

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
McElhaney Properties, Inc.	)	C.A. No.: 2011-CP-23-878
	)	
Plaintiff,	)	
	)	
v.	)	FINAL ORDER
	)	
Equifunding, Inc., and A. Kevin	)	
Hunter, II, as Delinquent Tax	)	
Collector for Greenville County,	)	
	)	
Defendants.	)	

FILED-CLERK OF COURT  
 GREENVILLE CO. S.C.  
 RANDY P. WILKINSON  
 2012 MAR -1 P 4:54

This is a Quiet Title Action in which the Plaintiff seeks to overturn a tax sale by the Greenville County Tax Collector. The parties were before me on January 30, 2012 for a trial on the merits. The subject tax sale occurred on October 5, 2009 for delinquent 2008 taxes on property located upon 1.68 acres on W. McElhaney Road in Taylors, South Carolina. (TMS: 0632.01-01-034.03). The real property is more particularly described as follows:

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Greenville being shown and designated at 1.68 acres, more or less, as shown on plat prepared for Randy H. Henson by Plumblee Surveying dated March 22, 2001 recorded in Plat Book 43-T at Page 57 and having, according to said plat, metes and bounds as shown thereon.

This being the same property acquired by Grantor by deed of Pearl Mae S. Howard, et al recorded in Deed Book 1946 at Page 1709 on March 23, 2001.

This property is conveyed subject to any and all existing reservations, easements, rights-of-way, zoning ordinances and restrictions or protective covenants that may appear of record or on the premises.

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Throughout the tax sale process and in the three years leading up to the delinquent tax notice, this property was owned by the Plaintiff, McElhaney Properties, Inc. Accordingly, Plaintiff paid the taxes for 2005, 2006 and 2007. However, the Plaintiff alleges that it did not receive the tax notice for 2008, thereby resulting in the tax sale and subsequent deed to Defendant Equifunding, Inc.

The Plaintiff filed this action to set aside the Tax Deed on February 11, 2011 and, by consent of the parties, joined Defendant Equifunding Inc.'s cause of action to quiet title. The parties completed discovery and by way of Consent Order referred this matter to the Master in Equity.

#### FINDINGS OF FACT

Based upon the testimony and evidence presented, I hereby find as follows:

The ultimate and dispositive issue presented is whether Plaintiff received statutory notice of the impending tax sale. Clearly, part of the legislative intent of the Legislature for collection of property taxes is to provide appropriate notice to the defaulting taxpayer of their rights prior to the seizure and sale of their real estate. This is consistent with the fundamental concepts of due process. The statutory requirements are intended for the protection of the taxpayer against surprise or the sacrifice and the loss of their property. Hawkins v. Bruno Yacht Sales, 577 S.E.2d 202 (S.C. 2003), *see also* King v. James, 694 S.E.2d 35 (S.C. App. 2010).

For the most part, the facts involved herein are uncontested. Pursuant to § 12-51-40(b), the Notice of Delinquent Property Taxes was mailed by the Delinquent Tax Collector to the Plaintiff at the Plaintiff's proper address. S.C. Code Ann. § 12-51-40(b) only requires the Notice be sent "certified mail, return receipt requested" when the addressee is an entity. As such, this notice was not sent "restricted delivery". However, this is not dispositive under the unique facts




of this case.

It is uncontroverted that the above Notice was mailed to Plaintiff but signed for by Heather Krook, now known as Heather Frye. Mrs. Frye testified at trial that she was an employee of a tenant in the building involved herein and that neither the tenant nor Mrs. Frye was in any way affiliated with McElhaney Properties or Mark Nyblom, an owner of McElhaney Properties, Inc. McElhaney Properties also maintained an office in the building. Frye, who now lives in Charlotte, North Carolina, testified that Mr. Nyblom had previously instructed her that she was not allowed to sign for any type of certified mail, UPS packages, Federal Express packages, et cetera. She testified that she had passed these instructions along to delivery personnel for such entities. However, Mrs. Frye acknowledged that the Domestic Return Receipt bears her signature. She unequivocally testified that, while not knowing what she had done with the letter, she had not given it to Mr. Nyblom or anyone else affiliated with Plaintiff.

As it relates to this piece of property, taxes had always been timely paid by Plaintiff. However, as it relates to the tax year in question, since the property taxes were not paid, the property proceeded to be sold at public auction at which time Defendant Equifunding, Inc., an out-of-state entity that frequently purchases delinquent properties in tax sales, successfully purchased the property with a winning bid of \$80,000.00.

Uncontroverted testimony revealed that following the tax sale, Mr. Nyblom continued to act in a manner consistent with his testimony that he was completely unaware of the tax sale and never actually received the delinquent tax notice. The Plaintiff continued to make significant improvements to the real property following the sale, but prior to the issuance of the deed. During that time, the Plaintiff obtained building permits from Greenville County for improvements to the property and spent over \$30,000 for these improvements, still unaware of

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any tax sale. Further, in 2010 Plaintiff received a tax bill for 2010 and realized the assessment had been increased to a taxable value of \$323,000. Plaintiff successfully appealed the assessment with Greenville County and was issued a refund check for \$2,019.40. This was also during the redemption period but prior to the issuance of the Tax Deed. Mr. Nyblom testified the property was worth between \$300,000.00 and \$400,000.00, that McElhane Properties, Inc. owned the same free and clear, and that this real property was the company's only asset.

Following the tax sale and before issuance of the deed, pursuant to §12-51-120, the Delinquent Tax Collector mailed to Plaintiff the required Notice of the approaching end of the redemption period. For unknown reasons, that letter was returned to the Delinquent Tax Collector as unclaimed. Thus, the Plaintiff also did not receive actual notice of the redemption period. Admittedly, the property was listed in the delinquent tax notices advertisements placed in The Greenville News, a paper of general circulation in Greenville County.


While Plaintiff raises multiple issues, the dispositive issue is that while the Delinquent Tax Collector technically complied with the applicable statutes, it is uncontroverted that Plaintiff never received notice of the impending tax sale nor of the end of the redemption period. As such, the clear intent of the statutes relating to tax sales has not been met. It is fundamental law that equity abhors forfeitures. See, Kiriakides v. United Artists Comm., 440 S.E.2d 364 (S.C. 1994). Further, it is well established law in this state that strict compliance is required with all matters relating to tax sales. Hawkins v. Bruno Yacht Sales, 577 S.E.2d 202 (S.C. 2003). This is based, in part, upon the law's recognition that the government's authority and ability to seize and sell property belonging to a taxpayer is a significant power. The statutory process was not created to punish taxpayers who have failed to pay their taxes because of legitimate mistake or error. Johnson v. Arbabi, 553 S.E.2d 453 (S.C. App. 2001). Failure to provide notice to the true

owner is not excused regardless of actual notice. Aldridge v. Rutledge, 238 S.E.2d 165 (S. C. 1977). In this case, the actual owner received neither. The rationale of these cases, even though there was technical compliance by the Delinquent Tax Collector, applies to these unique facts. This is true even though the Delinquent Tax Collector did all they were required to do and acted appropriately during the entire process.

Therefore, based upon the above, and the uncontradicted testimony that Plaintiff never received the Notice sent pursuant to § 12-51-40(b) nor the right of redemption, the Court is of the opinion that the Tax Deed should be set aside under the truly unique facts of this case. Such is required under the fundamental concept of due process.

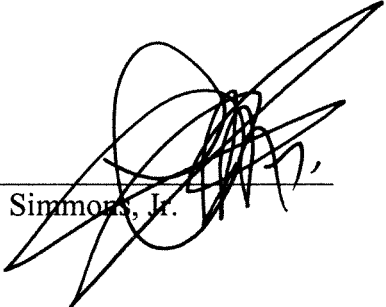
THEREFORE, IT IS HEREBY ORDERED THAT;

- 1) The Tax Sale which occurred on October 5, 2009 for MAP# 0632010103403 is hereby set aside,
- 2) The resulting Tax Deed for the same, recorded in the Greenville County Register of Deeds Office at Deed Book 2382, Page 5302 is hereby declared void and canceled;
- 3) That the subsequent transfer of the property by way of Deed from Equifunding, Inc. to Equivest Financial, LLC recorded March 2, 2011 at Deed Book 2385, Page 364 is also declared void and canceled;
- 4) Plaintiff promptly remit all redemption amounts due for taxes and penalties to Greenville County within 30 days of this Order being filed, with all appropriate amounts then being returned to Equifunding by Greenville County ;
- 5) That upon proper repayment of the redemption amount as set forth above, a certified copy of this Order may be filed in the Register of Deeds office, and upon filing, the Register of Deeds shall enter in the public records, under the names of Grantors and

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Grantees, the fact that the two previously referenced deeds have been canceled via  
Court Order;

AND IT IS SO ORDERED.

  
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Charles B. Simmons, Jr.  
Judge

March 1<sup>st</sup>, 2012  
Greenville County, SC