(R. 5). In addition, in its Conclusions of Law, the Master writes:

> The Court did not hear any testimony creating an issue that the mortgage holder, O&P Properties, LLC, did not receive proper notice of its statutory redemption due to its security interest in the property. It appears this notice was properly sent to the best address that Orangeburg County had on file and was not redeemed within the statutory time period by O&P Properties, LLC.

(R. 8).

The Appellants dispute that the Redemption Notice was sent to O&P properties by restricted delivery. They point to the cross-examination of Karen Henderson where she initially testified that the Redemption Notice was sent by restricted delivery and, upon being shown the return receipt card, may have recanted that. Frankly, the questioning on cross-examination makes the exchange between counsel and witness unclear. (R. 333-334). But, Plaintiff's Exhibit 11 does not show the "restricted delivery" box on the return receipt as checked. (R. 73).

However, the issue of "restricted delivery" is immaterial and certainly does not support the invalidation of the tax sale because the Redemption Notice was *not required* by law to be sent restricted delivery. An analysis of the propriety of the mailing of the Redemption Notice starts with a reading of Sections 12-51-120 and 12-51-40. Section 12-51-120 states, in pertinent part:

> Neither more than forty-five days nor less than twenty days before the end of the redemption period for real estate sold for taxes, 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 defaulting taxpayer and to a grantee, mortgagee, or lessee of the property of record in the appropriate public records of the county.

S.C. Code Ann. § 12-51-120. (Emphasis added). The precise guidance for the mailing requirements is derived by reference to Section 12-51-40(b), which states:

> In the case of real property, exclusive possession is taken by mailing a notice of delinquent property taxes, assessments, penalties, and costs to the defaulting taxpayer and any grantee of record of the property 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." *If the addressee is an entity instead of an individual, the notice must be mailed to its last known post office address by certified mail, return receipt requested, as described in Section S912*.

S.C. Code Ann. § 12-51-40(b). (Emphasis added). Thus, if the addressee is an entity rather than an individual, the mailing does not require "restricted delivery." That is consistent with Section 2.5(e) of the United States Postal Service "Domestic Mail Manual Section S912" which states: "If restricted delivery of certified mail to the addressee or someone named by the addressee in writing is requested, endorse the mail 'Restricted Delivery.' This service is available only for articles addressed to individuals by name."[2]

The mortgage at issue lists the mortgagee as:

> O & P Properties, LLC
> 213 Valley Drive
> Orangeburg, SC 29115

[2] The Court may take judicial notice of United States Postal Service "Domestic Mail Manual Section S912" particularly given that it is incorporated by reference in the statute.

(R. 69). Clearly, the mortgagee is an entity and not an individual.[3] Thus, according to the requirements of Section 12-51-40(b), which are incorporated by reference in Section 12-51-120, the notice must be mailed to its last known post office address by certified mail, return receipt requested. In the case at bar, that is precisely what occurred – the Redemption Notice was mailed by certified mail, return requested to O&P Properties at the address listed on the mortgage, thereby fully complying with Sections 12-51-120 and 12-51-40(b). (R. 72-74).[4] Section 12-51-120 further provides that "the return of the certified mail 'undelivered' is not grounds for a tax title to be withheld or be found defective and ordered set aside or canceled of record." S.C. Code Ann. § 12-51-120. While the mailing of the Redemption Notice was returned "unclaimed," that is not a legitimate basis for invalidating the tax sale of Parcel 2.

Importantly, any reliance by the Appellants on the case of *In re Ryan Investment Co., Inc.*, 335 S.C. 392, 517 S.E.2d 692 (1999), is misplaced. In *Ryan*, the Supreme Court rejected the argument that "postal regulations do not allow

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[3] The Court may also take judicial notice that O&P Properties, LLC is not listed on the Secretary of State's website, and as a result, there was no registered agent listed nor any alternative address available to the Delinquent Tax Collector.

[4] This issue is controlled by Section 12-51-40(b). But even if Section 12-51-120 did not explicitly include the language "as provided in Section 12-51-40(b)," any requirement to mail a redemption notice to an entity by "restricted delivery" is ineffectual and immaterial – there would be no person to whom to restrict delivery, a point well noted in Section 2.5(e) of the United States Postal Service "Domestic Mail Manual Section S912." As this Court has long recognized, per the words of former Chief Judge Alex Sanders, "whatever doesn't make any difference, doesn't matter." *McCall v. Finley*, 294 S.C. 1, 362 S.E.2d 26, 28 (Ct. App. 1987).

restricted delivery when the addressee is a corporation." 517 S.E.2d at 693. The Supreme Court held that "postal regulations in and of themselves cannot excuse the failure to comply with statutory mailing requirements." *Id*. In apparent response to the *Ryan* decision, the General Assembly amended Section 12-51-120 in 2000, to include the language "as provided in Section 12-51-40(b)." *See*, 2000 Act No. 399 § 3(X)(7). The General Assembly also amended Section 12-51-40(b) to include a specific reference to and incorporation of the "postal regulations" that the Supreme Court had refused to apply in *Ryan*. *See*, 2000 Act No. 399 § 3(X)(3). Thus, the holding in *Ryan* was abrogated by the 2000 legislative amendments.

Likewise, the Appellants' reliance on the case of *Manji v. Blackwell*, 323 S.C. 91, 473 S.E.2d 837 (Ct. App. 1996), is also misplaced. In *Manji*, this Court ruled that the mailing of a redemption notice by only certified mail was insufficient and "failed to comply with the notice requirements of § 12-51-120," thereby invalidating the tax sale. 473 S.E.2d at 838. *Manji* is easily distinguishable from the case at bar for two reasons. First, *Manji* pre-dates the 2000 amendments to Sections 12-51-120 and 12-51-40(b), as discussed above. Second, *Manji* involves the mailing of a redemption notice to an individual taxpayer and not to a corporation which is a mortgagee. Thus, *Manji* does not dictate a different result in the case at bar.

Additionally, the Appellants' position is barred on procedural grounds. "In South Carolina, all 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 mandatory and are to be strictly enforced." *Smith v. Barr*, 375 S.C. 157, 650 S.E.2d 486, 490 (Ct. App. 2007). (Emphasis added). Thus, "[f]ailure to give the required notice is a fundamental defect in the tax sale proceedings which renders the proceedings absolutely void." *Rivers v. Bulsa*, 325 S.C. 287, 478 S.E.2d 878 (Ct. App. 1996).

In this case, the delinquent taxpayer, Cutter & Company, is not arguing on appeal that the Redemption Notice was not properly sent to the correct address. That argument has already been abandoned on appeal.[5] Instead, Cutter & Company, argues that the tax sale is invalidated by a lack of proper notice *to a third party*, namely O&P Properties, which is the mortgagee and not the taxpayer. Therefore, the requirement of strict compliance with statutory notice provisions is not at issue for Cutter & Company. In other words, Cutter & Company may not argue that improper notice to another party invalidates the tax sale where Cutter &

[5] In the lower court, Cutter & Company asserted that the Delinquent Tax Collector did not use the proper address for tax notices because a change of address form had been submitted in October 2014. The Master-in-Equity did not find the testimony of Jamie Cutter to be credible for reasons described in the Final Order, and he ultimately ruled that "Orangeburg County used the best, proper address on file when it sent all appropriate tax notices to Cutter & Company, LLC." (R. 8). That ruling has not been appealed.

Company now concedes – by abandoning the issue – that the Redemption Notice was properly mailed to it, although delivery of that notice went unclaimed.

O&P Properties, likewise, cannot prevail for procedural reasons. The record reflects that O&P Properties never cross-claimed against the Delinquent Tax Collector and never pled that the Redemption Notice was not sent by restricted delivery. That is solely an argument that was pled by Cutter & Company in its Amended Complaint. Moreover, after judgment was entered, only Cutter & Company filed a Rule 59(e) motion raising this argument. O&P Properties did not file a Rule 59(e) motion to preserve the issue for appeal. *See*, *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("it is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review").

Thus, for these procedural and preservation reasons as well, the Appellants cannot prevail in invalidating the tax sale of Parcel 2. Nonetheless, it bears repeating, the record clearly shows that the mailing of the Redemption Notice to O&P Properties was in full compliance with the requirements of Sections 12-51-120 and 12-51-40(b). The judgment entered by the Master-in-Equity upholding the tax sale of Parcel 2 should be affirmed.

II. The Master-in-Equity correctly ruled that the two clerical errors in the Redemption Notice mailed to O&P Properties, LLC were immaterial given that those errors did not deprive the mortgagee of constructive notice of the property at issue and the notice had not even been received or claimed by the mortgagee.

In Section I of their opening brief, the Appellants also argue that the Redemption Notice mailed to O&P Properties includes two clerical errors, namely the wrong book and page were listed for the mortgage and the property description is incomplete or, more accurately, is stated in an abbreviated manner.[6] The Redemption Notice, however, does include the correct recording information for the title to Parcel 2 as well as the correct name of the mortgagor/taxpayer, and the correct tax identification number for the property. (R. 72). Accordingly, there is sufficient information for O&P Properties – had the Redemption Notice been received – to identify the applicable property or, at the very least, have constructive notice whereby it could seek additional information to identify the property. *See*, *Dibble v. Bryant*, 274 S.C. 481, 265 S.E.2d 673, 675 (1980); *Johnson v. Arbabi*, 355 S.C. 64, 584 S.E.2d 113, 115 (2003) (holding that the notice required by Section 12-51-120 is constructive notice).

[6] This issue on appeal is not included in the Statement of Issues on Appeal. In *Jones v. Lott*, 387 S.C. 339, 692 S.E.2d 900 (2010), the Supreme Court reaffirmed the well-established rule of appellate law that "[o]rdinarily, no point will be considered which is not set forth in the statement of the issues on appeal." 692 S.E.2d at 903.

In the Final Order, the Master-in-Equity ruled that "[w]hile there were errors in the notice that was sent, those errors were immaterial since the notice was never received by O&P Properties, LLC, as it was returned to the Delinquent Tax Office." (R. 8). The Master also noted that O&P Properties presented "no testimony that the errors caused the mortgagee confusion since it was never received." (R. 1). In short, there is no evidence that the inconsequential errors on the Redemption Notice itself – which did not prevent the mortgagee from easily identifying the subject property – violated the requirements of Section 12-51-120 or deprived O&P Properties of constructive notice as required by Section 12-51-120. This issue, if properly raised on appeal, does not require a reversal of the judgment entered by the Master-in-Equity as to Parcel 2.

III. The Appellants' argument that the Redemption Notices mailed to the Appellants failed to notify them of the correct amount required to redeem Parcel 2 was not raised at the trial before the Master and is not preserved for appeal. However, even if the merits are considered, the Appellants have not demonstrated that the $6,042.93 figure cited by the Delinquent Tax Collector as the redemption amount is incorrect or resulted in any prejudice to the Appellants.

The Appellants have also argued that the Redemption Notices mailed to the Appellants failed to notify them of the correct amount required to be paid to redeem the property. The Redemption Notices mailed to both parties stated $6,042.93 as the redemption amount. (R. 65, 72). On appeal, the Appellants insist

that amount is incorrect and that the correct amount was $5,663.32. The Appellants further claim that a Redemption Notice containing an incorrect redemption amount is a "fundamental defect" in the tax sale proceedings that warrants setting aside the tax sale. The Appellants' position fails on procedural and substantive reasons.

First, from a preservation standpoint, the record reflects that this is an issue that was not raised nor argued at trial. There was no testimony elicited from any of the witnesses on this issue. The Appellants' allegation that the correct redemption amount was $5,663.32 was never mentioned during the trial and is not addressed in the Master-in-Equity's Final Order. That number does not appear in the trial transcript. In its Rule 59(e) motion, Cutter & Company states in conclusory fashion that the Master erred "[b]y failing to address the content of the end of the redemption period notices, which incorrectly stated … the amount required to redeem the property." (R. 14). However, that bald statement provided the Master no explanation as to how Cutter & Company maintained that the redemption amount was "incorrect." A bald allegation, with no supporting evidence or argument, did not present that issue for the Master's consideration nor preserve that issue for appeal.[7] Additionally, it is well settled that "a party cannot use a Rule

[7] An issue is typically treated as abandoned where it is stated "in a short, conclusory statement without supporting authority." *Fields v. Melrose Limited Partnership*, 312

59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment, but did not." *Stevens & Wilkinson of South Carolina, Inc. v. City of Columbia*, 409 S.C. 563, 762 S.E.2d 693, 695 (2014).

In addition, the Appellants have not demonstrated that the redemption amount of $6,042.93 was incorrect. The Appellants offer a different number, specifically $5,663.32, and claim that "this accounting is derived from information found online on the Orangeburg County Treasurer's website." *See*, Appellants' Brief, p. 16. But, there is no testimony from the Treasurer or any testifying witness to explain the data on which the Appellants apparently rely to perform their alternative calculation.

Nonetheless, the $6,042.93 number is a correct one. There are three components to that figure: the 2014 taxes owed (with penalties and collection costs); the 2015 taxes owed (with penalties and collection costs); and the interest on the bid amount. The total for the 2014 taxes, when the redemption notice was issued in October 2016, totaled $1,965.92, with includes the taxes owed ($1,592.10) and statutory penalties of 15% ($238.82)[8] and collection costs ($135.00). The total for the 2015 taxes, when the redemption notice was issued in October 2016, totaled $2,037.01, which includes the taxes owed ($1,697.40) and

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S.C. 102, 439 S.E.2d 283, 285, n.3 (Ct. App. 1993). *See also*, *Glasscock, Inc. v. United States Fidelity & Guaranty Co.*, 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001).

[8] The statutory penalties totaling 15% are set forth in Section 12-45-180.

statutory penalties of 15% ($254.61) and collection costs ($85.00). The interest on the bid amount -- a number to which there is agreement from the Appellants -- was $2,040.00. Those three components -- $1,965.92 + $2,037.01 + $2,040.00 -- equal $6,042.93, which is the exact number included in the Redemption Notices mailed to the Appellants. Consequently, the Appellants have not demonstrated that the Delinquent Tax Collector used an incorrect redemption amount in the Redemption Notices. At any rate, the Appellants have also failed to show that an error in the Redemption Notices, perceived or otherwise, resulted in any prejudice to the Appellants who did not claim the Redemption Notices when mailed to their known addresses.

Finally, the Appellants raise an issue with the mailing of the Execution Notice dated April 1, 2016, which pertained to Cutter & Company's unpaid taxes for the tax year 2015. (R. 82). This is also a new issue raised for the first time on appeal that is not preserved for appellate review. Nonetheless, even if it were properly raised and addressed below, the Appellants' position lacks merit.

The Appellants insist that the Execution Notice dated April 1, 2016 was "not a statutorily-required notice," but they are clearly mistaken. *See*, Appellants' Brief, p. 16. The Execution Notice is actually required by statute, specifically Section 12-51-40(a), which states in part: "On April first or as soon after that as practicable, [the officer shall] mail a notice of delinquent property taxes, penalties,

assessments, and costs to the defaulting taxpayer and to a grantee of record of the property, whose value generated all or part of the tax." *See*, S.C. Code Ann. § 12-51-40(a). The notice is not intended to provide a history of past tax years for which taxes may remain unpaid or for which a tax sale may have held. Rather, it provides notice for the taxes due and unpaid in that specific tax year, which was 2015 for the April 1, 2016 notice at issue. The notice did not create any "artificial deadlines" as Appellants suggest. Instead, it provided notice of the unpaid taxes for 2015, including penalties and costs, and the amounts that would be due if the taxes remained unpaid at certain intervals.

In short, the issuance of the statutorily-required Execution Notice dated April 1, 2016, was not illegal nor improper, and it certainly does not constitute a "fundamental defect" in the tax sale proceedings at issue in this litigation.

IV. The Master-in-Equity correctly ruled that the Delinquent Tax Collector had no legal responsibility to treat Parcel 2 as divisible or already subdivided property or to sell less than the entire parcel to collect the unpaid tax obligation.

The Appellants' second and third issues on appeal may be addressed in tandem. The Appellants argue that the Delinquent Tax Collector committed a "fundamental defect" in the tax sale proceedings (1) by failing to treat Parcel 2 as divisible or already subdivided property and (2) by failing to sell less than the

entire parcel to collect the tax obligation. The Appellants insist that the subject property already appeared on a plat as four separate lots that could have been assigned separate tax map numbers so that less than the whole parcel could have been sold to pay the tax obligation of Cutter & Company.

The Appellants cite to this Court's decision in *Folk v. Thomas*, 336 S.C. 466, 520 S.E.2d 327 (Ct. App. 1999), as guiding authority. In *Folk*, this Court applied Section 12-51-40(d), *as it was codified at that time*, and set aside a tax sale "because the County failed to ascertain whether Parcel B was divisible before the sale." 520 S.E.2d at 330. The Appellants contend that the Delinquent Tax Collector in this case similarly committed a "fundamental defect" in the proceedings by failing to assess divisibility.

However, the Appellants' reliance on *Folk* is misplaced for two obvious reasons. First, this Court's decision in *Folk* was *reversed* by the Supreme Court and is not binding precedent. *See, Folk v. Thomas*, 344 S.C. 77, 543 S.E.2d 556 (2001). Second, and more importantly, in 2000, the General Assembly amended Section 12-51-40(d) to change the "divisibility" provision from a mandatory one using the term "shall" to an optional or discretionary one using the term "may." *See, Cricket Store 17, LLC v. City of Columbia Bd. of Zoning Appeals*, 428 S.C. 270, 834 S.E.2d 209, 212 (Ct. App. 2019) ("[t]he use of the word 'may' signifies permission and generally means that the action spoken of is optional or

discretionary unless it appears to require that it be given any other meaning"). At the time of the tax sale at issue in this litigation, the applicable provision of Section 12-51-40(d) was optional or discretionary: "When the real property is divisible, the tax assessor, county treasurer, and county auditor ***may*** ascertain what 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." S.C. Code Ann. § 12-51-40(d). (Emphasis added). Thus, unlike in *Folk*, there was no legal requirement in 2015 for a delinquent tax collector to ascertain whether the property was divisible.[9]

Moreover, in adjudicating this issue, the Master-in-Equity made the following finding of fact:

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

(R. 5). Additionally, the Master issued the following conclusion of law:

> As to Parcel 2, Cutter & Company, LLC did not request the Delinquent Tax Office or any other department of Orangeburg County divide Parcel 2 to take and auction enough property to satisfy outstanding property taxes,

[9] This change in the law in 2000 was recognized by the Supreme Court in *Folk*, 543 S.E.2d at 558, n.2.

> assessments, penalties, and cost for the 2014 and 2015 tax years. As such, Section 12-51-40(d) does not place a pre-sale burden on the County or tax collector to determine divisibility. Plaintiff has the initial burden of requesting the County to determine divisibility prior to the sale.

(R. 8). (Citation omitted). In *Folk*, *supra*, 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." 543 S.E.2d at 559.

Notably, the Appellants do not dispute the Master's finding that Cutter & Company, as the defaulting taxpayer, never made a request to the Delinquent Tax Collector to determine the divisibility prior to the tax sale. Likewise, no request was made to treat the property as subdivided or to assign different tax map numbers to each lot. That burden was on Cutter & Company. It did not satisfy the burden.

In sum, the Delinquent Tax Collector had no legal responsibility to treat Parcel 2 as divisible or already subdivided property or to sell less than the entire parcel to collect the unpaid tax obligation. Thus, the failure to take those actions, which are optional or discretionary at best under Section 12-51-40(d), does not constitute a "fundamental defect" sufficient to set aside a valid tax sale.

CONCLUSION

Based on the foregoing discussion and analysis, the Respondents Kathy Henderson, as Delinquent Tax Collector of Orangeburg County, and Stafford Funding Group, LLC respectfully request that the Court affirm the judgment entered by Judge James B. Jackson, Jr. confirming that title to Parcel 2 has properly vested to Stafford Funding Group.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned counsel for the Respondents certifies that the Final Brief of Respondents complies with Rule 211(b), SCACR.

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Respondents certifies that the Final Brief of Respondents complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

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