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**IN THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI
NO. 2007-CP-01552**

RICKY SMITH

APPELLANT

VERSUS

**JACKSON STATE UNIVERSITY,
MISSISSIPPI DEPARTMENT OF
FINANCE AND ADMINISTRATION,
SECRETARY OF STATE OF THE
STATE OF MISSISSIPPI
APPELLEES**

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 and/or the judges of the Court of Appeals may evaluate the possible disqualifications or recusal.

1. Ricky Smith, Pro Se
2. Jackson State University
3. The Honorable J. Dewayne Thomas, Presiding Chancellor at Trial Level
4. The Honorable Regina R. Quinn, Counsel for Jackson State University
5. The Honorable David S. Buford, Associate Counsel for Jackson State University
6. State of Mississippi ~ Secretary of State
7. The Honorable Nancy Morse Parkes, Counsel for the Mississippi Secretary of State's Office
8. Department of Finance and Administration

9. The Honorable Sarah E. Berry, Counsel for the Department of Finance
and Administration

Respectfully Submitted,

By: 

Regina R. Quinn, Esq., MSB#4595
ATTORNEY FOR APPELLEE
JACKSON STATE UNIVERSITY

Of Counsel:

JACKSON STATE UNIVERSITY

Regina R. Quinn, MSB#4595
David S. Buford, MSB#101162
Jackson State University
Office of General Counsel
Post Office Box 17239
1400 J. R. Lynch Street
Jackson, Mississippi 39217-0239
Tel: (601) 979-3950
Fax: (601) 979-9040

JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI

Sarah E. Berry, MBN 9483
Special Assistant Attorney General
Department of Finance and Administration
Post Office Box 267
Jackson, Mississippi 39205-0267
Telephone: (601) 359-3701
Facsimile: (601) 359-2470

I. STATEMENT OF ISSUES ON APPEAL

- A) Whether the Chancery Court properly granted summary judgment to Jackson State University on its claim to fee simple title to the property which is the subject of this appeal.¹
- B) Whether the Chancery Court erred in ruling that Plaintiff has no ownership interest in the subject property.
- C) Whether the Chancery Court erred in ruling that Plaintiff's sole remedy is a refund of the money he paid to the Secretary of State for the subject property.

II. STATEMENT OF THE CASE

A. NATURE OF THE CASE

On December 3, 2003, the Mississippi Institutions of Higher Learning (IHL), through the State of Mississippi (the "State"), acquired the subject property for the use and benefit of Jackson State University (JSU), by Special Warranty Deed from the Department of Finance and Administration (DFA), an agency of the State. On August 31, 2006 the Secretary of State's Office issued to Plaintiff a Forfeited Land Tax Patent ("tax patent") for the same property, when in fact the Secretary of State did not possess any rights in the subject property. At a hearing concerning ownership of the property, the Chancellor held that JSU (through IHL) was the owner of the property and that Plaintiff's proper remedy was a refund of the amount he paid for the tax patent from the Secretary of State, plus interest pursuant to *Miss. Code Ann. § 29-1-85*.

B. COURSE OF PROCEEDINGS AND DISPOSITION IN LOWER COURT

Plaintiff filed his original complaint on November 3, 2006, against JSU, the Department of Finance and Administration (DFA), and the Secretary of State, seeking confirmation of ownership of the subject property and damages. (R. at 1). On March 16, 2007, the Secretary of State filed its Answer to the Complaint, and on March 23, 2007, DFA filed its Answer to the

¹ The property which is the subject of this appeal is located at the corner of Lynch and Dalton Streets near the main campus of Jackson State University, parcel number 146-5. A detailed legal description appears in the record (R. at 14).

Complaint. (R. at 30, 42). JSU filed its Answer and its Motion for Summary Judgment on April 27, 2007. (R. at 63, 103). On May 11, 2007, Plaintiff filed his Response to JSU's Motion for Summary Judgment along with his Motion for Partial Summary Judgment. (R. at 171).

On June 1, 2007, the Chancellor granted JSU's Motion for Summary Judgment dismissing all claims against all defendants, ruling that the subject property was properly titled to JSU through the State and IHL, and that Plaintiff's sole remedy is a full refund of the money he paid for the tax patent, plus interest. (R. at 272; RE at 5, 7). On the same day, Plaintiff filed a brief, with the Chancery Court which he entitled "The Land Commissioner Brief." (R. 2 at 274).

On June 6, 2007, Plaintiff filed his Motion to Reconsider or Amendment of Final Judgment, and he filed a Motion for Review of Judgment. (R. at 386, 388). A hearing was held on July 30, 2007, and the Chancellor issued a Memorandum Opinion of the Court with findings of fact and conclusions of law. (R. at 394; RE at 7).

A final order was issued on August 8, 2007, wherein the Chancellor reaffirmed the court's earlier decision that JSU through IHL was the proper owner of the subject property. (R. at 398; RE at 5). Thereafter Plaintiff filed a motion for findings and a motion for a discovery conference with the Chancery Court. (R. at 400, 403). Plaintiff filed his Notice of Appeal on September 7, 2007. (R. at 406).

III. SALIENT FACTS CONCERNING ISSUES IN REVIEW

On or about August 28, 2000, the Hinds County Tax Collector conducted a tax sale for the unpaid 1999 ad valorem taxes on the subject property, and when no one purchased the property at said tax sale, it was stricken off to the State of Mississippi. (R. at 35-37, 104, 146-149, 173).²

² In accordance with *Miss. Code Ann. § 27-41-59*, when there are no purchasers at a tax sale, title to property is conveyed to the State of Mississippi, owners of the subject property who failed to pay their taxes (hereinafter "Delinquent Owners") retained a right of redemption which would not expire until two

A year and three months later, on December 19, 2001 (during the Delinquent Owners' redemption period), a Final Judgment (hereinafter "the Condemnation Order") was entered in the Special Court of Eminent Domain (First Judicial District of Hinds County). There, the subject property was condemned and all rights of the Delinquent Owners in the property were conveyed to, and vested in, the DFA for the State of Mississippi. The Delinquent Owners were paid for the appraised value (\$6,250.00) of the subject property. (R., Gen. Exhibit 2; RE at 24). In the Condemnation Order, the Special Court of Eminent Domain specifically provided that: "the real property being condemned herein is for public use and is to be used for Jackson State University, which is a public state University located in the City of Jackson, First Judicial District of Hinds, Mississippi." *Id.* Two days later on December 21, 2001 (still within the Delinquent Owners redemption period), the Condemnation Order was duly recorded in the land records of the Hinds County Chancery Clerk, at Book 5489, Page 960, giving notice to the entire world of the ownership status of the subject property. *Id.*

On or about December 3, 2003, DFA conveyed the subject property by Special Warranty Deed to the State of Mississippi for the use and benefit of IHL. (R., Gen. Exhibit 3; RE at 30). This conveyance instrument was approved and executed by the Secretary of State on February 12, 2003, and approved and executed by Governor Ronnie Musgrove on or before November 18, 2003. *Id.* It was duly recorded in the land records of the Hinds County Chancery Clerk at Book 5938, beginning at Page 369, on December 8, 2003. *Id.* It is by this conveyance that IHL through the State acquired the right to hold this property for the use and benefit of JSU. No party has claimed any deficiency in the Special Warranty Deed.

years after the tax sale in accordance with *Article IV, Section 79 of the Constitution of the State of Mississippi* and *Miss. Code Ann. § 27-45-3*. (R. at 179, 197). The Delinquent Owners are Craig M. Pool, Courtney P. Anthony, and the Estate of Catherine N. Grant. (R., Gen. Exhibit 2).

On August 31, 2006, the Secretary of State issued Forfeited Tax Land Patent Number 75182 to Plaintiff in consideration for \$5,695.00 (R., Gen. Exhibit 1; RE at 29). However, the Secretary of State did not provide JSU 30 days advance notice of its intent to sale the subject property by tax patent to Plaintiff prior to this conveyance as required by *Miss. Code Ann. § 29-1-1(4)*.

On or about November 3, 2006, Plaintiff filed suit against JSU, DFA, and the Secretary of State to determine ownership of the property and for damages in an amount of \$48,000. (R. at 1-4). The Chancellor held that the State of Mississippi, the Institutions of Higher Learning and Jackson State University own the property and that Plaintiff's remedy is a refund of the money he paid for the tax patent, plus interest.

IV. SUMMARY OF THE ARGUMENT

IHL, through the State, became the title owner and JSU became the beneficial owner of the subject property in accordance with the 2003 Special Warranty Deed from DFA to IHL, three years prior to any claim of ownership by Plaintiff. Plaintiff's alleged interest in the subject property is derived from a tax patent mistakenly issued by the Secretary of State in 2006. The Secretary of State did not own any interest in the subject property at the time that it allegedly conveyed title to Plaintiff. Therefore, Plaintiff's only remedy is the reimbursement of the money he paid for the tax patent, plus interest.

Additionally, the tax sale of August 28, 2000 (through which Plaintiff claims title), is void because the Chancery Clerk failed to provide statutorily mandated notice of the expiration of the redemptive period to the Delinquent Owners. Moreover, the sale by the Secretary of State to Plaintiff is void because the Secretary of State failed to provide JSU statutorily mandated notice of its intent to convey the subject property to Plaintiff. Assuming *arguendo* that the Secretary of State had a valid property interest in the subject property, Plaintiff's claim still fails

because in title recordation matters, Mississippi is a race-notice state. JSU's property interest is first in time (December 8, 2003) and first in right, and has priority of the later-filed interest of Plaintiff (August 31, 2006).

There is no genuine issue of material fact, and the relevant facts are undisputed. Therefore, this Honorable Court must affirm the Chancellor's ruling in favor of the Defendants.

V. ARGUMENT

A. STANDARD OF REVIEW

This Court's review of grants of summary judgment is *de novo*. The Court steps into the shoes of the lower court and reviews all the evidence to determine if any genuine issues of material fact exist and whether Appellees are entitled to summary judgment as a matter of law. *Mississippi Gaming Comm'n v. Treasured Arts, Inc.*, 699 So. 2d 936 (Miss.1997). Evidentiary matters are viewed in the light most favorable to the non-moving party. *Lamar Corp. v. State Highway Comm'n*, 684 So. 2d 601 (Miss.1996). Where no genuine issue of material fact exists, the law directs a judgment for the moving party, and summary judgment is appropriate. *Miss. R. Civ. P. 56*. If a controverted fact is not outcome-determinative, then it is immaterial and will not prevent the granting of summary judgment. *Sherrod v. United States Fidelity & Guar. Co.*, 518 So. 2d 640, 642 (Miss.1987).

B. PLAINTIFF DOES NOT POSSESS ANY PROPERTY INTEREST IN THE SUBJECT PROPERTY AS JSU THROUGH THE STATE OF MISSISSIPPI AND IHL IS THE RIGHTFUL OWNER

1. JSU Obtained Title to the Subject Property through the Department of Finance and Administration, the State of Mississippi, and the Institutions of Higher Learning Pursuant to a Valid Eminent Domain Proceeding and Special Warranty Deed.

On or about December 21, 2001, the Special Court of Eminent Domain (First Judicial District of Hinds County, Mississippi) entered a Final Judgment (hereinafter “Condemnation Order”) condemning the subject property and vesting and confirming fee simple title in the Department of Finance and Administration, State of Mississippi (DFA) pursuant to *Miss. Code Ann. § 31-11-25*.

The Delinquent Owners were made parties to the proceeding and paid \$6,250.00, the appraised value of the subject property. The Order specially provides that “the real property being condemned herein is for public use and is to be used for Jackson State University, which is a public state University located in the City of Jackson, First Judicial District of Hinds County, Mississippi.” (R., Gen. Exhibit 2; RE at 24). The Condemnation Order further provides that “fee simple ownership of said property shall be vested in plaintiff (DFA) and it may be appropriated to the public use as prayed for in the Complaint.” *Id.*

Thereafter, in accordance with the Condemnation Order, on December 3, 2003, DFA conveyed the subject property to the Board of Trustees for the Institutions of Higher Learning for the use and benefit of Jackson State University by Special Warranty Deed. Said Special Warranty Deed was approved and executed by the Secretary of State and Governor Ronnie Musgrove in accordance with *Miss. Code Ann. § 29-1-1*.

2. The Tax Sale is Void for Failure of the Chancery Clerk to Provide Notice Pursuant to *Miss. Code Ann. § 27-43-3*.

The Secretary of State did not have title to the subject property in 2006, and therefore, could not convey any interest to Plaintiff. A tax sale only conveys inchoate title, meaning a right which has not fully developed, matured, or vested. Title purchased at a tax sale only matures after the notice requirements of *Miss. Code Ann. § 27-43-3* are met and the right of redemption expires unexercised. See *Viking Investments LLC v. Addison Body Shops, Inc. et al.*, 931 So. 2d 639 (Miss.App.2006), *Lawrence v. Rankin*, 870 So. 2d 673 (Miss.App.2004); *Hart v. Catoe*,

390 So. 2d 1001 (Miss. 1980). Since the Chancery Clerk failed to provide the statutory-mandated notice to the Delinquent Owners, their redemption rights were never cut off. Consequently, legal title never vested in the Secretary of State, and therefore the Secretary of State could not convey good title to Plaintiff.

Under *Miss. Code Ann. § 27-43-3*, the record owner of the right of redemption must be given specific notices before expiration of the redemption period. See *Scafide*, Nov. 5, 2004, 2004 Miss. AG LEXIS 358 (stating: “The law is clear that failure to comply with the notice requirements of *Section 27-43-3* voids the tax sale and any tax deed issued to the purchaser at that tax sale”). Since the Hinds County Chancery Clerk failed to provide the record owners with the mandatory notices of redemption, the August 28, 2000 tax sale of the subject property is void, and the Delinquent Owners retained fee simple ownership of the property. See *Lawrence*, 870 So. 2d at 676 (holding: “We must strictly construe sections 27-43-1 and 27-43-3 (Rev. 2002). Failure of the chancery court to file the requisite affidavits renders a tax deed void.”). Through the Condemnation Order issued on December 19, 2001, the property rights of the Delinquent Owners were transferred to DFA for the State.³ The Chancery Clerk did not provide DFA, or any other party, with legal notice as required by the statute.⁴ Consequently, the sale is void.

³ It is undisputed that the Delinquent Owners, as of the date of the condemnation hearing, owned at least a right of redemption and possession in the property. If they owned only the right of possession and redemption, and only these rights passed to DFA, the tax sale would still be void as the Chancery Clerk did not provide legal notice of the right of redemption to any person or entity, whether it be the Delinquent Owners or DFA.

⁴ The whole of the notice attempts made by the Chancery Clerk are as follows: (1) On May 15, 2002, an “Owner’s Notice” was signed by the deputy clerk; (2) On May 29, 2002, the Owner’s Notice was mailed by certified mail to Mrs. John B. Grant, but that letter was returned indicating that it was not deliverable as addressed; (3) On July 11, 2002, a publication was made in the Clarion Ledger newspaper; and (4) On September 10, 2002, the Deputy Clerk filed her Affidavit, which states she made a diligent effort to locate “In re: A. H. Noeninger” by employing such resources as the phone directory, the city tax directory, and some other unstated resource.

The Chancery Clerk failed to meet the following requirements under *Miss. Code Ann. § 27-43-3*: (1) A notice was not issued to the sheriff of the county of the reputed owner; (2) The sheriff did not serve the record owners with personal notice; and (3) A return proof of service was not returned to the Chancery Clerk acknowledging that the record owners were given personal notice. (R. at 213-217; RE at 58-62). See *Viking Invs., LLC*, 931 So. 2d at 682-683 (Miss. Ct. App. 2006); *Lawrence*, 870 So. 2d at 675-676 (Miss. Ct. App. 2004); *Brown v. Riley*, 580 So. 2d 1234, 1237 (Miss. 1991).

3. The Tax Patent Is Void Due to the Failure of the Secretary of State to Follow Mississippi Code Ann. § 29-1-1(4).

The Secretary of State can only convey a tax patent when it possesses the property right or rights it attempts to convey. The Secretary of State must perform all required prerequisites codified in *Miss. Code Ann. § 29-1-1* in order to convey property forfeited for non-payment of taxes. *Section 29-1-1* requires that the Secretary of State provide all state agencies thirty (30) days advance notice of any intent to sell such forfeited property to any individual or private entity so as to first ascertain whether a state agency has a need for the subject land.⁵ *Miss. Code Ann. § 29-1-1(4)* reads as follows:

Before any state-held land is sold to any individual or private entity, thirty (30) days' advance notice of the intended sale shall be provided by the Secretary of State to the State Legislature, to all state agencies and to all governing authorities within the state for the purpose of ascertaining whether an agency or governing authority has a need for the land and for the purpose of ascertaining whether the sale of the land was authorized by law. If no agency or governing authority within the state expresses in writing to the Secretary of State by the end of the thirty-day period a desire to use the land, then the Secretary of State, with the prior approval of the Mississippi Legislature to sell the state-held land, may offer the land for sale to any individual or private entity.

Id. (emphasis added).

⁵ In all candor, the Secretary of State's Office does not interpret § 29-1-1(4) as applying to sales of tax-forfeited property. However, since the Legislature specifically exempted such sales from § 29-1-1(3) and not from § 29-1-1(4), Appellees DFA, IHL and JSU contend that § 29-1-1(4) applies to sales of tax-forfeited property.

The Office of the Secretary of State did not send JSU any notice regarding its disposal or sale of the subject property, and JSU did not otherwise receive such notice prior to the sale. (R. at 201; RE at 63 (Affidavit of Troy A. Stovall)).

4. JSU's Interest in the Property is First In Time and First in Right.

Plaintiff's claim to ownership of the subject property is entirely based on the tax patent which he received on August 31, 2006. Since JSU acquired its interest in and to the subject property on December 8, 2003 (almost three years before this conveyance to Plaintiff), it is clear that JSU is "first in time". Therefore, JSU, through the State and IHL, is the owner of the subject property. The later conveyance to Plaintiff by the Secretary of State is therefore void.

Regardless of the tax patent's validity, the Special Warranty Deed takes precedence over Plaintiff's tax patent. Because there is no operation of law that relates Plaintiff's alleged conveyance by tax patent to any time prior to 2006, JSU is the proper owner of the property in accordance with *Miss. Code Ann. § 89-5-5*, under the Special Warranty Deed filed on December 8, 2003. Section 89-5-5 states:

Every conveyance, covenant, agreement, bond, mortgage, and deed of trust shall take effect, as to all creditors and subsequent purchasers for a valuable consideration without notice, only from the time when delivered to the clerk to be recorded; and *no conveyance, covenant, agreement, bond, mortgage, or deed of trust which is unrecorded or has not been filed for record, shall take precedence over any similar instrument affecting the same property which may be of record*, to the end that with reference to all instruments which may be filed for record under this section, the *priority thereof shall be governed by the priority in time of the filing of the several instruments*, in the absence of actual notice.

Id. (emphasis added).

The plain language of *Miss. Code Ann. § 89-5-5* clearly establishes that JSU's claim to the subject property has priority and "takes precedence over" Plaintiff's later-filed tax patent as a "similar instrument affecting the same property."

C. PLAINTIFF'S LEGAL ARGUMENTS ARE NOT APPLICABLE AND ARE MISPLACED UNDER THE UNDISPUTED FACTS OF THIS CASE

In an attempt to avoid the obvious result of applying the race notice rule, Plaintiff misapplies *Vicksburg Waterworks Co. v. Vicksburg Water Supply Co.*, 80 Miss. 68, 72, 31 So. 535, 535 (1902). Plaintiff argues that *Vicksburg Waterworks* supports his contention that: (1) the date a tax lien attaches to property is set by statute, and (2) that the date of his purchase (August 31, 2006) relates back to the date the tax lien attached to the property. In so arguing, Plaintiff attempts to equate the date that he allegedly purchased the property from the Secretary of State with the date that a tax lien attached to the property (January 1, 1999). However, *Vicksburg Waterworks* does not support this argument.

In *Vicksburg Waterworks*, the Court was asked to construe contract language arising from the sale of real property from Vicksburg Water Supply to Vicksburg Waterworks (by assignment from Crumpler). The contract stated that the Vicksburg Water Supply Company would pay all liabilities that existed as of March 23, 1900. Vicksburg Waterworks paid the taxes on the property for the 1900 tax year and brought suit against Vicksburg Water Supply for reimbursement.

The Court reviewed and interpreted the contract between the parties (Vicksburg Water Supply as vendor and Vicksburg Waterworks as vendee) and held that the statute which fixed the date on which tax liens attached to real property is a liability as contemplated by the parties' agreement. Moreover, that liability relates back by law from September (when the amount of the lien is ascertained) to February 1st (when the lien attaches).

In the case before this Court, the only vendor with whom Plaintiff dealt with is the Secretary of State. Plaintiff, however, has pointed to no contract provision which apportions liability between the seller (the Secretary of State) and purchaser (Plaintiff himself) as in *Vicksburg Waterworks*. Moreover, there were no taxes due as between the Secretary of State

and Plaintiff. To the contrary, any tax lien on the property was extinguished prior to Plaintiff's purchase.⁶ Consequently, there is no prior tax lien date to which Plaintiff can attach his August 31, 2006 purchase of the subject property.

Plaintiff's attempt to relate back his ownership to 1999 or 2000 based upon *Miss. Code Ann. § 27-35-1* (the statute which sets tax lien attachments for January 1st) must, like his reliance on *Vicksburg Waterworks* fail. Any lien against the subject property was extinguished long before Plaintiff acquired any interest in it. Therefore, there was nothing to which Plaintiff's claim of title could "relate back." As soon as a public body acquires property, any ad valorem tax liens against the property are extinguished. *Miller*, February 23, 1995, 1995 Miss. AG LEXIS 62 (Ad valorem tax lien against property is extinguished on the date a public body acquires the property); *Davis v. City of Biloxi*, 184 So. 76, 78 (1938) (acquisition of title by public school extinguished tax assessments against land so that subsequent sale for taxes was ineffective); see also *Griffin*, May 3, 1992 WL 613922 (*Miss. A.G.*); *Eaton*, April 14, 1993, 1993 WL 156840 (*Miss. A.G.*). Despite the fact that the State is exempt from paying ad valorem taxes and that tax liens against the property are extinguished upon the property becoming State-owned, Plaintiff incorrectly argues that the Condemnation Order should be voided because such taxes were not paid by the State. This line of argument, involving statements in the Petition for the Condemnation, was correctly rejected by the Chancellor in that what matters is the Condemnation Order, rather than what the Petition said. (R. at 37-38).

Plaintiff's remaining arguments are arguments made for the first time on appeal and are procedurally barred. See *Canadian National/Illinois Central Railroad Company, A Corporation v. Hall*, 953 So. 2d 1084 (Miss. 2007) (stating that the Supreme Court of

⁶ Once the property was allegedly stricken-off to the Secretary of State's Office by the Hinds County Tax Collector, the tax liability was thereby extinguished. Further, even if the tax liability had not been extinguished after being stricken-off to the Secretary of State, that liability was certainly extinguished by the 2001 Condemnation Order when DFA through the State took ownership of the property.

Mississippi does not entertain arguments made for the first time on appeal as the case must be decided on the facts contained in the record and not on assertions in the brief).

Plaintiff argues that the validity of a tax patent can only be challenged by a court for fraud or mistake. This simply is untrue. Plaintiff cites cases dealing with United States land patents which are obviously not governed by the same authority as Mississippi tax patents. Even if judicial review was limited to instances of fraud or mistake, either the Chancery Clerk's failure to provide statutory notice of the maturing tax sale, or the Secretary of State's issuing a tax patent for property that it does not own by virtue of the nonpayment of taxes, would constitute a mistake.

Plaintiff's bona fide purchaser for value without notice argument is frivolous. It is undisputed that JSU's ownership through IHL was recorded at the Chancery Court when the Special Warranty Deed was filed on December 8, 2003. Moreover, Plaintiff had actual knowledge of JSU's claim of ownership of the property by JSU's possession of the property. See (R. at 3); see also *Bank of Mississippi v. Hollingsworth*, 609 So. 2d 422, 425 (Miss.1992) (the Court held that possession of land by one under claim of title is notice to the world of such claim).

Plaintiff also argues that the Chancellor failed to apply the correct standard for summary judgment because Plaintiff's discovery requests were not answered in writing at the time when the summary judgment for the Defendants was rendered. Plaintiff never demonstrated to the lower court that a continuance would enable him to discover any relevant facts which would preclude summary judgment against him. Furthermore, the question of whether or not a continuance should have been granted by a chancellor is reviewed under the deferential, "abuse of discretion standard." See *Prescott v. Leaf River Forest Products*, 740 So. 2d 301, 307 (Miss. 1999).

Nothing in the rule requires the completion of discovery prior to a summary judgment ruling. *Hosey v. Mediamolle, et al.*, 693 So. 2d 1267 (Miss. App. 2007). The *Hosey* Court explained that “the party resisting summary judgment must present specific facts as to why he cannot oppose the motion and must specifically demonstrate ‘how postponement of a ruling on the motion will enable him, by discovery or other means, to rebut the movant’s showing of the absence of a genuine issue of fact.’” *Id.* at ¶ 5-6. In this case, the Chancellor, after reviewing the discovery requests and fully considering the responses provided by all parties, correctly stated: “But if you (Plaintiff) look at all the exhibits and if you look at the discovery you (Plaintiff) propounded, it doesn’t help you (Plaintiff).” (R. at 40). Hence, the Chancellor did not abuse his authority in that the parties do not and did not dispute the salient facts. Rather, the parties disagree as to the law to be applied to the facts and the dictated outcome under the law.

Plaintiff cites *Eastman, Gardner, & Co., v. Barnes*, 95 Miss. 715, 49 So. 258 (1909), as authority supporting his ownership of the subject property. However, Plaintiff misconstrues that case. Although the State conveys by patent all the title it has of the character described in the patent, it cannot and does not convey title it does not have. The Secretary of State had no title to convey to Plaintiff. Therefore, *Barnes* clearly supports the Chancellors ruling for Defendants.⁷

Plaintiff’s remaining arguments attack the validity of the Condemnation Order. Relying upon *Mississippi Highway Commission v. Casey*, 178 So.2d 859 (Miss.1965), Plaintiff points to

⁷ *Barnes* also answers Plaintiff’s argument that under *Miss. Code Ann. § 29-1-1(1)*, the Land Commissioner or Secretary of State owns all property by every state agency, and by extension, the Secretary of State owns all property owned by every state agency, and by extension the Secretary of State owned the property in the hands of DFA and IHL (for the benefit of JSU) on August 31, 2006 so as to convey the tax patent to Plaintiff. This argument fails for three reasons. First, under the authority of *Barnes*, the tax patent could only convey an interest that the Secretary of State acquired by virtue of the nonpayment of taxes. That liability was clearly extinguished. Secondly, *§ 29-1-1(1)* specifically states “The provisions of this section shall not affect the authority of any agency to use any land held by the agency.” Finally, the Special Warranty Deed clearly indicates that DFA, as an “Agency of the STATE OF MISSISSIPPI” conveyed the subject property to “STATE OF MISSISSIPPI FOR THE USE AND BENEFIT OF THE BOARD OF TRUSTEES OF THE INSTITUTIONS OF HIGHER LEARNING.”

the fact that the Secretary of State was not a party to the eminent domain proceeding. However, these cases are not analogous. In *Casey*, the plaintiff's title to the claimed property matured upon expiration of the delinquent property owner's period of redemption. The Highway Commission condemned the property and did not give the plaintiff in *Casey* notice. In this case, Plaintiff had absolutely no interest in the subject property at the time of the condemnation proceeding (December 19, 2001). Whatever interest he arguably had did not come into existence until August 31, 2006.

Because the Plaintiff did not possess any interest in the subject property on December 18, 2001, Plaintiff lacks standing to attack the validity of the Condemnation Order on due process grounds. See *Mississippi High School Activities Association, Inc., et al., v. Farris, et al.*, 501 So.2d 393 (Miss.1987).

In addition to Plaintiff's lack of standing to attack the Condemnation Order on due process grounds, the question of whether the Secretary of State was a necessary party to the Condemnation hearing is moot because the tax sale never matured in favor of the Secretary of State. That void tax sale could not and did not transfer any rights to the Secretary of State. Therefore, the Secretary of State was not entitled to any notice of the proceeding.

Finally, Plaintiff argues that the Condemnation Order should be voided because the Secretary of State did not sign it, citing *Miss. Code Ann. § 29-1-1(3)*. "Conveyance" as defined by *Section 29-1-1(3)* limits the need for the Secretary of State's signature to sales or to purchases of land. This statute should not be construed to apply to transfers of property interests by judicial decree or order because (a) it does not explicitly so state and (b) such an interpretation would cause an unconstitutional separation of powers problem: it would allow a veto by the executive branch over action taken by the judiciary. Plaintiff's application of this statute to judicial orders would void any opinion of this Court which involves a conveyance of State property that was not

thereafter signed by the Secretary of State's Office. Therefore, *Miss. Code § 29-1-1(3)* should not be read to apply to property transfers by judicial orders.

None of Plaintiff's erroneous legal arguments create any material factual dispute. Under the relatively few relevant facts of this case, all of which are undisputed, the Chancellor was correct in granting Defendants' motions and by awarding summary judgment in their favor.

V. CONCLUSION

The uncontested facts clearly demonstrate that the Special Warranty Deed, which conveys the subject property to the State of Mississippi for the use and benefit of the Board of Trustees of the Institutions of Higher Learning (and Jackson State University) was executed and filed in the Chancery Court of Hinds County on December 8, 2003. It is also uncontested that Plaintiff's tax patent was not issued and filed until August 31, 2006. Therefore, in accordance with applicable Mississippi law, title is proper in IHL, through the State, for the benefit and use of Jackson State University. Moreover, the Secretary of State never possessed any interest in the subject property which it could convey to Plaintiff by virtue of the tax patent.

Based on the proper application of the law to the undisputed facts in this case, the Chancellor correctly granted summary judgment in favor of the state (DFA), IHL and JSU, and this Court should affirm that decision.

Respectfully Submitted,

JACKSON STATE UNIVERSITY, APPELLEE
ATTORNEYS FOR APPELLEE JSU

Regina Quinn, [REDACTED]
David S. Buford, [REDACTED]
OFFICE OF THE GENERAL COUNSEL
JACKSON STATE UNIVERSITY
Post Office Box 17239
Jackson, Mississippi 39217-0239
Telephone: (601) 979-3950
Facsimile: (601) 979-6800

BY:

REGINA R. QUINN, [REDACTED]

BY:

DAVID S. BUFORD, [REDACTED]

Respectfully Submitted,

DEPARTMENT OF FINANCE AND ADMINISTRATION,
APPELLEE

ATTORNEY FOR APPELLEE DFA

BY: Sarah E. Berry
SARAH E. BERRY


JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI

Sarah E. Berry, MBN 9483
Special Assistant Attorney General
Department of Finance and Administration
Post Office Box 267
Jackson, Mississippi 39205-0267
Telephone: (601) 359-3701
Facsimile: (601) 359-2470

CERTIFICATE OF SERVICE

I, SARAH E. BERRY, counsel for the Department of Finance and Administration, do hereby certify that I have this day joined in with counsel for Jackson State University to cause delivery of this Joint Brief of Appellees and Record Excerpts to all required parties.

SO CERTIFIED this the 19th day of February, 2008.

Sarah E. Berry
SARAH E. BERRY

CERTIFICATE OF SERVICE


I hereby certify that I have this day delivered by first class U.S. mail a true and correct copy of the above and foregoing Jackson State University's Response to Ricky Smith's Counter Motion for Partial Summary Judgment to:

Honorable J. Dewayne Thomas
Post Office Box 686
Jackson, MS 39205-0686

Ricky Smith, pro se
Post Office Box 68414
Jackson, MS 39286

Nancy Morse Parks, Esq.
Office of the Attorney General
Mississippi Secretary of State
Post Office Box 220
Jackson, MS 39205-0220

This the 19th day of February, 2008



David S. Buford, Esq.