

VS.

CAUSE NO. 2007-~~TS~~-01552

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JACKSON STATE UNIVERSITY,
SECRETARY OF STATE OF THE STATE OF MISSISSIPPI,
DEPARTMENT OF FINANCE AND ADINISTARTION

APPELLEES

APPELLANT'S OPENING BRIEF

On Appeal from the Judgment of the Chancery Court of the Fifth Judicial District of
Hinds County, Mississippi.

HONORABLE J. DEWAYNE THOMAS, CHANCELLOR

FILED

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SUPREME COURT
COURT OF APPEALS

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VS.

CAUSE NO. 2007-CA-01552

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

CERTIFICATE OF INTERESTED PARTIES

THE UNDERSIGNED Pro Se of record certifies that the following listed persons and/or entities have an interest in the outcome of this case. These representatives are made in order that the Justices of the Supreme Court and Judges of the Court of Appeals may evaluate possible disqualifications or recusal.

1. Ricky Smith, Pro Se
2. Jackson State University
3. Honorable J. Dewayne Thomas, Presiding Chancellor at Trial Level
4. Honorable Regina Quinn, Esquire for Jackson State University
5. Honorable David S. Buford, Counsel for Jackson State University
6. Secretary of State of the State of Mississippi
7. Honorable Nancy Morse Parkes, Esquire for the Secretary of State of the State of Mississippi
8. Department of Finance and Administration
9. Honorable Sarah E. Berry, Esquire for the Department of Finance and Administration

A handwritten signature in black ink, appearing to read 'Ricky Smith', is written over a horizontal line.

Ricky Smith
Pro Se

VS.

CAUSE NO. 2007-CA-12345

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

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whether the security of land or an estate is
all the title it has of the character described in the patent, if the conveyance is of a tax title
and whether a fee simple title has precedence over that tax land patent.

This case is submitted to the Mississippi Supreme Court to determine whether the Chancellor improperly construed the statutory language set forth by Mississippi Code Annotated § 29-1-1 (1972), as amended, by declaring a tax land patent issued by the Secretary of State of the State of Mississippi conveyed no character described in the patent, so that the tax land patent is null and void, and that a fee simple title obtained through Mississippi Code Annotated § 31-11-25 (1972), as amended, has precedence over the tax land patent.

III. Course of Proceedings and Disposition of the Courts Below

On the 03rd day of November, 2006, Ricky Smith, Pro Se, Plaintiff, filed, in Chancery Court of the Fifth Judicial District of Hinds County, Mississippi, its Complaint to confirm Tax Title against Jackson State University, the Department of Finance and Administration, and the Secretary of State of the State of Mississippi. [R, 1]

Defendant the Secretary of State of the State of Mississippi filed its Answer to the Complaint on the 16th day of March, 2007, the Department of Finance and Administration filed their Answers to the Complaint on the 26th day of March, 2007, Defendant Jackson State University filed its Answer to the Complaint and its Motion for Summary Judgment on the 27th day of April, 2007. [R, 30, 42, 63, and 103]

and Administration, and the Secretary of State of the State of Mississippi and request for documentations to Jackson State University and the Department of Finance and Administration. [R, 152]

On the 11th day of May, 2007, Plaintiff filed his Response to Defendant Jackson State University Motion to Dismiss Complaint or in the Alternative, Motion for Summary Judgment and Plaintiff's Counter Motion for Partial Summary Judgment. [R, 171]

On the 18th of May, 2007, Defendant Jackson State University filed its Response to Plaintiff's Response to Defendant Jackson State University Motion for Summary Judgment and Plaintiff's Counter Motion for Partial Summary Judgment. [R, 189]

On the 21st day of May, 2007, a hearing was held on the Defendant Jackson State University Motion for Summary Judgment and Plaintiff's Ricky Smith Counter Motion for Partial Summary Judgment. [R, (not in record)]

On the 29th day of May, 2007, Defendant Secretary of State of the State of Mississippi filed its Findings of Fact and Conclusions of Law. [R, (not in record)]

On the 31st day of May, 2007, Defendant Jackson State University filed its Findings of Facts and Conclusions of Law. [R, 207]

On the 01st day of June, 2007, the Court entered a Memorandum Opinion and Final Order granting Defendant Jackson State University Motion for Summary Judgment and denying and dismissing Plaintiff Ricky Smith Complaint and

Number 75162 null and void pursuant to Wisconsin
(1972), as amended. [R, 267]

On the 01st day of June, 21007, Plaintiff Ricky Smith filed the ~~Ida~~
Commissioner Brief [R, 274]

On the 06th day of June, 2007, Plaintiff Ricky Smith filed his Motion for
Review of Judgment. [R, 386]

On the 06th day of June, 2007, Plaintiff Ricky Smith filed his Motion to
Reconsider or Amendment of Final Judgment. [R, 388]

On the 30th day of July, 2007, a hearing was held on Plaintiff' Ricky Smith's
Motion for Review of Judgment and Plaintiff's Motion to Reconsider or
Amendment of Final Judgment. [R, 392]

On the 08th day of August, 2007, the Court Reaffirmed its Memorandum
Opinion and Final Order it entered on June 01, 2007. [R, 394]

On the 17th day of August, 2007, Plaintiff Ricky Smith filed his Motion for
Findings by the Court. [R, 400]

On the 30th day of August, 2007, Plaintiff Ricky Smith filed his Motion for
Discovery Conference. [R, 403]

On the 07th day of September, 2007, Appellant Ricky Smith filed his timely
Notice of Appeal [R, 406]

III. Statement of Facts

estate of Alberta N. Pool was probated in Hinds County Chancery Court under cause number P-95-468 and closed on the 22nd day of August, 1996. The estate of Catherine N. Grant was probated in Pikes County Chancery Court under cause number 2000-516 and closed on the 09 day of August; 2001.[R, 291-300] The Department of Finance and Administration gained its interest in the subject property on the 12th day of December, 2001 through an Eminent Domain proceeding under Civil Case number 01-3143-COV. [Hearing Exhibit 4]

Amidst those dates the Hinds County Tax Collector conducted a sale for the unpaid 1999 Ad Valorem Taxes on Parcel number 146-5, bearing the tax sale number 99-568 and said property was struck to the State of Mississippi. [R, 146-150]

On 03rd day of November, 2006, Ricky Smith, Pro Se, Appellant, filed, in Chancery Court of the Fifth Judicial District of Hinds County, Mississippi, its Complaint to confirm Tax Title and included Jackson State University, the Department of Finance and Administration, and the Secretary of State of the State of Mississippi as Defendants. *Id.*

The subject property was lawfully included on the chancery Clerk's list of lands to the State by a Certificate dated September 01, 2002. [R, 146-150] On or about the 03rd day of December, 2003 the Defendant Department of Finance and Administration executed a Special Warranty Deed for the State of Mississippi for

On or about the 20th day of April, 2005 Forfeited Land Patent number 75182 was filed with the Hinds County Chancery Clerk's Office in Book 6261 on Page 858. Subsequently, Tax Land Patent number 75182 was filed again with the Hinds County Chancery Clerk's Office in Book 6571 on Page 83 on the 31st day off August, 2006. [Hearing Exhibit 1]

On the 03rd day of November, 2006, Pro Se, Ricky filed a Complaint for Clearing of Title and Compensation for Rent against Defendants Jackson State University, the Department of Finance and Administration, and the Secretary of State of the State of Mississippi. *Id.* Defendants Jackson State University, the Department of Finance and Administration, and the Secretary of State of the State of Mississippi individually filed their Answers to the Complaint. *Id.* Jackson State University filed a Motion for Summary Judgment on the 27th day of April, 2007. Plaintiff filed his response to Jackson State University's Motion for Summary Judgment and filed his Motion for Partial Summary Judgment. *Id.*

On the 08th day of May, 2007, Plaintiff Ricky Smith filed his request for Discovery to include Interrogatories to Defendants Jackson State University, the Department of Finance and Administration, and the Secretary of State of the State of Mississippi and Production of Documents request to Defendants Jackson State University and the Department of Finance and Administration. *Id.*

Counter Motion for Partial Summary Judgment. The Honorable J. Dewayne Thomas ask all parties to supply Briefs including Findings of Facts and Conclusion of Law in support of their argument to be submitted no later than the 01st day of June, 2007 and Chancellor would make a determination no later than 10 days afterwards.

On the 01st day of June, 2007 the Honorable Chancellor J. Dewayne Thomas entered a Memorandum Opinion and Final Order granting Defendant Jackson State University Motion for Summary Judgment and denying and dismissing Plaintiff Ricky Smith Complaint and Counter Motion for Partial Summary Judgment, declaring the Tax Land Patent Number 75182 null and void pursuant to Mississippi Code Annotated § 29-1-1 (1972), as amended. *Id.*

On the 06th day of June, 2007, Plaintiff Ricky Smith filed a Motion to for Review and a Motion to Reconsider or Amendment of Final Judgment, in which Plaintiff Ricky Smith ask the Court to consider all documents before making Reconsideration to its Memorandum Opinion and Final Judgment. *Id.*

On the 30th day of July, 2007, a hearing to Reconsider or Amendment of Final Order was held on the 30th day of July, 2007, in which only one Request for Discovery was honored by the Secretary of State of the State of Mississippi on the day of the hearing. [Hearing Exhibit 8]

On August 08, 2007, the Court reaffirmed its Memorandum Opinion and Final Order it entered on June 01, 2007. *Id.*

sale of Forfeited Tax Lands of the State of Mississippi, when said lands are held by the State of Mississippi and the necessary requirements by law in such cases. If the State of Mississippi issues a Tax Land Patent pursuant to Mississippi Code Annotated § 29-1-1 et seq 1972 as amended, the Tax Land Patent is evidence that the patentee has complied with the requirements of Mississippi Code Annotated § 29-1-1 et seq 1972 as amended.

Mississippi Code Annotated § 29-1-1 et seq 1972 as amended, provides that the Secretary of State, under the general direction of the Governor and as authorized by law, shall sell and convey the public lands in the manner and on the terms provided herein for the several classes thereof; he shall perform all the administrative and executive duties appertaining to the selection, location, surveying, platting, listing, and registering these lands or otherwise concerning them; ... (emphasis added).

In case sub judice, the Chancellor found that the subject tax land patent was void because the Department of Finance and Administration instituted a valid eminent domain proceeding and fully complied with the eminent domain statute, that the Secretary of State had no authority to sell the subject property, and as a result the Secretary of State conveyed no such title as the State had acquired through the forfeiture of such land for non-payment of taxes. The Plaintiff asserts that the Chancellor's ruling is in error for the following reasons stated below.

First, Rule 56 of Mississippi Rules of Civil Procedure provides that summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show no genuine issue as to any

695 (Miss. 1996). Compliance to this aspect of summary judgment and other aspects were not met.

Second, in the case of *Sweatt v. Corcoran*, 37 Miss. 513 (Miss. 1859), the Mississippi Supreme Court recognized that a patent issued by the State is the highest evidence of title; and in a court of law is of itself evidence of the due performance of every prerequisite to its issuance and cannot be impeached except for fraud or mistake. Therefore patent number 75182 should be valid as the Plaintiff strictly complied with Mississippi Code Annotated § 29-1-1 et seq 1972 as amended.

Third, in the case of *Eastman, Gardner & Company v. Barnes*, 95 Miss. 715, 49 So. 258 (1909), the Mississippi Supreme Court has stated: “The State conveys by its patent all the title it has of the character described in the patent only, but does not convey any other or different title. If the conveyance is of a tax title, the patent passes all the title the State has of the character of title, but of no other.”

Fourth, Rule 19 of the Mississippi Rules of Civil Procedure provides that all parties shall be joined. The rule specifically states, “A person who is subject to the jurisdiction of the court shall be joined as a party in the action if: (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed

Fifth, pursuant to Mississippi Code Annotated § 29-1-1 et seq 1972 as amended, the Secretary of State is required to sign all conveyances of all state-held land and certain criteria is needed to be met in order for eminent domain proceeding to be lawful. The Mississippi Code Annotated § 29-1-1 et seq 1972 as amended specifically states: "Failure to obtain legislative approval pursuant to subsection (4) of this section and the signature of the Secretary of State on any conveyance regarding the sale or purchase of lands for the state including any agency, board or commission thereof, shall render the attempted sale or purchase of lands void." The Secretary of state was not notified properly of the purchase and other requirements pursuant to Mississippi Code Annotated § 31-11-25 et seq 1972 as amended.

Sixth, a condemner must determine at his peril the names of the owner and other persons having interest in or lien on the premises sought to be condemned and a party is bound by allegations or admissions in his own pleadings.

In considering challenges to the findings of a Chancellor, Appellate Courts employ a deferential standard of review. Accordingly, Appellate Courts will not reverse a Chancellor's findings unless they are manifestly or clearly erroneous or unless an erroneous legal standard was applied. *Southerland v. Southerland*, 875 So. 2d 204, 206 (¶5) (Miss. 2004); *Fisher v. Fisher*, 771 So. 2d 364, 3657 (¶8) (Miss. 2000); *Chamblee v. Chamblee*, 637 So. 2d 850, 859 (Miss. 19994).

I. THE CHANCELLOR FAILED TO APPLY THE STANDARD OF SUMMARY JUDGMENT, AS THE ENTIRE DISCOVERY WAS NOT SUBMITTED TO INCLUDE THE PRODUCTION OF DOCUMENTS AND ANSWERS TO THE INTERROGATORIES.

All of the facts in the case *sub judice* were not presented so that the Chancellor could make a thorough and fair ruling consistent with prior caselaw. So as to accurately convey the necessary standard for a summary judgment, Rule 56 of the Mississippi Rules of Civil Procedure is recited in its pertinent part as follows:

(c) Motion and Proceedings Thereon. The motion shall be served at least ten days before the time fixed for the hearing. The adverse party prior to the day of the hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone, although there is a genuine issue as to the amount of damages.

only be rendered if the pleadings, depositions, and...
on file...show no genuine issue as to any material fact. The admissions on file show that
neither the Department of Finance and Administration and Jackson State University
applied for transfer or purchase of the tax lands as prescribed by law. [R, 11, 12]
According to Mississippi Code Annotated § 29-1-21 et seq 1972 as amended, "The
Secretary of State, with the approval of the Governor, may sell the tax lands in the
manner provided in this chapter, at such prices and under such terms and conditions as
the Secretary of State with the approval of the Governor may fix, subject to the
limitations imposed in this chapter, or the Secretary of State, with the approval of the
Governor, may transfer any of the tax lands to any other state agency, county,
municipality or political subdivision of the state. Such agency or subdivision then may
retain or dispose of those lands as provided by law. If a state agency, county,
municipality, or other political subdivision of the state, has applied for transfer or
purchase of the tax lands, it shall have priority over all other applicants except the
original owner, his heirs or assigns." In addition, Mississippi Code Annotated § 29-1-1 et
seq 1972 as amended provides, "(11) Subsections (3), (4), (5) and (6) of this section shall
not apply to sales or purchases of land when the Legislature expressly authorizes or
directs a state agency to sell, purchase or lease-purchase a specifically described
property. However, when the Legislature authorizes a state agency to sell or otherwise
convey specifically described real property to another state agency or other entity such as
a county, municipality, economic development district created under Section 19-5-99 or
similar entity, without providing that the conveyance may not be made for less than the

property must make the following determinations before conveying ---

(a) That the state agency or other entity to which the proposed conveyance is to be made has an immediate need for the property;

(b) That there are quantifiable benefits that will inure to the state agency or other entity to which the proposed conveyance is to be made which outweigh any quantifiable costs to the state agency authorized to make the conveyance; and

(c) That the state agency or other entity to which the proposed conveyance is to be made lacks available funds to pay fair market value for the property. If the state agency authorized to convey such property fails to make such determinations, then it shall not convey the property for less than the fair market value of the property.” Other material issues are present that the Plaintiff will present later that would require a trial for the case *sub judice*. Consequently, the standard was not applied as summary judgment is a powerful tool which “should be used wisely and sparingly.” *Martin v. Simmons*, 571 So. 2d 254, 258 (Miss. 1990). Furthermore, in judging evidence at the summary judgment stage, the court does not make credibility determinations or weigh conflicting evidence. Rather, it draws all inferences in the light most favorable to the nonmoving party. See *T.W. Electric Service, Inc. v. Pacific Electric Contractors Ass’n*, 809 F.2d. 626, 630-31 (9th Cir. 1987). All of the evidence was not presented and the evidence that was warrants further review by trial and there is no law that supports a summary judgment.

**II. THE CHANCELLOR’S FINDINGS WERE IN ERROR, AS THE
ISSUANCE OF A TAX LAND PATENT BY THE SECRETARY OF
STATE OF THE STATE OF MISSISSIPPI SHOWS THAT ALL
PREREQUISITES WERE MET AND THAT A PATENT’S ISSUANCE**

In the case of Nathan A. Sweatt v. William W. Corcoran, 37 Miss. 513 (Miss. 1859); the High Court has found that "A patent for public land is the highest evidence of title; and in a court of law is of itself evidence of the due performance of every prerequisite to its issuance; and cannot be impeached except for fraud or mistake." See Bledsoe v. Doe ex dem. Little, 4 How. Miss. Rep. 13; Carter v. Spencer, Id. 42; 24 Miss. Rep. 118; Harris v. Mc Kissack, 34 Id. 464. "A land patent from the United States is conclusive in an action of ejectment: 13 Peters, 436, and authorities above; and cannot be attacked collaterally unless void, and will not be declared void merely because the evidence to authorize its issuance is deemed insufficient by the court. 16 Ohio Rep. 61, and authorities above." Furthermore, as stated in Nathan A. Sweatt v. William W. Corcoran, 37 Miss. 513 (Miss. 1859), "And it has been held that a patent alone passes title from the United States. 13 Peters, 498. And this court has held that a patent will prevail over a certificate of entry. 9 S. & M. 130; 12 S. & M. 659. And a certificate is not the highest evidence of title, and is only intended to be used where the patent has not been obtained. 32 Miss. 645. Therefore, the patent in this case must prevail." C.J. Smith delivered the opinion of the court when he said, "And it is settled in this court that a patent for land emanating from the government of the United States is the highest evidence of title; and in a court of law is evidence of the due performance of every prerequisite to its issuance, and cannot be questioned either in a court of law or equity, except upon the ground of fraud or mistake." See Bledsoe v. Doe ex dem. Little, 4 How. Miss. Rep. 13; Carter v. Spencer, Id. 42; 24 Miss. Rep. 118; Harris v. Mc Kissack, 34 Id.

certified to the State of Mississippi for unpaid taxes. The Secretary of State of Mississippi (the Land Commissioner) is the only agency of the State of Mississippi vested with the power to sale specific lands i.e. forfeited tax lands. [Hearing Exhibit 8]

In the case of Bruce et. al. v. Jones, 78 So. 9, 117 Miss. 207 this Court has found, "The law providing that the commissioner had the power of sale, and that a report of the sale spread upon the minutes should be received as evidence in the courts of the things therein recited, we think the title of the state to this land passed, and is sufficient proof of that fact. Clements v. Anderson, 46 Miss. 581; Jackson v. Dilworth, 39 Miss. 772; Green v. State, 56 Miss. 774-in which cases it was held that the act of March 16, 1852 (Laws 1852, c. 14), conveyed a vested right to the counties in which the land was situated, and the purchasers there-under had a vested right which the Legislature could not disturb. It follows, then, that a conveyance thereafter by the state to the appellants, the vendors in the chain of title, was void. The state, having parted with its title by this act and by the act of the commissioner, could not thereafter divest title out of its vendee by requiring such grantee to file proof of such fact with an officer of the state, and the acts referred to in the brief of appellant cannot have the effect of voiding this title. [3,4] Certain it is that the act conferred a perfect title, and as this is a suit in equity the title of complaints is sufficient in the absence of proof of failure of the purchaser to comply with the act, or that the terms of the act were not complied with by the purchaser. The equitable title having passed, and the purchaser being entitled to have a patent issue, was sufficient to make the land taxable, and the tax sale would confer title to the tax purchaser. 27 Amer.

wit, the minutes of the board of police of Harrison county. We therefore think the chancellor did not err in confirming the title, and the decree is affirmed." The theme of a patent being the highest evidence of ownership is well established throughout caselaw and additional proof of that fact is evident in *Edward Hines Yellow Pine Trustees v. State*. "[1] In considering the questions involved it will be well to have in mind certain well-established principles with reference to the construction of land patents by the federal and state governments. A patent to land constituting part of the public domain by the sovereign is the very highest evidence of title. The federal government is the source from which all titles are derived (except the lands in the original thirteen states), and when through its properly constituted officers it grants a part of its public domain there can be no higher source of ownership. *Carter v. Spencer*, 4 How. 42; 34 Am. Dec. 106, *Sweatt v. Corcoran*, 37 Miss. 516; *Bledsoe v. Little*, 4 How. 13; 22 R.C. L. p. 270, 271 §33. [2] Such a patent carries with it the presumption that all the legal prerequisites necessary to its issuance have been complied with; the presumption that the officers charged with executing land grants have performed their duties in regard to the several acts to be done by them. *Harris v. McKissack*, 34 Miss. 464; *Surget v. Little*, 24 Miss. 118, *Sweatt v. Corcoran*, *supra*; *Bledsoe v. Little*, *supra*; *Carter v. Spencer*, *supra*. [3] A patent to land issued by the sovereign cannot be questioned either in a court of law or equity, except on the ground of fraud or mistake. *Carter v. Spencer*, *supra*; *Sweatt v. Corcoran*, *supra*. In the case of *State ex rel. McCullen, State Land Com'r, v. Sproles et al.* it is stated that: "[5] It is unnecessary that we discuss the relative force of the

the presumption to be indulged on account of the recitals in the patent.

that the land was thereafter certified promptly by the Land Commissioner to the chancery clerk and local tax assessor as being thenceforth subject to taxation as private property.

We prefer to base the decision here upon the equities of the present claimants as innocent purchasers, which arise from the settled law that a patent is the highest evidence of title, and is affirmative evidence that all prerequisites have been complied with, as was expressly held in the case of *Carter v. Spencer*, 4 How. 42, 34 Am. Dec. 106; *Edward Hines Yellow Pine Trustees et al. V. State*, 133 Miss. 334, 97 So. 552; *Id.*, 134 Miss. 533, 98 So. 158; and *State v. Butler*, 197 Miss. 218, 21 So. 2d 650, 653. Moreover, in the case of *Colorado Coal & Iron Co. et al. v. United States*, 123 U.S. 307, 8 S. Ct. 131, 133, 31 L.Ed. 182, where sixty-one land patents for land in Colorado had been obtained from the federal government through false and fraudulent applications, and where the lands were later acquired by innocent purchasers, the Court said: "But it is not such a fraud as prevents the passing of the legal title by the patents. It follows that, to a bill in equity to cancel the patents on these grounds alone, the defense of bona fide purchaser for value without notice is perfect" See also *Maxwell Land-Grant case*, *United States v. Maxwell Land Grant Co.*, 121 U.S. 325, 379, 381, 7 S. Ct. 1015, 30 L. Ed. 949 to 959, inclusive, and Section 4110, Code 1942, as to rights of innocent purchasers for value without notice.

III. THE CHANCELLOR'S FINDINGS WERE IN ERROR, AS THE SECRETARY OF STATE OF THE STATE OF MISSISSIPPI, CONVEYED THROUGH IT'S PATENT ALL THE CHARACTER IT POSSESSED TO PARCEL NUMBER 146-5. IF THE CONVEYANCE THROUGH THE PATENT PASSES ALL THE TITLE THE

In the Chancellor's Memorandum Opinion of the Court, the case of Eastman, Gardner & Co. v. Barnes is heavily relied upon in the declaration of Tax Land Patent Number 75182 to be null and void. The Chancellor has stated under the **Conclusion of Law** section that, "Pursuant to Mississippi Code Annotated Section 29-1-1, et. seq. (1972), as amended, the Secretary of State by virtue of a Forfeited Tax Land Patent conveys only such title as the State has acquired through the forfeiture of such land for non-payment of taxes. The Secretary of State makes no representation or warranties as to title in a Forfeited Tax Land Patent and conveys only such title as the State of Mississippi acquired through the tax forfeiture." Furthermore, the Chancellor has found under the **Findings of Facts** section that the Secretary of State of the State of Mississippi (the Land Commissioner) had no authority to sell the subject property, "As a result, our Secretary of State on August 31, 2006, had no authority and no legal right to sale or convey the subject property to the Plaintiff, Ricky Smith." However, the case *sub judice* deals with a tax title and in the case of Eastman, Gardner, & Co. v. Barnes this court has said, "If the conveyance is of a tax title, the patent passes all the title the state has of that character of title, but of no other. If we were to adopt any other view it would destroy the scheme outlined by the statute for the separate classification and dealing with various kinds of land owned by the state." The case of Eastman, Gardner, & Co. v. Barnes dealt with the issuance of two kinds of patents, a swamp land patent and a tax land patent. Eventually, the state honored the tax land patent; "since it was only a tax title which the state had, this patent conveyed the true title, nor can the rights of Eastman, Gardner, & Co. be in any way affected by reason of the fact that they knew that appellee had obtained a patent to

the State of Mississippi was well within his right to sell the subject property,

lawfully without error. Pursuant to Mississippi Code Annotated § 29-1-1 et seq 1972 as amended, in its pertinent part states that "(2) The Secretary of State, under the general direction of the Governor and as authorized by law, shall sell and convey the public lands in the manner and on the terms provided herein for the several classes thereof; he shall perform all the administrative and executive duties appertaining to the selection, location, surveying, platting, listing, and registering these lands or otherwise concerning them; and he shall investigate the status of the various "percent" funds accrued and accruing to the state from the sale of lands by the United States, and shall collect and pay the funds into the treasury in the manner provided by law." The Jackson State University could use the subject property; conversely, the property is title in the name of the State of Mississippi and under the control of the Land Commissioner as stated in Mississippi Code Annotated § 29-1-1 et seq 1972 as amended, in its pertinent part, "(1) Except as otherwise provided in subsections (7), * * * (8) and (9) of this section, the title to all lands held by any agency of the State of Mississippi which were acquired solely by the use of funds appropriated by the state shall appear on all deeds and land records under the name of the "State of Mississippi." For the purpose of this section, the term "agency" shall be defined as set forth in Section 31-7-1(a). The provisions of this section shall not affect the authority of any agency to use any land held by the agency. No assets or property of the Public Employees' Retirement System of Mississippi shall be transferred in violation of Section 272A of the Mississippi Constitution of 1890. Before September 1, 1993, each shall inventory any state-held lands which were acquired solely by the use of

agency shall execute quitclaim deeds and any other

name and title of the property to the State of Mississippi.”

IV. THE CHANCELLOR’S FINDINGS WERE IN ERROR, AS THE EMINENT DOMAIN FINAL ORDER SHOULD HAVE BEEN VOIDED DUE TO THE FACT THAT THE SECRETARY OF STATE OF THE STATE OF MISSISSIPPI SHOULD HAVE BEEN A PARTY TO THE ACTION SINCE SECRETARY OF STATE WAS IN POSSESSION OF THE PERFECT TITLE.

In the Chancellor’s Final Order §3, he has stated: “DFA instituted a valid eminent domain proceeding and fully complied with the eminent domain statute. A Final Judgment and Condemnation Order were issued to DFA by Special Court of Eminent Domain on December 19, 2001 which vested and confirmed fee simple title to the subject property in DFA.” Nevertheless, the perfect or true title rested with the Secretary of State of the State of Mississippi. Therefore, the Secretary of State was a necessary party to the eminent domain proceedings and as a result the confirmation of title was not achieved. In the case of Mississippi State Highway Commission v. O. L. Casey, the Supreme Court held that where property was sold for taxes and tax collector’s list had been filed with chancery clerk and recorded long prior to commencement of, and entry of judgment in, eminent domain action, tax sale purchaser was necessary party to eminent domain proceeding. “[1] In the present case, the property was sold for taxes on September 18, 1961, and the tax collector’s list had been filed with the chancery clerk and the same had been recorded long prior to the commencement of the eminent domain action on May 7, 1963. An examination of the records would have disclosed the fact of the tax sale, the name of the purchaser, and that he was a necessary party to the proceeding to condemn.

Hinds County Tax Collector conducted a sale for the unpaid 1999 Ad Valorem Taxes on Parcel #146-5, bearing the tax sale number 99-568 and said property was struck off to the State of Mississippi. This fact was duly noted in the original eminent domain condemnation complaint. [R, 17-21] The original condemnation order was filed on the 12th of June, 2001 and the entry of judgment was entered on or about the 19th day of December, 2001. In *Seward v. Dogan*, 198 Miss. 419, 435, 21 So.2d 292, 294 (1945), the opinion, in pointing out the difference between the tax collector's list and the clerk's deed said: "The difference is that the tax collector's list vests in the purchaser a perfect title, without the right of possession, subject to redemption, and the clerk's deed vest in the purchaser a perfect title with the right of immediate possession, redemption having lapsed." In *Seward v. Dogan*, supra, the opinion, 198 Miss. At 438, 21 So.2d at 295 held that "[r]ights in land may be affected and effected without being accompanied by possession." "Clearly Casey not only had an interest in the property, but such also as entitled him to be recognized as a party in the eminent domain proceedings", *Mississippi State Highway Commission v. O. L. Casey*, supra. In the case of *W.E. New v. State Highway Commission of Mississippi*, 297 So.2d 821 (1974) has stated: "We are of the opinion that the Legislature intended to set out in detail the method of acquiring property by eminent domain; that the requirement of the law that all parties of interest be made parties and be duly notified by proper process is not directory, but is part of the procedure and must be strictly followed. *Mississippi Power Company v. Leggett*, 197 So.2d 475 (Miss. 1967.)" In fact, the Rule 19 of the Mississippi Rules of Civil Procedure requires

Persons to Be Joined if Feasible. A person who is subject to the jurisdiction of the court

shall be joined as a party in the action if:

- (1) in his absence complete relief cannot be accorded among those already parties, or
- (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.” Also, in *Mississippi State Highway Commission v. West et al* (1938), states, “that a condemner must determine at his peril the names of the owner and other person having interest in or lien on premises sought to be condemned.”

Additionally, a strict examination of the Eminent Domain statute would reveal that other errors were made. In particular, pursuant to Mississippi Code Annotated Section 31-11-25, et. seq. (1972), as amended, states: “The office of general services with the approval of the public procurement review board shall have the power and authority to acquire in its own name, or in the name of such other agency or instrumentality in the state of Mississippi as it may deem proper, by purchase, contribution or otherwise, all land and real property which shall be necessary and desirable in connection with the development or expansion of any state institution or public agency of this state upon any real property adjacent to or contiguous to such institution or agency or in connection with any project under the supervision of said office of general services for the construction, repair, remodeling, renovating, or making additions to any building structure or other facility and the office of general services is required or authorized by law to construct, repair,

with the owner or owners of any such land or real property which is

desirable for the public use in connection with any such project, the office of general services shall have the power and authority to acquire any such land or real property by condemnation proceedings in the manner otherwise provided by law and, for such purpose, the right of eminent domain is hereby conferred upon and vested in said office of general services." The Department of Finance and Administration has not shown any proof to date that its office received prior approval of the Public Procurement Review Board. Consequently, if this approval was not accomplished the transaction shall not be valid unless approved by the Public Procurement Review Board, pursuant to Mississippi Code Annotated Section 24-104-7, et. seq. (1972), as amended, in its pertinent part:

"There is hereby created within the Department of Finance and Administration the Public Procurement Review Board, which shall be composed of the Executive Director of the Department of Finance and Administration, the head of the Office of Budget and Policy Development and an employee of the Office of General Services who is familiar with the purchasing laws of this state. The Executive Director of the Department of Finance and Administration shall be chairman and shall preside over the meetings of the board. The board shall annually elect a vice chairman, who shall serve in the absence of the chairman. No business shall be transacted, including adoption of rules of procedure, without the presence of a quorum of the board. Two (2) members shall be a quorum. No action shall be valid unless approved by the chairman and one (1) other of those members present and voting, entered upon the minutes of the board and signed by the chairman. The board shall meet on a monthly basis and at any other time when notified by the

by the Department of Finance and Administration. Minutes shall be filed with the proceedings of each meeting, copies of which shall be filed on a monthly basis with the Legislative Budget Office."

V. THE CHANCELLOR'S FINDINGS WERE IN ERROR, AS THE EMINENT DOMAIN FINAL ORDER SHOULD HAVE BEEN VOIDED DUE TO THE FACT THAT THE SECRETARY OF STATE IS REQUIRED TO SIGN ALL CONVEYANCES AS REQUIRED BY MISSISSIPPI CODE § 29-1-1

As prescribed by Mississippi Code § 29-1-1 (3) In accordance with Sections 7-11-11 and 7-11-13, the Secretary of State shall be required to sign all conveyances of all state-held land. For purposes of this section, the term "conveyance" shall mean any sale or purchase of land by the State of Mississippi for use by any agency, board or commission thereof. Failure to obtain legislative approval pursuant to subsection (4) of this section and the signature of the Secretary of State on any conveyance regarding the sale or purchase of lands for the state including any agency, board or commission thereof, shall render the attempted sale or purchase of the lands void. Nothing in this section shall be construed to authorize any state agency, board, commission or public official to convey any state-held land unless this authority is otherwise granted by law. The Secretary of State shall not withhold arbitrarily his signature from any purchase or sale authorized by the Mississippi State Legislature. All sales of state-held lands, except those lands forfeited to the state for the nonpayment of taxes and those lands acquired by the Mississippi Transportation Commission under Section 65-1-123, shall be sold for not less than the fair market value as determined by two (2) professional appraisers selected by the State Department of Finance and Administration, who are certified general

commission or public official of state-held lands shall be deposited into the

Fund unless otherwise provided by law. The Secretary of State of Mississippi is the Land commissioner without question, his office is has charged and powers over land owned by the State of Mississippi. As prescribed by Mississippi Code § 7-11-11, The secretary of state shall have charge of the swamp and the overflowed lands and indemnity lands in lieu thereof, the internal improvement lands, the lands forfeited to the state for nonpayment of taxes after the time allowed by law for redemption shall have expired, and of all other public lands belonging to or under the control of the state. The regulation, sale and disposition of all such lands shall be made through the secretary of state's office.

The secretary of state shall sign all conveyances and leases of any and all state-owned lands and shall record same in a book kept in his office for such purposes. The Secretary of State is required to sign all conveyances, which means any sale or purchase of land by the State of Mississippi for use by any agency, board or commission thereof. The fee simple title to the land was certainly purchased by the Department of Finance and Administration as the purchase price was determined and paid; however, the Secretary of State of Mississippi was not included in the purchase at any phase. His signature was not obtained for the conveyance, if his signature had been obtained, a check of his books would have revealed that the tax deed was purchased earlier. The Department of Finance had knowledge of this fact; consequently, the Secretary of State did not have knowledge of the condemnation proceedings, as his signature was not obtained prior to the purchase nor after the purchase. Once the tax title matured, the land was placed in a different

met in order for the land to be disposed of properly.

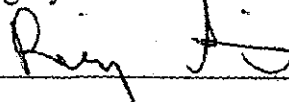
VI. THE CHANCELLOR'S FINDINGS WERE IN ERROR, AS THE EMINENT DOMAIN FINAL ORDER SHOULD HAVE BEEN VOIDED DUE TO THE FACT THAT THE DEPARTMENT OF FINANCE AND ADMINISTRATION'S ADVERMENTS OF PETITION TO CONDEMN LAND ARE BINDING AND A PARTY IS BOUND BY ALLEGATIONS OR ADMISSIONS IN HIS OWN PLEADINGS.

A case that was earlier stated that has relevance again is Mississippi State Highway Commission v. West et al. (1938) which states, "A party is bound by allegations or admissions in his own pleadings and by admission or agreements of facts but not by admissions of law." The Defendant, the Department of Finance and Administration clearly and accurately states in it's petition, "Defendants own fee simple title to the subject property subject to payment of all outstanding ad valorem taxes owed to Hinds County, State of Mississippi and said ad valorem taxes should be deducted from any damages award herein and should be paid to the Hinds County Chancery Clerk to satisfy any and all outstanding tax sales and to the Hinds County Tax collector to satisfy any outstanding ad valorem taxes." [R, 11-14] In addition, the title to the subject property was not confirmed under the laws of McDonald's Corporation v. Robinson Industries, Inc., 593 So. 2d 927 (Miss. 1991). [R, 13-15] McDonald's Corporation v. Robinson Industries, Inc., 593 So. 2d 927 (Miss. 1991), states, "[2] Clearly, trying title is not limited to the chancery court if another court has subject matter jurisdiction of the action and the issue of title is pendant to that claim. Historically, this Court has allowed courts other than chancery to try title where that issue is incidental to the main action.

adjudicate title where that issue arises out of the same occurrence. Moreover, the
of Mississippi Rules of Civil Procedures to eminent domain proceedings ensures that all
necessary parties to the title dispute will be joined." All the necessary parties were not
present and aware of the condemnation proceedings, particularly the Secretary of State
who was in possession of the tax title, and that fact is stated in the record. [R, 268-269]
Consequently, the owner of the title is Plaintiff and that fact should have been decided
affirmatively by the Chancellor based upon the proceeding above.

CONCLUSION

Mississippi Code Annotated § 29-1-1 clearly specifies that the powers of the
Secretary of State of the State of Mississippi and the necessary actions that are to be
performed when disposing of Tax Forfeited Property. In addition, Mississippi Code
Annotated § 31-11-25 outlines the actions and powers that the Department of Finance
and Administration are to perform when conducting a condemnation of personal
property, most of which were not followed purposely or by mistake, none the less the
Government is not King. The State of Mississippi is accountable for it's actions to
include it's agencies, to the price of upholding the integrity of the Law.



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SO CERTIFIED, this 14th day of January, 2008.



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