

COURT OF APPEALS OF THE STATE OF MISSISSIPPI
CASE NO. 2008-CA-01575

SKL INVESTMENTS, INC.

APPELLANT

VERSUS

GENISE ROLAND, ET AL.

APPELLEE

CERTIFICATE OF INTERESTED PARTIES

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 possible disqualifications or recusals.

1. Mike Malski, Chancery Court Judge
2. SKL Investments, Inc., Appellant
3. Genise Roland, Appellee
4. American General Finance, Inc., now known as American General Financial Services, Inc., Appellee
5. Parker H. Still, Attorney for Appellant
6. Mark T. Segars, Attorney for Appellant
7. Mark Thompson Segars, Attorney for Appellant
8. Douglas L. Tynes, Attorney for Appellee
9. Tommy Dexter Cadle, Attorney for Appellee

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Mississippi

None

United States

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TREATISES

None

RULES OF COURT

None

STATEMENT OF THE ISSUES

- I. Did the trial court err in finding that American General Financial Services, Inc.,

failed to receive proper notice as required by §27-43-5 Miss. Code Ann. (1972)
and §27-43-9 Miss. Code Ann. (1972)?

- II. Did the trial court err in confirming the tax sale to SKL Investments, Inc., subject to American General Financial Services, Inc.'s lien?
- III. Did the trial court err in failing to award damages and interest to SKL Investments, Inc., as required by §27-4-3 Miss. Code. Ann. (1972)?

CONCLUSION

This Honorable Court should affirm the Chancellor.

STATEMENT OF THE CASE

On August 31, 2002, a one acre tract of land located within the city limits of Booneville, Mississippi, was sold to SKL Investments, Inc., (hereinafter "SKL") for county taxes for the fiscal year 2001. After the time for redemption had expired, the Chancery Clerk of Prentiss County executed a tax deed to SKL. On August 16, 2006, SKL initiated a suit to quiet title to the subject property and subsequently filed an Amended Complaint on December 7, 2006. On January 9, 2007, American General Financial Services, Inc., (hereinafter "American General") answered the suit and filed its Counter-claim and Third Party Complaint to Set Aside Tax Sale and Conveyance of Land Sold for Taxes. American General asserted the following: that their lien should not be extinguished, and the tax sale be declared void as to American General, due to lack of proper notice required by §27-43-5 Miss. Code Ann. (1972), and the failure of the Chancery Clerk of Prentiss County, Mississippi, to strictly follow the statutory procedures on the tax sales

as set forth in §27-43-9 Miss. Code Ann. (1972); and that the tax sale should be held to be void and set aside against American General. After trial of the matter, the Chancery Court of Prentiss County confirmed the tax sale to SKL, subject to American General's lien, and held the tax sale to be void as to American General. SKL now appeals the Chancery Court's decision with the Mississippi Court of Appeals seeking a reversal of the trial court's decision, and requesting that the case be rendered.

A.
Course of Proceeding and Disposition in Court Below

The original complaint in this action to quiet and confirm title was filed on August 16, 2006. An amended complaint was filed on December 7, 2006. The complaint alleged that a one acre tract of land located within the city limits of Booneville and assessed to Genise Roland was sold for taxes on August 31, 2002. The taxes were never redeemed and matured to SKL on August 31, 2004. Following the date of maturity, a tax deed was issued to SKL on October 6, 2004. The complaint further alleged that American General had encumbered the property with a deed of trust dated May 18, 2001, executed by Genise Roland Crayton, and that by virtue of the tax deed said lien had been extinguished.

American General filed its answer to Amended Complaint to Quiet and Confirm Title and for Writ of Assistance and its Counterclaim and Third-Party Complaint to Set Aside Tax Sale and Conveyance of Land Sold for Taxes on January 9, 2007, denying that its lien had been extinguished and alleging that the tax sale was void as to American General and should be set aside as to American General on the grounds that the Chancery Clerk of Prentiss County failed to

strictly comply with §27-43-9 Miss. Code. Ann. (1972), which requires the clerk to enter on the tax sale book, upon the page showing the tax sale, a notation to the effect that an examination had been made for lienors, giving the names and addresses, if known, of said lienors, giving the book and page where the liens are created, and giving the date of registered mailing of the notice of lienors. At the trial hereof, American General amended paragraph 8 of its Counterclaim and Third Party Complaint to add at the end thereof that the Chancery Court failed to strictly comply with the requirement that American General be provided with the proper notice of forfeiture, pursuant to §27-43-5 Miss. Code. Ann. (1972), by failing to provide the lien holder, American General, with the description of the property of lien holder, the name of the owner of the property, and the recording information of the Deed of Trust of lien holder. On July 10, 2008, the date of trial, the only parties before the court were SKL and American General. The sole issues presented to the court were the failure of the Chancery Clerk to strictly comply with the statutory requirements contained in §27-43-5 Miss. Code Ann. (1972), which requires the Chancery Clerk to provide a proper notice to lien holder, American General, by failing to provide on the aforesaid notice the description of the property, the name of the owners of the property, and the recording information of the Deed of Trust of lien holder; the failure of the Chancery Clerk to strictly comply with the statutory requirements of §27-43-9 Miss. Code. Ann. (1972), which requires the Chancery Clerk to enter a notation on the tax sale book, upon the page showing tax sale, a notation to the effect that an examination had been made for lienors, giving the names, addresses, if known, of said lienors, giving the book and page where the liens are created, and giving the date of registered mailing of the notice of lienors; and, the failure of the Chancery Clerk to award interest and damages to Appellant.

Two witnesses were called whose testimony revealed that American General received a delinquent tax notice via certified mail that contained no information on such notice whatsoever. According to the testimony of the Prentiss County Chancery Clerk, the form of the notice of delinquent notices that the Chancery Clerk's office issued, at the time, did not contain the aforesaid information and according to the such testimony no notation whatsoever was made in the tax sale book on the book and page showing sale concerning examination for lien holders, etc. At the conclusion of the trial , the court required briefs from all parties. Following receipt of the briefs, the Chancellor found that the notice received by American General did not meet the statutory requirements of §27-43-5 Miss. Code. Ann. (1972), and further failed to strictly comply with §27-43-9 Miss. Code Ann.(1972), requiring the Chancery Clerk to make a notation on the book and page of the tax sale book showing sale, a notation to the effect that an examination had been made for lienors, giving the names and addresses, if known, of lienors, giving the book and page where the liens are create, and the date of mailing by registered mail of the notice to lienors, and the court held that the tax sale was confirmed to SKL subject to American General's lien, and the court further held the tax sale was void as to American General. The Court further declined to award damages and interest to SKL Investments, Inc.

B.
Statement of Relevant Facts

On March 5, 1982, Genise Roland (hereinafter "Roland") acquired the following property located within the city limits of Booneville, Prentiss County, Mississippi. Record, page 34

(hereinafter R-34).

The property is described as follows:

One acre of the Northwest Quarter of Section 10, Township 5, Range 7 East, bounded as follows: Beginning at a point 209 feet North of the Southeast corner of said Quarter and at the Northeast corner of the Colored Methodist Church lot, and run West with North line of said church lot 209 feet to the point of beginning. Known as 601 A & B and 603 Martin Luther King Drive, Booneville, MS.

On October 26, 1992, American General encumbered the subject property with a deed of trust executed by Roland and her husband, Johnny F. Crayton. Said deed of trust was recorded in Deed of Trust Book 221 at Page 471 in the Prentiss County Chancery Clerk's Office. (R-33) Another Deed of Trust with American General as the beneficiary was filed on May 18, 2001, and recorded in Deed of Trust Book 322 at Page 1. Transcript, Exhibit 4, (hereinafter T-Ex.4, R-65).

On August 31, 2002, the subject property was assessed to Roland and sold to SKL for unpaid taxes for the tax year 2001. (R-32). The property was not redeemed and matured to SKL on August 31, 2004. (Id.-32). Following the date of maturity, the Chancery Clerk for Prentiss county executed a tax deed to SKL. (T-Ex. 4). Said deed was dated October 6, 2004, and recorded in Deed Book 216 at Page 36 in the land records of Prentiss County. (Id. At Ex. 4). On August 16, 2006, SKL filed a complaint to quiet and confirm title. (R-5). An amended complaint was filed on December 7, 2006. (R-31). On January 9, 2007, American General filed its Answer to Amended Complaint to Quiet and Confirm Title for Writ of Assistance and their Counter-claim and Third-Party Complaint to Set Aside Tax Sale and Conveyance of Land Sold for Taxes. (R-53). The complaint alleged that SKL acquired the subject property via a tax deed from the

Chancery Clerk of Prentiss County and by virtue thereof American General's lien had been extinguished. (R-33). In its counterclaim, American General admitted receiving, via certified mail, a Notice of Forfeiture to Lienor by the Chancery Clerk of Prentiss County, but denied that the notice met the requirements as specifically set out under the Code. (T-Ex. 4, T-2-4).

In American General's Counterclaim to Set Aside Tax Sale and Conveyance of land, American General and Amendment thereto alleged that the tax sale was void and should be set aside, because the notice of the Chancery Clerk did not specifically comply with § 27-43-5 Miss. Code Ann. (1972) by failing to provide lien holder, American General, with the description of the property, the name of the owner of the property, and the recording information of the Deed of Trust of lien holder (T-2-3), and the date of the tax sale, (T-2-4), and further alleged that the Chancery Clerk failed to specifically comply with § 27-43-9 Miss. Code Ann.(1972) which required the clerk to enter a notation on the tax sale book, upon the page showing tax sale, a notation to the effect that an examination had been made for lienor, giving the names and addresses, if any, of said lienor and giving the book and page where the lienor are created and the date of mailing by registered mailing by registered mail the notice to lienor. (R60-61).

At the trial, the parties stipulated to the above facts (T-22, T-Ex. 4), except that the parties did not stipulate to the amendment granted upon motion *ore tenus* at the trial of this cause to add at the end of paragraph VIII of the counterclaim of American General the following,

“; and, that the aforesaid Chancery Clerk further failed to provide the Defendant/Counter-Plaintiff, American General, Inc., now known as American General Financial Services, Inc., the proper statutory notice of forfeiture pursuant to §27-43-5, Miss. Code Ann. (1972), by failing to provide the lien holder,

American General Finance, Inc., now known as American General Financial Services, Inc., with the description of the property, the name of the owners of the property, or the recording information on the aforesaid deed of trust (T-2-4).

The Chancery Clerk admitted at the trial hereof that such information required by §27-43-5 Miss. Code Ann. (1972), was not contained in the aforesaid notice to lien holder (T-15-16, T-19-21), and it was stipulated that the proper notations were not made, and in fact, no notation was made on the tax sale book showing sale as required by §27-43-9 Miss. Code Ann. (1972), (T-22, T-Ex.-4).

The issues presented to the court were: the adequacy of the notice of forfeiture to American General as set forth herein-above; the failure of the Chancery Clerk to make the proper notations on the tax sale book on the book and page showing sale of the subject property, as set forth above; and whether or not SKL Investments, Inc., was entitled to damages and interest. Only two (2) witnesses were called at the trial herein. The first witness called was Gary Castle by American General (T-4). Mr. Castle testified that he was the manager of American General when the Deed of Trust was filed on the subject property (T-6). Mr. Castle further testified that his office received a notice of forfeiture via certified mail and such notice was introduced into evidence (T-Ex.-1), but he could not recall if any additional documentation was attached. (Id.-6). Such notice contained none of the information required by §27-43-9 Miss. Code Ann. (1972). On cross-examination he admitted writing "Cheryl, important, locate who this is and advise me", on the notice American General received (T-8, Ex.-1). This indicates that the only information received by American General was the information contained in Exhibit -1, which said exhibit does not contain any information whatsoever; that nothing was attached thereto concerning the

description of the property, the recording information, the names of the owners of the property, and the recording information of the lien holder; and, further indicates that nothing was attached to the notice to lien holders (T-Ex.-1).

The only other individual to testify at the trial of this cause was Sheila Holley, the Chancery Clerk for Prentiss County (T-11). She testified that she was not the Chancery Clerk in 2004, when the notice of forfeiture was mailed, (T-21), and that a copy of the notice to lien holders was not kept as a permanent record in the Chancery Clerk's Office, but the clerk only kept a copy of the return receipt of the notice of lien holders, (T-17 & 18, T-Ex.-3). Mrs. Holley further testified that although the clerk's office did not keep a copy of the notice to lien holders in this matter, it was customary for the clerk's office to send a cover page of all properties upon which the lien holder held a lien along with an attachment of all properties of lien holder that were subject to forfeiture (T-13-14), and an exhibit was introduced into evidence of the notice sent to another lien holder to prove this (R-Ex.-2). This notice did not contain the date of the tax sale or a description of the property as required by §27-43-5 Miss. Code Ann.(1972), and even if same had been sent to American General, such notice would have still been defective. It was stipulated that no notation was made on the book and page of the tax sale book showing tax sale making notation of the name of lien holder or the date notice was sent to the lien holder. (T-Ex.-4), as required of the Chancery Clerk by §27-43-9 Miss. Code Ann. (1972).

At the conclusion of the trial, the court requested each party submit a brief on their respective positions. Following the submission of the briefs, the Chancellor issued a Memorandum Opinion and Judgment specifically finding that the Prentiss County Chancery Clerk did not follow the statutory requirements of §27-43-5 Miss. Code Ann. (1972) and §27-43-

9 Miss. Code Ann. (1972) (R-197-200), and declined to award damages and interest. As such, the court found the tax sale defective and void as to American General and confirmed the tax sale to SKL subject to American General's lien. (R-200).

SUMMARY OF THE ARGUMENT

The trial court's ruling and Appellant's appeal are about four (4) issues: the court finding that American General did not receive proper notice of tax sale, the court's finding that the clerk failed to make proper notation on the tax sale book on the page showing sale, thus rendering the tax sale void as to American General, and the issue of whether or not the court should have awarded damages and interest to SKL, and the issue of the court confirming the tax sale to SKL subject to American General's lien.

American General received a notice of forfeiture from the Chancery Clerk on the property that is the subject of this appeal, and upon which American General is lien holder. Such notice did not contain any of the information required by §27-43-5 Miss. Code Ann. (1972), which requires the Chancery Clerk to provide lien holders with the description of the property, the name of the owner of the property, the recording information on the Deed of Trust, and the date of Tax Sale. Such information was absolutely necessary for American General to ascertain whose property was being forfeited for taxes and what property was being forfeited for taxes. The aforesaid statute must be strictly complied with, and if not, then such tax sale is void as to the lien holder as a result thereof. The Chancery Clerk also failed to comply with §27-43-9 Miss. Code Ann. (1972), which requires the clerk to make a notation on the book and page of the tax

sale book showing sale that examination had been made for lien holders, giving the names and addresses of lienors, the book and page where the liens were created, and the date of mailing by registered mail of the notice to lienors. This statute also must be strictly complied with and since same was not strictly complied with the tax sale is therefore void as to American General. The trial court held that the tax sale is void as to American General, and made the correct determination that SKL was now the owner of the property (Roland) subject to the lien of American General. The Appellant was not granted damages and interest from and against American General, after the tax sale was declared void as to American General, because such tax sale was confirmed in Appellant as to the owners of the property (Roland), subject to American General's lien. It would not be proper to assess damages and interest against American General in that Appellants are the owners of the property since their tax sale has been confirmed.

Based upon the foregoing, the Mississippi Court of Appeals should affirm the decision of the Prentiss County Chancery Court.

ARGUMENT

Standards of Review

The Mississippi Supreme Court does not sit to redetermine questions of fact. Matter of City of Horn Lake, 630 So.2d 10,19 (Miss. 1993).

Review of Questions of Law

The Supreme Court employs a de novo standard of review when passing on questions of

law. G.B. "Boots" Smith Construction v. Cobb, 860 So.2d 774, 776-777 (Miss.2003) (¶¶ 6-7).

Legal conclusions are also reviewed de novo. Andrew Jackson Life Insurance Co. v. Williams, 566 So.2d 1172, 1183-1184 (Miss. 1990).

Review of Jurisdictional Questions

Jurisdictional questions are subject to de novo review. McCain Builders, Inc., v. Rescue Rooter, LLC, 797 So.2d 952, 954 (Miss. 2001).

PROPOSITION 1

DID THE TRIAL COURT ERR IN FINDING THAT AMERICAN GENERAL FAILED TO RECEIVE PROPER NOTICE AS REQUIRED BY MISS. CODE ANN. §27-43-5 AND §27-43-9?

The trial court did not err in finding that the Prentiss County Chancery Clerk failed to give American General Financial Services proper notice of the tax sale when the testimony revealed that improper notice was sent to American General Financial Services, Inc. by the Chancery Clerk of Prentiss County.

Section 27-43-5, Miss.Code Ann. (1972), establishes the requirements and the form of notice to lienholders when land has been sold for taxes, as follows:

It ***shall*** be the duty of the clerk of the chancery court to examine the record of deeds, mortgages and deeds of trust in his office to ascertain the names and addresses of all mortgages, beneficiaries and holders of vendors liens of all lands sold for taxes; and, he ***shall***, within the time fixed by law for notifying the owners, send by certified mail with return receipt requested to all such lienors so ***shown of record the following notice***, to-wit:

"State of Mississippi

To _____,

County of _____

"You will take notice that _____ (here describe lands) assessed to, or supposed to be owned by _____ was on the _____ day of _____ 19____, sold to _____ for taxes of _____ (giving year) upon which you have a lien by virtue of the instrument recorded in this office in _____ Book _____, page _____, dated _____, and that the title to said land will become absolute in said purchaser unless redemption from said sale be made on or before the _____ day of May of 19____.

"This _____ day _____, 19____.

" _____

"Chancery Clerk of _____ County, Miss."

(emphasis added). The statute providing the form and requirements for notices of tax sales must be strictly construed and complied with. Norwood v. Moore, 932 So.2d 63 (Miss. Ct. of App. 2006). Any deviation from statutorily mandated procedures renders the tax sale void. Roach v. Goebel, 856 So.2d 711, 716 (Miss. 2003), Hart v. Catoe, 390 So.2d 1001, 1003 (Miss. 1980). Any statute dealing with land forfeitures for delinquent taxes should be strictly construed. Brown v. Riley, 580 So.2d 1234, 1237 (Miss. 1991). In the case before the Court, the Chancery Clerk of Prentiss County testified that the procedures prescribed above were not followed and the form required by the statute for the notice was not used. The Chancery Clerk sent another form that was not in compliance with Miss. Code Ann. § 27-43-5 (1972). The uncontroverted testimony was that the Clerk of the Prentiss County Chancery Court did not note the name of the property owner, the book and page number of the deed of trust, or the PPIN number on the notice sent to the lien holder. Further, the Chancery Clerk did not make any notation on the Tax Sale Book as required by statute and the Chancery Clerk did not keep a copy of the notice sent to the lienholder in their tax sale records. Section 27-45-5 of the Mississippi Code requires such or the tax sale is void. As a result thereof the tax sale on the subject property is void as to American General Financial Services, Inc.

According to the prevailing law in Mississippi, the statute, with respect to tax sales, must be strictly complied with. Pace v. Wedgeworth, 20 So.2d 842 (Miss. 1945); Lamar Life Insurance Company v. Mente & Co., 178 So. 89 (Miss. 1938). Whether or not the lienor receives the notice or not is of *no consequence* as respects to the validity of the tax sale. Lamar Life Insurance Company, at . As such, the Chancery Clerk of Prentiss County did not comply with the statute. The Clerk even testified that the Chancery Clerk's Office has changed its process on tax sales so that it is in compliance with the statute. Further, the Clerk admitted during her testimony that Mississippi Code Annotated 27-45-3 (1972) was not complied with in the present instant.

The final requirement of the Chancery Clerk is found in Section 27-43-9 of the Mississippi Code Annotated (1972), which provides as follows:

Upon completing the examination for said liens, the clerk *shall* enter upon the tax sale book upon the pages showing the sale a notation to the effect that such examination had been made, giving the names and addresses, if known, of said lienors, the book and page where the liens are created, and the date of mailing by registered mail the notice to the lienors. If the clerk finds no liens of record, he *shall* so certify on said tax sale book. In each instance, the clerk *shall* date the certificate and sign his name thereto.

Failure of the clerk to enter such notation on the tax sale book and page showing sale and the failure of the clerk to date and sign his name to the above required notation or certification on the page of the Tax Sale Book showing sale is insufficient to comply with the statutory requirements of the clerk to entered upon the Tax Sale Book his notation or certification showing search for lienor, etc., has been made. As a result of such actions the tax sale is rendered void. Pace, 20 So.2d 842. The legislature used the term "shall" in the above quoted code section and the use of such a term puts an absolute obligation and

responsibility on the Chancery Clerk. As a result of the aforementioned statute and the clerk's subsequent failure to comply with the statute, the tax sale is void.

Therefore, the Mississippi Court of Appeals should affirm the trial court's ruling that the notice to American General Financial Services, Inc. was deficient.

PROPOSITION 2

DID THE TRIAL COURT ERR IN CONFIRMING THE TAX SALE TO SKL INVESTMENTS, INC. SUBJECT TO AMERICAN GENERAL SERVICES, INC.'S LIEN?

The trial court did not err in confirming the tax sale to SKL Investments Inc. while making the new owners of the property subject to American General Financial Services, Inc.'s lien. The findings are not contradictory, as the appellant argues. If that were the case, then there would be no need to make lien holders a party to actions like this. American General Financial Services, Inc. has a separate interest from the property owner. To extinguish its interest a specific procedure must be undertaken, as outlined in Miss. Code Ann. § 27-43-1 et seq (1972). The reason that different requirements are needed to extinguish interest of a landowner and a lien holder is because each party has a separate interest in the subject property. If the procedure to extinguish a land owner's interest is complied with completely, but the procedure to extinguish a lien holder's interest is not, then only the land owner's interest is extinguished. If one would only need to follow the statute as to one party, then it would make the rest of the statute completely useless. To hold otherwise would negate the necessity to follow through with the statutory requirement of notifying the lien holder.

The Appellant's argument that the Chancellor did not have legal grounds to make his finding

is baseless. The Appellant originally sued the land owner of the subject property and the land owner did not contest the proceedings as they related to him. The Appellee, the lien holder of the subject property herein, did contest the proceedings. To hold that the Chancellor did not have the authority to confirm a lien holder's interest in property where the taxes were delinquent would completely strip all lien holders of any rights they would have in properties where lien holders have a deed of trust. The Appellees had a deed of trust securing their interest in the subject property that was properly filed and attached to the subject property that gave legally sufficient notice to all people who had an interest purchasing such property. The Appellant had notice of the Appellee's interest in the subject property prior to purchasing the taxes on the subject property. The Appellants cite no case law that supports their position. To the contrary, Lamar Life Ins. Co. states that when the chancery clerk fails to give proper notice as required by the statute, the tax sale is *void as to that lienor*. 178 So. 89, 94-96 (emphasis added), Roebuck v. Bailey, 166 So. 358, 361-63 (Miss. 1936). As a result the Chancellor's decision to confirm the tax sale as to the land owner and to void the tax sale as to the lien holder, American General Financial Services, Inc., was proper.

Therefore, the Mississippi Court of Appeals should affirm the trial court is decision to confirm the tax sale to SKL Investments, Inc. subject to American General Financial Services, Inc.'s lien.

PROPOSITION 3

DID THE TRIAL COURT ERR IN FAILING TO AWARD AND INTEREST TO SKL INVESTMENTS, INC. AS REQUIRED BY MISS. CODE ANN. § 27-45-3?

The trial court did not err in failing to award damages and interest to SKL Investments, Inc. of and from American General Financial Services, Inc. The trial court awarded SKL Investments, Inc. the relief it was seeking against the land owner and confirmed titled in SKL Investments, Inc. As a result, SKL Investments, Inc. stepped into the place of the land owners and now have the land owner's interest in the subject property. Such interest is now subject to American General Financial Services, Inc.'s Deed of Trust since the tax sale was declared to be void as to the Appellee. Mississippi Code Ann. § 27-45-3 (1972) applies only to redemption of taxes, which is not the case here. A purchaser of a tax sale is not an innocent purchaser for value and title subject to any and all encumbrances that are not properly extinguished. James v. Tax Inv. Co., 40 So.2d 539, 620 (Miss. 1949). Further, tax sale purchasers are charged with having knowledge of law and the requirements set out by the statute for a sale to be valid. Everett v. Williamson, 143 So. 690, 695-96 (Miss. 1932).

Mississippi Code Ann. § 27-45-7 deals with what a tax sale purchaser is entitled to when taxes are redeemed by a mortgagor. This statute is also inapplicable because SKL had its tax sale confirmed as to the owner of the property and the tax sale was held to be void as to the mortgagee, American General Financial Services, Inc. If SKL Investments, Inc. were awarded damages and interest from American General Financial Services, Inc., it would be a windfall to SKL Investments, Inc. as it would have purchased a valuable piece of property for a nominal amount and would have a properly filed deed of trust that it had notice of extinguished even though the clerk failed to comply with the statutory requirements with reference to notice to the lienholders and with reference to making proper notation and certification on the tax sale book and page showing sale.

Mississippi Code Ann. § 27-45-3 states the requirements for redemption by an owner or someone on his or her behalf as aforesaid. As with Miss. Code Ann. § 27-25-7, this statute is

inapplicable because the taxes have not been redeemed. The Appellant, SKL, had its tax sale confirmed as to the owner of the property. As such, SKL Investments, Inc. acquired a valid transferrable interest in the subject property, although such interest is subject to the Deed of Trust in favor of the Appellee, American General Financial Services, Inc. If the Appellant were awarded damages and interest, it would be a windfall for the Appellant since they would have their interest in the subject property along with damages and interest. SKL Investments, Inc. would essentially be getting compensated twice.

The Court held in Lawrence Investment v. Rankin that attorney's fees in cases where the tax sale was held void as to the owner of the property that was sold for taxes were improper. David Lawrence d/b/a Lawrence Investments v. Robert John Rankin, 870 So.2d 673, 677 (Miss. 2004). By implication, an award of attorney's fees from a lien holder would also not be proper where a tax sale was held to be void as to the lien holder.

Therefore, the Mississippi Court of Appeals should affirm the trial court's decision not to assess damages and costs to American General Financial Services, Inc.

CONCLUSION

The law in Mississippi with respect to tax sales is clear: a tax collector and chancery clerk must strictly comply with Miss. Code Ann. § 27-43-1 et seq. (1972) or the a tax sale is void. In the present case, the process required by the statute was not complied with. It was uncontroverted that Clerk of the Prentiss County Chancery Court did not note the name of the property owner, the book and page number of the deed of trust, or the PPIN number on the notice sent to the lien holder.

Further, the Chancery Clerk did not make any notation on the Tax Sale Book as required by statute and the Chancery Clerk did not keep a copy of the notice sent to the lienholder in their tax sale records. Each of these errors in and of itself makes the tax sale void as to the lien holder.

SKL Investment, Inc.'s request for a hearing on damages and interest under Miss. Code Ann. § 27-45-3 (1972) is unfounded in law and should be denied. This Code section only applies to owners or people on their behalf redeeming such taxes. That is simply not the case at bar. The Appellant was successful in having their tax sale confirmed against the owner of the subject property, but the tax sale was void as to American General Financial Services, Inc. As a result, this code section is inapplicable and the Appellant is not entitled to an award of damages and interest and a hearing on such should be denied.

The simple fact is that American General Financial Services, Inc. did not have sufficient notice, required by statute, which renders the tax sale void as to American General Financial Services, Inc. It is well established in Mississippi law that such deficiencies are fatal to tax sales and renders them void. As a result of such, this Court should affirm the decision of the trial court.

Respectfully submitted, this the 12th day of February, 2009.

AMERICAN GENERAL FINANCIAL SERVICES,
INC., Appellee

BY: 131 Douglas L. Tynes
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CERTIFICATE OF SERVICE

I, DOUGLAS L. TYNES, one of the attorneys for the Appellee, American General Financial Services, Inc., do hereby certify that I have this day mailed, postage prepaid by U.S. Mail, a true and correct copy of the above and foregoing Brief of Appellee to:

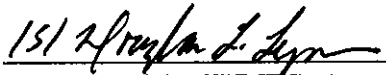
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Trial Court Judge

SO CERTIFIED, this the 17th day of February, A.D., 2009.



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for Defendant / Appellee