STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	
Steven D. Brown	)	Civil Action No. 2015-CP-32-00817
	)	
Plaintiffs,	)	
	)	**ORDER**
v.	)	
	)	
John Gantt,	)	
	)	
Defendants.	)	
_____	)	

INTRODUCTION:

The parties tried this contested tax sale case March 23, 2016. S. R. Anderson, Esq., represented Plaintiff, Steven D. Brown. Robert M. Cook, II., Esq., represented Defendant, John Gantt.

Plaintiff obtained title in 2002 to two properties, hereinafter referred to as TMS 69 and TMS 70. However, Plaintiff lived at another location, 715 Westside Drive. His grandmother lived on TMS 69 and another relative was living on TMS 70. Plaintiff owned these properties for several years. After his grandmother died, Plaintiff failed to pay the property taxes for TMS 69.

Thereafter, Lexington County sold Plaintiff's property (TMS 69) for failure to pay taxes in December 2006. The tax deed was filed February, 2008. Defendant initiated eviction action against Plaintiff in April 2008. July 2009, Plaintiff claimed the tax overage generated by the sale. Lexington County sent the overage payment check out August 2009. In March 2015 Plaintiff filed this suit.

Plaintiff argues that the tax sale should be void because of Lexington County's failure to strictly comply with the tax sale statutory requirements, specifically failure to send notices to the 715 Westside Drive address and by creating an artificial payment deadline.

Defendant claims the County did comply with applicable statute, and even if the County did not, the combination of Plaintiff's knowingly claiming the tax overage and being evicted from the property by Defendant precludes Plaintiff from now contesting the tax sale. Based on the following facts and conclusions of law, the Court denies Plaintiff's request to void the tax sale.

FINDINGS OF FACT:

1. This Court obtained jurisdiction pursuant to the October 15, 2015 Order of Reference.
2. The parties are residents of the State of South Carolina and Lexington County.
3. The Court has jurisdiction of the subject matter and parties pursuant to S.C. Code §12-51-10 et. seq. (1976, as amended)
4. The following events and dates are undisputed and relevant to analysis:
    a. Original tax notice sent to Plaintiff on 10/11/05.
    b. Second notice sent to Plaintiff on 4/27/06.
    c. Writ of execution sent to Plaintiff on 6/12/06.
    d. Property posted on 8/11/06.
    e. Tax sale held 12/4/06.
    f. Letter sent to Plaintiff advising of tax sale and Plaintiff's right to redeem.
    g. Second letter sent to Plaintiff on 10/22/07 advising of his right to redeem.
    h. Tax deed filed of record on 2/27/08.

i. Eviction action filed by Defendant against Plaintiff on 4/2/08.

j. Claim filed by Plaintiff on 7/2/09 for tax sale overage.

k. Check issued by Lexington County for tax sale overage on 8/12/09.

l. Tax Sale Voidance Complaint filed by Plaintiff on 3/3/15.

5. There are a number of other relevant and disputed facts:

a. Plaintiff owned two lots other than the lot where he lived. The first lot, TMS 69, the subject property, was where his grandmother lived. She lived there for several years. Each year Lexington County would mail the tax bill to the property address and the grandmother would ensure that Plaintiff received the bill. (Transcript page 33)

b. When his grandmother died, Plaintiff made no effort to contact Lexington County to alert them that she had died and to send the bill to him at different address. (Transcript page 34)

c. Similarly on the other piece (TMS 70) where his uncle lived, the taxes were mailed there and his uncle paid the bill. (Transcript pages 17-18) The Plaintiff concedes that he never contacted or notified the Lexington County tax office to use any other address for mailing notices. (Transcript at page 33, line 5-page 35, line 17) There is no evidence that the County was provided a corrected or forwarding address by any other means. Kelly Bradshaw of the Delinquent Tax Office testified that the notices sent to the Plaintiff were sent using the proper, statutorily required method by way of certified/restricted delivery or otherwise. (Transcript at page 59, line 24-page 76, line 14) Significantly, when the plaintiff requested payment of the tax sale overage, he identified the property in question as 110 Lane Drive, which was the exact same address to which the notices had previously been sent. (Transcript at page 80, lines

17-25; and defendant's exhibit No. 3)

d. Kelly Bradshaw's post trial submitted research indicated that the County had the 715 Westside Drive address for Plaintiff in its records. (See attachment to this Order)

6. Plaintiff and Defendant dispute the facts surrounding Defendants alleged eviction of Plaintiff from the property. Plaintiff claims lack of memory or that he never was served or evicted. Defendant claims (a) he went to property (b) met Plaintiff face to face (c) spoke with him at least twice and (d) identified him in Court. (Transcript pages 36-37, 100-105, 123-126 line 6)

7. Defendant's testimony is more credible because:

a. Defendant testified he made direct observation and contact with Plaintiff twice and identified him in Court. Plaintiff's testimony was hesitant and less concise, specifically stating only that he had never been evicted from anywhere.

b. Defendant's testimony about Magistrate Court involvement in an eviction action tracked the reality of how those proceedings occur.

c. Defendant's course of action---get tax deed, go to property, discuss with person on property, go to Magistrate Court to evict, thereafter check property and finding no one present, begin process of taking possession, making repairs etc. is inherently logical and believable.

d. Plaintiff's demeanor and testimony was often vague and hesitant. Defendant's testimony was direct observation or recollection of specific actions. (Transcript page 35 line 18- page 36 line 8; page 98 line 8-page 107)

8. The Lexington County Execution Notice stated that the delinquent taxes had to be paid by 5:00 P.M. Friday, December the 1st. The sale date was Monday, December 4th:

"Absolutely no payments would be accepted the day of the sale." (Transcript page 72 Line 1-page 73 line 11)

9. Plaintiff repeatedly testified that he understood that his property had been sold, that no one prevented him from talking to a lawyer, that he read the documents, and that he knew he was claiming the overage from the tax sale. (Transcript page 18 line 5- page 19 line 2 {direct examination}; pages 37-44 {cross examination})
10. Defendant testified he spent approximately $22,000.00 on the property. This testimony was based upon invoices for the various items. While this evidence was not contested, there was no persuasive appraisal type evidence of value of improvements to the property. (Transcript page 107 line 6-page 115)

ISSUES:

1. Is action legal or equitable?
2. Did County fail to properly Plaintiff of tax sale?
3. Did County create an artificial deadline for payment?
4. Is Plaintiff claim time barred?
5. What is legal consequence of Defendant evicting Plaintiff from property and Plaintiff claiming tax overage?
6. If Sale is void, is Defendant entitled to damages under Betterment Statutes?

CONCLUSIONS OF LAW & DISCUSSION:

1. **AN ACTION TO SET ASIDE A TAX SALE LIES IN AN ACTION IN EQUITY**. King v James, 694 S.E. 2d 35, 39 (Ct.App.2010) South Carolina courts have consistently held that strict compliance with all legal requirements surrounding tax sale is required for

the protection of the taxpayer against surprise or sacrifice of his property. Dibble v Bryant, 265 S.E. 2nd 673, 675 (1980) An appellate court's standard of review in equitable matters is their own view of the preponderance of the evidence. Williams v. Wilson, 349 S.C. 336, 339-40, 563 S.E.2d 320, 322 (2002)

2. **THE COUNTY FAILED TO PROPERLY NOTIFY PLAINTIFF OF THE SALE BECAUSE THEY HAD THE PLAINTIFF'S OTHER ADDRESS, THE 715 WESTSIDE DRIVE IN THE COUNTY RECORDS THAT WERE PART OF THE STANDARD SEARCH DOCUMENTS EXAMINED WHEN NOTICES WERE NOT CLAIMED**. While it is true that Plaintiff was certainly less than diligent and admittedly relied on other family members to pay bills or forward to him the yearly tax notices, and that when his grandmother died, he took no steps to notify the County of Lexington to mail the tax notices elsewhere, the County did have the 715 Westside address in their records.

The applicable statute *S.C. Code Ann.* §12-51-40 (Supp. 2015), which governs pre-sale notices, states in pertinent part:

"After the county treasurer issues his execution against a defaulting taxpayer in his jurisdiction, … directed to the officer authorized to collect delinquent taxes, assessments, penalties, and costs.... the officer to which the execution is directed shall:

> (a) On April first or as soon after that as practicable, mail a notice of delinquent property taxes, penalties, assessments, and costs to the defaulting taxpayer and to a grantee of record of the property, whose value generated all or part of the tax. The notice must be mailed to the **best address available, which is either the address shown on the deed conveying the property to him, the property**

address, or other corrected or forwarding address of which the officer authorized to collect delinquent taxes, penalties, and costs has actual knowledge....

(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 the property necessary to satisfy the payment of the taxes, assessments, penalties, and costs. 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 and any grantee of record of the property **at the address shown on the tax receipt or to an address of which the officer has actual knowledge**, by "certified mail, return receipt requested-restricted delivery" pursuant to the United States Postal Service "Domestic Mail Manual Section S912"....

(c) If 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 *9 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 of it, or by taking exclusive possession of personalty…

(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 must 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 before the legal sales date for three consecutive weeks for the sale of real property…," (emphasis added)

S.C. Code Ann. §12-51-120 (Supp. 2015), which governs post-sale notice of the approaching end of the one year redemption period, states in pertinent part:

"The notice must be mailed to the best address of the owner available to the person officially charged with the collection of delinquent taxes … **Pursuant to this chapter, the return of the certified mail 'undelivered' is not grounds for a tax title to be withheld or be found defective and ordered set aside or canceled of record."** (Emphasis added)

The facts of this case are not on all fours with cases such as Good v. Kennedy, 291 S.C. 204, 352 S.E.2d 708 (1997); Benton v. Logan, 323 S.C. 338, 474 S.E.2d 446 (1996); Reeping v. Jebbco, 402 S.C. 195, 740 S.E.2d 504 (2013). In those cases, there was evidence that the defaulting taxpayer had given notice of a new address to the county tax authority or that the county simply did not use correct address on record. Here, there is no evidence that Plaintiff did anything at all when his grandmother died.

It should be noted that *S. C. Code Ann*. § 12-51-40(b)(Supp. 2014), the section providing for notice of delinquent taxes due, has been amended twice subsequent to the *Good v. Kennedy, supra.*, and *Benton v. Logan, supra.*, decisions. Prior to 1998, this section only required the requisite notice to be sent to "the address shown on the tax receipt or to a

more correct address known to the officer". In 1998, the statute was amended to clarify "or to an address of which the officer has actual knowledge." (1998 South Carolina Laws Act 285, H.B. 3908). Constructive knowledge was no longer effective under the statute. Accordingly, the Court in those two (2) decisions was not bound by the actual notice standard set forth in the current statute, and the *Reeping* decision involve facts of actual notice by the County.

Defendant argues that the tax sale should not be voided because the delinquent tax collector used the "best available address" for sending notices as required by Section 12-51-40(b). That sub-section provides that the "best available address" is either: 1) the address shown on the deed conveying the property to him, 2) the property address, or 3) other corrected or forwarding address of which the officer … as actual knowledge. All tax notices were sent to "Steven D. Brown, 110 Lane Drive, Pelion, SC 29123." That address is the address on the deed to the plaintiff and also the property address. The property address was later changed to 311 Bub Shumpert Road, but only after the tax sale to the defendant. Accordingly, defendant argues, the plaintiff must show that the delinquent tax collector had actual knowledge of a corrected or forwarding address. Notwithstanding, Plaintiff correctly argues that statutory process requires that notices are to be sent to the defaulting tax payer at the best address available or such address of which the Delinquent Tax Collector has actual knowledge. The County had notice of the 715 Westside Drive address. First, the office of the Delinquent Tax Collector posted the notice of the delinquent taxes on the mobile home. On the notice, it clearly reflects that Mr. Brown's address is 715 Westside Drive, West Columbia, SC 29169. The Delinquent Tax Collector's employee posted the notice on Lot 011600-02-70, the mobile home, and

Lot 0116-02-69. It is clear that the Delinquent Tax Collector had access to Mr. Brown's correct address. **Second, Ms. Bradshaw further searched her records and found that while she did not personally handle this case, other notices on real and personal property which were sent to Mr. Brown at the Westside Drive address**. The County had the alternate address available in their data systems.

3. **The County's written requirement that payment be made by 5:00 the Friday before the Monday sale created an artificial deadline**. Section 12-51-40 provides that the Delinquent Tax Collector shall specify that if taxes are not paid before a subsequent sale, the property will be sold. The various notices sent by the Delinquent Tax Collector specifically state that no payments will be accepted on the date of the sale. Plaintiff's Exhibit 3. The taxes are due for the preceding tax year, and the tax payer shall have until the actual sales day to pay the taxes. By refusing to take payment on the date of the sale, the Delinquent Tax Collector has shortened the payment period in violation of Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 577 S.E.2d 202 (2003).

   Plaintiff argues that this case and its progeny establish that a delinquent tax collector may not (by way of the language on the notices sent to taxpayers) artificially shorten the time during which the defaulting taxpayer may pay the past due taxes. The plaintiff contends that the Bruno Yacht decision applies to the case at bar and that the tax sale should be voided as a result. It is significant that the Bruno Yacht decision relied upon version of Section 12-51-40(b) in force in 1995, and not the version of Section 12-51-40(b) that was in existence when the tax sale to the defendant in this action occurred. The 1995 version of that statute was worded to include language that stated "all delinquent notices shall specify that if the taxes, assessments, penalties, and costs are not paid **on or before** a

subsequent sales date …." (Emphasis added). That statute was amended by 1996 Act No. 431 to read "All delinquent notices shall specify that if the taxes, assessments, penalties, and costs are not paid **before** a subsequent sales date …. " (Emphasis added, the phrase "on or" deleted by the amendment).

Accordingly, Defendant argues that the legislature manifestly intended to change the effect of the statute to remove the requirement that provided the notice to the defaulting tax must be worded to provide that the taxpayer had until the actual sales date to pay delinquent taxes. In the case at bar the tax sale notice provided that the defaulting tax payer must pay the taxes "prior to 5:00 o'clock pm, Friday, December 1, 2006," which was the close of the last business day prior to the sales date of Monday, December 4, 2006. (Plaintiff's Exhibit No. 3).

This court takes notice of the tremendous administrative effort required to conduct a tax sale. Requiring payment by the two days before the actual sale would seem to be a great assistance to the County's ability to conduct the tax sale without having to pull cases where payment has been tendered the day of the sale. While sympathetic this challenge, if the County can set an arbitrary date the Friday before the sale, why not a week or two or three weeks before the sale? Further, while not apples to apples, because of the volume and the defaulting taxpayer's ability to redeem, the court does note that in foreclosure sales, cases are pulled up to and in some cases, during the sale, and a property owner has the right to tender full payment until the gavel falls. It would seem that a property owner would have at least the same rights in a government seizure of his property as he would in a contract based foreclosure of land or the repossession of a personal property.

These statutes contain no prohibition on the Tax Collector accepting delinquent tax payments up until the moment before the tax sale starts. Further, there appears to be court recognition that requires the greatest level of protection before the government takes property. *See Dickson v. Burckmyer*, 67 S.C. 526, 46 S.E. 343, 345 (1903)("[A]ll requirements of the law leading up to tax sales which are intended for the protection of the taxpayer against surprise or the sacrifice of his property are to be regarded [as] mandatory and are to be strictly enforced."); *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 256, 715 S.E.2d 348, 356 (Ct. App. 2011)("A court of equity abhors forfeitures, and will not lend its aid to enforce them … [e]quity does not favor forfeitures or penalties and will relieve against them when practicable in the interest of justice.").

While not making a specific ruling that a tax authority would have to take correct payment from a taxpayer or mortgage holder up to the final moment before sale, the Court finds this language in the notice especially worrisome when comparing this situation with a private taking pursuant to a contract or a mortgage foreclosure, in which a debtor has a right to pay off or satisfy the debt up to the moment of sale. *See also* S.C. Code Ann. § 36-9-623(c) ("A redemption may occur at *any time* before a secured party …has disposed of collateral …") (emphasis added). Such action, merely for purposes of administrative convenience, would appear to afford a defaulting taxpayer less protection than a debtor would have in a claim and delivery for a couch or a mortgage foreclosure action.

4. **PLAINTIFF IS NOT TIME BARRED FROM ASSERTING CLAIM.** Since the failure to give notice is jurisdictional, and not a mere administrative error, Plaintiff is not barred by the two year statute of limitations. Further, since Plaintiff brought the action

within ten years, Plaintiff is not barred by the applicable ten year statue or by doctrine of laches.

Section 12-51-160 deals with the statute of limitations in tax sales. An action for the recovery of land sold pursuant to 12-51-40, *et seq.*, must be brought within two (2) years from the date of the tax sale. The statute of limitations for an action to recovery land sold at a tax sale does not apply because the delinquent tax collector did not deliver the proper notices. The failure to do so renders the tax sale void. Reeping v. JEBB Co., LLC, 402 S.C. 195, 740 S.E.2d. 504 (S.C. App. 2013) See also Gibbs v. GKH, Inc., 311 S.C. 103, 427 S.E.2d. 701 (Ct. App. 1993) The failure to provide the defaulting tax payer with the required notices is a jurisdictional issue and can be raised in spite of the two (2) year statute of limitations as set forth in 12-51-160.

Section 15-3-340 provides that one asserting title to property may bring an action for the recovery of same so long as it is brought within ten (10) years after the existence of the act for which the action is prosecuted. This action was commenced on March 3, 2015, and the deed into the Defendant was recorded on February 27, 2008, and results from a tax sale held on December 4, 2006. It is clear Plaintiff's right to proceed in this matter is well within the statutory time period. Laches is unavailable to the Defendant as a defense, as this action was brought within the period as above stated. (Former Code Sections 10-124 and 10-242). Cromwell v. Whitney, 229 S.C. 213, 92 S.E.2d. 473 (SC 1956), is a tax sale case brought within the then existing statute of limitations.

5. PLAINTIFF IS BARRED FROM AND HAS WAIVED RIGHT TO CONTEST TAX SALE BY HIS AFFIRMATIVE ACTION OF KNOWINGLY CLAIMING

THE TAX OVERAGE AND HIS PASSIVE INACTION IN NOT PROTESTING THE MAGISTRATE COURT EVICTION.

Plaintiff candidly admits that he knew he was claiming tax sale overage, but argues that he can still offer to repay funds and get property back since the underlying case is void. Defendant argues that Plaintiff is barred from challenging the tax sale because he knowingly took tax sale overage and did not raise void tax sale in the magistrate court eviction process. Plaintiff would be correct that the action would be void if the case facts were that Plaintiff did not knowingly take the tax overage (active action on his part) or if he had not failed to assert his rights or take action during the magistrate eviction (passive action on his part).

This issue has been anticipated: "Another unusual question raised by the increase in tax sale overage is the effect of a taxpayer's claiming and retention of the excess proceeds of sale. Could a taxpayer claim the funds and later challenge the tax purchaser's title? Several cases suggest that a defect in the tax sale procedure renders the title wholly void (as opposed to voidable), which would seem to preclude a tax purchaser's defense that acceptance of the proceeds of sale operates as a ratification of the sale. It is likely, however, that a court would use its equitable power to prevent a taxpayer from 'having his cake and eating it too." Weyman C. Carter, Enforcement of Judgment Liens By Judicial Sale And Tax Sale Master-In-Equity Bench-Bar Seminar 9, (2011)

There appears to be no South Carolina appellate precedent regarding knowingly claiming tax sale refund. Plaintiff and Defendant were asked to research and alert the court to any

authority relating to due diligence and claiming tax sale overage if there was not controlling South Carolina precedent. Neither party submitted any such research.

A Westlaw research revealed one appealed trial court decision from Beaufort County. J Dub Holdings LLC, Appellant vs. SBK Investments et al Appellate Case No. 2015 – 001469 (attached) The trial court order turned on the finding that the defaulting tax payer thought he was receiving a tax refund, not claiming a tax overage. Curtis Lee Coltrane's Appellant's brief filed in this case contained discussion of due diligence issue and tax overage claim. While this case was remanded without ruling on these issues, the brief was instructive and portions are included herein. The only decided South Carolina appellate case the court is aware of is an unpublished opinion that is factually distinctive from this case. Terry v Brown, No.2008-UP-413 (S.C. Ct. App 2008)

Equitable principles dictate denial of Plaintiff's claim. While Ex Parte Dibble, 310 S.E.2d 440,442 (Ct. App. 1983) reminds us that courts have an inherent power to do all reasonable things required to insure a just result, Regions Bank v Wingard, 715 S.E. 2d. 348 (2011) gives guidance how to exercise that function:

a. Equitable maxims are not legally binding precedent but represent concepts of equity in different situations.
b. Maxims are offers of guidance in equitable cases, not binding legal precedent.
c. Conduct matters.
d. Both side's equitable concerns should be balanced.

Here, it is abundantly clear from direct examination and cross examination that the Plaintiff knew he was claiming money generated from the tax sale of this property. Through a third party assignee, an application for the tax overage was filed with the

Lexington County Treasurer. The address for the property (110 Lane Drive) was entered by the assignee (Plaintiff's Exhibit 9 and Defendant's Exhibit 4). The overage was disbursed to Mr. Brown, from the assignee. The overage totaled $2,886.09 on a bid of $3,300.00. It is undisputed that the plaintiff in 2009 requested and received the $2,889.09 overage generated from the tax sale.

Common sense, logic and basic fairness dictate that a taxpayer, who seeks and accepts payment of a tax sale overage, rather than contesting the tax sale, has waived his rights to later contest the appropriateness of the prior tax sale. The defendant's amended answer in his fourth defense specifically pleads the plaintiff's receipt of the tax sale overage as a bar to this action. The plaintiff's own testimony establishes that he clearly understood that the money he received in 2009 was directly the result of the tax sale of his property in December 2006. (There has been no court consideration nor Plaintiff argument that he was entitled to the equivalent of a Miranda-type warning that acceptance of tax overage would bar a subsequent attempt to void the tax sale).

Plaintiff testified that he was prepared to pay back to the Treasurer the bid amount, which he would have to do if it had been a mistake. Here, it was not a mistake. It was a deliberate action. If conduct matters, then Plaintiff cannot simply knowingly take the money, and wait until, by following the logic of his argument, up to ten years for an adverse possession under possible color of title action to accrue after the fact, to decide now he wants to give the money back. Surely, there is no legislative intent to create a ten year statute of limitation for the defaulting taxpayer to claim overage money and then change his mind and seek to void a tax title.

Randolph R. Lowell, Robert L. Reibold, & Shealy Boland Reibold, South Carolina Equity: A Practitioner's Guide Pages 183-184 (2010) note that:

a. Waiver is a voluntary and intentional relinquishment or abandonment of a known right.

b. Waiver can be express or implied from circumstances.

c. Waiver is affirmative defense, but while it must be pled, the requirement is not so strict to insist upon the use of the word waiver, the complaint must at a minimum allege facts that constitute waiver. (See Footnote 187)

d. Waiver is similar to laches. Laches based on passivity-Magistrate court inaction-while waiver based on party's affirmative act-claiming surplus.

e. "Where an implied waiver is involved, the distinction between waiver and stipple is close and sometimes the doctrines merge into each other with almost imperceptible graduation." .

A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Generally, the party claiming waiver must show that the party against whom waiver is asserted possessed, at the time, actual or constructive knowledge of his rights or of all the material facts upon which they depended. The doctrine of waiver does not necessarily imply that the party asserting waiver has been misled to his prejudice or into an altered position. *Janasik v. Fairway Oaks Villas Horizontal Property Regime*, 307 S.C. 339, 415 S.E.2d 384 (S.C. 1992)

A person who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it. *Regions Bank v. Schumach* 354 S.C. 648; 582 S.E.2d 432 (2003) (citations omitted) One cannot complain of fraud in misrepresentation

of contents of written instrument signed by her when the truth could have been discovered by reading the instrument. *Id* at 673 citing *Outlaw v. Calhoun Life Ins. Co.*, 236 S.C. 272, 276, 113 S.E.2d 817, 819 (1960)

Plaintiff testified that he consulted an attorney after being advised that he might have a claim. There was no testimony that he was stopped from contacting an attorney years earlier when the tax sale process started, when he claimed the overage or met with Defendant. This nature of this duty and the consequence for failing to undertake it are stated in *King v. Oxford*, 282 S.C. 307, 318 S.E.2d 125 (Ct. App. 1984) "It is the policy of the courts not only to discourage fraud, but also to discourage negligence and inattention to one's own interests." (citation omitted) *Id King* at 312. Courts do not sit for the purpose of relieving parties who refuse to exercise reasonable diligence or discretion to protect their own interests. *Mobley v. Quattlebaum*, 101 S.C. 221, 85 S.E. 585 (1915). A party must avail himself of the knowledge or means of knowledge open to him. *Id* at 589 citing *Montgomery v. Scott*, 9 S.C. 35, 30 Am. Rep. 1). The court will not protect the person who, with full opportunity to do so, will not protect himself. *J.B. Colt Company v. Britt*, 129 S.C. 226, 123 S.E. 845 (1924)"

Other courts have ruled that the knowing acceptance of the proceeds from a tax sale, even when the defaulting taxpayer had knowledge of or participated in the tax sale, constitutes ratification of that sale and being barred from challenging the validity of the sale.

The United States Court of Appeals for the Fourth Circuit held in *Johnson v. Gartlan*, 470 F.2d 1104, 31 A.F.T.R. 2d 73-562 (Ct.App.1973) (cert denied) "We find that this case comes within the general rule, adhered to in Virginia, that acceptance of proceeds

from a contested sale constitutes ratification of the sale." (citations omitted) *Id Johnson* at 1106.

In *Johnson*, the land of a defaulting taxpayer, Johnson, was seized by the IRS to satisfy its lien. The property was sold at tax sale and a deed issued to the purchaser, Manderfield, in 1964. Interest in the property was subsequently transferred to Gartlan. In January of 1963, the IRS returned to Johnson a $100 money order which he had sent to the IRS as partial payment for the delinquent taxes, although though there is nothing in opinion suggesting that Johnson ever received the returned money order or even knew his property had been sold. The following year, the IRS sent a check in the amount of $13,636.35 to Johnson, who endorsed the check and kept the money. Johnson never questioned nor contested the tax sale. After his death, his heirs subsequently filed suit to quiet title to the property. The Court upheld the tax sale reasoning that *20 Johnson ratified the sale by accepting and cashing the IRS check, *despite the fact that the record did not indicate that any explanation for what the check was for accompanied the check and the IRS failed to follow statutory sale procedure.* "Although the IRS failed to comply with the strict statutory regulations, Johnson's subsequent ratification served to validate the tax sale." *Id Johnson at 1106.* The Court went on to find "it strains our imagination to believe Johnson did not know that was the reason for the payment. No honest man pockets over $13,000 if he does not know what it is for, without asking the drawer for an explanation." *Id* at 1106.

Similarly, in *Behr v. Burge*, 940 P.2d 1084 (Co. 1997), the defaulting taxpayer, Sanders, cashed the surplus proceeds check, despite her knowledge and involvement in the tax sale (Sanders was present at the tax sale). Sanders argued that because she did not apply for

the proceeds, and that there was no explanation included with the check as to what the proceeds were for, she could not have ratified the tax sale. The Court disagreed citing *Johnson, supra* and *Lawrence v. Beaman* 90-2 U.S.T.C. ¶ 50,514, 1990 WL 157523 (D.Mass. 1990) (tax sale ratified by party's prior knowledge of sale and informed acceptance of surplus proceeds check). *Id Behr* at 1087.

Other cases supporting the long standing principle of ratification and estoppel of a tax sale are below:

> In *Proctor v. Nance*, 119 S.W. 409 (Missouri 1909) the Court stated "Plaintiff pleads that Hall at the time he gave the order for said surplus had no knowledge that the sale was void, and that Hall was an uneducated person, and did not intend to ratify said sale by receiving said surplus; but the very character of the transaction of taking the surplus of the sale necessarily advised Hall that his land had been sold, and that this was a part of the purchase money paid by the defendant at the execution sale. It carried notice upon its face, or at least was of that unequivocal nature that it put Hall upon inquiry as to the source of that surplus, and why it was there in the treasury for him, and it must be held that he had notice that his land had been sold for the taxes under the tax judgment. He had the option to refuse to take down this surplus, and bring his action to remove the cloud from his title, or he could ratify the sale, even though it was not a void judgment, and thereby estop himself from disputing the validity of the proceedings under which the land had been sold."
>
> In *Clyburn v. McLaughlin*, 17 S.W. 692 (Missouri 1891) held "It is a well-recognized principle of the law of estoppel that 'no person will be allowed to

adopt that part of a transaction which is favorable to him, and reject the rest to the injury of those from whom he derived the benefit." "And it has been held in the application of this principle, that it makes no difference whether the proceedings under which the sale occurs are voidable, or wholly void, in consequence of the want of jurisdiction." *Clyburn* held "Being of the opinion that the acceptance of the balance of the purchase price from the sheriff constituted a ratification and affirmance of the sale, it becomes unnecessary to consider questions discussed regarding the validity of the sale and deed…" *Id Clyburn* at 693.

Approximately nine and one half years passed from the date of the original tax notice to the time of the filing of the complaint. Over seven years passed from the date the defendant's tax sale deed was recorded to the filing of the complaint. Six years and eleven months passed from the date of the defendant's eviction of the plaintiff and the filing of the plaintiff's complaint. Five years and eight months elapsed from the plaintiff's claim for the tax sale overage and the filing of the complaint.

Accordingly, the Court finds that Plaintiffs act of knowingly claiming the overage and his inaction during the defendant's eviction of the plaintiff in April of 2008 was sufficient to trigger the plaintiff's responsibility to act to protect his interest. The combination of Plaintiff's action and inaction bars his recovery.

6. Defendant is not entitled to Betterment damages because the tax sale was not voided and because there was no persuasive proof of value of improvement of property.

Even were the sale voided, Plaintiff has not proven entitlement to betterment damages. To determine the value of any improvements to the land, the Court looks at the value of the land before and after the improvements. The Defendant introduced as exhibits

various bills and receipts. However, he has offered no evidence as to whether or not the property had increased in value as a result of the improvements. Butler v. Lindsey, 293 S.C. 466, 361 S.E.2d. 621 (S.C. App. 1987). An improvement is something that permanently, enhances the value of property. S.C. Pipeline v. Loan Star Steel, 345 S.C. 151, 546 S.E.2d. 654 (S.C. 2001). Section 27-27-10 does not attempt to give the improving Claimant the costs of the improvements, but only such amount as found to have increased the value of the property. Reaves v. Stone, 231 S.C. 628, 99 S.E.2d. 729 (S.C. 1957). Mr. Gantt testified that he had spent approximately $23,000.00 trying to fix up the property. No testimony was offered reflecting any enhancement in value resulting from the improvements.

While not entitled to betterment damages, the court notes that there is authority for premise that under equity analysis, person seeking equity must do equity. Therefore, as condition precedent to obtaining relief sought, Plaintiff would have to reimburse Defendant for amount of taxes and penalties, interest and costs justly charges against the land with legal interest, after deduction of rents or other income from land received by purchaser while in possession under tax deed. United States v County of Richland, 526 F. Supp. 332 (D.S.C. 1981)

CONCLUSIONS:

Wherefore, it is Ordered and adjudged that Plaintiff's request for relief is denied.

AND IT IS SO ORDERED.

June 15, 2016 _____

Lexington, South Carolina

James O. Spence
Master-in-Equity/Special Circuit Court Judge