

CYNTHIA B FORTE
BERKELEY COUNTY
REGISTER OF DEEDS

Po Box 6122 ~ Moncks Corner, SC 29461 (843) 719-4084

*** THIS PAGE IS PART OF THE INSTRUMENT - DO NOT REMOVE ***



Instrument #: 2020028903

Receipt Number: 174780

Return To: BERKELEY COUNTY CLERK OF
COURT

Recorded As: ORDER/N/C

X X

Recorded On: August 04, 2020

X, SC, X

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Received From: BERKELEY COUNTY CLERK OF
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Book/Page: RB 3449: 687 - 717

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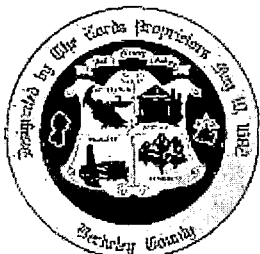
Total Pages: 31

Indirect- ABNEY, ANTHONY

*** EXAMINED AND CHARGED AS FOLLOWS ***

Recording Fee: \$0.00

Tax Charge: \$0.00



Cynthia B. Forte
Cynthia B Forte - Register of Deeds

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF BERKELEY)

Case No. 2019CP0802693)

Anthony Abney,)

Plaintiff,)

vs.)

ORDER

Non-Jury

Quiet Title

Confirm Tax Sale

Cynthia Bryan, William Morris, Sandra Brooks, Regional Finance, and JOHN DOE and JANE DOE, being fictitious names used to designate the unknown heirs at law, distributees, devisees, legatees, widows, widowers, successors and assigns, personal representatives, and creditors of Jessie Wilson, Laura Pugh, and Beatrice Wilson, all of whom are deceased, and all other defendants who may be deceased, and all other persons unknown claiming any right, title, interest, estate or lien upon said real estate described in this complaint, and RICHARD ROE and MARY ROE, as fictitious names representing incompetents, minors, persons in the military service of the United States of America, and persons under any other legal disability whose true names are unknown,

Defendants.)

This matter came before me on July 29, 2020 at 11:30 a.m. using remote communication technology to avoid the need for a physical appearance by any party, witness, or counsel, as provided for in South Carolina Supreme Court Administrative Order 2020-04-30-02 (*RE: Statewide Evictions and Foreclosures*) and South Carolina Supreme Court Administrative Order 2020-04-22-01 (*RE: Operation of the Trial Courts During the Coronavirus Emergency*). This

CERTIFIED TRUE COPIES OF RECORD IN THIS COUNTY

DATE

CLERK OF COURT

C.P. & G.S.

BERKELEY COUNTY, SC

matter is an action to quiet title to property that was the subject of a tax sale by the Berkeley County Delinquent Tax Collector pursuant to §15-53-10, §15-67-10 and §12-61-10, et seq., Code of Laws of South Carolina, 1976, as amended, to clear tax titles and bar all other claims hereto. Present at the hearing was the Plaintiff, Mr. Anthony Abney, and his Attorney, Ms. Abby M. Robertson.

This matter was commenced by the filing of the *Lis Pendens*, Summons/Notice and Complaint (hereinafter the "Pleadings") by the Plaintiff on October 30, 2019. Defendant William Morris was served at his residence on January 2, 2020. Defendant Sandra Brooks was served at her residence on January 3, 2020. Defendant Regional Finance was served at the office of its principal place of business and by and through its registered agent on November 14, 2019. Defendant Cynthia Bryan accepted service of the pleadings and consented to reference by that acceptance filed April 8, 2020. Efforts to find and personally serve the Defendants Jessie Wilson, Laura Pugh, and Beatrice Wilson are detailed in the Affidavits of Due Diligence filed on November 11, 2019.

Further, named in this matter are John Doe, Jane Doe, representing unknown parties which may claim or be entitled to a right, title or interest in the Property, whether as heirs, devisees, distributees, legatees, widows, widowers, personal representatives, executors, administrators, successors, assignees, creditors, alienees or issue of Jessie Wilson, Laura Pugh and Beatrice Wilson, all of whom are deceased. Richard Roe and Mary Roe are fictitious names for a class of persons whose identities are unknown and who may include mentally incompetent persons, minors, incarcerated persons, persons in the military service of the United States of America, and other persons under legal disability who may claim or be entitled to a right, title or interest in the property. Kelley Y. Woody, Esq. was appointed as Guardian ad Litem in this matter. Service was accomplished upon unknown parties by Publication of the Summons & Notice of Intent to Refer,

Notice of Filing, and the *lis pendens* in The Berkeley Independent on February 19, 2020, February 26, 2020, and March 4, 2020. The Guardian ad Litem filed an Affidavit in the matter on June 24, 2020 stating that she was contacted by known heirs stating that there were no other heirs. As of the time of the hearing, no other Answers or responsive pleadings have been filed.

Notice of the hearing was mailed to the known Defendants on June 11, 2020 and was published in The Berkeley Independent on June 17, 2020, June 24, 2020 and July 1, 2020. The Affidavit of Publication was filed on July 27, 2020. The known Defendants were provided with the proposed Exhibits, which have been pre-filed, numbered 1 through 16 by the Plaintiff's Attorney by mail on July 9, 2020 pursuant to Certificate of Service filed on July 27, 2020. At the outset of the hearing, the Plaintiff's Attorney made a motion to admit the Testimony of the Delinquent Tax Collector, Lourenza Greene, and the pre-filed Exhibits marked 1 through 16 into evidence. They were admitted without objection.

FINDINGS OF FACT

1. All parties to this action have been properly served and timely notified of the hearing.

2. This action is brought pursuant to the provisions of the South Carolina Uniform Declaratory Judgment Act, §15-53-10, et seq., Code of Laws of South Carolina, 1976, as amended, for the purpose of obtaining a decree adjudging that the Plaintiff is seized in fee simple of a good and marketable title to the real estate herein below described and that the Defendants above named have no interest or estate in or lien upon the said real estate, and as permitted by §12-61-10, et seq., Code of Laws of South Carolina, 1976, to clear tax titles and bar all other claims hereto. The Plaintiff further brings this action against the above named Defendants pursuant to §15-67-10, Code of Laws of South Carolina, 1976, as amended, to determine adverse

claims, if any, to the Subject Property and to quiet title thereto in the name of the Plaintiff.

QUIET TITLE

3. The real property which is the subject of this action, hereinafter referred to as the "subject property", is more particularly described as follows:

ALL that certain piece, parcel or lot of land, situate, lying and being in the Kitfield area of 1st St. Johns Parish, Berkeley County, South Carolina, containing 3.56 acres, more or less, and shown as Lot D on a plat prepared by Cleatwood E. Droze, RLS, dated February 23, 1988, and recorded in the Office of the Register of Deeds for Berkeley County, S.C., in Plat Cabinet G at Page 381; and having such size, shape, form, delineations, metes and bounds as are shown on said plat.

Together with a Fifty (50') foot Ingress-Egress easement as shown on said plat.

Being the property conveyed to Willie Mae Laverne Mazyck, et al, by Willie Mae Laverne Mazyck, Personal Representative of the Estate of Wilhelmina M. Gadsden, by a Deed dated May 22, 1992 and recorded on June 2, 1992 in Deed Book 105 at Page 257; and conveyed to Cynthia Bryan by Willie Mae Laverne Mazyck by a Deed dated August 9, 2002, and recorded in the Office of the Register of Deeds for Berkeley County, S.C., in Book 2850 at Page 226; and further conveyed to Anthony Abney by Virginia R. Hamilton, Delinquent Tax Collector for Berkeley County, dated February 8, 2018 and recorded on March 14, 2018 in Deed Book 2695 at Page 668 in the Office of the Register of Deeds for Berkeley County, S.C.

TMS No.: 122-00-03-097

4. The subject property is a portion of that 18.1 acre tract, more or less, conveyed by the South Carolina Public Service Authority to Willie Wilson, Laura Pugh, and Jessie Wilson by that Deed dated February 12, 1941 and recorded on March 26, 1941 in Deed Book A68 at Page 82 in the Register of Deeds Office for Berkeley County, filed as Exhibit 1.

5. Thereafter, Willie Wilson executed a Deed stating that Laura Pugh and Jessie Wilson were his siblings and, further, confirming his ownership in the property by virtue of his siblings having predeceased him leaving no spouse or lineal descendants, dated April 2, 1985 and recorded on April 9, 1985 in Deed Book A596 at Page 162 in the Register of Deeds Office for Berkeley County, South Carolina, filed as Exhibit 2.

6. Recitals contained in Deed provide that Jessie Wilson departed this life intestate in the year 1952 leaving no spouse or lineal descendent.

7. No probate Estate or Deed of Distribution can be found for Jessie Wilson in Berkeley County.

8. Pursuant to the Statutes of Descent and Distribution applicable at the time, upon information and belief, his heirs-at-law would have been his parents and siblings surviving him, being Laura Pugh and Willie Wilson.

9. Pursuant to the recitals contained in Deed, Laura Pugh departed this life intestate in the year 1983 leaving no spouse or lineal descendent.

10. No probate Estate or Deed of Distribution can be found in Berkeley County for Laura Pugh.

11. Pursuant to the Statutes of Descent and Distribution applicable at the time, her heirs-at-law would have been her parents and siblings surviving her, being Willie Wilson.

12. Willie Wilson is the surviving sibling of Jessie Wilson and Laura Pugh.

13. As of the date of his death, Willie Wilson was the sole fee simple owner of the subject property.

14. Willie Wilson died Testate on July 15, 1986. His Estate was probated in Berkeley County bearing Case Number 1986ES08-317. His Will and Petition for Appointment are filed as Exhibit 3.

15. Per the terms of his Last Will and Testament, he devised all of his property, including the subject property, unto his wife, Beatrice Wilson, for Life, and upon her death, to his children: Gladys W. Wallace, Carrie Lee Vanish, Barbara Ann Waring, Wilhelmina Morris, and Mary Francis Brown.

16. Thereafter, Gladys W. Wallace, as Executrix of the Estate of Willie Wilson, pursuant to the powers given to her, including, specifically, the power to distribute real property in kind, executed that Deed dated January 4, 1988 and recorded on April 5, 1988 in Deed Book A747 at Page 323, partitioning the 18.1 acre tract, more or less, into five (5) lots for each of Willie Wilson's children, subject to the Life Estate of Beatrice Wilson. This deed is filed as Exhibit 4 and referred to herein as the "Partition Deed."

17. Beatrice Wilson passed away on or about 1989, extinguishing her life estate interest. The Berkeley County tax records were amended to show that she was deceased.

18. The Partition Deed also conveyed the "Ingress-Egress Easement" depicted on the partition plat entitled "Showing the Division of the Willie Wilson Estate" dated February 23, 1988 and recorded in Plat Cabinet G at Page 381. The division Plat is filed as Exhibit 5.

19. The subject property was conveyed by that Partition Deed to Wilhelmina Gadsden, and is further shown as Lot D being 3.56 acres, more or less, on the Division Plat.

20. Wilhelmina Gadsden passed away, Testate, on September 2, 1990; her Estate was probated in Berkeley County in File Number 92ES08-252. She devised the subject property to her three children, Sandra Brooks, William Morris, and Willie Mae Laverne Mazyck, as Joint Tenants with Rights of Survivorship, and the Deed of Distribution reflecting the devise was executed on May 22, 1992 and recorded on June 2, 1992 in Deed Book 105 at Page 257. The Will and Deed of Distribution are filed as Exhibit 6.

21. Willie Mae Laverne Mazyck conveyed her interest in the subject property to Cynthia Bryan, severing the joint tenancy and any survivorship rights in the co-owners, by that Deed dated August 9, 2002 and recorded on August 9, 2002 in Deed Book 2850 at Page 226 in the Register of Deeds Office for Berkeley County. This Deed is filed as Exhibit 7.

22. On February 8, 2018, Virginia R. Hamilton, Delinquent Tax Collector for Berkeley County, did execute and deliver a Deed of Conveyance of the subject property to Plaintiff, Anthony Abney, the highest bidder at the tax sale. This Deed was recorded on March 14, 2018 in Deed Book 2695 at Page 668 and is filed as Exhibit 8.

CONFIRMATION OF TAX SALE

23. On December 31, 2014, the date in which a lien attaches to all real and personal property for payment of the ensuing year's taxes, the owners of the property were Cynthia Bryan, Sandra Brooks and William Morris.

24. The property taxes for the subject property for tax year 2015 were not paid.

25. Carolyn M. Umphlett, the County Treasurer for Berkeley County, directed the Berkeley County Delinquent Tax Collector to levy by distress and sell so much of such property necessary to satisfy the delinquent taxes, assessments, penalties, and costs for their collection on March 17, 2016. The tax execution is filed as Exhibit 9.

26. On June 4, 2010, Cynthia Bryan filed with the Berkeley County Assessor's Office an Address Change Form confirming the address for the property tax notices as: PO Box 502, Pinopolis, SC 29469. The address change form is filed as Exhibit 10.

27. On April 8, 2016, pursuant to the Tax Execution, the Berkeley Delinquent Tax Collector sent a Notice of Delinquent Property Taxes stating that, if not paid, the property must be duly advertised and sold to Cynthia Bryan, et al, at PO Box 502, Pinopolis, SC 29469.

28. Thereafter, on May 20, 2016, the Berkeley Delinquent Tax Collector sent via certified mail, return receipt requested-restricted delivery, the Notice of Delinquent Property Taxes to Cynthia Bryan et al, at PO Box 502, Pinopolis, SC 29469. Such notice was returned unclaimed. The notice and return receipt are filed as Exhibit 11.

29. The subject property was posted by Palmetto Property Posting, Inc. on July 23, 2016, in a conspicuous place on the premises, complying with the requirements of §12-51-40(c) Code of Laws of South Carolina, 1976, as amended. Evidence of the property posting is filed as Exhibit 12.

30. An advertisement complying with the requirements of §12-51-40(d) Code of Laws of South Carolina, 1976, as amended, was published in The Post and Courier, a newspaper of general circulation in Berkeley County, on November 17, 2016, November 24, 2017 and December 1, 2016. Copies of the published notices are filed as Exhibit 13.

31. The Delinquent Tax Collector, after due advertisement, during the usual hours of sale, did sell and give receipt to the Plaintiff, Anthony Abney, the highest bidder, at such sale on December 5, 2016.

32. On January 6, 2017, the Delinquent Tax Collector sent notice that the property was sold at the Delinquent Tax Sale advising the Delinquent Tax Payer of the twelve (12) month redemption period, providing the redemption amount good through after September 5, 2017. This notice is filed as Exhibit 14.

33. On November 3, 2017 the Delinquent Tax Collector sent notice of the pending end of the redemption period to Cynthia Bryan, et al at P.O. Box 502, Pinopolis, SC 29469. Such notice was received. This notice is filed as Exhibit 15.

34. None of the Defendants, nor any other party, redeemed the property during the twelve (12) month redemption period ending December 6, 2017.

35. The Delinquent Tax Collector sent notice of the overage due to delinquent taxpayer on March 27, 2018. Such notice was received. The notice and signed receipt are filed as Exhibit 16.

36. The aforementioned execution and sale of the subject property was proper in that it complied with South Carolina Code of Laws (1976) § 12-49-10 through 12-49-30 and § 12-51-40 through 12-51-170, as amended.

37. The duly assessed real property taxes for tax year 2015 together with all assessments, penalties and costs, constituted a first lien on the subject property which attached at the beginning of the 2015 tax year, and that the aforementioned tax lien was senior to and took priority over all liens, and that any liens on the Property were junior to and subordinate to the aforementioned tax lien, including, but not limited to, that judgment of Regional Finance.

38. That no party has brought an action for recovery of the subject property.

39. More than two years have passed since the date of such tax sale. "In all cases of tax sale the deed of conveyance, whether executed to a private person, a corporation, or a forfeited land commission, is prima facie evidence of good title in the holder, that all proceedings have been regular and that all legal requirements have been complied with. An action for the recovery of land sold pursuant to this chapter or for the recovery of the possession must not be maintained unless brought within two years from the date of the sale" as provided in §12-51-90 South Carolina Code of Laws, 1976.

CONCLUSIONS OF LAW

Based upon the Findings of Fact and testimony presented in this matter, I, therefore, conclude as follows:

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. *Leysath v. Leysath*, 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 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 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.
- (e) 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 pursuant to 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.
- (f) 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 12-5190, 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, Code of Laws of South Carolina, 1976, as amended.

- (g) If 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.*

This Court has jurisdiction over the parties and the real property which is the subject matter of this action. All Defendants, known and unknown, received proper notice of the matter and of the hearing. Any interest in the subject property retained by Laura Pugh, Jessie Wilson, or Beatrice Wilson, and JOHN DOE and JANE DOE, being fictitious names used to designate the unknown heirs at law, distributees, devisees, legatees, widows, widowers, successors and assigns, personal representatives, and creditors of Jessie Wilson, Laura Pugh, and Beatrice Wilson, all of whom are deceased, and all other defendants who may be deceased, and all other persons unknown claiming any right, title, interest, estate or lien upon said real estate described in this complaint, and RICHARD ROE and MARY ROE, as fictitious names representing incompetents, minors, persons in the military service of the United States of America, and persons under any other legal disability whose true names are unknown, has been extinguished. That, at the time of the tax sale, the owners of the subject property were Cynthia Bryan, William Morris, and Sandra Brooks.

At the hearing, no issues were raised concerning the actions of the Tax Collector, and

based upon the Testimony of Lourenza Greene, Berkeley County Delinquent Tax Collector, and other evidence received, I find that all requirements of the South Carolina Code of Laws with regard to the Tax Sale of the Property were properly followed and were in strict compliance therewith.

Because the Tax Sale of the Property was conducted in strict compliance with all statutory requirements pertaining to tax sales, all rights, title, claims, interests, estates, and any other creditors' claims of any of the defendants in, to, or upon the Property were extinguished by the Tax Sale. Thus, all adverse claims to the Property are forever barred, and Plaintiff's marketable, fee simple title to the Property is certain and free from all reasonable doubt.

Additionally, Plaintiff's tax deed is incontestable on procedural or other grounds and all claims against or challenges to the Tax Sale of the Property are barred by the two-year statute of limitations set forth in §12-51-90, and §12-51-60, Code of Laws of South Carolina, 1976, as more than two years have passed since the date of the Tax Sale.

DECREE

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

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

ALL that certain piece, parcel or lot of land, situate, lying and being in the Kitfield area of 1st St. Johns Parish, Berkeley County, South Carolina, containing 3.56 acres, more or less, and shown as Lot D on a plat prepared by Cleatwood E. Droze, RLS, dated February 23, 1988, and recorded in the Office of the Register of Deeds for Berkeley County, S.C., in Plat Cabinet G at Page 381; and having such size, shape, form, delineations, metes and bounds as are shown on said plat.

Together with a Fifty (50') foot Ingress-Egress easement as shown on said plat.

Being the property conveyed to Willie Mae Laverne Mazyck, et al, by Willie Mae Laverne Mazyck, Personal Representative of the Estate of Wilhelmina M. Gadsden, by a Deed dated May 22, 1992 and recorded on June 2, 1992 in Deed Book 105 at Page 257; and conveyed to Cynthia Bryan by Willie Mae Laverne Mazyck by a Deed dated August 9, 2002, and recorded in the Office of the Register of Deeds for Berkeley County, S.C., in Book 2850 at Page 226; and further conveyed to Anthony Abney by Virginia R. Hamilton, Delinquent Tax Collector for Berkeley County, dated February 8, 2018 and recorded on March 14, 2018 in Deed Book 2695 at Page 668 in the Office of the Register of Deeds for Berkeley County, S.C.

TMS No.: 122-00-03-097

B. That any lien on the subject property by virtue of that judgment of Regional Finance against Defendant William Morris in Civil Case bearing Case Number 2011CP0801190 has been released from the subject property.

C. That a copy of this Order shall be recorded in the Office of the Register of Mesne Conveyance for Berkeley County, South Carolina, and shall be properly indexed in the chain of title to the herein described real property under the name of Cynthia Bryan, William Morris, Sandra Brooks, Jessie Wilson, Laura Pugh, and Beatrice Wilson, as grantors, and Anthony Abney, as grantee, in the same manner as other deeds are recorded.

D. That upon request from Plaintiff, the Sheriff of Berkeley 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 its agents, employees and representatives or

assigns in such full, quiet and peaceable possession.

AND IT IS SO ORDERED!

SIGNATURE OF THE COURT TO FOLLOW



Berkeley Common Pleas

Case Caption: Anthony Abney VS Cynthia Bryan , defendant, et al
Case Number: 2019CP0802693
Type: Master/Order/Quiet Title and Form 4

AND IT SO ORDERED!

s/Dale E. Van Slambrook #3079

Upon recording, return to:
 Nelson Mullins Riley & Scarborough, LLP
 1320 Main Street, 17th Floor Meridian Bldg.
 Columbia, SC 29201
 Attn. Matthew A. Abec, Esq.

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY)	
Guardian Tax SC, LLC,)	Civil Action No. 2018-CP-08-2318
)	
Plaintiff,)	
)	
vs.)	
)	
AME Development Group, LLC, Robert)	Final Order of Quiet Title
R. Amerson; Sutterlin Investments,)	
LLC; Cypress Grove Homeowners')	(Action to Quiet Tax Title)
Association, Inc.; Virginia R. Hamilton,)	
solely in her capacity as the Berkeley)	
County Delinquent Tax Collector,)	
)	
Defendants.)	

This matter comes before the Court following the Order of Reference filed on July 31, 2019 and the Motion for Default Judgment filed June 21, 2020. In its Complaint, Plaintiff Guardian Tax SC, LLC ("Plaintiff") seeks to quiet its tax title to real property located at 301 Silverleaf Lane, Moncks Corner, South Carolina 29461 and 100 Weeping Cypress Drive, Moncks Corner, South Carolina 29461 (parcel no. 210-08-01-092 and 210-08-01-093) (the "Properties"), which sold at public auction by the Berkeley County Delinquent Tax Collector (the "Delinquent Tax Collector").

The hearing occurred on July 2, 2020. The Court conducted the hearing by video-conference in which all parties, including the court reporter, had real time audio and video communication with the Court and the other parties under paragraphs (b)(2) and (c)(2)-(3) of *In*

Operation of the Trial Courts During the Coronavirus Emergency, No. 2020-000447 (S.C. Sup. Ct. April 22, 2020). The parties did not object to the hearing proceeding by video-conference. Present was Matthew A. Abee, Esq. of Nelson Mullins Riley & Scarborough LLP on behalf of Plaintiff, and County Attorney John O. Williams for Virginia R. Hamilton, solely in her capacity as the Berkeley County Delinquent Tax Collector. No other counsel or parties appeared. Based on the record and evidence presented at the hearing, the Court **GRANTS** Plaintiff's Motion for Summary Judgment on all causes of action. The Court makes the following findings of facts and conclusions of law.¹

Findings of Fact

On November 29, 2018, Plaintiff filed this action under S.C. Code Ann. § 12-61-10 to quiet its tax title to the Properties, which are more particularly described in Plaintiff's Notice of *Lis Pendens* filed on November 29, 2018, as:

All that certain piece, parcel or lot of land, situate, lying and being in the Cypress Grove Subdivision, Berkeley County, South Carolina, as will be more fully shown as HOA, .29 Acre, Phase 2 Only, on a plat entitled "Final Plat of Cypress Grove – Phases 1 & 2", prepared by Jonathan R. Smith, PLS, dated September 10, 2008, and last revised on December 4, 2012, and recorded in the Office of the Register of Deeds for Berkeley County, S. C., in Plat Cabinet P, at page 263-P; and having such size, shape, form, delineations, metes, and bounds as are shown on said plat.

Address: 301 Silverleaf Lane, Moncks Corner, South Carolina 29461
Parcel: 210-08-01-092

AND

All that certain piece, parcel or lot of land, situate, lying and being in the Cypress Grove Subdivision, Berkeley County, South Carolina, as will be more fully shown as HOA, .34 Acre, Phase 1 Only, on a plat entitled "Final Plat of Cypress Grove — Phases 1 & 2", prepared by Jonathan R. Smith, PLS, dated September 10, 2008, and last revised on December 4, 2012, and recorded in the Office of the Register of Deeds for Berkeley County, S. C., in Plat Cabinet P, at Page 261-P;

¹ To the extent that any findings of fact constitute conclusions of law, or vice-versa, they shall be so regarded.

and having such size, shape, form, delineations, metes, and bounds as are shown on said plat.

Address: 100 Weeping Cypress Drive, Moncks Corner, South Carolina 29461.
Parcel: 210-08-01-093.

At the outset, the Court finds that it has subject matter jurisdiction, jurisdiction over the parties, and venue is proper.

I. The Tax Sale and Tax Deed

Plaintiff bought the Properties at the Berkeley County (the “County”) tax sale conducted on December 5, 2016 (the “Tax Sale”). After the expiration of the statutory one-year redemption period following the Tax Sale, the Delinquent Tax Collector issued two tax deeds to Plaintiff dated February 8, 2018, recorded on March 14, 2018 in book 2695 at page 648 (parcel no. 210-08-01-093) and in book 2695 at page 653 (parcel no. 210-08-01-092) (the “Tax Deeds”).

Based on the evidence presented at the hearing, the Court finds that all notices of the delinquent taxes, execution, levy, posting, advertisements, Tax Sale, and redemption sent to the interested parties entitled to notice were performed in strict conformity with all statutory requirements. The Delinquent Tax Collector exercised reasonable discretion in selling only so much of the Properties as was necessary to cover the amount of back-taxes—the sale of the Properties was reasonable and not excessive. Thus, the Tax Sale validly conveyed the fee simple interest in the Properties to Plaintiff. By virtue of these conveyances, Plaintiff is seized in fee simple in the Properties, free and clear of all clouds on the title and Defendants’ interests, subject to all governmental and zoning regulations.

II. Relevant Title History of the Properties and Procedural History

In its Complaint, Plaintiff named Defendants AME Development Group, LLC (“Defaulting Taxpayer”), Cypress Grove Homeowners’ Association, Inc. (the “HOA”) and

Virginia R. Hamilton, solely in her capacity at the Berkeley County Delinquent Tax Collector (collectively, "Defendants"). Plaintiff also originally named Robert R. Amerson as a defendant because he previously held a mortgage on the Properties, a release of which was recorded in book 2998 at page 278 on April 17, 2019. Thus, Plaintiff dismissed Mr. Amerson as a party. Plaintiff also originally named Sutterlin Investments, LLC because of a potential encroachment on the Properties. Plaintiff notified to the Court that it reached a resolution with Sutterlin Investments, which has been dismissed from the action.

Plaintiff named Defaulting Taxpayer because of its ownership interest in the Properties under that general warranty deed from CR Properties, LLC recorded in book 6726 at page 105 on July 19, 2007. Plaintiff also named Defaulting Taxpayer because of its status as a Declarant under the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Cypress Grove recorded in book 10738 at page 93 on May 7, 2014 (the "Covenants").² As of the date of filing the *Lis Pendens*, Defaulting Taxpayer had not transferred its ownership interest in the Properties to the HOA or any other parties, with the exception of the conveyance by the Tax Collector under the Tax Deeds.

III. Service of Process and Default

Plaintiff properly served the following parties by the following methods:

- AME Development Group, LLC with Summons and Complaint by personal service on November 27, 2018, as evidenced by the affidavit of service filed

² Plaintiff named Defaulting Taxpayer because it was the only declarant that had ownership of the Properties and that was the original declarant under the original covenants, conditions, and restrictions that were subsequently amended by the Covenants. Thus, it did not name the second party to the Covenants, Cypress Grove Development Partners, LLC, because it held no recorded interest in the Properties and has filed its articles of termination on February 11, 2020. Likewise, because the Properties had not been conveyed to the HOA as common area, Plaintiff named only the HOA as a party rather than each individual member of the HOA or each property owner within the Cypress Grove Development. The Court finds that Plaintiff has named the necessary parties for the relief it seeks. *See* S.C. Code Ann. § 15-53-80; S.C. Code Ann. § 12-61-20.

November 9, 2018, and with the First Amended Summons and Complaint by commercial delivery service (FedEx) on December 20, 2019, as evidenced by the affidavit of service filed February 14, 2020;

- Cypress Grove Homeowners' Association, Inc. with Summons and Complaint by certified mail, restricted delivery, return receipt requested on February 5, 2019, as evidenced by the affidavit of service filed February 25, 2019, and with the First Amended Summons and Complaint by certified mail, restricted delivery, return receipt requested on December 26, 2019, as evidenced by the affidavit of service filed February 14, 2020;
- Virginia R. Hamilton, solely in her capacity as the Berkeley County Delinquent Tax Collector by certified mail, restricted delivery, return receipt requested on February 19, 2019, as evidenced by the affidavit of service filed March 29, 2019;

The Court finds that service on each party was proper, giving the Court personal jurisdiction over the parties consistent with the Due Process clause of the United States and South Carolina Constitutions.

Despite the proper service of process, Defendants, with the exception of the Guardian *ad litem*, did not serve any response to the Complaint. Plaintiff filed a request for an entry of default and affidavit of default with the Court.³ Plaintiff thereafter filed a Motion for Summary and Default Judgment on June 21, 2020, which was properly served on the Defendants under Rule 5, SCRCF.

IV. Notice and the Default Judgment Hearing

On June 21, 2020, Plaintiff properly served the Notice of the Hearing and its Motion for Summary and Default Judgment on Defendants. It also provided a courtesy copy of the notice by regular mail and email to counsel for the Defaulting Taxpayer and to the HOA. Plaintiff then filed the Notice of Hearing and Certificate of Service with the Court on June 21, 2020. The Court

³ In its affidavit of default, Plaintiff's counsel included an affidavit of non-military service as required by the Servicemembers Civil Relief Act, 50 U.S.C. §§ 501–597b, specifically, 50 U.S.C. § 521. The Courts finds that the defendants who are in default are not in the military service; thus, this default judgment is proper under the Servicemembers Civil Relief Act.

finds that this notice was properly served within the time periods provided by Rule 55, SCRCP. Nevertheless, Defendants did not attend the hearing personally, through counsel, or through any other representative, with the exception of the County, which appeared through the County Attorney.

Having received no objection to Plaintiff's action to quiet its tax title, the Court accepts as true the allegations of the Complaint as set forth therein and reaffirmed by the evidence presented at the hearing, including the affidavit of Lourenza Greene, on behalf of the Delinquent Tax Collector's office. Based on this evidence, the Court grants Plaintiff the relief it seeks under its quiet tax title cause of action.

In addition to an action for quiet tax title, Plaintiff seeks to reform the Tax Deeds to properly reflect Plaintiff's correct legal name on the deeds. (Am. Compl. ¶¶ 27–29.) Through a mutual mistake, the Tax Deeds list the grantee as Guardian Tax Partners SC, LLC. The correct legal name for Plaintiff is Guardian Tax SC, LLC. The Court finds and concludes that these mistaken designations on the Tax Deeds are immaterial as this order concludes that fee simple title is vested in Plaintiff. Nevertheless, it reforms the Tax Deeds to reflect Plaintiff's correct legal name: Guardian Tax SC, LLC.

Plaintiff also seeks quiet title and declaratory judgment related to the rights and interest that the Defaulting Taxpayer or the HOA may have in the Properties under the Covenants or those Plats entitled "Final Plat of Cypress Grove – Phases 1 & 2," prepared by Jonathan R. Smith, PLS, dated September 10, 2008, and last revised on December 4, 2012, and recorded in the Office of the Register of Deeds for Berkeley County, S. C., in Plat Cabinet P at pages 260–64 (the "Plats"). (Am. Compl. ¶¶ 30–39.) The Covenants and Plats, among others, list the Properties with an "HOA" designation and, in some plats, identify the Properties as "non-buildable."

Plaintiff represents to the Court that it has sought guidance from the City of Moncks Corner and the County regarding any laws, ordinances, or regulations that would make the Properties non-buildable, but has not identified any authority that would prohibit the issuance of a building permit for the Properties. (Am. Compl. ¶ 32.)

Nevertheless, Plaintiff does not seek a declaration from the Court regarding its rights to build on the Properties under any governmental laws, ordinances, or regulations. Instead, it seeks declarations that (1) the Properties are not common area of the HOA, (Am. Compl. ¶ 39.c.); (2) the Properties are buildable under the Covenants and Plats such that the HOA and Defaulting Taxpayer may not restrict the rights of Plaintiff or its successors and assigns from building on the Properties, (Am. Compl. ¶ 39.d.); and (3) the Tax Sale and any future sales of the Properties are not contingent upon approval by the HOA or Defaulting Taxpayer, (Am. Compl. ¶ 39.e.).

The Court agrees and grants Plaintiff the declaration it seeks. It finds that the Tax Sale extinguished any such restrictions on the Properties. The Properties are not common property, are buildable, and future sales are not contingent upon approval by the HOA or Defaulting Taxpayer.

Conclusions of Law

Based upon the record, the testimony and evidence presented, and the arguments of counsel at the merits hearing, the Court makes the following conclusions of law:

1. This matter is properly before the Court. Notice of the hearing was properly given to Defendants and the Court has personal jurisdiction over them, both known and unknown. Further, this matter is within the subject matter jurisdiction of this Court, having been properly referred for the purpose of taking testimony, receiving evidence, and making findings of fact and

conclusions of law with respect to all issues with the authority and power to enter a final judgment, with any appeal to the Court of Appeals or to the Supreme Court of South Carolina.

2. This action was filed more than two years after the Tax Sale; thus, the statute of limitations for any action for the recovery of the Properties has passed. S.C. Code Ann. § 12-51-160. Accordingly, the Tax Deeds are incontestable on procedural or other grounds. S.C. Code Ann. § 12-51-90(C).

3. In strict accordance with all statutory requirements, the Delinquent Tax Collector provided all required notices to all interested parties entitled to notice, properly executed and levied upon the Properties, and thereafter properly advertised and sold the Properties to Plaintiff at the Tax Sale.

4. After providing the statutorily required notice of the approaching end of the redemption period to all interested parties entitled to notice in strict compliance with S.C. Code Ann. § 12-51-120, the Delinquent Tax Collector issued the valid Tax Deeds for the Properties to Plaintiff.

5. Plaintiff timely and properly served Defendants with process of the Summons and Complaint and also the First Amended Summons and Complaint. Thereafter, Defendants, with the exception of the County and its officials, failed to answer the Complaint or make any other appearance in this action. Defendants are, therefore, in default, with the exception of the County and its officials. Furthermore, as set forth in the affidavit filed by counsel for Plaintiff, Defendants are not entitled to the protections afforded by the Servicemembers Civil Relief Act, 50 U.S.C. §§ 501–597b.

6. At all times concerned, the provisions of Chapter 51 of Title 12 of the South Carolina Code of Laws entitled, “Alternative Procedure for Collection of Property Taxes,”

controlled. At the hearing, no issues were raised concerning the actions of the Delinquent Tax Collector. Based upon the evidence received at the hearing—including the testimony of Lourenza Greene—the Court concludes that all requirements of the South Carolina Code of Laws with regard to the Tax Sale were properly followed and were in strict compliance therewith.

7. Based on the foregoing and because the Tax Sale of the Properties was conducted in strict compliance with the statutory requirements pertaining to tax sales, the Tax Sale of the Properties extinguished and forever eliminated all rights, titles, claims, interests, estates, liens, mortgages, judgments, and any other creditors' claims in, to, or upon the Properties, including, but not limited to, all interests of Defendants. Accordingly, all rights, titles, claims, interests, estates, liens, mortgages, judgments, and any other creditors' claims that Defendants had or claim to have in, to, or upon the Properties are hereby extinguished. All rights, titles, claims, interests, estates, liens, mortgages, judgments, and any other creditors' claims of any person or entity claiming under, by, or through, Defendants are hereby extinguished. Thus, all adverse claims to the Properties are forever barred; provided, however, that the Properties remain subject to all governmental laws, ordinances, and regulations.

8. Plaintiff's marketable, fee simple title to the Properties is certain and free from all reasonable doubt.

9. Because the Tax Sale of the Properties was conducted in strict compliance with the statutory requirements pertaining to tax sales, any person or entity occupying the Properties must vacate the Properties and remove all items of personal property. Any person occupying the Properties shall maintain the condition of the Properties without causing any harm or damage to the Properties.

10. The Properties are not subject to the restrictions of Administrative Order No. 2020-04-30-02, *In re Statewide Evictions and Foreclosures* (S.C. Sup. Ct. Filed April 30, 2020) because the Properties are not subject to the limitations, requirements, and restrictions of the federal Coronavirus Aid, Relief, and Economic Security Act.

NOW, THEREFORE, based upon the foregoing, it is hereby ordered as follows:

- A. The Clerk of Court shall cancel the *Lis Pendens* in this action.
- B. All claims, rights, titles, interests, estates, liens, mortgages, judgments, and any other creditors' claims of AME Development Group, LLC, Robert R. Amerson, or Cypress Grove Homeowners' Association, Inc. (or any other person or entity claiming under, by, or through them) in, to, or upon the Properties are forever barred. Likewise, any claims to the Properties accruing after the filing of the *Lis Pendens* in this action are forever barred.
- C. The Tax Sale extinguished all rights, titles, claims, interests, estates, liens, mortgages, judgments, and other creditors' claims in, to, or upon the Properties, and all claims to the Properties adverse to Guardian Tax SC, LLC are forever barred.
- D. This Court hereby quiets and confirms marketable, fee simple title to the Properties in Guardian Tax SC, LLC. The marketable, fee simple title of Guardian Tax SC, LLC, to the Properties is certain and free from all reasonable doubt.
- E. Because there is no claim to the overage by any other party or claimant, the overage may be claimed by Defendants under S.C. Code Ann. §§ 12-51-60 and 12-51-130 and if not claimed within the time set forth therein, the overage may be disposed in accordance with the provisions of S.C. Code Ann. § 12-51-130.

F. The Register of Deeds is ordered to record this Order in the real property records for the County, indexing AME Development Group, LLC and the Cypress Grove Homeowners' Association, Inc. as the grantors and Guardian Tax SC, LLC as the grantee.

IT IS SO ORDERED.

[Signature page of the Honorable Dale Van Slambrook to follow.]

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018-CP-08-02318

Guardian Tax SC, LLC
PLAINTIFF(S)

AME Development Group, LLC, et al.
DEFENDANT(S)

Submitted by: Matthew A. Abee, Esq., Nelson Mullins-Riley &
Scarborough LLP, 803-255-9335

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
- ☐ **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: See attached Final Order of Quiet Title

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Except Court retains jurisdiction for writ of assistance, as needed.

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)		
Guardian Tax SC, LLC	AME Development Group, LLC; Cypress Grove Homeowners' Association, Inc.; Virginia R. Hamilton, solely in her capacity at the Berkeley County Delinquent Tax Collector	N/A		
If applicable, describe the property, including tax map information and address, referenced in the order:				
PIN	Address	Defendant	Book	Page
210-08-01-092 and 210-08-01-093	301 Silverleaf Lane, Moncks Corner, South Carolina 29461 and 100 Weeping Cypress Drive, Moncks Corner, South Carolina 29461	AME Development Group, LLC	1935	2523
			2695	648
			2695	653
		Cypress Grove Homeowners' Association, Inc.	10197	45
			10732	25
			10738	93
			10821	26
			2311	147
		P	260-64	

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The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page. In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

[Electronic signature of the Honorable Dale Van Slambrook to follow.]

ELECTRONICALLY FILED - 2020 Jul 30 2:14 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0802318



Berkeley Common Pleas

Case Caption: Guardian Tax Sc, Llc , plaintiff, et al VS Ame Development Group, Llc , defendant, et al
Case Number: 2018CP0802318
Type: Master/Order/Quiet Title and Form 4

AND IT SO ORDERED!

s/Dale E. Van Slambrook #3079