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58-CV-2021-900694.00
CIRCUIT COURT OF
SHELBY COUNTY, ALABAMA
MARY HARRIS, CLERK

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

GUARDIAN TAX AL, LLC,
Plaintiff,

V.

J. HARRIS DEVELOPMENT
CORPORATION,
DKT WYOMING LLC,
OCCUPANT ANY,
Defendants.

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) Case No.: CV-2021-900694.00
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ORDER OF DEFAULT JUDGMENT

Before this Court is the Motion for Default Judgment against J. HARRIS DEVELOPMENT CORPORATION and DKT WYOMING, LLC, (collectively, "Defendants") filed June 10, 2022, by Plaintiff Guardian Tax AL, LLC ("Plaintiff"). Plaintiff requests that the court enter judgment regarding the real property known as 121 Park Forest Ter, Alabaster, AL 35007 (Parcel No. 23 07 26 0 006 005.000; PPIN: 77120) (the "Property") which was purchased at the Shelby County Alabama tax sale held on March 21, 2016 (the "Tax Sale"). Because the facts and law support the relief requested by Plaintiff, the Court **GRANTS** the motion, making the following findings of fact and conclusions of law without a hearing.

1. Plaintiff filed its Complaint as an action for ejectment and for relief in the nature of ejectment and quiet title to the Property on November 17, 2021. As set forth in Plaintiff's Complaint, the real property involved in this action is located in Shelby County, Alabama and is more specifically described as:

Lot 5, according to the Survey of Park Forest Subdivision-Fourth Sector, as recorded in Map Book 18, Page 95, in the Probate Office of Shelby County, Alabama.

Address: 121 Park Forest Ter, Alabaster, AL 35007
Parcel No.: 23 07 26 0 006 005.000

2. As explained in the Affidavit of Default filed by Plaintiff, service of process was

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completed on Defendants J. Harris Development Corporation and DKT Wyoming LLC in December of 2021 under Ala. R. Civ. P.4(c). The Court finds that service on Defendants was proper, giving the Court personal jurisdiction over them consistent with the Due Process clause of the United States and Alabama Constitutions. Nevertheless, Defendants failed to respond to the Summons and Complaint. In the 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 court finds and concludes that Defendants are not entitled to protections under the Servicemembers Civil Relief Act, 50 U.S.C. §§ 501-597b, specifically, 50 U.S.C. § 521. Accordingly, Defendants are in default and Plaintiff is entitled to default judgment. *See* Ala. R. Civ. P. 55(a).

3. Title history shown by the records is as follows. Prior to the tax sale, Park Forest Development Corporation conveyed the property to Defendant, J. Harris Development Corporation by Corporation Warranty Deed recorded in the Judge of Probate's Deed Book at Instrument number 1992-11351 on June 16, 1992. Thereafter, Defendant DKT Wyoming, LLC ("Delinquent Taxpayers") purchased a tax sale certificate to the property on or about August 24, 2012.

4. After Defendants failed to pay the ad valorem real property taxes for the Property, the County sold the Property at the tax Sale in accordance with state law to FNA NP LLC ("Purchaser") in the amount of \$473.71. Defendants did not (1) pay the delinquent taxes owed within five days or otherwise file any objections to the Tax Sale under Ala. Code § 40-10-13, (2) redeem the property within three years from the Tax Sale, (3) seek judicial redemption of the Property under Ala. Code § 40-10-82.

5. A Tax Sale Certificate for the Property was properly issued to Purchaser under

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Ala. Code § 40-10-19. Purchaser assigned the Tax Sale Certificate to Plaintiff, Guardian Tax AL, LLC by Assignment of Tax Sale Certificate dated April 29, 2019.

6. Then, after the expiration of the three-year administrative redemption period, the Shelby County, Alabama Probate court issued Plaintiff a Tax Deed to the Property, which is recorded in the county land records at Instrument number 20200420000153270 on April 20, 2020 (the "Tax Deed").

7. Based on the evidence before the Court, the Court finds that, with respect to the Tax Sale, all assessments, notices of delinquent taxes, and notices of redemption sent to the interested parties entitled to notice were performed in strict conformity with all statutory requirements. Thus, the Tax Sale validly conveyed the fee simple interest in the Property to Purchaser, which then validly conveyed the Property in fee simple to Plaintiff. By virtue of these conveyances, Plaintiff is seized in fee simple in the Property, free and clear of all clouds on the title and Defendants' interests, subject to all easements and restrictions of record.

Conclusions of Law

1. This matter is properly before the Court. Notice was properly given to Defendants and the Court has personal jurisdiction over them. Further, this matter is within the subject matter jurisdiction of this Court and venue is proper.

2. This matter is ripe for final resolution without a hearing. Ala. Rules Civ. P. 55(b)(2). The facts necessary to support the relief requested are contained within the record before the Court, including the allegations in the Complaint, which Defendants have admitted by virtue of their default. *See* Ala. Rules Civ. P. 12 and 55. Defendants have failed to contest the validity of the Tax Sale, Plaintiff's title, or Plaintiff's entitlement to relief. Indeed, the real property records referenced in the Complaint, including the Tax Deed, confirm Plaintiff is

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entitled to the relief it seeks. *See* Ala. Code § 40-10-30. Based on this undisputed evidence, Plaintiff is entitled to judgment as a matter of law.

3. In strict accordance with all statutory requirements, the County provided all required notices to all interested parties entitled to notice, properly assessed and levied upon the Property, and thereafter properly notices and sold the Property to Purchaser at the Tax Sale.

4. Under Alabama law, an interested party has two methods of redeeming a property from that sale: “‘statutory redemption’ (also known as ‘administrative redemption’), which requires the payment of specified sums of money to the probate judge of the county in which the parcel is located (*see* § 40-10-120 et seq., Ala. Code 1975), and ‘judicial redemption’ under §§ 40-10-82 and -83, Ala. Code 1975 ...” *Ex parte Found. Bank*, 146 So. 3d 1, 3 (Ala. 2013); *Heard v. Gunn*, 262 Ala. 283, 78 So.2d 313 (1955)); *see also Wall to Wall Properties v. Cadence Bank, NA*, 163 So. 3d 384, 387 n.1 (Ala. Civ. App. 2014) (identifying difference between administrative and judicial redemption under §§ 40-10-82 and -83). Defendants have failed to utilize either method to redeem the Property from the Tax Sale.

5. Based on the foregoing and because the Tax Sale of the Property was conducted in strict compliance with the statutory requirements pertaining to tax sales, the tax Sale of the Property extinguished and forever eliminated all rights, titles, claims, interests, estates, liens, mortgages, judgments, and any other creditors’ claim in, to, or upon the Property. Accordingly, all rights, titles, claim, interests, estates, liens, mortgages, judgments, and any other creditors’ claims that Defendants had or claim to have in, to or upon the Property are extinguished. All rights, titles, claim, interests, estates, liens, mortgages, judgments, and any other creditors’ claims of any person or entity claiming under, by, or through, Defendants are extinguished. Thus, all adverse claims to the Property are forever barred. Plaintiff’s marketable, fee simple

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title to the Property is certain and free from all reasonable doubt.

6. Because the Tax Sale of the Property was conducted in strict compliance with the statutory requirements pertaining to tax sales, any person or entity occupying the Property must vacate the Property and remove all items of personal property as set forth below. Any person occupying the Property shall maintain the condition of the Property without causing any harm or damage to the Property. Any personal property left at the Property is deemed to be abandoned.

Order

Therefore, it is ORDERED, ADJUDGED, and DECREED that:

1. Plaintiff shall have judgment against Defendants J. HARRIS DEVELOPMENT CORPORATION, and DKT WYOMING, LLC.

2. Plaintiff is declared to be the sole holder in fee simple of the Property. Defendants and those who might claim any right, title, interest in, or lien upon the Property through Defendants are barred from any claim to the Property. Any cloud upon the title to the Property is hereby removed, confirming Plaintiff's fee simple title to the Property.

3. To the extent that Defendants or anyone claiming under them are in possession of the Property, they shall quit and vacate the Property and to deliver possession to the Plaintiff within 30 days of the date of this order.

4. The Shelby County Probate Court shall record this order in the real property records for the County upon presentment of a copy of this order and payment of the property deed-recording fee by Plaintiff.

5. Costs are taxed as paid.

DONE this 2nd day of August, 2022.

/s/ PATRICK E. KENNEDY
CIRCUIT JUDGE

Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
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Certified a true and correct copy

Date: 08/12/22

Mary H. Harris
Mary H. Harris Circuit Clerk
Shelby County, Alabama

Allen S. Bayl

