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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

Shannon M. Phillips, Master in Equity  
Gordon Cooper, Master in Equity

Appellate Case No. 2021-000880

Michael E. Williams,

Respondent

vs.

Raymond Arnold a/k/a Raymond Arnold, Jr.

Appellant.

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RESPONDENT'S INITIAL BRIEF

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November 2, 2021

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**ISSUE ON APPEAL**

1. The Trial Court Correctly Denied the Appellant's Request for Relief.

## STATEMENT OF THE CASE

On December 3, 2012, the subject real property was sold with two (2) other tracts of land, all of which were owned by Raymond Arnold, Jr. (Appellant). The subject tract of land was the second tract sold. The total unpaid taxes on all three (3) tracts of land was \$770.69 (Tr. \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_).

When Tract I was sold, the bid price was \$700.00. This was still \$70.69 short of the necessary amount to pay all of the delinquent taxes. When Tract II (the subject tract) was sold, the bid price was \$5,300.00. The Respondent was the successful bidder.

Tract III was sold and the bid price was \$11,500.00. Since the bid prices of Tract I and Tract II were more than enough to pay the delinquent taxes, the Appellant filed an action naming the County and the successful bidders on the three (3) tracts. The Complaint contended that the County had improperly sold Tract III. [Reference is made to Cause of Action 2014-CP-42-4750, hereinafter referred to as 2014 action.]

After the filing of the 2014 action, the Appellant reached a settlement and regained ownership of Tract I and Tract III. On May 4, 2016, the Appellant dismissed the action and all claims as to all Defendants (Tr. \_\_\_\_\_). The Appellant also sought, and received, the surplus funds from the sale of Tract II (Tr. \_\_\_\_\_).

On August 3, 2019, the Respondent brought the subject action to quiet title. The Appellant filed an Answer which was basically a general denial; he asserted no affirmative defenses.

The matter was referred to the Master-in-Equity on September 8, 2020. The hearing was held on June 21, 2021. At the trial, the Respondent introduced the entire Delinquent Tax File, and testimony was presented from the Tax Collector which showed that the sale had complied with the applicable statutory requirements.

When counsel for the Appellant cross-examined the Tax Collector, he attempted to show that the Tax Sale was erroneous because the County had sold all three (3) tracts. Trial Counsel for the Respondent objected, and the court sustained the objection. The court held that the 2014 action had been dismissed with prejudice as to all Defendants. Therefore, matters relating to the 2014 action were not relevant to the subject quiet title action.

Based on testimony presented by the Tax Collector's Office, the court correctly held that the Tax Sale should be affirmed. This appeal has ensued.

## STANDARD OF REVIEW

Post-trial Motions are generally discretionary. The decision is left to the discretion of the trial judge who tried the case. Coleman v. Dunlap, 306 S.C. 491 (1992); BB&T v. Taylor, 369 S.C. 548 (2006).

Therefore, the Standard of Review is limited to whether the trial court abused its discretion. An abuse of discretion does not occur unless the Judge issuing the Order is controlled by an error of law or whether the Order was based on factual conclusions that were without evidentiary support. Tri-County Ice & Fuel Co. v. Palmetto Ice Company, 303 S.C. 237 (1990).

## ARGUMENT

### **The Trial Court Correctly Denied The Appellant's Requested Relief**

When the subject Tax Sale took place, it was a fact that all three (3) of the Appellant's parcels did not need to be sold. The total of the delinquent taxes was \$770.69. The sale of Tract I resulted in a sales price of \$700.00. The sale of Tract II (subject property) resulted in a sales price of \$5,300.00. Therefore, after the sale of Tract II, there were sufficient funds to pay all of the delinquent taxes. Tract III should not have been sold, however, it was necessary to sell Tract II (subject property).

The Appellant brought the 2014 action challenging the sale because Tract III was incorrectly sold. When the 2014 action was brought, the Appellant had the opportunity to challenge the validity of the sale of the subject property. Instead, the Appellant reached a settlement which allowed him to regain Tracts I and III. A Stipulation of Dismissal was entered into which resolved all claims arising out of the Tax Sale. The case was dismissed as to all parties.

Collateral Estoppel (also referred to as Issue Preclusion) prevents the litigation of issues of fact or law that have been determined in prior litigation. The Doctrine also prevents litigation of issues that a party had full and fair opportunity to litigate. Zurcher v. Bilton, 379 S.C. 132 (2008).

In his Brief, the Appellant contends that he should have been allowed to assert the invalidity of the Tax Sale. He cites the case of Kunst v. Loree, 404 S.C. 649 (Ct. App. 2013).

The Respondent respectfully submits that the holding in Kunst does not apply to the fact pattern of this case. In Kunst, the Plaintiff had sued Kunst for breach of contract. Kunst did not timely answer and was in default. The Plaintiff ultimately obtained a verdict against Kunst. At the conclusion of the contract action, Kunst brought an action against the Plaintiff for defamation. The trial court dismissed Kunst's action on the basis of collateral estoppel. The trial court reasoned that since "truth" is a defense to defamation, and since the Plaintiff had obtained a judgment against Kunst, the Plaintiff had established "truth" in order to obtain his verdict.

The Court of Appeals held that the Doctrine of Collateral Estoppel does not apply to default judgments because the essential element requiring the claim to have been actually litigated has not been met. In the case at bar, the issue of the Tax Sale's validity was litigated. A resolution was agreed upon and the action was dismissed as to all parties.

The Appellant also argues that since the Respondent did not actively participate in the 2014 action, the Doctrine of Collateral Estoppel does not preclude him from now attacking the Tax Sale. In support of his argument, the Appellant cites the case of Jones v. City of Folly Beach, 326 S.C. 360 (1997).

It is respectfully submitted that this argument is also without merit. In Jones, the Plaintiff had initiated suit in Federal Court. During the trial, the Plaintiff was unhappy with the direction that the case was taking. So, the Plaintiff voluntarily dismissed his action. [The federal action was dismissed with prejudice; the state action was dismissed without prejudice.] The Plaintiff then brought the state action in the Court of Common Pleas. The court held that Collateral Estoppel did not preclude the Plaintiff from doing this because the federal court had not made a final determination and therefore, the case had not been fully litigated. id at p. 367.

In the case at bar, however, the matter was litigated and was final. The Appellant reached an agreement, and he dismissed his action with prejudice as to all Defendants. When a case has been dismissed with prejudice, the matter is concluded:

- Nunnery v. Brantley Constr. Co., 289 S.C. 205 (Ct. App. 1986) – It is generally recognized that a dismissal with prejudice indicates an adjudication on the merits, and this precludes subsequent litigation to the same extent as if the action had been tried to a final adjudication.
- Collins v. Sigmon, 299 S.C. 464 (1989) – When an action has been dismissed with prejudice, it bars relitigation of the same claim.

Our courts have consistently held that Collateral Estoppel prevents a party from relitigating issues that were decided in a previous action. Carolina Renewal, Inc. v. S.C. Dept. of Transportation, 385 S.C. 550 (Ct. App. 2009). Therefore, in the case at bar, the trial court correctly held that the Appellant did not have the right to relitigate the issue.

In addition to the Doctrine of Collateral Estoppel, the trial court should be affirmed for the following reasons:

- (a) 12-51-160 – This Code Section imposes a two (2) year statute of limitation to attack a Tax Deed. The Code Section reads as follows:

“In all cases of tax sale the deed of conveyance, whether executed to a private person, a corporation, or a forfeited land commission, is prima facie evidence of a good title in the holder, that all proceedings have been regular and that all legal requirements have been complied with. An action for the recovery of land sold pursuant to this Chapter or for the recovery of the possession must not be maintained unless brought within two (2) years from the date of the sale as provided in §12-51-90(c).”

The subject property was sold on December 3, 2012. The hearing in the case at bar took place on June 21, 2021. At the hearing, the Appellant, for the first time, attempted to assert that the Tax Sale should be set aside. This was about nine and half years after the Tax Sale. Accordingly, any effort to attack the Tax Sale would be barred by the statute of limitation imposed by Code §12-51-160.

- (b) No Affirmative Defenses Raised – When the Appellant filed his Answer, he filed a general denial. No affirmative defenses were raised, and nothing was pled to avoid or dismiss the Respondent’s action. As a result, it is respectfully submitted that the Appellant should not have been allowed to raise a defense not pled. This is particularly true since the Appellant, after dismissing the 2014 action as to all parties, requested and received for the overage from the subject Tax Sale (Tr. \_\_\_\_). By doing this, the Appellant acquiesced to the validity of the Tax Sale.

In the trial of the case at bar, the Delinquent Tax Collector presented his entire tax file.

He also offered testimony to show that he had done the following:

- Filing the execution for delinquent taxes on March 17, 2012 (Tr. \_\_\_\_);
- Filing Notice of Delinquency which was received for by the Appellant on August 11, 2012 (Tr. \_\_\_\_);
- Advertising three (3) consecutive times in a newspaper of general circulation (Tr. \_\_\_\_);
- Filed Notice of Redemption which was received for by the Appellant on November 12, 2013 (Tr. \_\_\_\_);
- Filed Notice of Overage which was received for on May 23, 2014 (Tr. \_\_\_\_);
- Paid the overage to the Appellant on October 17, 2016 (Tr. \_\_\_\_).

The Delinquent Tax Collector complied with all statutory requirements. Therefore, the Tax Sale should be approved, and the title should be quieted.

Based on all of the above, it is respectfully submitted that the trial court did not abuse its discretion in denying the Appellant’s Motion to reopen the trial of the case.

## CONCLUSION

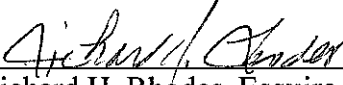
The Respondent respectfully submits that the Order of the lower court should be affirmed and that the Appellant's appeal should be dismissed.

The Appellant's main argument is that he should have been allowed to relitigate the issues involved in the 2014 action. The Doctrine of Collateral Estoppel correctly prevents him from doing so.

Additionally, the Appellant attempted to void a Tax Sale which had taken place approximately nine and a half years before. Code §12-51-160 precludes that.

Also, the Record shows that the Delinquent Tax Office complied with the statutory requirements of the sale. And, the Appellant receipted for the overage after dismissing the 2014 action with prejudice.

Respectfully submitted,

  
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