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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM FLORENCE COUNTY
Court of Common Pleas**

The Honorable Haigh M. Porter, Master-in-Equity

Case No.: 2017-CP-36-00214

The Corner Store, Inc., and all persons claiming any right, title, estate interest in or lien upon the real estate described; any unknown adults and those persons who may be in the military service of the United States of America, all of them being a class designated as John Doe, whose true name is unknown; any unborn infants or persons under disability being a class designated as Richard Roe, whose true name is unknown; United States of America and Paige Holsapple as Florence County Delinquent Tax Collector, are Defendants and Respondents,

Nilesh Patel, as Trustee of Anjay R. Patel Irrevocable Trust Agreement Dated December 18, 2000 is the Appellant and Defendant,

vs.

Ronald Edwin Barfield, Plaintiff and Respondent.

INITIAL BRIEF OF RESPONDENT BARFIELD

April 6, 2022

/s/Charlie J. Blake, Jr., S.C. Bar # 16980

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STATEMENT OF THE ISSUES ON APPEAL

- I. Did the Master-in-Equity err in his failure to find that the federal forfeiture of the subject property should have prevented the tax sale?
- II. Did the federal government's release of the subject property from the forfeiture years after the tax sale cure the defect of selling the subject property while under federal forfeiture?
- III. Did the Master-in-Equity err in finding the tax sale valid?
- IV. Did the Master-in-Equity err in applying the statute of limitations in S.C. Code Ann. §12-51-160?

STATEMENT OF THE CASE

The original action was filed by Respondent Barfield on April 14, 2018, seeking to confirm the tax sale and quiet title on property located in Florence County. Ronald Barfield purchased the property at tax sale on October 3, 2016. The United States of America filed an answer on or about February 8, 2019, contesting the tax sale. The United States of America produced an Order of Forfeiture as to Anjay Patel filed in the United States District Court Western District of Virginia. The list of properties forfeited by Anjay Patel included the subject property. Michelle Dahl Sturkie, Esq. was appointed as Guardian ad Litem on March of 2019, to represent any unknown individuals who may claim an interest in the subject property.

Appellant Nilesh Patel, Trustee of Anjay Patel Irrevocable Trust dated December 18, 2000 (“Patel Trust”) filed a Motion to be added as party on May 3, 2019. The Answer and Crossclaim of the Appellant were filed on July 16, 2021. A trial was scheduled for July 20, 2021. In lieu of continuing to pursue its interest in the subject property, the United States of America elected to release the property from federal forfeiture and not attend the scheduled the quiet title hearing. The hearing on the merits was held and Order granting relief for Barfield was entered on September 17, 2021.

STANDARD OF REVIEW

The sale of real property for the satisfaction of ad valorem taxes is governed by S.C. Code Ann. § 12-51-40 et seq. (1976). In cases of tax sales, the deed of conveyance is held and taken as prima facie evidence of good title in the holder, and that all proceedings have been regular, and all of the legal requirements have been complied with. S.C. Code Ann §12-51-160 (1976). The burden of proving the title is defective is on the party attacking the deed. *Leysath v. Leysath*, 209 S.C 342, 40 SE.2d 233 (1946).

ARGUMENTS

FACTS OF THE CASE

Respondent Barfield purchased the subject property at the 2016 Florence County tax sale. The property is designated as TM#: 900113-03-001. The Corner Store, Inc., failed to pay the 2015 ad valorem property taxes on the property and is recognized as the defaulting taxpayer.

The Corner Store, Inc., was the titled owner of the property from 2010 until the property was lost at the 2016 tax sale. In 2011, the United States Government indicted and prosecuted Anjay Patel and other defendants in the Western District of Virginia. Anjay Patel and the other named Defendants in the indictment indicated that the subject property belonged to them even though it is listed and/or incorporated as The Corner Store. Patel pled guilty and agreed to forfeit his interest in the subject property. Prior to the completion of the criminal action, The Corner Store, Inc. executed an Assignment of Rents and Leases on the subject property to the Patel Trust in February of 2012. The Amended Preliminary Order of Forfeiture-Final AS TO DEFENDANT (ANJAY PATEL) was filed in Harrisonburg, Virginia on August 29, 2013.

The Corner Store, Inc. did not pay the 2015 taxes and a tax execution for the 2015 tax year was issued on March 28, 2016. The delinquent tax notice was sent to The Corner Store, Inc on April 12, 2016. A certified delinquent notice was mailed to The Corner Store, Inc. on May 20, 2016, and it was claimed by the registered agent for The Corner Store. The property was advertised for sale in a newspaper in general circulation in Florence on three separate dates in September of 2016.

The property was sold at the delinquent tax sale in October of 2016. Ronald Edwin Barfield was the successful bidder at the tax sale. Multiple redemption notices were sent to various

addresses of The Corner Store, Inc. and one was claimed. These notices were sent on September 6, 2017. The property was not redeemed, and Barfield was issued a deed in May of 2018. Barfield has paid the taxes and improved the property since taking ownership. (Transcript 17-18).

Ronald Barfield filed a quiet title action on the subject property in 2018. The United States of America objected to the quiet title due to Anjay Patel including the property in the forfeiture proceedings. Anjay Patel through his Trustee (Nilesh Patel) objected to the quiet title and sought to intervene in October of 2019. Patel filed its Answer and Counterclaim in July of 2021.

I. Did the Master-in-Equity err in his failure to find that the federal forfeiture of the subject property should have prevented the tax sale?

The United States of America indicted Anjay Patel in 2011 and took the subject property by federal forfeiture prior to the property being sold at tax sale. The United States was added to allow the Court to determine its rights to the property. The United States of America relied on *21 U.S.C Section 853(k)(2)* to object to the sale. This code provides that in the event of a criminal forfeiture of property no party claiming an interest in the property may commence an action alleging an interest in the property. Prior to the hearing, the United States of America elected to withdraw its objection to the tax sale and waive protections granted to them under the law. The Patel Trust attempted to argue notice issues on behalf of the United States of America before the Master and again on appeal.

The strength of the United States of America's claim and the adequacy of the notice given to Florence County by the United States are moot issues. The United States of America elected to withdraw its claim and did not appear at the hearing. The protections given to the United States on forfeited property are specific to the United States of America. These rights are not given to the forfeiting owner, a Trust of the forfeiting owner or a third party. The Court was clear that the

Patel Trust was allowed to present its argument on behalf of the United States of America just for information purposes and the legitimacy of this claim would be considered at the Court's discretion (Transcript 36).

II. Did the federal government's release of the subject property from the forfeiture years after the tax sale cure the defect of selling the subject property while under the federal forfeiture?

The United States of America elected to withdraw its claim to the property and objection to the quiet title. According to Black's Law Dictionary, an action to quiet title is "a proceeding to establish a plaintiff's title to land by compelling the adverse claimant to establish a claim or be forever estopped from asserting it" (Black's Law Dictionary, 10th ed. 2014). The purpose of adding the United States of America to the quiet title was to allow them to assert its claim. Once the United States of America made the decision to waive its claim to the subject property, the adequacy of the notice given to Florence County by the United States and whether the email to a county employee was sufficient became moot.

The Patel Trust is now attempting to resurrect the arguments and issues waived by the United States of America. The Patel Trust's interest is not protected under the federal forfeiture laws detailed in 21 U.S.C 853. Respondent Florence County and Barfield both objected to Patel Trust attempting to step in the shoes of the United States of America at the hearing. The Master allowed the Patel Trust to proceed with this argument only after establishing that we were in a court of equity and the Master would sort out the issue. (Transcript p. 36).

III. Did the Master-in-Equity err in finding the tax sale was valid?

The Florence County Delinquent Tax Collector followed the procedure for notifying delinquent taxpayers as found in Title 12 of the South Carolina Code of Laws. The lower court

was clear that the Appellant did not have an established right to notice. The Patel Trust is attempting to stand in the shoes of the parties that could object to the Respondent Barfield quieting title. “The Patel Trust was never an owner of record, grantee of the property or the mortgage holder. The Trust is relying on a mere filing of an assignment of rents and lease.” (Judge’s Order).

The Appellant Patel Trust’s claim under of the S.C. Code of Laws § 12-51-40 demonstrates its lack of standing. S.C. Code § 12-51-40 requires notices be sent to the defaulting taxpayer and to a grantee of record of the property. Florence County Delinquent Tax Collector mailed the notice to The Corner Store. The Patel Trust is not entitled to this notice as the property was not titled in its name.

The inability of the Patel Trust to establish its right to notice as defaulting taxpayer or grantee forced the Trust to correlate an assignment of rents to a mortgage. The Trust’s assignment of rent does not provide a right to possession of the property. An assignment of rent does not serve to transfer title. The Patel Trust is using a strained construction to equate its rights to that of a grantee or defaulting taxpayer. In its discretion, the Master in Equity did not feel that the Patel Trust’s argument matched the meaning of the statute. “In interpreting a statute, words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation” Rowe v. Hyatt, 321 S.C. 366, 468 S.C.2d 649 (1996).

Appellant Patel Trust argued entitlement to notice of the end of the redemption period and cited S.C. Code § 12-51-150 of the S.C. Code of Laws. This notice is actually detailed in S.C. Code § 12-51-120, which requires that the redemption notice be sent to the defaulting taxpayer, to a grantee, mortgagee or lessee. The Master-in-Equity rejected the Trust’s rights to receive notice of the end of the redemption period as a mere holder of an assignment of rents. Again, the Patel

Trust is attempting to stand in the shoes of a party that could legitimately challenge the quiet title sale.

IV. Did the Master-in-Equity err in applying the statute of limitations in S.C. Code Ann. § 12-51-160?

Even if the tax sale had a defect, which is denied, the Patel's Trust attempt to overturn the tax sale is untimely. S.C. Code § 12-51-160 establishes that no action for the recovery of land may be maintained unless brought within two years. The tax sale of the real property was on October 3, 2016. The Patel Trust filed its Motion to Intervene in October of 2019, and its Answer and Counterclaim on July 16, 2021. The intervention to set aside the tax sale would need to be filed before October 3, 2018. The Trust filed its Motion nearly a year after the required deadline.

The Court properly established that this action is to quiet title not an action for the Appellant to recover the subject property. The Patel Trust was never an owner of record, grantee of the property or mortgage holder. S.C. Code § 12-51-160 is clear that any action must be brought within two years from the date of sale as provided in S.C. Code § 12-51-90(C). The referenced section gives the defaulting taxpayer, grantee from the owner, or mortgage or judgment creditor twelve months to redeem and an additional twelve before the deeds becomes incontestable. The Patel Trust does not fall within the protected categories and was well outside of the statutory protection. The Court properly emphasized that to allow the Patel Trust as a holder of a mere assignment of rent to stop a quiet title after nearly five (5) years from the date sale would be absurd and unfair.

CONCLUSION

The Respondent Barfield respectfully prays that this Court dismiss this action based upon the Appellant's objection to the quiet title being untimely, the compliance of Florence County to

the tax sale laws, and the lack of standing of the Respondent, or alternatively, affirm the decision of the trial court without oral argument based upon the papers submitted. Further, the Respondent respectfully requests this Court to affirm the trial court's decision for any ground appearing on the record.

April 6, 2022

/s/Charlie J. Blake, Jr., S.C. Bar # 16980

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