

No. \_\_\_\_\_

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**In The  
Supreme Court of the United States**

—◆—  
ROBERT HOLMES,

*Petitioner,*

v.

CRAIG CASSEL,

*Respondent.*

—◆—  
**On Petition For A Writ Of Certiorari  
To The Court Of Civil Appeals,  
Fourteenth Supreme Judicial District Of Texas**

—◆—  
**PETITION FOR A WRIT OF CERTIORARI**

—◆—  
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**QUESTION PRESENTED**

The Fourteenth Amendment, Section 1, to the Constitution of the United States provides, in part,

“nor shall any State deprive any person of life, liberty or property, without due process of law; . . .”

In the State of Texas, however, its Tax Code provides that a property owner whose property was wrongfully seized by the government in tax delinquency proceedings must initiate his recovery action within either a 1 or 2 year limitation period.

In the case at bar, it is a matter of simple fact that the Petitioner had no notice of, and was not a party to, the tax delinquency proceedings that resulted in the seizure of his property.

Therefore, the question presented is whether Texas limitation statutes are constitutionally valid against a citizen whose due process rights have been denied in such a profound manner.

**PARTIES TO THE PROCEEDING**

**Petitioner:** Robert Holmes

**Respondent:** Craig Cassel

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner Holmes respectfully submits this petition for a writ of certiorari to review the judgment of the Court of Appeals, Fourteenth Supreme Judicial District of Texas.



## **OPINIONS BELOW**

The opinion of the Court of Civil Appeals, Fourteenth Supreme Judicial District of Texas is reproduced in the Appendix. The summary judgment opinion of the 80th District Court, Harris County, Texas, is reproduced in the Appendix. The Texas Supreme Court denied a writ of certiorari. A copy of its order denying Petitioner's Motion for Rehearing is reproduced in the Appendix.



## **JURISDICTION**

The Texas Supreme Court denied Holmes' Petition for Review. The Motion for Rehearing on the Petition for Review was denied on November 21, 2014. This Court has jurisdiction under 28 U.S.C. §1257(a).



## **CONSTITUTIONAL AND STATUTORY PROVISIONS**

This case involves the 14th Amendment to the U. S. Constitution, Texas Tax Code Sections 33.51



and 34.08, and Texas Civil Practice and Remedies Code Sections 16.024 and 16.025, all of which are reproduced in the Appendix.



### **STATEMENT OF THE CASE**

This case is a land title declaratory judgment action regarding the effect of a delinquent tax suit foreclosure on the property interest of a non-party (Holmes). The trial court ruled that Holmes was barred from claiming ownership under Texas Tax Code limitations and Tex. Civ. Prac. & Rem. Code limitations.

The Court of Appeals for the Fourteenth Judicial District, Houston, Texas, affirmed the trial court, holding that Tax Code §33.54 and Tax Code §34.08 limitations were absolute “irrespective of *any potential merit* of a property owner’s challenge to a tax sale.” (emphasis added).



### **FACTUAL BACKGROUND**

Robert Holmes acquired an undivided  $\frac{1}{2}$  interest in Harris County property pursuant to a 1983 deed, filed for record in the Real Property Records of Harris County (“Holmes Tract”). His deed had a metes and bounds description. The subject of this appeal is the Holmes Tract. The other co-owner of the Holmes Tract was Charles Bush. (App. 28, 29).

In 1995, twelve years later, the government initiated tax delinquency proceedings against Charles Bush (as the sole owner) under Cause # 1995-20275 (the “1995 Tax Suit”) in the 80th District Court of Harris County. Holmes *was not named as a defendant* in the 1995 Tax Suit, *was never served with citation*, and had *no notice* of the lawsuit. (App. 3, App. 28, 29). Judgment was entered against Charles Bush. No judgment was entered against Holmes. (App. 2).

Ultimately, a tax deed was executed by the Constable in favor of Craig Cassel (“the Tax Deed”). In 2010, a controversy arose as to the ownership of the Holmes Tract. Holmes claimed an undivided  $\frac{1}{2}$  interest and Cassel claimed 100% ownership.



## PROCEDURAL BACKGROUND

Holmes filed this declaratory judgment action in the 80th District Court (where the original delinquent tax foreclosure proceeding was heard) seeking to determine the effect of the tax delinquency suit against his  $\frac{1}{2}$  property interest. Holmes alleged that (1) the tax proceedings against him were void because of the violation of his right of due process and (2) that the 1995 tax proceedings actually involved the property adjacent to, and not his property.

The trial court ruled that Holmes’ claims were barred by limitation statutes under the Texas Tax

Code and the Texas Civil Practice and Remedies Code.

The Houston Court of Appeals affirmed. The Texas Supreme Court denied writ of certiorari.



## **REASONS FOR GRANTING THE PETITION**

All jurists would agree that the constitutional requirement of due process is critical to our system of justice. Therefore, whenever the opportunity arises to clarify the consequences of a failure to abide by this rule (especially regarding the confiscation of private property by the government), this Court must remind the lower courts of the critical importance of the Due Process Clause.

### **I. ANY TAX DELINQUENCY PROCEEDING AGAINST ROBERT HOLMES OR HIS $\frac{1}{2}$ PROPERTY INTEREST VIOLATED HOLMES' CONSTITUTIONAL RIGHT OF DUE PROCESS**

Our United States Constitution, 14th Amendment, Section 1 provides:

“ . . . nor shall any State deprive any person of life, liberty, or property, without due process of law.”

It was acknowledged by the Houston Court of Appeals that Holmes did not receive due process in the 1995 Tax Suit.

“Holmes was not named in the Tax Suit, nor was he served with citation . . . Holmes was not named in the judgment.” (App. 3, App. 30-45).

It is uncontroverted that Holmes had no actual notice of the Tax Suit.

The Houston Court ruled that Holmes was barred by limitations from asserting his ownership claim, thus promoting the unlikely proposition that the limitation provisions of the Texas Tax Code are *superior to, and trump* (without discussion) our critically important, constitutional safeguard of due process. Moreover, the Houston Court stated, in no uncertain terms, that Tax Code limitations *always* prevail:

“irrespective of *any* potential merit of a property owner’s challenge to a tax sale . . . ” (App. 12) (emphasis added).

This holding is directly contrary to the 14th Amendment to our Constitution. As Chief Justice Roberts declared in *Jones v. Flowers*, 547 U.S. 220 (2006),

“Before a State may take property and sell it for unpaid taxes, the Due Process Clause of the Fourteenth Amendment requires the government to provide the owner notice and

opportunity for hearing appropriate to the nature of the case.” (*Jones* at 223).

This fundamental rule has been repeated by this Court on many occasions – usually while examining the sufficiency of notice to the aggrieved party. In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), the Court held that prior to any action that will affect a protected property interest, due process requires “notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” (*Mullane* at 314).

In *Armstrong v. Manzo*, 380 U.S. 545 (1965), no notice of a court proceeding was given to the petitioner. Justice Potter Stewart wrote

“ . . . there is no occasion to linger long. It is clear that failure to give petitioner notice of the pending adoption proceedings *violated the most rudimentary demands of due process of law.*” (*Armstrong* at 550) (emphasis added).

In *Peralta v. Heights Medical Care, Inc.*, 485 U.S. 80 (1988), this Court again dealt with the due process issue and, again confirmed the obvious, stating

“An elemental and fundamental requirement of due process in any proceeding which is to be accorded finality is *notice . . .*” (*Peralta* at 84) (emphasis added).

## **II. HOLMES MAY COLLATERALLY ATTACK THE TAX JUDGMENT AND SUCH ATTACK IS NOT SUBJECT TO LIMITATIONS**

Under *Peralta* a collateral attack may be used to set aside a judgment based on a complete lack of notice to an interested party in violation of their due process rights. Such attack is not subject to limitations.

## **III. THE GOVERNMENT COULD NOT, AND DID NOT, CONVEY HOLMES' 1/2 INTEREST IN THE TAX DEED**

The 1995 Tax Suit upon which Cassel bases his title resulted only in a judgment against Charles Bush (Mr. Holmes' co-owner) and a foreclosure of Bush's 1/2 interest. Specifically, the Final Judgment provides that "Plaintiff's and Intervenor(s) tax liens are hereby foreclosed on the above-described property *against said Defendant(s)* or any one claiming under the Defendant(s) by any right acquired during the pendency of this suit." (emphasis added) (App. 30-45).

To nail down that the 1995 Tax Suit was *only* effective as to Bush and his 1/2 interest, the Final Judgment also provides that the order of sale shall have "all the force and effect of a writ of possession *as between the parties to this suit* and any person claiming under the defendant(s) by any right acquired pending this suit, . . ." (emphasis added) (App. 30-45).

The Cassel Tax Deed *itself* only conveyed to Cassel “all of the estate, the right, title, and interest acquired or held by each taxing unit that was a party to the judgment foreclosing tax liens.” (App. 46-50).

Thus, the Final Judgment of the 1995 Tax Suit and the language of the Cassel Tax Deed closely follow the mandate of Texas Tax Code §34.01 which provides that, in the event the property is bid off by the taxing unit, its

“title includes all the interest *owned by the defendant*, including the defendant’s right to the use and possession of the property, subject only to the defendant’s right of redemption” Texas Tax Code § 34.01(k). (emphasis added).

Likewise, if the foreclosure results in a sale to a third party, like Cassel,

“The deed vests good and perfect title in the purchaser or the purchasers assigns to *the interest owned by the defendant in the property* subject to the foreclosure, including the *defendant’s right* to the use and possession of the property, . . .” Texas Tax Code § 34.01(n). (emphasis added).

Finally, Texas Property Code §5.003(a) limits the property conveyed in any deed (including this Tax Deed) to the estate owned by the grantor. Obviously, since the government never acquired Holmes  $\frac{1}{2}$  interest, it could not convey this interest to Cassel.

#### **IV. THE GOVERNMENT ADMITTED HOLMES' TITLE WAS NOT AFFECTED BY THE 1995 TAX SUIT**

The various tax jurisdictions involved in the 1995 Tax Suit have admitted that Holmes'  $\frac{1}{2}$  interest was not affected in that litigation. The tax jurisdictions have pleaded that "plaintiff's [Holmes] interest was *unaffected* and *not prejudiced in any manner . . .* " and that "plaintiff [Holmes] was not a party to the prior judgment and his interest in the property was not prejudiced by the tax foreclosure . . . " (emphasis added) (App. 25-27).

Furthermore, the government admitted that "The tax sale conducted under the judgment passed *only the interest that was owned by the named defendants.* (Tex. Tax Code § 34.01(n))." (App. 20) (emphasis added).

In sum, the Cassel Tax Deed *only* conveyed the  $\frac{1}{2}$  interest owned by the named Defendant in that case, Charles Bush. This reality is reflected in the Petition and Final Judgment in that suit, along with the sheriff's deed, and is clearly mandated by Texas Tax Code §34.01 in multiple instances – even the government concurs.

#### **V. TEX. CIV. PRAC. & REM. CODE §16.024 AND TEX. CIV. PRAC. & REM. CODE §16.025 DO NOT APPLY**

The trial court ruled that the above limitation statutes also bar Holmes' ownership claim. These



statutes require that Cassel prove that he obtained Holmes'  $\frac{1}{2}$  interest under a registered deed or "color of title" – but Cassel received no such deed.

First, any "deed" of Holmes' property was void because it arose from a void judicial proceeding. Certainly, no void proceeding can start the clock on any limitation statute.

Second, the government has admitted "plaintiff's [Holmes] interest was *unaffected* and not prejudiced in any manner . . . " and that "plaintiff was not a party to the prior judgment and his interest in the property was not prejudiced by the tax foreclosure . . . " (emphasis added) (App. 25-27).

Thus, the Tax Deed, *at most*, could have only conveyed the undivided  $\frac{1}{2}$  interest previously owned by Charles Bush. This results in Mr. Cassel and Mr. Holmes owning the Holmes Tract *jointly as tenants in common*.

## **VI. HOLMES' DEFENSE TO THE 1995 TAX SUIT**

Perhaps the most significant reason underlying the Due Process Clauses centers on fundamental fairness. Any citizen who is the subject of a judicial proceeding must be given the opportunity to present his defenses. Otherwise, the judicial event is a meaningless sham.

Here, Holmes presented *uncontroverted* evidence to the trial court that the 1995 Tax Suit actually concerned the property *adjacent* to the Holmes Tract. (App. 13 at footnote 8).

It is hard to imagine a stronger defense to a tax deficiency proceeding than a defense of non-ownership. Yet, the Houston Court of Appeals ruled that the limitation provisions of the Tax Code prevail, despite the clear violation of Holmes' constitutional right of due process.



### CONCLUSION AND PRAYER

Under the decision of the Houston Court of Appeals, the government is free to confiscate property of innocent citizens in complete disregard of their Constitutional protection of due process. This decision is clearly unjust. It can only result in chaos by inviting the government to ignore the publicly recorded property interests of our citizens.

Petitioner requests an opportunity to submit full briefing, and that this Court grant review, reverse the decision of the Court of Civil Appeals, Fourteenth Supreme Judicial District of Texas, and declare (as the government has admitted) that Robert Holmes'  $\frac{1}{2}$

ownership in the Holmes Tract was unaffected by 1995 Tax Suit.

Respectfully submitted,

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**Memorandum Opinion of August 1, 2013 Withdrawn, Affirmed and Corrected Memorandum Opinion filed August 15, 2013.**

[SEAL]

**In The  
Fourteenth Court of Appeals**

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**NO. 14-12-00964-CV**

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**ROBERT HOLMES, Appellant  
V.  
CRAIG CASSEL, Appellee**

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**On Appeal from the 80th District Court  
Harris County, Texas  
Trial Court Cause No. 2011-32230**

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**SUBSTITUTE MEMORANDUM OPINION**

We withdraw our opinion of August 1, 2013 and issue this substitute memorandum opinion in its place.

Robert Holmes appeals from the trial court's grant of Craig Cassel's motion for summary judgment based on limitations. Holmes filed the present lawsuit seeking to have the trial court declare a 1995 tax deficiency judgment and subsequent sale of certain real property to Cassel void because Holmes claimed

record ownership of a one-half undivided interest in the subject property and was not a party to the lawsuit, provided notice, or named in the judgment.<sup>1</sup> In five issues on appeal, Holmes asserts that the trial court erred in (1) ruling that Cassel owns any interest in the tract in which Holmes claims an interest, (2) applying limitations under the Texas Tax Code, (3) applying limitations under the three – and five-year adverse possession statutes in the Texas Civil Practice & Remedies Code, (4) failing to find a fact issue regarding the elements of adverse possession, and (5) failing to find fact issues regarding Holmes' defenses of estoppel and waiver. We affirm.

### **Background**

In 1995, the Taxing Authorities initiated tax deficiency proceedings involving property located at 5405 Griggs Road in Houston, Texas (the Property) against Charles Bush and Gerald Monks, Trustee.<sup>2</sup> the time that the 1995 deficiency suit (the Tax Suit) was filed, Holmes allegedly owned an undivided one-half interest in the Property, received by a deed from

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<sup>1</sup> In his original petition, Holmes included the following taxing authorities, who are not parties to this appeal: Harris County, Harris County Education Department, Port of Houston Authority of Harris County, Harris County Flood Control District, Harris County Hospital District, Houston Independent School District, and Houston Community College System. For ease of reference, we will refer to these entities hereinafter as the Taxing Authorities.

<sup>2</sup> Monks was a record lien holder.

Bush and duly recorded on December 30, 1983. Holmes was not named in the Tax Suit, nor was he served with citation. On June 25, 1996, the trial court entered final judgment against Bush and Monks in favor of the Taxing Authorities; Holmes was not named in this judgment. An order of sale of the property was issued on March 5, 2003.<sup>3</sup> Cassel purchased the Property at the tax sale.

Cassel took possession of the Property after purchasing it. He maintained the Property by having the yard cut, installing a new roof on the building located on the Property, and partially demolishing and replacing a wall. Cassel rented space in the Property to a club for about two years after he purchased the Property. He paid the taxes on the Property. Cassel maintained an actual and visible “appropriation” of the Property from the time he purchased.

In May 2011, Holmes filed suit against the Taxing Authorities and Cassel,<sup>4</sup> seeking to declare the judgment from the Tax Suit void. In his petition, he asserted that because he was not named in the Tax Suit or the judgment, this judgment was void as to his one-half interest in the Property. He further

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<sup>3</sup> There is no explanation in the record for the delay between the tax foreclosure judgment and the tax sale.

<sup>4</sup> The Taxing Authorities answered by filing a jurisdictional plea, special exceptions, and a general denial. The final judgment in this case expressly states that Holmes “take nothing against all defendants.” Holmes has not challenged the judgment as it relates to the Taxing Authorities.

argued that any conveyance of his interest in the Property to Cassel arising out of the judgment was likewise void. He sought declarations from the trial court to support these claims. Holmes attached a certified copy of a warranty deed from Charles Bush and Charles Bush d/b/a Charles Bush Enterprises as grantor to Robert W. Holmes and James E. Anderson as grantees of “real property in Harris County, Texas,” described in the “attached exhibit ‘A’ for legal description,” executed on December 6, 1983. The attached exhibit “A” contained in our record is nearly illegible, but appears to be a metes and bounds description of a tract or parcel of land “out of Reserve ‘C’ of Royal Palms Addition . . . in the City of Houston, Harris County, Texas, according to Plat recorded in Volume 57, Page 29 of the Map Records of Harris County, Texas, said tract or parcel of land being more fully described as follows: [illegible].” It appears that this deed and attachment were recorded on December 30, 1983. Holmes did not provide a copy of the Tax Suit.

Cassel answered with a general denial and asserted the affirmative defenses of statute of limitations under the Texas Tax Code, failure to comply with the Tax Code’s statutory prerequisites to filing suit, and the three- and five-year adverse possession statutes under the Texas Civil Practice & Remedies Code. He also counterclaimed against Holmes for a declaratory judgment to quiet title under his August 5, 2003 deed. Cassel attached a copy of his August 5,

2003 deed (the Tax Deed) to his counterclaim, which provides the following description of the Property:

.5347 ACRES, MORE OR LESS, OUT OF RESERVE "C", ROYAL PALMS ADDITION, CITY OF HOUSTON, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN VOLUME 57, PAGE 29 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS; AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS BY COUNTY CLERK FILE NUMBER "E" 666591 OF THE OFFICIAL PUBLIC RECORDS OF HARRIS COUNTY, TEXAS.

HCAD Number: 0912220000005

Cassel subsequently filed a motion for summary judgment. In this motion, he asserted that, pursuant to Texas Tax Code section 33.54(a), an action relating to the title of property may not be maintained against a purchaser of property at a tax sale unless that action is commenced before the first anniversary of the date that the deed executed to the purchaser is filed of record. Cassel purchased the Property at a tax sale on August 5, 2003, and recorded his deed on February 9, 2004. Holmes did not file suit until May 27, 2011. Thus, Holmes was precluded from maintaining suit pursuant to this section of the Tax Code.

Cassel further argued that Holmes did not comply with Texas Tax Code section 34.08(a). This subsection requires that, to challenge the validity of a tax sale under this chapter, the challenging party must (1) deposit into the registry of the court an amount



equal to the amount of delinquent taxes, penalties, and interest specified in the judgment of foreclosure obtained against the property, as well as all costs of the tax sale, or (2) file an affidavit of inability to pay. Tex. Tax Code § 34.08(a). Because Holmes did neither, Cassel contended that Holmes was barred from challenging the tax sale. Finally, Cassel asserted that he met the requirements of both the three- and five-year adverse possession statutes provided for in sections 16.024 and 16.025 of the Texas Civil Practice and Remedies Code. Cassel attached an affidavit to his motion providing facts in support of his motion.<sup>5</sup>

Holmes responded to Cassel's motion for summary judgment. He first alleged that, as a matter of law, Cassel had no ownership interest in the Property because Cassel's Tax Deed referred to an adjacent property. Holmes also contended that the Tax Code sections Cassel asserted as a bar to his claims were inapplicable because he never contested Cassel's one-half interest in the Property; rather, he asserted that the Tax Suit and Cassel's Tax Deed were void as to his interest in the Property. Holmes further argued that "any application of limitation statutes is a denial of due process and is precluded under the open courts doctrine." Holmes asserted that the doctrines of estoppel and waiver based on two emails

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<sup>5</sup> The Taxing Authorities responded to Cassel's summary-judgment motion, stating that Cassel sought no affirmative relief from them and that they would neither file any further response nor appear at the hearing on the motion.

from Cassel's counsel, sent in June 2010 and January 2011, requesting that Holmes pay one-half of the taxes applicable to the Property either prevented or created a fact issue precluding summary judgment.

Regarding Cassel's adverse-possession claims, Holmes claimed that Cassel did not acquire the Property under "color of title" as required by the adverse possession statutes because the Tax Deed conveying title to Cassel actually did not convey Holmes' property, as discussed above, or only conveyed to Cassel a one-half interest in the Property. Further, he argued that Cassel's possession was not hostile to his claim because he had paid one-half of the taxes, pursuant to the emails described above.

In his reply, Cassel explained that the Tax Deed under which he claims title clearly references the Harris County Appraisal District (HCAD) account number associated with the Property.<sup>6</sup> argued that because the Tax Suit was for delinquent taxes, the foreclosure could only have been for the property included under that account, which was the Property located at 5405 Griggs Road. Cassel noted that Holmes never paid any taxes on this Property until he paid half of the 2009 taxes and that Holmes never paid any delinquent taxes. Cassel objected to Holmes' claims of waiver and estoppel as unpled affirmative

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<sup>6</sup> Cassel attached a map from HCAD showing that this account number is associated with the property located at 5405 Griggs Road.

defenses.<sup>7</sup> Cassel further asserted that he met the requirements for claiming under “color of title” for purposes of the adverse possession statutes because the Tax Deed references the proper HCAD account encompassing the Property.

On June 12, 2012, the trial court signed an order granting Cassel’s motion for summary judgment. Holmes filed a motion for new trial on July 11, 2012, repeating the arguments he made in his summary-judgment response. On August 1, 2012, Cassel filed a “motion for a judgment nunc pro tunc,” seeking to have the final judgment in a “recordable format” with “specific reference to the deed at issue” and a “reference that this is [a] final and appealable judgment.”

The trial court signed a “modified final judgment” on September 18, 2012, ordering, adjudging, and decreeing that: (1) Cassel’s motion for summary judgment is granted; (2) Holmes’ causes of action are barred by sections 33.54(a) and 34.08(a) of the Texas Tax Code; (3) Holmes’ causes of action are barred by sections 16.024 and 16.025 of the Texas Civil Practice & Remedies Code; (4) all right, title, and interest to the real property acquired by Holmes pursuant to warranty deed dated December 6, 1983 and recorded on December 30, 1983 in the Real Property Records of

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<sup>7</sup> On May 16, 2012, Holmes filed an answer to Cassel’s counterclaim, which was served on Holmes on March 15, 2012. In this answer, Holmes generally denied Cassel’s counterclaims and asserted the affirmative defenses of waiver, estoppel, and laches.

Harris County Clerk's File No. J299406, is vested in Cassel by virtue of limitations running from May 6, 2003; and (5) Holmes take nothing against all defendants, all costs are taxed against Holmes, and the judgment is final and appealable. The trial court denied Holmes' motion for new trial, and this appeal timely followed.

### **Standard of Review**

A traditional summary judgment under Rule 166a(c) is properly granted only when the movant establishes that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. Tex. R. Civ. P. 166a(c); *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 215 (Tex. 2003). To determine if the nonmovant raises a fact issue, we review the evidence in the light most favorable to the nonmovant, crediting favorable evidence if reasonable jurors could do so, and disregarding contrary evidence unless reasonable jurors could not. *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). A defendant who conclusively negates a single essential element of a cause of action or conclusively establishes an affirmative defense is entitled to summary judgment on that claim. *Frost Nat'l Bank v. Fernandez*, 315 S.W.3d 494, 508 (Tex. 2010). In reviewing traditional summary-judgment motions, we must take as true all evidence favorable to the nonmovant and draw every reasonable inference and resolve all doubts in favor of the nonmovant. *PAS v. Engel*, 350 S.W.3d 602, 308 (Tex. App. – Houston

[14th Dist.] 2011, no pet); *Mendoza v. Fiesta Mart*, 276 S.W.3d 653, 655 (Tex. App. – Houston [14th Dist.] 2008, pet. denied). If the movant establishes that the action is barred by limitations, the nonmovant must then adduce summary judgment proof raising a fact issue in avoidance of the statute of limitations. *Roberts v. T.P. Three Enters., Inc.*, 321 S.W.3d 674, 675-76 (Tex. App. – Houston [14th Dist.] 2010, pet. denied) (citing *KPMG Peat Marwick v. Harrison Cnty. Hous. Fin. Corp.*, 988 S.W.2d 746, 748 (Tex. 1999)).

### **Discussion**

In his second issue, which is dispositive of this appeal, Holmes asserts that the trial court erred in applying the Tax Code limitations to prevent him from asserting his one-half interest in the property. [A]n action relating to the title to property may not be maintained against the purchaser of the property at a tax sale unless the action is commenced . . . before the first anniversary of the date that the deed executed to the purchaser at the tax sale is filed of record.” Tex. Tax Code § 33.54(a). “When actions are barred by this section, the purchaser at the tax sale . . . has full title to the property, precluding all other claims.” *Id.* § 33.54(c).

Holmes argues that, because he was not served with citation in the Tax Suit, it is void as to him. But subsection (b) of Tax Code section 33.54 provides only that a person who was not served with citation in the tax foreclosure suit but who pays taxes on the

property during the applicable limitations period *and* until the commencement of an action challenging the validity of the tax sale is not subject to the one-year limitations period provided by subsection (a). *See id.* § 33.54(b). “It is reasonable to expect one claiming an ownership in property to pay the taxes on the property to avoid the limitations bar.” *John K. Harrison Holdings, L.L.C. v. Strauss*, 221 S.W.3d 785, 789 (Tex. App. – Beaumont 2007, pet. denied). Statutes of limitations further the policy that one must diligently pursue legal rights or risk losing them if they are not timely asserted. *Roberts*, 321 S.W.3d at 677 (citing *City of Murphy v. City of Parker*, 932 S.W.2d 479, 48182 (Tex. 1996)).

Holmes does not allege that he paid taxes on the Property either before or after the Tax Sale. Indeed, there is no indication in the record that Holmes paid any taxes on the Property until 2010, when Cassel requested that Holmes pay one-half of the taxes for the 2009 tax year. That payment was made approximately fifteen years after the Tax Sale and about seven years after the Property was purchased by Cassel. Although section 33.54(b) provides a means of avoiding the bar of limitations, Holmes did not avail himself of it. *See id.*; *cf. Roberts*, 321 S.W.3d at 677 (concluding that there was no evidence in the summary judgment record to support the appellants’ claim that subsection (b) bars application of the limitations period to them).

Furthermore, Holmes did not deposit an amount equal to the delinquent taxes, penalties, and interest

specified in the final judgment of the Tax Suit or file an affidavit of his inability to pay this amount prior to filing suit. A person may not commence an action challenging the validity of a tax sale without doing so. See Tax Code § 34.08(a) (providing that, to commence an action challenging the validity of a tax sale under Tax Code Chapter 34, a person must “deposit[] into the registry of the court an amount equal to the amount of the delinquent taxes, penalties, and interest specified in the final judgment of foreclosure obtained against the property plus all costs of the tax sale” or “an affidavit of inability to pay” under Tex. R. Civ. P. 145).

Finally, Holmes contends that, because he was not made a party to or given notice of the Tax Suit and the trial court granted fee simple title in the Property to Cassel, which improperly broadened the deed beyond its scope and terms, he was denied due process. These issues have been considered in a similar situation in a prior opinion by this court. Irrespective of any potential merit of a property owner’s challenge to a tax sale, such claims must be brought within the limitations period set forth in section 33.54. *Roberts*, 321 S.W.3d at 678-79 (citing cases overruling such challenges to tax sales brought outside the statutory limitations period). Accordingly, we overrule Holmes’ second issue.

Because the trial court properly granted summary judgment on limitations under the Tax Code, we need not consider the other grounds stated in the

judgment.<sup>8</sup> Accordingly, we overrule the remainder of Holmes' issues and affirm the trial court's judgment.

/s/ Martha Hill Jamison  
Justice

Panel consists of Justices Frost, Jamison, and Donovan.

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<sup>8</sup> Even Holmes' claim that Cassel's deed allegedly referred to an adjacent tract of land fails because, as discussed *supra*, such actions must be brought forth in the limitations period established in Texas Tax Code section 33.54.

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**NO. 2011-32230**

<b>ROBERT HOLMES</b>	§	<b>IN THE</b>
<b>Plaintiff,</b>	§	<b>DISTRICT</b>
<b>V.</b>	§	<b>COURT</b>
	§	
<b>HARRIS COUNTY, HARRIS</b>	§	
<b>COUNTY EDUCATION</b>	§	
<b>DEPARTMENT, PORT OF</b>	§	<b>80th JUDICIAL</b>
<b>HOUSTON AUTHORITY,</b>	§	<b>DISTRICT</b>
<b>HARRIS COUNTY FLOOD</b>	§	
<b>CONTROL DISTRICT,</b>	§	
<b>HOUSTON COMMUNITY</b>	§	
<b>COLLEGE SYSTEM AND</b>	§	
<b>CRAIG CASSEL</b>	§	
<b>Defendants.</b>	§	<b>HARRIS COUNTY,</b>
	§	<b>TEXAS</b>

**MODIFIED FINAL SUMMARY JUDGMENT**

On June 11, 2012, the Court considered Craig Cassel's Motion for Summary Judgment on Statute of Limitations and Texas Tax Code and Alternative Motion for Summary Judgment on Adverse Possession, and the Court after having read and considered the motion, arguments and responses, and exhibits submitted in support thereof, is of the opinion that the Motion is **GRANTED**.

Therefore, it is **ORDERED, ADJUDGED, and DECREED** that Robert Holmes's causes of action are barred by the statute of limitation set forth in Sections 33.54(a) and 34.08(a) of the Texas Tax Code.

Therefore, it is **ORDERED, ADJUDGED, and DECREED** that Robert Holmes's causes of action are barred by the statute of limitation set forth in Sections 16.024 and 16.025 of the Texas Civil Practice and Remedies Code.

**IT IS ORDERED, ADJUDGED, and DECREED** that that [sic] all right, title, and interest to the real property acquired by Robert Holmes pursuant to that certain Warranty Deed dated December 6, 1983 and recorded on December 30, 1983, in the Real Property Records of Harris County, Clerk's File No. J299406, is vested in Craig Cassel by virtue of the limitations set forth above, running from May 6, 2003.

**IT IS FURTHER ORDERED** Robert Holmes takes nothing against all defendants. All costs are taxed against Robert Holmes, for which let execution issue. This is a final and appealable judgment.

SIGNED on September 18, 2012

/s/ Larry Weiman  
JUDGE PRESIDING

APPROVED AS TO FORM:

/s/ Matthew G. Wylie  
Matthew G. Wylie  
Texas Bar No. 24054006  
8502 Cambridge Street  
Houston, TX 77054  
Tel: 713-383-7199  
Fax: 713-490-3378  
Attorney for Craig Cassel

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RE: Case No. 13-0945      DATE: 10/3/2014  
COA #: 14-12-00964-CV      TC#: 2011-32230  
STYLE: ROBERT HOLMES  
v. CRAIG CASSEL

Today the Supreme Court of Texas denied the  
petition for review in the above-referenced case.

MR. JOHN H. CAMPBELL  
ATTORNEY AT LAW  
BANK OF AMERICA BUILDING  
2200 MARKET STREET, SUITE 804  
GALVESTON, TX 77550

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RE: Case No. 13-0945      DATE: 11/21/2014  
COA #: 14-12-00964-CV      TC#: 2011-32230  
STYLE: ROBERT HOLMES  
v. CRAIG CASSEL

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review.

MR. JOHN H. CAMPBELL  
ATTORNEY AT LAW  
BANK OF AMERICA BUILDING  
2200 MARKET STREET, SUITE 804  
GALVESTON, TX 77550

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**UNITED STATES CONSTITUTION**

**14TH AMENDMENT**

**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.

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## **TAX CODE**

Sec. 33.54. LIMITATION ON ACTIONS RELATING TO PROPERTY SOLD FOR TAXES. (a) Except as provided by Subsection (b), an action relating to the title to property may not be maintained against the purchaser of the property at a tax sale unless the action is commenced:

(1) before the first anniversary of the date that the deed executed to the purchaser at the tax sale is filed of record; or

(2) before the second anniversary of the date that the deed executed to the purchaser is filed of record, if on the date that the suit to collect the delinquent tax was filed the property was:

(A) the residence homestead of the owner;  
or

(B) land appraised or eligible to be appraised under Subchapter C or D, Chapter 23.

(b) If a person other than the purchaser at the tax sale or the person's successor in interest pays taxes on the property during the applicable limitations period and until the commencement of an action challenging the validity of the tax sale and that person was not served citation in the suit to foreclose the tax lien, that limitations period does not apply to that person.

(c) When actions are barred by this section, the purchaser at the tax sale or the purchaser's successor

in interest has full title to the property, precluding all other claims.

---

Sec. 34.01. SALE OF PROPERTY.

(k) The taxing unit to which the property is bid off takes title to the property for the use and benefit of itself and all other taxing units that established tax liens in the suit. The taxing unit's title includes all the interest owned by the defendant, including the defendant's right to the use and possession of the property, subject only to the defendant's right of redemption. Payments in satisfaction of the judgment and any costs or expenses of the sale may not be required of the purchasing taxing unit until the property is redeemed or resold by the purchasing taxing unit.

(n) The deed vests good and perfect title in the purchaser or the purchaser's assigns to the interest owned by the defendant in the property subject to the foreclosure, including the defendant's right to the use and possession of the property, subject only to the defendant's right of redemption, the terms of a recorded restrictive covenant running with the land that was recorded before January 1 of the year in which the tax lien on the property arose, a recorded lien that arose under that restrictive covenant that was not extinguished in the judgment foreclosing the tax lien, and each valid easement of record as of the date of the sale that was recorded before January 1 of

the year the tax lien arose. The deed may be impeached only for fraud.

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Sec. 34.08. CHALLENGE TO VALIDITY OF TAX SALE. (a) A person may not commence an action that challenges the validity of a tax sale under this chapter unless the person:

(1) deposits into the registry of the court an amount equal to the amount of the delinquent taxes, penalties, and interest specified in the judgment of foreclosure obtained against the property plus all costs of the tax sale; or

(2) files an affidavit of inability to pay under Rule 145, Texas Rules of Civil Procedure.

(b) A person may not commence an action challenging the validity of a tax sale after the time set forth in Section 33.54(a)(1) or (2), as applicable to the property, against a subsequent purchaser for value who acquired the property in reliance on the tax sale. The purchaser may conclusively presume that the tax sale was valid and shall have full title to the property free and clear of the right, title, and interest of any person that arose before the tax sale, subject only to recorded restrictive covenants and valid easements of record set forth in Section 34.01(n) and subject to applicable rights of redemption.

(c) If a person is not barred from bringing an action challenging the validity of a tax sale under Subsection (b) or any other provision of this title or



applicable law, the person must bring an action no later than two years after the cause of action accrues to recover real property claimed by another who:

(1) pays applicable taxes on the real property before overdue; and

(2) claims the property under a registered deed executed pursuant to Section 34.01.

(d) Subsection (c) does not apply to a claim based on a forged deed.

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**PROPERTY CODE**

Sec. 5.003. PARTIAL CONVEYANCE. (a) An alienation of real property that purports to transfer greater right or estate in the property than the person making the alienation may lawfully transfer alienates only the right or estate that the person may convey.

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## **CIVIL PRACTICE AND REMEDIES CODE**

Sec. 16.024. ADVERSE POSSESSION: THREE-YEAR LIMITATIONS PERIOD. A person must bring suit to recover real property held by another in peaceable and adverse possession under title or color of title not later than three years after the day the cause of action accrues.

Sec. 16.025. ADVERSE POSSESSION: FIVE-YEAR LIMITATIONS PERIOD. (a) A person must bring suit not later than five years after the day the cause of action accrues to recover real property held in peaceable and adverse possession by another who:

(1) cultivates, uses, or enjoys the property;

(2) pays applicable taxes on the property;

and

(3) claims the property under a duly registered deed.

(b) This section does not apply to a claim based on a forged deed or a deed executed under a forged power of attorney.

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[CR 12] CAUSE NO. 2011-32230

ROBERT HOLMES	§	IN THE
VS.	§	DISTRICT COURT
CITY OF HOUSTON,	§	80th JUDICIAL
ET AL.	§	DISTRICT
	§	HARRIS COUNTY,
	§	TEXAS

DEFENDANTS' ORIGINAL ANSWER  
TO PLAINTIFFS' ORIGINAL PETITION  
FOR DECLARATORY JUDGMENT

(Filed Jun. 17, 2011)

Come now, Defendants CITY OF HOUSTON, HARRIS COUNTY, HARRIS COUNTY EDUCATION DEPARTMENT, PORT OF HOUSTON OF HARRIS COUNTY AUTHORITY, HARRIS COUNTY FLOOD CONTROL DISTRICT, HARRIS COUNTY HOSPITAL DISTRICT, HOUSTON INDEPENDENT SCHOOL DISTRICT, and HOUSTON COMMUNITY COLLEGE SYSTEM (“Defendants”), and file this Original Answer to Plaintiffs’ Original Petition for Declaratory Judgment, and would show the Court as follows:

I.

**Jurisdictional Plea –  
Plaintiffs’ Lack of Standing**

**1.1 *Plaintiff Robert Holmes has no standing to bring this suit.*** By this petition, Plaintiff is seeking a declaration that a judgment entered by this Court under Cause No. 95-20275 in 1996 is partially void. Plaintiff admits in his petition that he was not named as a defendant nor served with process in Cause No. 95-20275, and the judgment he assails shows on its face that Plaintiff was not a party to that action. Thus, the Plaintiff has no standing to bring this action.

**1.2** Nor can it be said that any interest Plaintiff has in the property subject of [CR 13] the tax judgment has been prejudiced by that judgment. The tax sale conducted under the judgment passed only the interest that was owned by the named defendants. TEX. TAX CODE §34.01(n). Thus, Plaintiff’s interest was unaffected and not prejudiced in any manner so as to give him standing to bring this action. Only those who are parties to the judgment are bound thereby while those who are not joined are not bound by it

**1.3** Because Plaintiff was not a party to the prior judgment and his interest in the property was not prejudiced by the tax foreclosure, he clearly lacks standing to bring this suit, thereby depriving this Court of subject matter jurisdiction. Accordingly,

Defendants move that this suit be dismissed in its entirety for want of jurisdiction.

**II.**

**Jurisdictional Plea –  
No case or controversy**

**2.1 *There is no case or controversy between Plaintiff and these Defendants.*** As shown by Paragraph number 8 of Plaintiffs petition, the Plaintiff's dispute is with Defendant Craig Cassel rather than with these governmental Defendants. Any declaratory judgment regarding Plaintiff's interest in the subject property affects no interests of these Defendants. The governmental units have no claim of title to the subject property. Thus, any declaratory judgment such as the one requested by Plaintiff would constitute a mere advisory opinion which this Court lacks jurisdiction to issue.

\* \* \*

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[CR 210] NO. 938067

<b>METROPOLITAN TRANSIT</b>	§	<b>IN CIVIL COURT</b>
<b>AUTHORITY OF HARRIS</b>	§	<b>OF LAW</b>
<b>COUNTY, TEXAS,</b>	§	
<b>Plaintiff</b>	§	
<b>vs.</b>	§	<b>NUMBER 4 OF</b>
<b>CRAIG CASSEL,</b>	§	
<b>ROBERT HOLMES, et al,</b>	§	<b>HARRIS COUNTY,</b>
<b>Defendants</b>	§	<b>TEXAS</b>
	§	

**AFFIDAVIT OF ROBERT HOLMES**

On this day and before the undersigned, appeared ROBERT HOLMES, who after being duly sworn, testified as follows:

1. My name is ROBERT HOLMES. I am over the age of 18 and I am competent to make this Affidavit. I have personal knowledge of all matters contained herein.

2. I own an undivided  $\frac{1}{2}$  interest in the property that is the subject of this litigation (a small portion of a tract located at 5405 Griggs, Houston, Texas). I acquired my interest in a 1983 deed to myself and the Honorable James E. Anderson. Such deed was filed for record in the Real Property Records of Harris County on May 16, 1983 and a copy is attached hereto.

3. Anderson subsequently conveyed his  $\frac{1}{2}$  interest to Charles Bush. Mr. Bush was responsible for all operations associated with the property.

4. Apparently, tax collection proceedings were initiated against Charles Bush, et al, under Cause No. 1995-20275 in the District Court of Harris County, 80th Judicial District. I was never informed by Mr. Bush that taxes were in arrears, or that any tax deficiency litigation had been commenced.

5. I was not named as a defendant in this lawsuit, was never served with citation, and I had no notice of the lawsuit.

[CR 211] 6. No judgment was entered against me.

7. I only learned of the 1995 tax deficiency litigation in 2009 when I was first contacted by MTA regarding its proposed condemnation of a portion of the property. At that time, I was informed that the  $\frac{1}{2}$  interest previously owned by Mr. Bush was now owned by Craig Cassel.

Further affiant sayeth not.

/s/ Robert Holmes  
\_\_\_\_\_  
ROBERT HOLMES

SWORN AND SUBSCRIBED by ROBERT HOLMES on the 28th day of April, 2011.

[Notary Stamp] /s/ Cynthia A. Rice  
\_\_\_\_\_  
Notary Public

\_\_\_\_\_



[CR 219] **SUIT NO. 95-20275**

<b>CITY OF HOUSTON</b>	§	<b>IN THE DISTRICT</b>
<b>VS.</b>	§	<b>COURT</b>
<b>CHARLES BUSH, ET AL</b>	§	<b>080TH JUDICIAL</b>
	§	<b>DISTRICT</b>
	§	<b>HARRIS COUNTY,</b>
	§	<b>TEXAS</b>

**FINAL JUDGMENT**

**CAME ON TO BE HEARD** on the 25TH day of JUNE, 1996 the above-entitled and numbered cause, and appeared, Plaintiff CITY OF HOUSTON, hereinafter called Plaintiff, and Intervenor(s) HARRIS COUNTY, HARRIS COUNTY EDUCATION DEPARTMENT, PORT OF HOUSTON OF HARRIS COUNTY AUTHORITY, HARRIS COUNTY FLOOD CONTROL DISTRICT and the HARRIS COUNTY HOSPITAL DISTRICT (hereinafter Harris County), HOUSTON INDEPENDENT SCHOOL DISTRICT [through Harris County Education District hereinafter HISD Hospl. and] HOUSTON COMMUNITY COLLEGE SYSTEM, hereinafter called Intervenor(s), by and through their respective attorneys of record, and announced ready. Defendant(s) STATE OF TEXAS – TEXAS EMPLOYMENT COMMISSION, [State of Texas – Texas Alcoholic Beverage Commission] UNITED STATES OF AMERICA-INTERNAL REVENUE SERVICE has/have answered and has/have been duly notified of trial and ~~has/have~~ ~~appeared~~/failed to appear in Court. Defendant(s)

CHARLES BUSH, GERALD P. MONKS, TRUSTEE,  
~~THE STATE OF TEXAS — TEXAS ALCOHOLIC  
BEVERAGE COMMISSION~~, although duly served  
with citation which has been returned to this Court  
and has been on file for more than ten (10) days, and  
duly notified of this hearing, ~~has/have appeared in  
court~~ [and Gerald Monks having answered, Charles  
Bush/]failed to appear or answer herein, and  
has/have wholly made default. It appearing to the  
Court that the answer(s) of defendant(s), fail to raise  
any affirmative defense to the prima facie cause  
established by Plaintiff's and Intervenor's Petition  
and Interventions, and that the date and time for the  
appearance of the Defendant(s), has passed and that  
the return of service has been on file herein in the  
manner and for the length of time provided by law,  
the Court determined that this cause is ready for  
entry of Judgment. Plaintiff and Intervenor(s) having  
moved the Court to dismiss from this suit any parties  
not named above, it was so **ORDERED**. A jury hav-  
ing been waived, all matters of controversy, both of  
fact and of law, have been submitted to the Court  
without the intervention of a jury. Evidence was  
submitted concerning the ownership and title of the  
property hereinafter described. Certified tax records  
of Plaintiff and Intervenor(s) were introduced in  
evidence, and evidence was submitted as to the value  
of the subject property. After consideration of Plain-  
tiffs and Intervenor(s)' Petition and Interventions, the  
evidence and argument of counsel, the Court is of the  
opinion and finds that the law and the facts are with  
the Plaintiff and Intervenor(s) and that Plaintiff and

Intervenor(s) should recover judgment as is hereinafter provided, and the Court finds as follows:

That this is a suit brought for the collection of delinquent taxes and City of Houston special assessment liens (hereinafter referred to as "taxes"); that all conditions precedent to the right to levy the taxes herein sued for were complied with as required by law; that Plaintiff and Intervenor(s) are legally constituted and authorized to levy, assess, and collect said taxes, and all said taxes were duly and legally assessed against the property hereinafter described and the owner(s) thereof; that all notices required by law have been given by the proper officials to the proper persons and for the time and in the manner provided by law; that the below named Defendant(s) who were served with citation or otherwise appeared in this cause, was/were the owner(s) of [CR 220] record of the herein described property, or were claiming some right, title or interest thereto, at the time of the institution of this suit or at this time; that the property described herein was located within the boundaries of Plaintiff and each political subdivision in whose behalf this suit was brought when the taxes hereinafter stated were assessed and found to be due; that the Defendant(s) are indebted to Plaintiff and Intervenor(s) for such delinquent taxes, penalties, interest, attorneys' fees, abstractor's fees, court costs, and Tax Master fee which constitute a separate, valid, and subsisting lien in favor of Plaintiff and Intervenor(s) on the herein described property which lien is prior and superior to all claims, right, title,

interest, or liens asserted by any of the Defendant(s); and that the Plaintiff and Intervenor(s) should have judgment and a foreclosure of the constitutional and statutory tax liens on the herein described property as hereinafter provided.

**IT IS ORDERED, ADJUDGED, AND DECREED** that Plaintiff and Intervenor(s) recover judgment against the below named defendants for taxes, penalties, interest and attorney's fees due, owing and unpaid in the following amounts for all delinquent years upon the following described property as set out below, together with interest at the rate of ten percent (10%) per annum on all of said sums from date of judgment until paid.

**DEFENDANT(S)**

CHARLES BUSH  
GERALD P. MONKS, TRUSTEE (LIENHOLDER)  
STATE OF TEXAS-TEXAS EMPLOYMENT  
COMMISSION (LIENHOLDER)  
THE STATE OF TEXAS (LIENHOLDER) –  
TEXAS ALCOHOLIC BEVERAGE COMMISSION  
THE UNITED STATES OF AMERICA-INTERNAL  
REVENUE SERVICE (LIENHOLDER)

**PROPERTY AND AMOUNTS OWED**

.5347 ACRES, MORE OR LESS, OUT OF RESERVE  
“C”, ROYAL PALMS ADDITION, CITY OF  
HOUSTON, ACCORDING TO THE MAP OR PLAT  
THEREOF, RECORDED IN VOLUME 57, PAGE 29  
OF THE MAP RECORDS OF HARRIS COUNTY,  
TEXAS; AND BEING MORE PARTICULARLY  
DESCRIBED BY METES AND BOUNDS BY

COUNTY CLERK FILE NUMBER "E"666591 OF  
THE OFFICIAL PUBLIC RECORDS OF HARRIS  
COUNTY, TEXAS. (ACCT. #091-222-000-0005)

**Assessed Value:**      **\$ 142,860**

**Plaintiff CITY OF HOUSTON**

**Tax Years:**              **1981-1995**  
**Base Tax:**              **\$18,150.99**  
**Penalty & Interest:** **\$23,637.68**  
**Attorney's Fees:**      **\$ 1,052.71**  
**TOTAL DUE:**            **\$42,841.38**

In the event that the property described above is sold pursuant to this Court Order, in accordance with section 33.52 of the Texas Property Tax Code, CITY OF HOUSTON, shall recover from the proceeds of such sale, in addition to the above amounts, the current year's taxes, prorated through the date of this judgment, at the rate of \$ 2.60, per day which the Court finds to be \$ 460.20, plus reasonable attorney's fees in the amount of \$ 69.03.

**[CR 221] Intervenor HOUSTON COMMUNITY  
COLLEGE SYSTEM**

**Tax Years:**              **1989-1995**  
**Base Tax:**              **\$ 509.98**  
**Penalty & Interest:** **\$ 352.06**  
**Attorney's Fees:**      **\$ 14.46**  
**TOTAL DUE:**            **\$ 892.50**

In the event that the property described above is sold pursuant to this Court Order, in accordance with section 33.52 of the Texas Property Tax Code, HOUSTON COMMUNITY COLLEGE SYSTEM,

shall recover from the proceeds of such sale, in addition to the above amounts, the current year's taxes, prorated through the date of this judgment, at the rate of \$ .23, per day which the Court finds to be \$ 40.71, plus reasonable attorney's fees in the amount of \$ 6.11.

**Intervenor HARRIS COUNTY**

<b>Tax Years:</b>	<b><u>1981-1995</u></b>
<b>Base Tax:</b>	<b><u>\$15,296.36</u></b>
<b>Penalty &amp; Interest:</b>	<b><u>\$15,447.38</u></b>
<b>Attorney's Fees:</b>	<b><u>\$ 4,412.35</u></b>
<b>TOTAL DUE:</b>	<b><u>\$35,156.09</u></b>

In the event that the property described above is sold pursuant to this Court Order, in accordance with section 33.52 of the Texas Property Tax Code, HARRIS COUNTY, shall recover from the proceeds of such sale, in addition to the above amounts, the current year's taxes, prorated through the date of this judgment, at the rate of \$ 2.44, per day which the Court finds to be \$ 431.88, plus reasonable attorney's fees in the amount of \$ 64.78.

**Intervenor HOUSTON INDEPENDENT SCHOOL DISTRICT**

<b>Tax Years:</b>	<b><u>1981-1995</u></b>
<b>Base Tax:</b>	<b><u>\$27,811.66</u></b>
<b>Penalty &amp; Interest:</b>	<b><u>\$33,623.89</u></b>
<b>Attorney's Fees:</b>	<b><u>\$ 1,435.25</u> + 15.00 Court Cost</b>
<b>TOTAL DUE:</b>	<b><u>\$62,885.80</u></b>

In the event that the property described above is sold pursuant to this Court Order, in accordance with

section 33.52 of the Texas Property Tax Code, HOUSTON INDEPENDENT SCHOOL DISTRICT, shall recover from the proceeds of such sale, in addition to the above amounts, the current year's taxes, prorated through the date of this judgment, at the rate of \$ 5.42, per day which the Court finds to be \$ 959.34, plus reasonable attorney's fees in the amount of \$ 143.90.

All of the foregoing property is located in HARRIS COUNTY, TEXAS, and all volume and page references, as well as clerk file references, unless otherwise indicated, are to the Deed Records of HARRIS COUNTY, TEXAS; the complete description as contained in each of those deed records is incorporated herein by reference as if fully set forth herein.

[CR 222] **IT IS ORDERED, ADJUDGED, AND DECREED**, that Plaintiff and Intervenor(s) recover penalty and interest on the base tax at the statutory rate of one percent (1%) per month pursuant to section 33.01 of the Texas Property Tax Code (Vernon 1982) for each succeeding month or Portion of a succeeding month that the taxes, penalties and interest remain unpaid from the date of this hearing, until the date this judgment is signed.

**IT IS ORDERED, ADJUDGED, AND DECREED**, that Plaintiff and Intervenor(s) recover postjudgment interest at the legal rate of ten percent (10%) per annum from the date of judgment until paid.

**IT IS ORDERED, ADJUDGED, AND DECREED**, that Plaintiff and Intervenor(s) recover all court costs expended in this cause to date, and such other costs as may hereafter be incurred as provided by law.

**IT IS ORDERED, ADJUDGED, AND DECREED**, that Plaintiff and Intervenor(s) shall not be granted any monetary relief, in the form of personal liability, against anyone designated as a lienholder herein, except that a first lien exists against the herein described property, for the amount of the taxes, interest, penalties, attorneys' fees, abstractor's fees, costs of court and officer's costs; the tax lien(s) asserted herein are paramount and superior to the claims of any creditors or any holder of a lien who was made a party to this suit, whether or not the debt or lien existed before the attachment of the tax lien(s); and Plaintiff's and Intervenor(s)' tax liens are hereby foreclosed on the above-described property against said Defendant(s) or anyone claiming under the Defendant(s) by any right acquired during the pendency of this suit.

**IT IS ORDERED, ADJUDGED, AND DECREED**, that a Tax Master's fee is hereby awarded **Chris Stacy** in the sum of \$50.00 to be taxed as court costs herein.

**IT IS ORDERED, ADJUDGED, AND DECREED**, that Plaintiff recover judgment for all sums set out above, together with all costs of suit and sale now or hereafter incurred, including abstractor's fees



incurred in securing data and information as to the name, identity, and location of necessary parties and legal description of the herein described property, in the amount of \$324.76. The proceeds of any foreclosure sale in this cause shall be applied first to the payment of all costs of making said sale and costs of Court and then to the payment of the judgments herein recovered and the residue, if any, shall be distributed as provided by law.

**IT IS ORDERED, ADJUDGED, AND DECREED**, that an order of sale be issued by the Clerk of this Court, directed to the Sheriff or any Constable of HARRIS COUNTY, TEXAS, commanding such officer to seize, levy upon, and advertise for sale as under execution, all of the herein described property, and sell such property to the highest bidder for cash, as under execution; such order to have all the force and effect of a writ of possession as between the parties to this suit and any person claiming under the defendant(s) by any right acquired pending this suit, provided that none of the property shall be sold to any party, other than a taxing unit which is a party to the suit, for less than the amount of the adjudged value of the property or the aggregate amount of the judgment against the property, whichever is lower. The adjudged value, or reasonable fair value, of the property as set by this Court, is as shown above. The Defendant(s) may, at any time before the sale, file a written request with the officer in whose hands the Order of Sale is placed, that the property be divided and sold in smaller tracts than the whole, in which

case the officer shall sell the property in such subdivisions thereof as the Defendant(s) may request and, in such case, shall only sell as many subdivisions thereof, as near [CR 223] as may be, as are necessary to satisfy this judgment, interest and costs; the net proceeds of any sale of such property made hereunder to any purchaser other than a taxing unit who is a party to this suit, shall be applied to satisfy the judgment and liens foreclosed herein, but any excess in the proceeds of sale over the amount of judgment, the costs of suit and sale and other expenses chargeable against the property, shall be paid to the parties legally entitled to such excess pursuant to Texas Property Tax code Ann., §34.03 (Vernon 1982); that the owner of such property, or anyone having an interest therein, or their heirs, assigns, or legal representatives, may redeem such property in the time and manner prescribed by law; that the officer executing the Order of Sale shall make proper conveyance to the purchaser(s) of the property, as prescribed by law, and shall proceed to place the purchaser(s) of said land in possession thereof within thirty days after the day of sale, subject to such right of redemption; and, if the officer executing such order of sale fails to place the purchaser(s) in possession of the land within the thirty days after the day of the sale, that the clerk of this Court issue, upon request therefor, a Writ of Possession in the name of the purchaser(s) and the purchaser(s)' heirs and assigns.

**IT IS ORDERED, ADJUDGED, AND DECREED,** that this Judgment is in all things without

prejudice to the right of Plaintiff and Intervenor(s) to hereafter maintain a suit or suits for and recover any taxes that may be due and owing on the herein described property for any years subsequent to those years for which a recovery is hereby awarded Plaintiff and intervenor(s).

All relief not specifically granted by this judgment is hereby denied, and for all of the foregoing judgment let execution issue.

**SIGNED** this the 9th day of July, 1996

/s/ Lee Duggan, Jr.

**JUDGE PRESIDING**

[CR 224] **APPROVED BY:**

**CALAME LINEBARGER GRAHAM  
PEÑA BURNEY FOREMAN  
TORRES & GARZA, L.L.P.**

/s/ Lisa Montez

LISA MONTEZ

SBN 00784625

P.O. BOX 3064

HOUSTON, TEXAS 77253

(713) 247-7600

FAX: (713) 247-0444

ATTORNEY FOR CITY OF  
HOUSTON, HOUSTON  
COMMUNITY COLLEGE  
SYSTEM

HEARD, GOGGAN, BLAIR  
& WILLIAMS  
3555 TIMMONS, SUITE 800  
HOUSTON, TEXAS 77027  
(713) 624-4300 FAX 624-4243

/s/ Corinna Steel  
CORINNA STEEL, 19099500  
PAMELA POPE JOHNSON,  
10819850  
PANKAJ R. PARMAR, 00792098  
CORMAC P. CREAVEN,  
000792436  
  
ATTORNEYS FOR HARRIS  
COUNTY & HOUSTON  
INDEPENDENT SCHOOL  
DISTRICT

DEFAULT JUDGMENT/NO 95-20275

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[CR 225] **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document has been mailed or hand-delivered to all opposing counsel and other parties who have made an appearance in this suit.

CHARLES BUSH	THE STATE OF TEXAS-
4546 NEWBERRY	TEXAS ALCOHOLIC
HOUSTON, TX 77051 OR	BEVERAGE
5214 CORAL CREEK DR	COMMISSION
HOUSTON, TX 77021	BY SERVING THE
GERALD P. MONKS,	ATTORNEY GENERAL
TRUSTEE	OF THE STATE
4660 BEECHNUT	OF TEXAS
HOUSTON, TX 77096	SUPREME COURT
NANCY W. NORWOOD	BUILDING, CAPITOL
ASSISTANT ATTORNEY	STATION
P.O. BOX 12548	AUSTIN, TX 78711-2548
AUSTIN, TX 787112548	SUSAN V. SAMPLE
	UNITED STATES
	ATTORNEY
	8701 S. GESSNER,
	STE. 710
	HOUSTON, TX 77074
	HEARD GOGGAN BLAIR
	& WILLIAMS
	ATTORNEYS AT LAW
	3555 TIMMONS,
	STE. 800
	HOUSTON, TX 77027

Dated this the 25th day of June, 1996

/s/ Lisa Montez  
\_\_\_\_\_  
LISA MONTEZ

\_\_\_\_\_

[CR 226] **SUIT NO. 95-20275**

<b>CITY OF HOUSTON</b>	§	<b>IN THE</b>
<b>VS.</b>	§	<b>DISTRICT COURT</b>
<b>CHARLES BUSH, ET AL</b>	§	<b>080TH JUDICIAL</b>
	§	<b>DISTRICT</b>
	§	<b>HARRIS COUNTY,</b>
	§	<b>TEXAS</b>

**CERTIFICATE OF LAST**  
**KNOWN MAILING ADDRESS**

The undersigned, as Attorney for the CITY OF HOUSTON, HOUSTON COMMUNITY COLLEGE SYSTEM in the above numbered and entitled cause, does hereby certify that the last known mailing address of the Party and/or Parties against whom Judgment is taken is:

CHARLES BUSH  
4546 NEWBERRY  
NEWBERRY HOUSTON, TX 77051 OR  
5214 CORAL CREEK DR  
HOUSTON, TX 77021

GERALD P. MONKS, TRUSTEE (LIENHOLDER)  
4660 BEECHNUT  
HOUSTON, TX 77096

~~THE STATE OF TEXAS (LIENHOLDER-~~  
~~TEXAS ALCOHOLIC BEVERAGE COMMISSION~~  
~~STATE OF TEXAS, SUPREME COURT~~  
~~BUILDING, CAPITOL STATION~~  
~~AUSTIN, TX 78711-2548~~ [LM]

---

Certify this my hand the 25th day of June, 1996.

/s/ Lisa Montez  
\_\_\_\_\_  
LISA MONTEZ  
STATE BAR NO. 00784625  
ATTORNEY FOR CITY OF  
HOUSTON, HOUSTON  
COMMUNITY COLLEGE  
SYSTEM  
SPIN NO. 99999932

\_\_\_\_\_  
[CR 227] **SUIT NO. 95-20275**

<b>CITY OF HOUSTON</b>	§	<b>IN THE</b>
<b>VS.</b>	§	<b>DISTRICT COURT</b>
<b>CHARLES BUSH, ET AL</b>	§	<b>080TH JUDICIAL</b>
	§	<b>DISTRICT</b>
	§	<b>HARRIS COUNTY,</b>
	§	<b>TEXAS</b>

**NON-MILITARY SERVICE AFFIDAVIT**

Before me, the undersigned authority, on this day personally appeared LISA MONTEZ Attorney for CITY OF HOUSTON, HOUSTON COMMUNITY COLLEGE SYSTEM, in the above styled cause, known to me to be a credible person, and who after being duly sworn, upon oath did depose and say:

**“To the best of my knowledge the Defendant(s) CHARLES BUSH, GERALD P. MONKS, TRUSTEE, were not at the time of the institution of**

**this suit, or at any time since, and are not now,  
in any Military or Naval service of the United  
States of America.”**

/s/ Lisa Montez  
\_\_\_\_\_  
LISA MONTEZ  
STATE BAR NO. 00784625

Sworn to and subscribed before me, the under-  
signed authority, on this the 20 day of June, 1996.

/s/ Pat Holder  
\_\_\_\_\_  
Notary Public, State of Texas

[Notary Stamp]

[CR228] [SEAL]

I, Chris Daniel, District Clerk of Harris  
County, Texas certify that this is a true  
and correct copy of the original record filed  
and or recorded in my office, electronically  
or hard copy, as it appears on this date.

Witness my official hand and seal of office  
this April 28, 2011.

Certified Document Number: 36129228

/s/ Chris Daniel  
Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

\_\_\_\_\_



[CR 229] Deed under Re-sale Pursuant  
to Texas Tax Code §34.05

Date of Execution: August 5, 2003

Harris County For itself and as  
Trustee for City of Houston and  
Houston Independent School  
District

Grantee(s): Craig Cassel

Grantee(s)

Mailing Address: 8211 Fawn Terrace, Houston, TX  
77071

Consideration/

High Bid: Twenty-Five Thousand and 00/100  
(\$25,000.00) Dollars

Land and

Premises: .5347 ACRES, MORE OR LESS,  
OUT OF RESERVE "C", ROYAL  
PALMS ADDITION, CITY OF  
HOUSTON, ACCORDING TO  
THE MAP OR PLAT THEREOF,  
RECORDED IN VOLUME 57,  
PAGE 29 OF THE MAP REC-  
ORDS OF HARRIS COUNTY,  
TEXAS; AND BEING MORE  
PARTICULARLY DESCRIBED  
BY METES AND BOUNDS BY  
COUNTY CLERK FILE NUM-  
BER "E"666591 OF THE OFFI-  
CIAL PUBLIC RECORDS OF  
HARRIS COUNTY, TEXAS.

HCAD Number: 0912220000005

Constable: Constable Michael C. Butler  
Precinct 7, Harris County, Texas

Newspaper: Daily Court Review

Date of Re-Sale: August 5, 2003

Order of Re-Sale: That resolution, order or ordinance dated July 24, 2001 and passed and adopted by grantor's governing body at a regularly scheduled meeting and further authorizing the re-sale of the real property described herein, previously acquired by Grantor in the following described tax foreclosure proceeding:

Cause: That case bearing Cause No. 1995-20275 filed in the 080TH Judicial District Court of Harris County, Texas and styled CITY OF HOUSTON VS. CHARLES BUSH, ET AL.

Date of Original Tax Foreclosure Sale: May 6, 2003

File Number of Original Tax Deed: W758297

That WHEREAS, Grantor's governing body requested by Order of Re-Sale that the Constable advertise for sale and sell said land and premises herein described, by having a notice of the sale published in the English language once a week for three consecutive weeks preceding the day of the sale, in the above-described Newspaper, a newspaper published in Harris County, Texas, and the first publication appearing not less than twenty-one days immediately

preceding the day of the Re-Sale, containing a statement of the authority by virtue of which the re-sale is to be made, the time of levy, time and place of sale; also a brief description of the property to be sold by stating the number of acres and the original survey; if the property was located in a plated subdivision or addition the name by which the land is generally known with reference to that subdivision or addition; or by adopting the description of the land as contained in the judgment.

And WHEREAS, on the above-stated Date of Re-Sale, being the first Tuesday of the month, between the hours of ten o'clock a.m. and four o'clock p.m., I sold the above-described land and premises at public venue in the County of Harris, State of Texas, at such place as approved by Commissioner's Court and the promises hereinafter described were sold to Grantee for [CR230] the above-stated Consideration, and Grantee being the highest bidder.

NOW THEREFORE, in consideration of the premises aforesaid, and of the payment of the above-stated Consideration, the receipt of which is hereby acknowledged, I, as said Constable, have granted, sold and conveyed, and by these premises do grant, sell and convey unto the said Grantee all of the estate, the right, title, and interest required or held by each taxing unit that was a party to the judgment foreclosing tax liens on the property which the Grantor, for itself, and as trustee for all taxing entities which established tax liens in the above referenced

Cause had in and to the above-described land and premises;

To have and hold the above described land and premises, together with all and singular the rights, privileges, and appurtenances thereto in any manner belonging unto the said Grantee, its successors, assigns forever, as fully and as absolutely as I, Constable, can convey by virtue of said Order of Re-Sale.

This conveyance is subject to any right of redemption remaining to the former owner at the time of the resale.

IN TESTIMONY WHEREOF, I have hereunto set my hand, this 28 day of January, 04.

/s/ Michael Butler  
Constable Michael C.  
Butler Precinct 7  
Harris County, Texas

THE STATE OF TEXAS §  
§  
COUNTY OF HARRIS §

BEFORE ME, the undersigned Notary Public in and for the State of Texas, on this day personally appeared Constable Michael C. Butler Precinct 7, Harris County, Texas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as Constable Michael C. Butler Precinct 7, Harris County, Texas, for the purposes and consideration, and in the capacity therein expressed.

GIVEN under my hand and seal of office, this  
28th day of January, 2004.

/s/ Maria Gloria  
NOTARY PUBLIC, State of Texas

[Notary Stamp]

Return to:

Linebarger Goggin Blair  
& Sampson, LLP  
1301 Travis Street, 3rd floor  
Houston, Texas 77002  
713/844-3590/fax 713/844-3529  
Attorney for Plaintiff(s), Harris County, et al.

Deed under order of Sale Cause No. 1995-20275

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