

Order for Suit to Quiet Title After Tax Sale

BACKGROUND

This is an action to quiet title pursuant to Sections 12-61-10 through 60 and 15-67-10 through 100, Code of Laws of South Carolina, 1976, as amended. Plaintiff initiated this matter on _____, seeking to quiet title to a piece of real property located in Charleston, South Carolina, which it acquired at a Charleston County Forfeited Land Commission sale.

Defendant was served with the Summons and Complaint on _____, which she answered denying the material allegations of the Complaint. This matter was then referred by consent order to this court with finality with any appeal to be directly to the South Carolina Supreme Court. The consent order also specifically allowed this matter to be heard before the running of the one hundred twenty (120) period set forth in Rule 40(h), S.C.R.Civ.P.

A hearing was held in this matter before me on the ____ day of _____, 1996. Present at the hearing were _____, attorney for Plaintiff, _____, representative for Plaintiff, Mary Scarborough, Deputy Delinquent Tax Collector for Charleston County, and W.O. Thomas, Jr., Treasurer for Charleston County. Defendant did not appear either in person or through a representative. Based on the testimony of W.O. Thomas, Jr., _____ and Mary M. Scarborough and on the exhibits presented at the _____, 1996, hearing, I make the following findings of fact and conclusions of law as required by Rule 52(a), S.C.R.Civ.P.

FINDINGS OF FACT

I hereby specifically find from the testimony and exhibits presented at trial:

1. That Defendant is a citizen and resident of Charleston County, South Carolina, and at all times relative hereto, resided at _____, Charleston, South Carolina 294____.
2. That the real property, which is the subject of this action, was conveyed to Defendant by deed of _____ dated _____, and recorded on _____, in the Office of the Register of Mesne Conveyance for Charleston County, South Carolina, in Book _____, at Page _____, and has the following description, to wit:

Insert legal description here

TMS#

(hereinafter referred to as the "Property").

3. That Defendant remained the owner of record of the Property until title was transferred to the Forfeited Land Commission by deed of the Charleston County Delinquent Tax Collection dated

_____.

4. That Defendant's address of record is _____, Charleston, South Carolina 294__.

5. That Defendant neglected to pay the ad valorem taxes on the Property for the tax year ____, which were duly levied and assessed against the Property by the political subdivisions of the State of South Carolina legally authorized to assess real property taxes against the Property.

6. That W.O. Thomas, Jr., the Treasurer of Charleston County, South Carolina, issued a tax execution for the tax year _____ directed to the Charleston County Delinquent Tax Collector against the Defendant, strictly charging and commanding Charleston County Delinquent Tax Collector to levy by distress and sell so much of the estate of Defendant to satisfy the delinquent ad valorem taxes, assessments, penalties and costs for their collection, a copy of which was sent to Defendant by the Charleston County Delinquent Tax Collector.

7. That by virtue of the tax executions for the tax year _____, the Charleston County Delinquent Tax Collector took "exclusive possession" of the Property by sending, via certified mail, return receipt requested - delivery restricted to addressee, proper notice of the sale to Defendant on _____, which notice was received by Defendant on _____.

8. That the Charleston County Delinquent Tax Collector did serve upon Defendant, by publication, all notices of delinquent taxes, assessments, penalties and costs to which she was entitled, in a timely manner on _____, _____, and _____.

9. That on _____, during the usual hours of sale, the Charleston County Delinquent Tax Collector, after due advertisement, did sell the Property and give receipt to the Charleston County Forfeited Land Commission, the only bidder at such sale for the sum of \$_____.

10. That prior to the expiration of the twelve (12) month redemption period the Charleston County Delinquent Tax Collector provided to Defendant all notices to which she was entitled, in a timely manner by mailing notice, via certified mail, return receipt requested - delivery restricted to addressee, on _____, to Defendant notifying her that the Property had been sold for taxes and that if it was not redeemed by paying taxes, assessments, penalties, costs and eight percent (8%) interest on the bid price in the total amount of \$_____ on or before _____, that a tax title to the Property would be delivered to the successful bidder at the tax sale, which notice was received by Defendant on _____.

11. That no one redeemed the Property during the twelve (12) month redemption period beginning on _____, the date of the aforementioned sale, and ending on _____.

12. That the aforementioned execution and sale of the Property was proper in that it strictly complied with Sections 1249-10 through 300 and 12-51-10 though 170, Code of Laws of South Carolina, 1976, as amended, in all material respects.

13. That by deed dated _____, and recorded on _____, in the office of the Register of Mesne Conveyance for Charleston County, South Carolina, in Book _____, at Page _____, Walter T. Martin, the Delinquent Tax Collector for Charleston County, South Carolina, did convey the Property to the Charleston County Forfeited Land Commission.

14. That the duly assessed ad valorem taxes for the tax year _____, together with all assessments, penalties and costs, constituted a first lien in all cases whatsoever upon the Property, which first lien attached at the beginning of the tax year _____, as provided in Section 12-49-10, Code of Laws of South Carolina, 1976, as amended, and that the aforementioned tax lien was senior to and took priority over any mortgage liens on the Property, and that the mortgage liens, if any, were junior to and subordinate to the aforementioned tax lien.

15. That by virtue of Defendant's failure to redeem the Property and by virtue of the conveyance of the Property to the Charleston County Forfeited Land Commission by the Charleston County Delinquent Tax Collector, any and all interest Defendant had in and to the Property has been extinguished.

16. That on _____, Plaintiff, as highest bidder, purchased the Property from the Charleston County Forfeited Land Commission at a Charleston County Forfeited Land Commission Auction for the sum of \$ _____.

17. That by deed dated _____, the Charleston County Forfeited Land Commission conveyed title to the Property to Plaintiff, which deed was recorded in the Office of the Register of Mesne Conveyance for Charleston County on _____, in Deed Book _____, at Page _____.

18. That Defendant was properly served with process in this action and was properly notified of the _____, hearing in this matter.

CONCLUSIONS OF LAW

The sale of real property for the satisfaction of ad valorem taxes is governed by Sections 12-49-10 through 330 and 12-51-40 through 170, Code of Laws of South Carolina, 1976, as amended. If the governmental agency charged with collecting delinquent ad valorem taxes fails to strictly comply with the statutory requirements of a tax sale, the sale is invalid. *Man v. Blackwell*, Op. No. 2524 (Ct. App. filed June 17, 1996).

A tax deed, "whether executed to a private person, a corporation, or a forfeited land commission, must be held and taken as 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." Section 12-51-160, Code of Laws of South Carolina, 1976, as amended; *Leysath v. Leysath*, 209 S.C. 342, 40 S.E.2d 233, (1946). The burden of proving that the title is defective is on the party attacking the deed. *Leyeath v. Leyeath*, supra.

If a taxpayer fails to pay the ad valorem taxes on a piece of real property by March 17th of year

immediately succeeding the year for which the taxes are due, the county treasurer must issue a tax execution directed to the person authorized to collect delinquent taxes. Section 12-45-180, Code of Laws of South Carolina, 1976, as amended. Once a County treasurer has issued a tax execution, the delinquent tax collector must:

(a) On April first or as soon thereafter as practicable, mail a notice of delinquent property taxes, penalties, assessments, and costs to the owner of record at the best address available which is either the address shown on the deed conveying the property to him, the property address, or such other corrected or forwarding address that the owner of record has filed with the appropriate tax authority and to a known grantee of the delinquent taxpayer of the property on which the delinquency exists. The notice must specify that if the taxes, penalties, assessments, and costs are not paid, the property must be advertised and sold to satisfy the delinquency.

(b) If the taxes remain unpaid after thirty days from the date of mailing of the delinquent notice, or as soon thereafter as practicable, take exclusive possession of so much of the defaulting taxpayer's property as is necessary to satisfy the payment of the taxes, assessments, penalties, and costs may be taken. 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 at the address shown on the tax receipt or to a more correct address known to the officer, by "certified mail, return receipt requested - deliver to addressee only". . . . All delinquent notices shall specify that if the taxes, assessments, penalties, and costs are not paid on or before a subsequent sales date, the property must be duly advertised and sold for delinquent property taxes, assessments, penalties, and costs. The return receipt of the "certified mail" notice is equivalent to "levying by distress".

(c) In the event the "certified mail" notice has been returned, take exclusive physical possession of the property against which the taxes, assessments, penalties, and costs were assessed by posting a notice at one or more conspicuous places on the premises, in the case of real estate, reading: 'Seized by person officially charged with the collection of delinquent taxes of (name of political subdivision) to be sold for delinquent taxes', the posting of the notice is equivalent to levying by distress, seizing, and taking exclusive possession thereof, or by taking exclusive possession of personally. . . .

(d) The property must be advertised for sale at public auction. The advertisement must be in a newspaper of general circulation within the county or municipality, if applicable, and must be entitled "Delinquent Tax Sale". It shall include the delinquent taxpayer's name and the description of the property, a reference to the county auditor's map-block-parcel number being sufficient for a description of realty. The advertising must be published once a week prior to the legal sales date for three consecutive weeks for the sale of the real property. . . . All expense of the levy, seizure, and sale must be added and collected as additional costs, and shall include, but not be limited to, the expense of taking possession of real or personal property, advertising, storage, identifying the boundaries of the property, and mailing certified notices. When the real property is divisible, the tax assessor, county treasurer, and county auditor shall 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 such cases, the officer shall partition the property and furnish a legal description of it.

Section 12-51-40, Code of Laws of South Carolina, 1976, as amended.

"The property duly advertised must be sold by the person officially charged with the collection of delinquent taxes at public auction at the courthouse on a legal sales date during regular hours for legal tender payable in full on the date of the sale." Section 12-51-50, Code of Laws of South Carolina, 1976, as amended. The delinquent tax collector must submit a bid equal to the amount of the unpaid taxes, penalties and costs on behalf of the Forfeited Land Commission. Section 12-51-55, Code of Laws of South Carolina, 1976, as amended. Unless someone else submits a higher bid, the Forfeited Land Commission is deemed the successful bidder.

For the twelve month period immediately succeeding the tax sale, title to the property remains in the defaulting tax payer; however his title is defeasible upon his failure to redeem the property during the twelve month period. *Von Elbrecht v. Jacobs*, 286 S.C. 240, 332 S.E.2d 568 (Ct. App. 1985); See Sections 12-51-90, 100 and 130, Code of Laws of South Carolina, 1976, as amended. If the defaulting tax payer redeems the property during the twelve month period, the tax sale is canceled and the successful bidder's money is refunded together with interest. Sections 12-51-90 and 100. If, however, the defaulting taxpayer fails to redeem the property during the twelve month period, his title is defeated and title to the property is transferred to the successful bidder. *Von Elbrecht v. Jacobs*, supra; See Sections 12-51-90, 100 and 130.

Prior to the end of the twelve month period, the delinquent tax collector must give the owner of record notice "at the best address available" , via "certified mail, return receipt requested - deliver to addressee only," that the redemption period is about to expire. Section 12-51-120, Code of Laws of South Carolina, 1976, as amended. The notice must be sent no "more than forty-five days nor less than twenty days prior to the end of the redemption period," and must alert the owner that the property described therein has been sold for taxes and if not redeemed in the manner specified therein by the date specified therein (twelve months from the date of the sale) a tax deed will be delivered to the successful bidder. *Id.* Because this right to notice is jurisdictional, an owner's right to redeem cannot be terminated unless the notice is given; and failure to give such notice in the manner proscribed prevents the title to the property from being transferred to the successful bidder. *Good v. Kennedy*, 291 S.C. 204, 352 S.E.2d 708 (Ct. App. 1987); *Id.*

Plaintiff has established that it has a deed to the Property from the Charleston County Forfeited Land Commission, which held a tax deed to the Property, and Defendant has failed to rebut the presumption that Plaintiff's title is good by providing any evidence that the title is defective. This standing alone is sufficient to merit the entry of judgment in favor of Plaintiff quieting title to the Property. The evidence adduced at trial, however, clearly establishes that the sale was proper.

Upon Defendant's failure to pay the 19____ ad valorem taxes on the Property by _____, the Charleston County Treasurer, W.O. Thomas, Jr., issued a tax execution directed to the Charleston County Delinquent Tax Collector. Thereafter, on approximately _____, the Charleston County Delinquent Tax Collector sent notice to Defendant at _____, Charleston, South Carolina 294__ her address of record, which is also her permanent residence notifying her that the 19____ ad

valorem taxes on the property were delinquent and that if she did not pay them the Property would be advertised and sold to satisfy the delinquency. Despite this notice, the 19____ ad valorem taxes were not paid during the next thirty days.

On _____, the Charleston County Delinquent Tax Collector took "exclusive possession" of the Property to satisfy payment of the 19____ ad valorem taxes. He took "exclusive possession" by mailing notice to Defendant at _____, Charleston, South Carolina 294____, via "certified mail, return receipt requested deliver to addressee only" notifying her of the amount of the unpaid 19____ ad valorem taxes, assessments, penalties and costs on certain specified dates, and advising her that if the same was not paid by _____, the Property would be advertised and sold on _____, to satisfy the delinquent taxes, assessments, penalties and costs. The certified return receipt shows that the notice was picked up on _____, and signed for by "_____." Still the delinquent taxes were not paid.

On _____, on _____, and again on _____, the Charleston County Delinquent Tax Collector advertised the Property for sale at public auction. He did so by running an advertisement in The Post and Courier, a newspaper of general circulation in Charleston County, South Carolina, under the heading "DELINQUENT TAX BALE, County of Charleston, State of South Carolina." In the advertisement he advertised numerous properties for sale, and included each taxpayer's name, a description of each property by Charleston County tax map identification number and the amount of delinquent taxes, assessments, penalties and costs due on each property. Yet on _____, the 19____ ad valorem taxes on the Property remained unpaid.

On _____, the Property was sold at public auction by the Charleston County Delinquent Tax Collector to the Charleston County Forfeited Land Commission for \$_____, the amount of the delinquent taxes, assessments, penalties and costs due on the Property as of that date.

On _____, the Charleston County Delinquent Tax Collector sent notice to Defendant of the nearing of the end of the twelve month redemption period. The notice was sent to Defendant at _____, Charleston, South Carolina 294____, via "certified mail, return receipt requested - deliver to addressee only." The notice described the Property by its County Tax Map identification number, _____, and stated that if the Property was not redeemed on or before _____, by paying the taxes, assessments, penalties and costs together with eight percent interest on the Charleston County Forfeited Land Commission's bid amount, which according to the notice totaled \$_____, a tax title would be delivered to the successful bidder at the tax sale. The certified return receipt shows that the notice was picked up on _____, and signed for by "_____." Nevertheless, the Property was not redeemed.

By tax deed dated _____, the Charleston County Delinquent Tax Collector delivered a tax title to the Property to the Charleston County Forfeited Land Commission. The deed was recorded on _____, in the Office of the Register of Mesne Conveyance in Deed Book _____, at Page _____.

On _____, Plaintiff purchased the property at a public auction from the Charleston County Forfeited Land Commission for \$_____. Title to the Property was conveyed to Plaintiff by deed of the Charleston County Forfeited Land Commission dated _____. The Plaintiff's deed to the Property was recorded in the Office of the Register of Mesne Conveyances on _____, in Deed Book _____, at Page _____.

It is clear from the foregoing that the sale of the Property was conducted in strict compliance with the statutes governing tax sales and that Plaintiff has good title to the Property. Accordingly, judgment must be entered in Plaintiff's favor.

DECREE

NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED ADJUDGED AND DECREED:

A. That judgment is hereby entered in favor of Plaintiff, _____, against Defendant, _____, terminating any and all interest Defendant, _____, her spouse, heirs, devisees, successors, assigns and anyone or anything in the whole world claiming under her, irrespective of the nature of such claim, has in and to the real property described hereinbelow, and barring any future claims Defendant, _____, her spouse, heirs, devisees, successors, assigns and anyone or anything in the whole world claiming under her, irrespective of the nature of such claim, has in and to the following described real property, to-wit:

Insert legal description here

TMS#

B. That a copy of this Order shall be recorded in the Office of the Register of Mesne Conveyance for Charleston County, South Carolina, and shall be properly indexed in the chain of title to the herein described real property under the name of _____ as grantor and _____, as grantee in the same manner as other deeds are recorded.

C. That the Sheriff of Charleston County, South Carolina, is hereby ordered and directed to eject and remove from the premises the occupant(s) of the herein described property, together with all personal property located therein, and put Plaintiff, _____, and its agents, employees and representatives or assigns in full, quiet and peaceable possession of the herein described property without delay, and to keep the Plaintiff, _____, and its agents, employees and representatives or assigns in such full, quiet and peaceable possession.

D. That Defendant, _____, is hereby directed to provide Plaintiff, _____, with an accounting of all rent monies collected after _____.

E. That judgment be entered in favor of Plaintiff, _____, against Defendant,

_____, in an amount equal to Plaintiff's costs incurred in maintaining this action as more particularly specified in a subsequent Order of this Court.

AND IT IS SO ORDERED!

Roger M. Young,

Master-In-Equity for Charleston County, South Carolina

North Charleston, South Carolina