

STATE OF SOUTH CAROLINA
COUNTY OF YORK

William Bronson,
Plaintiff,

v.

Cray, Inc. and York County,
Defendants.

IN THE COURT OF COMMON PLEAS
IN THE SIXTEENTH JUDICIAL CIRCUIT

Case Number: 2021-CP-46-03234

ORDER

This matter comes before this Court for hearing on Defendant Cray, Inc.'s Motion to Dismiss Plaintiff's complaint. Present at the hearing on March 15, 2022 were Daniel J. Ballou on behalf of Cray, Inc. ("Cray"), Laura R. Dover on behalf of Defendant York County and Daniel D. D'Agostino on behalf of Plaintiff William Bronson ("Bronson").

Based on the evidence submitted to the Court, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Cray is the title owner of real property located in York County, South Carolina designated as Tax Map Number 070-08-03-108 (the "Property").
2. Upon Cray's failure to timely pay 2018 York County property taxes, the County commenced collection procedures in accordance with the Alternate Procedure for Collection of Property Taxes, S.C. Code Ann. § 12-51-40, et seq. (the "Act"), resulting in a tax sale on November 4, 2019 ("Tax Sale").
3. It is undisputed by the parties that the County strictly complied with the requirements of the Act in selling the Property at the Tax Sale, and that Bronson was the high bidder at the Tax Sale.

4. Based upon the November 4, 2019, Tax Sale date, Cray originally had until November 4, 2020 to exercise its statutory right of redemption under S.C. Code Ann. § 12-51-90.

5. On September 21, 2020, the County sent proper Notice of Redemption pursuant to S.C. Code Ann. § 12-51-120.

6. On September 23, 2020, H3755 Section 3 also known as Act 174 was passed by the South Carolina General Assembly and signed by the Governor, effective September 30, 2020 (“Act 174”). Act 174 extended the statutory redemption period for real property sold at a tax sale in 2019 and provided that where the redemption period for such property had not expired as of September 30, 2020, the redemption period was extended for 12 additional months. Act 174 therefore applied to the Tax Sale of the Property.

7. On June 30, 2021, the South Carolina Supreme Court held Act 174 unconstitutional based upon the “one subject rule.” *Mercury Funding, LLC v. Chesney*, (Op. No. 28040, June 30, 2021).

8. Following the *Mercury Funding* decision, the South Carolina Department of Revenue issued a guidance to counties on July 21, 2021, regarding delinquent tax sales held in 2019 (the “Guidance”). While not necessary to resolve the issues in this action, the Guidance advised that counties should issue new notices of redemption to all taxpayers whose property was sold at a tax sale within the scope of Act 174 and who had not yet redeemed their property, and if such property is not thereafter redeemed, the county should issue the tax title to the successful bidder as soon as possible.

9. Cray redeemed the Property on August 17, 2021, before York County could send a new notice of redemption and before any tax deed had been issued to the Plaintiff.

10. Plaintiff filed suit on October 21, 2021, seeking a declaration that the County should issue a tax deed to him and that title to the Property be vested in him as high bidder.

11. In response to the Complaint Cray and the County both filed Motions to Dismiss, pursuant to Rule 12(b)(6), S.C.R.Civ.P. Cray further moved to cancel the *lis pendens* filed herein for good cause shown on the grounds that the claim alleged by the Plaintiff does not affect title to real property.

CONCLUSIONS OF LAW

1. In South Carolina, all requirements of the law leading up to tax sales are intended for the protection of the taxpayer against surprise or the sacrifice of his property. All such laws, including statutes involving the right of redemption, are regarded as mandatory and are to be strictly enforced. See, *Smith v. Barr*, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App. 2007); *Donohue v. Ward*, 298 S.C. 75, 83, 378 S.E.2d 261, 265 (Ct. App. 1989); *Tanner v. Florence Cnty. Treasurer*, 336 S.C. 552, 521 S.E.2d 153, 159 (1999); *Baker v. Denton*, 37 F.Supp.3d 794 (D. S.C. 2014).

2. S.C. Code §12-51-40 sets forth the statutory procedure for conducting a tax sale. Even after a properly conducted tax sale, the defaulting taxpayer may still redeem the property by paying all owed taxes, interest and penalties within twelve months of the tax sale. S.C. Code §12-51-90.

3. Act 174 extended the statutory redemption period for an additional 12 months.

4. Under S.C. Code §12-51-120, notice of redemption must be mailed “neither more than forty-five days nor less than twenty days before the end of the redemption period.” Act 174’s extension of the redemption period meant that the notice sent on September 21, 2020, was no longer timely and did not strictly comply with the Act, rendering it defective as a matter of law.

5. The County was fully justified in following the provisions of Act 174 between its effective date and the date of the Supreme Court's decision in *Mercury Funding*. All statutes in South Carolina are presumed to be constitutional. *State v. Neuman*, 384 S.C. 395, 402, 683 S.E.2d 268, 271 (2009); *Foundation v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013).

6. In the wake of *Mercury Funding*, the County endeavored to issue new notices of redemption and issue tax titles to the successful bidder of unredeemed property as provided in the Act. Before the County could do so in this case, Cray redeemed the Property in accordance with S.C. Code §§12-51-90.

7. Notwithstanding the determination that Act 174 was unconstitutional, the taxpayer is still entitled to the statutory rights provided by the Act, including proper and timely notice of redemption. See, *Smith v. Barr*, and related cases *supra* (requiring strict compliance with tax sale statutes for protection of taxpayer). No basis exists to require the County to issue a tax deed to the high bidder in a tax sale where the mandatory requirements of the Act have not been met.

8. Moreover, Cray redeemed the Property before the expiration of the redemption period and before the County could send a new notice of redemption required under the Act. Under the Act, once redemption has occurred, the County has no continuing interest in the title to the Property, and therefore no interest it can convey. S.C. Code §12-51-100.

9. Plaintiff has alleged no facts sufficient to contest the County's actions in following the law as it existed at the time of the Tax Sale. Cray properly redeemed the Property in accordance with the Act and dismissal under Rule 12(b)(6) is therefore appropriate.

10. Additionally, Plaintiff seeks an equitable remedy when he clearly has an adequate remedy at law. *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n*, 298 S.C. 179, 185, 379

S.E.2d 119, 123 (1989)("equitable relief is generally available only where there is no adequate remedy at law.) The Act clearly provides that a successful high bidder of a voided tax sale is entitled to a refund of the purchase price plus interest. S.C. Code §§12-51-90, 100.

11. A *lis pendens* may only be filed "in an action affecting the title to real property." S.C. Code §15-11-10. As a successful bidder at a tax sale, Plaintiff has no property interest until the expiration of the statutory redemption period. So too, the Plaintiff's declaratory judgment claim does not in fact affect title to the Property, as under no set of facts does the Plaintiff have any legal or equitable interest in the Property after a valid statutory redemption. At best, Plaintiff has merely stated a claim for refund under S.C. Code §12-51-100.

IT IS THEREFORE HEREBY ORDERED that the Plaintiff's claims in the above-referenced case are hereby dismissed with prejudice and the *lis pendens* filed herein is hereby dissolved.

AND IT IS SO ORDERED.

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021 CP-46-03234

William Bronson

Cray, Inc. and York County

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Daniel J. Ballou

Attorney for : Plaintiff Defendant
 or
 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

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:



York Common Pleas

Case Caption: William Bronson VS Cray Inc , defendant, et al

Case Number: 2021CP4603234

Type: Order/Dismissal and Cancellation of Lis Pendens

So Ordered

s/Daniel D. Hall 2753