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2006-CA-01405-SCT

Appellee

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 2006-CA-01405

NAPOLEAN MOORE

APPELLANT

VS.

MARATHON ASSET MANAGEMENT, L.L.C.


APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court or the judges of the Court of Appeals may evaluate possible disqualifications or recusal:

1. Napoleon Moore, Appellant
2. Marathon Asset Management, LLC, Appellee
3. Honorable William H. Singletary
4. Paul E. Rogers, Esquire
5. H. Fariss Crisler, III, Esquire

Respectfully submitted,


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**ATTORNEY FOR MARATHON ASSET
MANAGEMENT, LLC**

SUMMARY OF THE ARGUMENT

The Plaintiff raises two issues in his brief. In the first issue raised by the Plaintiff/Appellant, it is argued that the tax sale in question should be set aside due to no notice being given of the maturity of the tax sale in question to the Plaintiff/Appellant. The Chancery Clerk was not required to give notice of the maturity of the tax sale in question due to the fact that the Plaintiff/Appellant was not an owner of record of the property at least 180 days prior to the maturity and in fact was not an owner of record until 369 days after the tax sale maturity.

The second issue raised by the Plaintiff/Appellant was that he was entitled to an equitable lien against the property equal to the funds he has put into the property. The Plaintiff/Appellant failed to perform due diligence in checking the title to the subject property prior to purchasing it and now wants the Defendant/Appellee to pay for his mistake in not doing so. Moreover, the Plaintiff/Appellant, at the time of trial, had collected rent on the property in the amount of \$751.00 monthly for a time in excess of 2 ½ years.

ARGUMENT

In his first issue the Plaintiff/Appellant claims that the tax sale is void due to the Plaintiff/Appellant receiving no notice of the impending tax maturity and that title should be confirmed in the Plaintiff/Appellant.

The Plaintiff/Appellant purchased the property which is the subject of this civil action at a foreclosure sale on June 13, 2003. Tr. at 2. The Substitute Trustee's Deed by which title to the subject property was conveyed to the Plaintiff/Appellant was filed on August 31, 2004 in the office of the Chancery Clerk of Hinds County at Jackson, Mississippi. Tr. at 2. The tax sale in question in this case took place on August 27, 2001 for the 2000 ad valorem taxes due thereon and had a maturity date of August 27, 2003. Tr. at 4, 6. The Plaintiff/Appellant purchased the subject property at the foreclosure sale 76 days prior to the date of maturity. Pursuant to Mississippi Code Annotated § 27-43-1, the Hinds County Chancery Clerk was required to give notices of the impending maturity to the record owner of the land as of 180 days prior to the expiration of the time of redemption. With the Plaintiff/Appellant purchasing the subject property only 76 days prior to the date of maturity, the Plaintiff/Appellant was entitled to no statutory notice of the impending maturity. In addition to purchasing the subject property 76 days prior to the date of maturity, the Plaintiff/Appellant did not record his Substitute Trustee's Deed until August 31, 2004, some 369 days after the date of maturity. Ex. 1. A diligent title search of the land records prior to August 31, 2004 would not have revealed the interest of the Plaintiff/Appellant.

The Plaintiff/Appellant argues in his brief that the Sheriff, in serving a notice of the tax

sale maturity, could have noticed either the Plaintiff/Appellant at the property while he was repairing the property or a renter of the Plaintiff/Appellant. By noticing a renter at the property, the Sheriff could have then obtained the name of the Plaintiff, whose Substitute Trustee's Deed was not of record at that time, and could have then given this information to the Hinds County Chancery Clerk for further notification. The Plaintiff/Appellant is attempting to impose duties on the Sheriff and the Chancery Clerk not required by statute. The Plaintiff/Appellant failed to perform any due diligence in examining the title prior to or subsequent to his purchase of the subject property at the foreclosure sale which would have avoided this entire case. The Plaintiff/Appellant is an experienced real estate investor in purchasing and repairing residential properties and knew full well the importance of assuring that he has good title to any property he purchases and the payment of his tax obligations. Tr. at 15, 16. The Plaintiff/Appellant seeks to impose on the Hinds County Sheriff, the Hinds County Chancery Clerk and the Defendant/Appellee duties not required by law solely because the Plaintiff/Appellant failed to perform due diligence that a reasonable real estate investor would have performed under the same or similar circumstances. The Plaintiff/Appellant argues that the notices given by the Hinds County Chancery Clerk of the impending tax sale maturity to the previous owner of the subject property were insufficient. However, the Plaintiff/Appellant purchased the title to the subject property as it existed on the date of his purchase, being June 13, 2003. All notices required to be issued by the Chancery Clerk of the impending tax sale maturity had already been issued as of the date of foreclosure. In Rains v. Teague, 377 So. 2d 924, 927 (Miss. 1979), the Mississippi Supreme Court held that it is incumbent on a landowner to be knowledgeable about the assessment on his property and to be diligent to make sure that his taxes are paid.

The second issue raised by the Plaintiff/Appellant in his brief was that the Plaintiff/Appellant should have been awarded an equitable lien for his purchase price of the subject property and any repairs he made to the subject property. The Plaintiff/Appellant testified at trial that he collected rent on the subject property in the amount of \$751.00 monthly from October, 2003 until the date of trial which was in March, 2006. The rent collected by the Plaintiff/Appellant at the time of trial was approximately \$22,500.00. This rent collected by the Plaintiff/Appellant exceeded the amount of the repairs that the Plaintiff/Appellant claims that he incurred by more than \$3,500.00. Once again, the Plaintiff/Appellant attempts to impose duties on the Hinds County Sheriff and Hinds County Chancery Clerk not required by law and to extract money from the Defendant/Appellee solely because the Plaintiff/Appellant failed to have a \$75.00 title examination prepared either before or after he purchased the subject property. The Plaintiff/Appellant admitted that he should have had the title examination performed, which, of course, would have avoided this entire case. The Plaintiff/Appellant, being an experienced real estate investor, should have known of the unpaid taxes on the subject property. All improvements and repairs made by the Plaintiff/Appellant to the subject property were made when he should have known with reasonable diligence of the unpaid taxes and were made at his own peril. In Johnson v. Carter, 11 So. 2d 196 (Miss. 1943), the Court held that a purchaser of a parcel of real property from a person holding a tax patent, knowing the title to be suspicious, paid taxes and made improvements at his own peril. The Court also held in Associates Financial Services Co. of Mississippi, Inc. v. Bennett, 611 So. 2d 973, 977 (Miss. 1992), that Courts should not be expected to look after people who should be efficient professionals in their operations of the business.

CONCLUSION


Mississippi Code Annotated § 27-43-1 requires the Chancery Clerk to provide notice of an impending maturing tax sale to the record owner of land as of 180 days prior to the expiration of the time of redemption. The Plaintiff/Appellant purchased the subject property at a foreclosure sale 76 days prior to the date of maturity and did not record his Substitute Trustee's Deed until more than 1 year subsequent to the date of maturity. The Plaintiff/Appellant was entitled to no statutory notice regarding the maturing of the tax sale in question. A diligent search would not have revealed the interest of the Plaintiff/Appellant due to his deed not being recorded until 369 days after the tax sale maturity.

The Plaintiff/Appellant is not entitled to an equitable lien against the subject property. The Plaintiff/Appellant, an experienced real estate investor, failed to perform even a basic title examination of the property which he was purchasing either before or after his purchase of the subject property. A title examination would have revealed the unpaid taxes which could have easily been paid prior to the date of maturity. The Chancellor, after reviewing all the testimony and evidence, applied the requirements of the Mississippi Code and correctly found for the Defendant/Appellee. As such, no manifest error was committed due to the correct application of the law.

The Defendant/Appellee prays that the Court will affirm the decision of the Hinds County Chancery Court and confirm the title of the subject real property in the Defendant/Appellee.

Respectfully submitted,

MARATHON ASSET MANAGEMENT, LLC

BY: 

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MSB# 

CERTIFICATE OF SERVICE

I, H. Fariss Crisler, III, do hereby certify that I have this day caused to be served via U.S. mail, postage pre-paid, a true and correct copy of the above and foregoing to the following:

Honorable William Singletary
Hinds County Chancery Judge
Post Office Box 686
Jackson, Mississippi 39205

Paul E. Rogers, Esquire
Paul E. Rogers, P.A.
Post Office Box 2810
Jackson, Mississippi 39207

Mississippi Supreme Court Clerk
Post Office Box 249
Jackson, Mississippi 39205-0249

This the 23 day of April, 2007.



H. FARISS CRISLER, III