NO. 19-7576

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 2019

JAMES ANTHONY DAVIS
Appellant-Petitioner

vs.

BRAZORIA COUNTY, CITY OF ANGLETON, ANGLETON INDEPENDENT SCHOOL DISTRICT ET AL
Respondent

From a case appealed from the Texas Supreme Court
Cause No. 19-0318

PETITION FOR WRIT OF CERTIORARI

James Anthony Davis
James A. Davis
Appellant Pro Se
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QUESTION PRESENTED FOR REVIEW

1. Whether the Petitioner could be liable for the 2012 taxes as he was not the property owner on January 01, 2012.

2. Whether the government's interference with and denial of Petitioner's property rights constitute a taking and/or the denial of due process.

3. Whether the initial judgment must stand on its face.

4. Whether the Respondent joined all necessary parties for just adjudication of this case.

5. Whether res judicata precludes the award of taxes for a tax year adjudicated in a different cause number.

PARTIES TO THE PROCEEDING

Petitioner is James Anthony Davis which was the Appellant in the Fourteenth Court of Appeals.

Respondents are the following taxing entities:

Brazoria County, City of Angleton, Angleton Indpendent School District, Special Road and Bridge District, Angleton Danbury Hospital District, Angleton Drainage District, and the Port of Freeport.

CORPORATE DISCLOSURE STATEMENT

There is no parent or publicly held corporation holding or owing more than 10% of the corporation's stock involved with this case.

LIST OF PROCEEDINGS

Respondent filed the trial court cause in the 239th Judicial District Court of Brazoria County, Texas on January 12, 2016. Judgment for the Respondents was entered May 22, 2107. Petitioner filed an appeal in this cause to the Fourteenth Court of Appeals in Houston, Texas with same being docketed on or about August 22, 2017. Judgment was rendered by the Fourteenth Court of Appeals on September 11, 2018. Petitioner appealed to the Supreme Court of Texas in Cause No. 19-0138 by Petition for Review on

February 04, 2019. Review was denied on March 29, 2019. Petitioner's Motion for Rehearing was denied on May 24, 2019 .

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TABLE OF AUTHORITIES

STATEMENT OF JURISDICTION

The Supreme Court has jurisdiction pursuant to 28 U.S.C. § 1254.

OPINIONS BELOW

For cases from the state courts:

The opinion of the Supreme Court of Texas is attached as Appendix A and consists of a postcard only denying Petition for Review. The opinion is unpublished.

The opinion of the Supreme Court of Texas is attached as Appendix B and consists of a postcard only denying the Petition for Review. The opinion is unpublished.

The Fourteenth Court of Appeals denial of Rehearing is contained at Appendix C.

The Memorandum and Opinion of the Court of Appeals for the Fourteenth District of Texas, Houston Division is attached as Appendix D.

The judgment of the trial court is contained at Exhibit E.

DATE OF JUDGMENT SOUGHT TO BE REVIEWED

Petitioner seeks review of the judgment of the trial court entered on

May 22, 2018, the judgment of the Court of Appeals rendered onSeptember 11, 2018 and the denial of a Petition for Review by the Texas Supreme Cour on March 29, 2019.

CONSTITUTIONAL OR STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Texas Constitution Sec. 19. DEPRIVATION OF LIFE, LIBERTY, PROPERTY, ETC. BY DUE COURSE OF LAW.

No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Texas Tax Code § Section 32.07:

Sec. 32.07. PERSONAL LIABILITY FOR TAX. (a) Except as provided by Subsections (b) and (c) of this section, property taxes are the personal obligation of the person who owns or acquires the property on January 1 of the year for which the tax is imposed or would have been imposed had property not been omitted as described under Section 25.21. A person is not relieved of the obligation because he no longer owns the property.

Texas Tax Code Sec. 33.52. TAXES INCLUDED IN JUDGMENT.

(a) Only taxes that are delinquent on the date of a judgment may be included in the amount recoverable under the judgment by the taxing units that are parties to the suit.

(b) In lieu of stating as a liquidated amount the aggregate total of taxes, penalties, and interest due, a judgment may:

(1) set out the tax due each taxing unit for each year; and

(2) provide that penalties and interest accrue on the unpaid taxes as provided by Subchapter A.

(c) For purposes of calculating penalties and interest due under the judgment, it is presumed that the delinquency date for a tax is February 1 of the year following the year in which the tax was imposed, unless the judgment provides otherwise.

(d) Except as provided by Section 34.05(k), a taxing unit's claim for taxes that become delinquent after the date of the judgment is not affected by the entry of the judgment or a tax sale conducted under that judgment. Those taxes may be collected by any remedy provided by this title.

Texas Rules of Appellate Procedure 56.1. Orders on Petition for Review

(a) Considerations in Granting Review. Whether to grant review is a

matter of judicial discretion. Among the factors the Supreme Court considers in deciding whether to grant a petition for review are the following:

(1) whether the justices of the court of appeals disagree on an important point of law;

(2) whether there is a conflict between the courts of appeals on an important point of law;

(3) whether a case involves the construction or validity of a statute;

(4) whether a case involves constitutional issues;

(5) whether the court of appeals appears to have committed an error of law of such importance to the state's jurisprudence that it should be corrected; and

(6) whether the court of appeals has decided an important question of state law that should be, but has not been, resolved by the Supreme Court.

Texas Rules of Civil Procedure 301. JUDGMENTS

The judgment of the court shall conform to the pleadings, the nature of the case proved and the verdict, if any, and shall be so framed as to give the party all the relief to which he may be entitled either in law or equity. .....Only one final judgment shall be rendered in any cause except where it is otherwise specially provided by law..

Texas Rules of Civil Procedure 306a. PERIODS TO RUN FROM SIGNING OF JUDGMENT

1. Beginning of Periods.

The date of judgment or order is signed as shown of record shall determine the beginning of the periods prescribed by these rules for the court's

plenary power to grant a new trial or to vacate, modify, correct or reform a judgment or order and for filing in the trial court the various documents that these rules authorize a party to file within such periods including, but not limited to, motions for new trial, motions to modify judgment, motions to reinstate a case dismissed for want of prosecution, motions to vacate judgment and requests for findings of fact and conclusions of law; but this rule shall not determine what constitutes rendition of a judgment or order for any other purpose.

Texas Rules of Civil Procedure 329 TIME FOR FILING MOTIONS

The following rules shall be applicable to motions for new trial and motions to modify, correct, or reform judgments (other than motions to correct the record under Rule 316) in all district and county courts:

(a) A motion for new trial, if filed, shall be filed prior to or within thirty days after the judgment or other order complained of is signed.

(b) One or more amended motions for new trial may be filed without leave of court before any preceding motion for new trial filed by the movant is overruled and within thirty days after the judgment or other order complained of is signed.

(c) In the event an original or amended motion for new trial or a motion to modify, correct or reform a judgment is not determined by written order signed within seventy-five days after the judgment was signed, it shall be considered overruled by operation of law on expiration of that period.

(d) The trial court, regardless of whether an appeal has been perfected, has plenary power to grant a new trial or to vacate, modify, correct, or reform the judgment within thirty days after the judgment is signed.

STATEMENT OF THE CASE

On or about September 14, 2011, the Respondents filed suit in Cause No. 64967 against Veronica Davis for delinquent taxes pertaining to two pieces of property- one in West Columbia for 2009 and 2010 taxes and one in Angleton, Texas for the tax years 2007, 2009 and 2010. Veronica Davis transferred the Angleton property to her son, the Petitioner, on December 31, 2012 for his eighteenth birthday. The deed is recorded in the Deed Records of Brazoria County, Texas under the File No. 62043. Said deed shows that the Petitioner was not the record title holder on January 01, 2012.

At the time of judgment, the taxing authority sought taxes for all years up to and including 2013 for the West Columbia property and up to and including the 2012 tax year for the Angleton property. Respondent contended that in a delinquent tax suit, all years subsequent to the tax years pled may be added into the suit, during the pendency of the suit. Also during the pendency of said suit, Respondents were made aware of the transfer of title to Petitioner.

All taxes that were alleged due and owing as pled in the

Respondent's Original Petition were paid by Veronica Davis, as well as those which came due during the pendency of the suit. Judgment was entered on November 18, 2014 on said tax suit, stating that all taxes were paid and that dismissal of the cause was thereby entered. Accordingly, the suit was dismissed and judgment was entered showing that there was no taxes due and owing on either property.

Petitioner was subsequently sued in Cause No. 84732-T for delinquent taxes on January 12, 2016, for delinquent taxes for the years 2014 and 2015. Also included in the action was the 2012 taxes which was taken care of in Cause No. 64967 . Petitioner pled as an affirmative defense res judicata, payment, and nonownership during the time at issue.

Contrary to the assertion of the Respondent in the subsequent tax suit, both properties were dismissed from the suit, due to payment. More specifically, the 2012 taxes on the Angleton property was the only tax year in dispute due to same having been paid in 2014. The Fourteenth Court of Appeals of Texas, Houston Division failed to correctly state the case or properly adjudicate the issues raised.

Petition for Review was denied by the Texas Supreme Court.

Petitioner herein applies to this Court for Certiorari.

REASONS FOR GRANTING WRIT

Petitioner is now engaged in litigation to retain his property that Respondent seeks to divest him of for ad valorem property taxes for the tax year 2012, a period of time when he was not the property owner. Said taxes were paid by the prior property owner. Therefore, Petitioner is now subject to a taking without due process of law.

Petitioner contends that mandating payment twice for the same tax year, and demanding the second payment from the successor owner during a period of time when he was not the property owner contradicts the principle of res judicata. Moreover, same constitutes a "taking". Moreover, the "taking" has/shall culminate(d) in a sheriff's sale. Said sale is premised on a void judgment from the trial court. The Court of Appeals failed to reverse the trial court judgment, which has led to penalties, interest, collection fees, during the pendency of all appellate actions since entry of judgment in May, 2017, in connection with fighting against the improper judgment.

The Petitioner should not be required pay costs, penalties, interest, or

lose his property pursuant to a void judgment because the the taxes were already paid and adjudicated as paid. Additionally, Petitioner was not the property owner for the tax year in question, and is therefore not liable for taxes for the year 2012,as required by Texas Law. Same thereby violates the **United States Constitution**, Fourteenth Amendment. Therefore, the actions of the Respondent constitute a "taking" and a denial of due process.

Petitioner contends that the Court of Appeals has made a mistake of law that is of such statewide importance that it should be corrected by this Honorable Court. Specifically, this Honorable Court should uphold and set forth a standard for tax cases as every citizen of the State is affected thereby. The decision of the trial court affords taxing entities the ability to take unfair advantage of tax payers ad infinitum, without taxpayer recourse. The tax payer is left with no prescriptive period limiting the period of time for which taxing entities may institute a delinquent tax suit. Without the imposition of a statute of limitations on tax actions coupled with failing to uphold the doctrine of res judicata, a State's taxing entity is given a broader prescriptive periods to bring actions, than any other citizen or entity.

Though a lawsuit was filed by Respondents, due process was not afforded to Petitioner. Specifically, the Court required no proof of the allegations of Respondents regarding tax payments. No Respondent (taxing authority) appeared nor testified that the alleged tax year had not been paid. In essence, the tax attorney advised the Court of the alleged amount owed and the Court accepted same as true. However, the prima facie case was rebuttable. Moreover, the Fourteenth Court of Appeals had decided an important question of law that is directly contrary to its own decisions and contrary to that set forth by the Texas Supreme Court in contravention **Texas Rules of Appellate Procedure** 56.1(a)(5).

SUMMARY OF ARGUMENT

In 2017, the taxing authority sued James Davis for delinquent back taxes, and included tax liability for the 2012 year, which had already been paid and adjudged as paid by a 2014 judgment. The 2014 judgment is res judicata for the 2012 tax year.

By way of further affirmative defense, James Davis was not the owner on January 01, 2012 and is not responsible for the taxes pursuant to the **Texas Tax Code** § 32.07.

If taxes were due for tax year 2012, as Respondent alleged in Cause No. 84732-T, Respondent was required by law to join Petitioner in the 2011 tax suit (Cause No. 64967) pursuant to **Texas Rules of Civil Procedure** 39 , as he would have been a necessary and indispensable party. The Court of Appeals may not make an end run around the law in order to find James Davis liable, as the law is clear and well established.

Because the judgment signed in November, 2014 pertained to the 2012 taxes as well, the trial court may not set aside that judgment by subsuming the 2012 taxes in a subsequent suit. The Court lost plenary power with regard to same on December 18, 2014 The judgment entered in the subsequent tax suit was void and a nullity as a matter of law.

At the time of the original filing of Petitioner's Petition for Writ of Certiorari, Respondents sought not only to divest Petitioner of his property, but to sell it as well for the alleged nonpayment of the 2012 ad valorem taxes. Said sell indicates that same is being sold for the amount of back taxes, court costs, and other fees for a sum of less than $2500.00, which is well below the market value of the house. Same constitutes a taking pursuant to the **United States Constitution**, amendment Fourteen and the

Texas Constitution, art 1, § 19 which prohibits any person from being deprived of "liberty, or property, without due process of law".

Though Petitioner continues to engage in litigation to rectify this property rights issue, the Respondent has failed and refused to recognize the state of the law regarding same. Therefore, Petitioner continues to advance his constitutionally guaranteed property rights.

ISSUE ONE

It is violative of Petitioner's property rights and due process rights to find him liable for 2012 taxes when he was not the property owner at the beginning of that taxing year.

Veronica Davis owned the property which is the subject of this suit until December 31, 2012. Said property was transferred to Petitioner on December 31, 2012 for his eighteenth birthday. Petitioner, did not own the property on January 01, 2012.

Pursuant to the **Texas Tax Code** § Section 32.07:

> (A) .....[*P*]*roperty taxes are the personal obligation of the person who owns or acquires the property on January 1 of the year for which the tax is imposed....* A person is not relieved of the obligation because he no longer owns the property.

Nonownership is an affirmative defense. See **Paisano** discussed below. Payment is also an affirmative defense. Veronica Davis paid the taxes prior to the dismissal of the cause of action and said payment is what the dismissal is premised on. Judgment was rendered on November 14, 2012. The November, 2014 in Cause No. 64967 clearly states that Veronica Davis, the former owner paid all taxes due and owing.

Even though the 2012 taxes were not due at the time Respondents filed its suit, they became due during the pendency of said action and were therefore due and owing pursuant to **Texas Tax Code** 33.52[1].

As previously stated,it is an affirmative defense to tax liability that the defendant did not own the subject property on January 1 of the year for which the tax was imposed. **Texas Tax Code Ann.** § 32.07. The Court in **Maximum Medical Improvement v. County of Dallas**, 272 S.W.3d 832, 837 (Tex.App- Dallas 2008), held that since MMI pled lack of ownership and that since "Dallas County introduced no evidence that MMI owned personal property at the Address" .....

> Our review of the evidence and inferences supporting the trial judge's finding of MMI's ownership lead us to conclude Dallas County did not

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[1] See text of rule included on page

introduce legally sufficient evidence to support its claims, on which it had the burden of proof, : " Our resolution of the ownership issue obviates any need to address MMI's first and third issues..... We reverse judgment in favor of Dallas County and render a take-nothing judgment on Dallas County's claims.

In **Morris vs. Houston ISD**, 388 S.W.3d 310 (Tx.2012), the Supreme Court noted that lack of ownership was more than an affirmative defense, but rather that it was the legislative intent to negate liability for property taxes for those lacking ownership:

> While Section 42.09(b)(1) refers to non-ownership as an affirmative defense, it evidences the ***Legislature's intention to provide taxpayers with an opportunity to avoid tax liability for property that they do not own.*** See *City of Pharr v. Boarder to Boarder Trucking, Serv., Inc.*, 76 S.W.3d 803, 806 (Tex.App.-Corpus Christi 2002, pet. denied) (recognizing "that 42.09 makes [it] clear that the legislature desires that the taxpayer 'have available the defense that he did not own the property.' "). ***Taxing statutes are construed strictly against the taxing authority and liberally for the taxpayer.*** *Bullock v. Statistical Tabulating Corp.*, 549 S.W.2d 166, 169 (Tex.1977); *Wilson Commc'ns, Inc. v. Calvert*, 450 S.W.2d 842, 844 (Tex.1970). [Emphasis added].

The Supreme Court of Texas in **Willacy County Appraisal District vs. Sebastian Cotton and Grain, Ltd**, (Tx.Sup.Ct. 16-0626), (April 2018) held:

> Property tax liability, therefore, derives from ownership of property. See *Tex. Tax Code* § 32.07. A person who owns

property is generally liable for property taxes assessed on that property, and a person who does not own property generally has no property tax liability. See *Green Tree Servicing, LLC v. Travis Cty.*, No. 03-10-00709-CV, 2011 WL 3890408 at *7 (Tex. App.-Austin 2011, no pet.) (mem. op.) (holding that a party "presenting prima facie proof that it did not own the [property] at issue . . . set up a meritorious defense to its liability for the taxes assessed"). Certiorari should be granted because the decision to deny Petition for Review by the Supreme Court of Texas defies the Court's own law regarding the issue of taxation against a non-owner.

ISSUE TWO

Whether the government's interference with and denial of Petitioner's property rights constitute a taking and/or the denial of due process

As outlined supra, the Petitioner was not the property owner on January 01, 2012, as required by **Texas Tax Code** § Section 32.07. Petitioner has contested and continued to contest that he has any tax liability for the 2012 taxes due to: 1)payment, 2) a judgment adjudicating that all taxes were paid, and 3) because he was not the owner on January 01, 2012. As a result of said dispute, the Respondent placed the Petitioner's property up for Sheriff's sale for September 04, 2019. [2] If the Petitioner fails

[2] Same was pulled from the tax sale due to payment by a third party during the period that this Honorable Court sent the Petition for Writ of Certiorari back to Petitioner for

to pay the taxes, costs, and other penalties, or redeem same, he will be divested of said property. Therefore, Petitioner contends he is left without a valid remedy at law. The Texas Supreme Court has denounced such an eventuality. The Court in **R. Communications, Inc. v. Honorable John Sharp**, 875 S.W.2d 314, 315 (Tex. 1994) stated:

> Of the various state constitutional claims, we focus on the taxpayer's assertion that the Tax Code violates the fundamental requirement that: All courts shall be open, and every person for an injury done him, in his lands, goods, person, or reputation, shall have remedy by due course of law. TEX. CONST. art. I, § 13. In *Eustis v. City of Henrietta*, 90 Tex. 468, 39 S.W. 567, 569 (1897), we held that a statute requiring tax payment as a precondition to defending title to property against a claim of title under a tax sale violated both sections 13 and 19 of the Texas Bill of Rights. On subsequent appeal, we again held "that the owner [of property subject to a tax levy] could not be required to pay the taxes as a condition precedent to making the defense" against the claim of title. *Eustis v. City of Henrietta*, 91 Tex. 325, 43 S.W. 259, 262 (1897); see also Town of Pleasanton v. Vance, 277 S.W. 89, 90 (Tex.Comm'n App.1925, judgment adopted) (Texas Constitution prohibits restriction on taxpayer's ability to contest liability in collection suit). ..... [A]n act of the legislature which makes the right of an individual or corporation to prosecute an appeal to depend on the giving of a supersedeas bond, without reference to the ability or inability of such corporation or individual to give such a bond, is violative of the Constitution.

Same is applicable here. Therefore, Respondent's actions are

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correction. However, same will be returned to the tax sale list due to the assessment of other costs.

violative of the **Texas Constitution**, as outlined above, Respondent has left Petitioner no choice other than pay the 2012 taxes which have already been paid or lose his property at Sheriff's sale or to the lienholder. Said sale is an action deliberately instituted by Respondent in order to cause a cessation in litigation and/or force the Petitioner to pay the disputed tax amount, as set out in **Eustis**. In addition to violating the foregoing holding, requiring the Petitioner to pay the taxes prior to a response from this Honorable Court further offends fair play and impartiality.

Petitioner further contends that the 2017 judgment for taxes is void because the Court lost its plenary to modify or alter the 2014 judgment as it related to the 2012 taxes in December, 2014, 30 days after judgment pursuant to Texas Rules of Civil Procedure 306 and 329b. [3] "It is unquestionably the law that a judgment rendered outside a court's period of plenary power is not merely voidable, but void." See **Mapco, Inc. v. Forrest**, 795 S.W.2d 700, 702-03 (Tex. 1990); **Univ. Gen. Hosp., LP v. Siemens Med. Solutions USA, Inc**. (Tex. App., 2013)

In **Texas Attorney General Opinion**, No. V-0815 (1949), the attorney

[3] Text of the rules included supra under Constitutional and Statutory Provisions

general examined the effect of a void tax sale. The AG stated that a void tax proceeding "could not divest title out of the then owner" and that same "constitutes a taking, without due process of law." **Id** at 3. Petitioner contends that taking his property for a tax year in which he was not the owner constitutes a void procedure and such a taking is a denial of due process. The opinion relied on **Eustis** which stated:

> The Legislature's broad authority to prescribe compensatory remedies for takings is well-established, so long as those methods comply with due process and other constitutional requirements. See, e.g., Secombe v. R.R. Co., 90 U.S. 108, 117–18, 23 Wall. 108, 23 L.Ed. 67 (1874) . When the Legislature creates such a statutory procedure, recourse may be had to a constitutional suit only where the procedure proves inadequate, for it is not the taking of property, as such, that raises constitutional concerns.....

Therefore, the issuance of judgment for taxes, penalties, interest, and the proceedings to effectuate the forced sale of said property co

Moreover, the Respondents in the instant case are all branches of local government. The Due Process Clauses protect against government deprivations of "life, liberty, or property, without due process of law." **U.S. Const.** amend. V; XIV,§1. Due process embraces the substantive and fundamental concept that all government actions must relate to a legitimate

end of government. See **Nectow v.City of Cambridge**, 277 U.S.183, 188 (1928) **; Lawton v. Steele**, 152 U.S. 133, 136-37 (1894). .....Decisions that restrict the liberty of individuals or the enjoyment of their property must be justifiable by one of the legitimate ends of government: the promotion of health, safety, morals, or general welfare. **Village of Euclid v. Ambler Realty Co.**, 272 U.S. 365, 395 (1926).

Likewise, the Fifth Circuit holds the same. In **FM Priorities Operating Company v. City of Austin**, 93 F.3d 167, 174 (5th Cir. 1996) the Fifth Circuit upheld the right of property owners to be free of arbitrary government action affecting their property rights.("[I]f such government action is 'clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare,' it may be declared unconstitutional."

Though Petitioner does not contest the right of governmental entities to tax property, he does contest the Respondent's ability to tax hime when he was not the property owner and then divest him of his right to his property for an alleged tax liability that he does not owe due to both payment (as manifested by the prior judgment entered) and nonownership.

Said actions are indeed unreasonable and clearly arbitrary given that the sale is premised on only one tax year which is clearly in dispute and which is being taken contrary to the law of the case.

Moreover, divesting Petitioner of his property does not meet the legitimate ends of government. The acts of Respondent are an oppressive exercise of strong-arming the Petitioner and are contrary to the law. The Court of Appeals ruling has in effect denounced the established due process rights set out for the last century. Therefore, Certiorari should be granted.

ISSUE THREE

Whether the initial judgment must stand on its face.

Petitioner contends that the judgment entered in Cause No. 64967 in November 2014 in which the 2012 taxes were adjudged paid, must stand on its face. The judgment submitted by Respondents and signed by the Court indicates that all taxes, penalties, and interest have been paid. Said judgment signed November 18, 2014 (See Appendix H, attached and incorporated by reference, as if fully copied herein) reads as follows:"

On the 19th day of September, 2014, came on this cause for trial.

> Came also for consideration was Defendant's Motion to Dismiss[4] due to payment of taxes.
>
> The Court having heard the argument fo[sic] counsel **FINDS that Defendant has paid all taxes due and owing *in this cause and the matter for dispute in this cause is for attorney's fees***, recording fees, and filing fees. .... [Emphasis added]
>
> IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that this cause is hereby DISMISSED.

The second order, submitted by the Plaintiff, references that said cause is being dismissed pursuant to Plaintiff's Motion to Dismiss (See Appendix F, attached and incorporated by reference, as if fully copied herein) which states in pertinent part:

> Now comes the Plaintiff(s), Angleton Drainage District, Angleton Independent School District, Angleton-Danbury Hospital District.....City of West Columbia, Columbia Brazoria ISD..... and moves the Court to dismiss the suit as to the cause of action asserted by the Plaintiff(s) for the reason **that all taxes, penalty and interest have been paid**.[Emphasis added]

The motion was filed on November 12, 2014,[5] with the Order of Dismissal being signed on November 18, 2014. Pursuant to **Texas Rules of**

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[4] Defendant was Veronica Davis

[5] See Appendix, Exhibit F

Civil Procedure 301, the judgment shall conform to the pleadings. (See statute supra). The order clearly specifies that the basis for the dismissal is the payment of all taxes, penalty, and interest, thereby tracking the pleading as required by law.

A properly executed order of dismissal is a judgment. **Texas State Bd. of Examiners in Optometry v. Lane**, 337 S.W.2d 801, 803-04 (Tex.Civ.App.--Fort Worth 1960, writ ref'd). **Texas Rules of Civil Procedure** 301, 304, 306, and 329b provide that judgments must be entered during the term of Court in which it was rendered and that the court loses plenary power 30 days after signing the judgment. Therefore, the trial court committed reversible error in its attempt to set aside its judgment of 2014 by finding that the 2012 taxes were not paid and due and owing in a 2017 judgment involving the same subject matter.

Additionally, the order submitted by the Respondents states that it applies to all taxing entities- for both Angleton and West Columbia, Texas. (Appdx G) . The aforementioned judgment includes the City of Angleton, Angleton Danbury Hospital District, etc., which are clearly taxing entities for the City of Angleton only. The judgment clearly specifies that it applies

to both properties by naming the taxing entities applicable to both.

Therefore, it is clear and unequivocal that the judgment for the 2012 taxes that Petitioner herein appealed was adjudicated and determined paid pursuant to the judgments referenced above. Therefore, the Court's judgment signed on May 22, 2017 is contradictory to and violative of said judgment, is an impermissible and untimely collateral attack on said judgment .

More specifically, the 2017 judgment for taxes is void because the Court lost its plenary to modify or alter the 2014 judgment as it related to the 2012 taxes in December, 2014, 30 days after judgment pursuant to Texas Rules of Civil Procedure 306 and 329b. [6] "It is unquestionably the law that a judgment rendered outside a court's period of plenary power is not merely voidable, but void." See **Mapco, Inc. v. Forrest**, 795 S.W.2d 700, 702-03 (Tex. 1990); **Univ. Gen. Hosp., LP v. Siemens Med. Solutions USA, Inc**. (Tex. App., 2013).

The Court of Appeals discusses that an amendment somehow negates the tax liability for the 2012 taxes as it pertains to Veronica Davis

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[6] Text of the rules included supra under Constitutional and Statutory Provisions

indicating that same probably occurred to dismiss the 2012 taxes. There is nothing in the record to support such a false statement. No evidence was tendered by the taxing authorities to support same. The Court of Appeals erred in its determination that the amendment nullifies the need to have joined Petitioner in the cause of action. Said ruling is contrary to the judgment which includes, rather than excludes the Angleton property.

More importantly, an amendment to a Petition may not occur in contravention of the law. The amendment does not negate that Veronica Davis was the owner of the property on January 01, 2012. No amendment to a pleading can be made that would negate the definition of what constitutes an owner, nor may an amendment be made nullifying the statutory provision that the person owing the property on January 01 of the taxing year is responsible for said taxes pursuant **Texas Tax Code** § 32.07. If Respondent's argument could be deemed at all plausible, the tax obligation does not pass to the successor in interest nor does transfer of title negate the former owner's tax liability. An amendment to a pleading can not obviate nor negate the law.

The argument of the Court is therein faulty. (See COA opinion page

5- Appendix D). With no record tendered regarding the basis of the amendment, the court may not proffer mere conjecture to modify the recitation on the face of judgment. Moreover, as heretofore stated, no amendment may change the statutory provisions that Veronica Davis' tax liability would pass to the successor in interest by virtue of sale or gift because she owned the property on January 01, 2012.

Pursuant to the finding in **Jackson Hotel Corp. v. Witchita City Appraisal District**, 980 S.W.2d 879, 882(Tex.App.-Ft. Worth 1998, no writ, "Tax statutes are to be construed against the taxing authority and liberally in favor of the person sought to be held liable for the tax." The **Jackson** Court further opined that the court must also consider the consequences which would result from alternate construction of a statute to "avoid absurd results." **Id** at 882.

The trial court and the Fourteenth Court of Appeal erred in finding that the Petitioner owed taxes for the year 2012. Same is contrary to the judgment, violative of case law and is the type of absurd result mentioned in **Jackson**. The Court of Appeals committed reversible in finding for the taxing authority with respect to this issue. For the foregoing reasons,

Certiorari should be granted.

ISSUE FOUR

Whether the Respondent joined all necessary parties for just adjudication of this case.

If the Respondent contends that James Davis could or should have been sued for the taxes which are the basis of this judgment, he was a necessary party in the first tax suit (Cause No. 64967). Consequently, he should have been impleaded or otherwise joined in said litigation because he was a necessary party thereto. Respondents did not join him and are now precluded from instituting a new suit against him for the 2012 taxes for the year already adjudicated.

Pursuant to **Texas Rules of Civil Procedure** 39, Petitioner should have been joined in the suit as a necessary party, pursuant to the **Texas Rules of Civil Procedure** 39 which requires mandatory joinder when, among other things, he claims an interest in the subject of the suit, which without his joinder, "would impair or impede his ability to protect that interest ." Same has definitely occurred in this instance and said rule was

designed to prevent such. **Texas Rules of Civil Procedure** 39 provides in pertinent part:

> (a) A person who is subject to service of process ***shall be joined*** as a party in the action if :
>
> (1) in his absence complete relief cannot be accorded among those already parties, or
>
> (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may
>
> (i) as a practical matter impair or impede his ability to protect that interest or;
>
> (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff.

Petitioner's joinder was absolutely necessary and mandated because:

1) he was the property owner at the time of judgment and at the time of the alleged amendment.

2) obviously, in his absence complete relief could not be afforded among those already parties;

3) Petitioner claimed an interest relating to the subject of the action and was so situated that the disposition of the action in his absence would impede the ability to protect his interest

4) To prevent a second suit being filed for 2012 taxes.

5) Clearly, it has left the parties subject to double or multiple risks of having to pay taxes a second time and be subject to endless litigation to rectify said situation.

Given that Petitioner was not joined during the time that the matter was adjudicated, Respondents are precluded from bringing suit against Petitioner for the 2012 taxes . Doing so not only offends the interest of justice, but also offends res judicata discussed infra and **Texas Rule of Civil Procedure** 39.

Additionally, the 2017 judgment pertaining to the 2012 taxes is in all things void. The court lost plenary power over the 2012 taxes contained in the 2014 judgment thirty days after the signing of said judgment pursuant to **Texas Rules of Civil Procedure** 306. ("Judicial action taken after the court's jurisdiction over a cause has expired is a nullity." **Times Herald Printing Co. v. Jones**, 730 S.W.2d 648, 649 (Tex. 1987) (per curiam); See also **First Alief Bank v. White**, 682 S.W.2d 251, 252 (Tex.1984) (per curiam)- where the judge was held to lack jurisdiction to modify the judgment after the expiration of 30 days.

It is obvious from the judgment that Petitioner did not need to be joined in the suit due to payment of the 2012 taxes, as contained on the face

of the judgment. However, since the taxing authority claimed in 2017 that he was liable for 2012 taxes on the property in question, he would have been a necessary party in the 2011 lawsuit (Cause No. 64967). Taking Petitioner's property without properly joining him constitutes a denial of due process. He was not given the process due at the time in which same was relevant.

The United States Supreme Court has determined that ***"[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner***." **Matthews v. Eldridge,** 424 U.S. 319, 333 (1976) ... In most cases, "a meaningful time" means ***prior*** to the deprivation of the liberty or property right at issue. **Zinermon v. Burch**, 494 U.S. 113, 127; 110 S.Ct. 975,983, 108 L.E.2d 100 (1990). Hence, Petitioner should have been heard during the 2014 trial in Cause No. 64967, since that is the relevant time for which the 2012 was adjudicated.

For the foregoing reasons, Certiorari should issue.

ISSUE FIVE

Whether res judicata precludes the award of taxes for a

tax year adjudicated in a different cause number

As heretofore stated, the issue of the 2012 taxes for the Angleton, property (Account No. 8180 000 5000) was adjudicated in Cause No. 64967 in Brazoria County, Texas in the year 2014. Pursuant to the November, 2014 judgment , all unpaid taxes, penalties, or interest were paid. A new suit for delinquent taxes was filed in Cause No. 84732-T in 2016, which included the 2012 taxes.[7]

The Court in **C.I.R. v. Sunnen**, 333 U.S. 591, 598, 69 S.Ct. 713 (1948) held that where a claim of tax liability or nonliability relating to a particular year is litigated, judgment on merits is res judicata to any subsequent proceeding involving the same claim and the same tax year.

> Res judicata applies not only to claims which have been litigated, but" those related matters that, **with due diligence, should have been litigated** in the prior suit: [Emphasis added]

Barr v. Resolution Trust Corp. ex rel, Sunbelt Federal Sav. 637 S.W.2d 627 (1992).

At all times relevant to Cause No. 64967, Respondents were aware of the transfer of title to the Petitioner. Consequently, pursuant to **Texas**

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[7] There is no dispute regarding any other tax years, as all other taxes were paid.

Rules of Civil Procedure 39, the alleged nonpayment of the 2012 taxes against whomever was deemed liable should have been litigated prior to dismissal. Due diligence would have warranted joining Petitioner in the action, if the 2012 taxes had not been paid as set out in **Abbott** below:

In **Abbott Laboratories v. Gravis**, 470 S.W.2d 639, 642 (Tex.1971) the Supreme Court wrote:

> The Latin phrase "res judicata" means that the matter has been adjudged; a thing judicially determined; or a matter settled by judgment..... As relevant here, an existing final judgment rendered upon the merits by a court of competent jurisdiction upon a matter within its jurisdiction is conclusive of the rights of the parties in all other actions on the points at issue and adjudicated in the first suit. (citations omitted.) Further, the rule of res judicata in Texas **bars litigation of all issues connected with a cause of action or defense which, with the use of diligence, might have been tried in a former action as well as those which were actually tried**." [Emphasis added]

In **West Oso Independent School Dist. v. Paisano Minerals Inc.**, 661 S.W.2d 300 (Tx.App.-Corpus Christi 1983), West Oso ISD brought a tax suit against Paisano Minerals for tax liability for the year 1983. Singer was determined to be the property owner, however, Singer was not joined in the suit. His attorney moved for and was granted an instructed verdict because Singer was not a party to the suit. In the second suit, as an affirmative

defense, Paisano pled that the first judgment was res judicata. Both sides filed motions for summary judgment and the trial court granted Paisano's motion.

> The school district perfected this appeal. In its first point of error, the school district alleges that the decision in first suit is not res judicata to the second suit. It argues that we should look beyond the pleadings and the judgment of the first suit and examine the record of the first suit to determine the basis on which the trial court granted the judgment. ***This we refuse to do as it would amount to an impermissible collateral attack of the judgment.*** [Emphasis added]

Likewise, Paisano applies in this case. Petitioner would therefore show that a suit for the 2012 taxing year is res judicata and could not be subsequently brought against Petitioner, James Davis. Respondent is precluded from bringing a subsequent claim for 2012 taxes due to res judicata.

The Court of Appeals erred in finding that res judicata did not apply in this case. Petitioner, at all times argued that the claims should have been raised and that James Davis was a necessary party which should have been joined in Cause No. 64967, in that he was the owner at the time of entry of judgment. Therefore, joinder was necessary. Because Petitioner

was not, res judicata applies.

For the foregoing reasons, Certiorari should be granted.

CONCLUSION

In short, Respondents are precluded from bringing an action against the Petitioner for delinquent taxes due to res judicata. Additionally, the taxes were already paid and the matter adjudicated in Cause No. 64967 for a tax year (2012) which predates the Petitioner becoming the owner.

Additionally, Respondents are precluded from bringing an action against the Petitioner for the 2012 taxes because he was not the property owner of the property which is the subject of this suit on January 01, 2012 as required by Texas statute.

Pursuant to the **Texas Tax Code** §32.07 and the citation issued, the owner of the property on January 01, 2012 was responsible for the taxes. Said owner paid those taxes as evidenced by the judgment in said cause. Had said owner, not paid those taxes, it would have been necessary for the Respondents to either join the prior owner in the lower court action or to join the Petitioner in Cause No. 64967 during its pendency-neither of which occurred, as required by **Texas Rules of Civil Procedure** 39. Pursuant to

Texas Rules of Civil Procedure 306 and 329, the Respondents are now precluded from doing so.

Petitioner further contends that the persistence of the Respondent in levying taxes, penalties and interest, coupled with costs and fees for a period in which he was not the property owner, and listing same for Sheriff's sale will result in Petitioner his losing his homestead or force him to pay the ad valorem taxes for a year in which he was not the property owner. Same violates his constitutional rights to due process and further constitutes a taking. He was not afforded process at the time it was due (during the pendency of the first tax suit). The actions of the Respondents now rise to the level of a taking.

The Court abused its discretion in this cause. Therefore, this Honorable Court should grant certiorari in this matter.

PRAYER

WHEREFORE PREMISES CONSIDERED, Petitioner prays that this Honorable Court:

1. Grant Petitioner's Writ of Certiorari in this cause.
2. Issue an order reversing the order of the court granting

judgment in favor of Respondents;

3. Issue an order staying all lower court proceedings until this matter is adjudicated in this Court.

4 Issue a finding determining that the 2012 taxes have been paid and that the actions of the Respondents constitute a violation of the constituion, the notions of fair play, and justice.;

5. Tax all costs against the Respondent;

6. Refund of any additional tax, penalties, interests, etc.

7. Grant such other and further relief to which Petitioner may be justly entitled.

Respectfully submitted,

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