

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

**COPY**

SKL INVESTMENTS, INC.

**FILED**

APPELLANT

V.

MAR 31 2009  
SUPREME COURT  
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SUPREME COURT  
COURT OF APPEALS

GENISE ROLAND, ET AL.

APPELLEE

ON APPEAL FROM THE CHANCERY COURT OF PRENTISS COUNTY, MISSISSIPPI,  
CIVIL ACTION NO. 2006-321 (59)S

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REPLY BRIEF OF APPELLANT

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ORAL ARGUMENT REQUESTED

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## INTRODUCTION

The present action before the Court involves SKL Investments, Inc.'s (hereinafter "SKL") action to quiet and confirm tax title. At trial, the sole issue presented was the adequacy of the notice of sale to American General Financial Services, Inc. (hereinafter "American General") which had encumbered the property with a deed of trust. After said trial, the Chancery Court of Prentiss County confirmed the tax sale to SKL subject to American General's lien. Consequently, SKL has established that American General received notice via certified mail that the subject property was going to mature to SKL, and as such, American General by their own negligence allowed the property to mature. Therefore, by virtue of receiving notice of the maturity, the Prentiss County Chancery Court's decision should be reversed and the lien should be extinguished. Furthermore, the Chancery Court erred in confirming the tax sale to SKL subject to the lien of American General. By operation of law, when the trial court confirmed title to SKL, the lien was extinguished. Alternately, at a very minimum, the trial court erred in failing to provide SKL a hearing on damages and interest. As such, the Plaintiff, SKL Investments, Inc. requests this Court reverse the trial court's ruling and render this case.

## ARGUMENT

### **I. American General Financial Services, Inc. received notice that the property was going to mature to SKL Investments, Inc.**

In the Brief submitted to the Court, American General attempts to avoid the consequence of their inactions by raising a legal technicality being the form notice did not contain the precise language of the notice in the statement. However, they cannot avoid the simple fact that they did receive notice by certified mail that the property would mature to SKL. They also cannot come before this Court in good faith asserting that they did not understand the importance of the notice

received. After all, Gary Castle, manager of American General, admitted writing on the notice, "Cheryl, important locate who this is and advise me." (T-8, Ex. 1).

American General, in their Brief, sets forth several cases for the proposition that any deviation from the standard form providing notice of maturity, renders the sale void. However, there are numerous cases to the contrary. As set forth in SKL's Brief, the primary case is *Rush v. Wallace Rentals, LLC*, 837 So.2d 191 (Miss. 2003), where the Mississippi Supreme Court adopted a diligent effort standard for notice of a tax sale. The *Rush* case, which came down in 2003, further settled Mississippi Law that if the Chancery or Municipal Clerk was diligent in searching and inquiring as to the addresses of an individual or corporation, the tax sale would not be rendered void. *See Also DeWeese Nelson Realty, Inc. v. Equity Services Company*, 502 So.2d 310 (Miss. 1986). As with the case at hand, the argument set forth in the *Rush* case was that any deviation from the pertinent statutes dealing with the tax sale renders said sale void. The Court distinguished this argument seeming to adopt a negligence standard for the Chancery Clerks and only then would the tax sale be rendered void. *Rush* at 197. The Prentiss County Chancery Clerk, while not using the precise form identified in the statute, was not negligent. A proper search of the records was conducted and notice was provided.

As required by Miss. Code Ann. §27-43-5, American General received notice that the property would mature to SKL by certified mail, and realized the urgency and simply failed to act. They now are before this Court seeking to be rewarded for their inactions at the expense of SKL who comes before this Court with clean hands. The Plaintiff respectfully requests that this Court reverse the trial court's ruling and render the case.

**II. The Trial Court erred in confirming the tax sale to SKL Investments, Inc. subject to American General Financial Services, Inc.'s lien.**

It is well settled law that a valid tax sale that is not redeemed within the statutory two year time period extinguishes the lien of a deed of trust. *Hancock Bank v. Ladner*, 727 So.2d 743, 746 (Miss. Ct. App. 1998). In the case at hand, the Chancellor found a valid tax sale, thus American General's lien should have been extinguished.

In support of their position that the Chancery Court of Prentiss County had the authority to confirm the tax sale to SKL Investments, Inc. subject to American General's lien said American General relies on the case of *Lamar Life Insurance Company v. Billups*, 169 So.32 (1936), and *Roebuck v. Bailey*, 166 So.358 (Miss. 1936). Both of these decisions were decided in 1936, when Mississippi Code of 1930, Section 3262 was applicable. Under Section 3262, "Failure to give the required notice to the lienor shall render the tax sale void as to them only, and the clerk shall be liable, for such failure to purchaser at the tax sale in the penal sum of \$25.00, in addition to the actual damage sustained." Under the Code of 1930, a Chancellor had the authority to confirm a tax sale subject to a lien. This is no longer the law, and as set forth above, a valid tax sale extinguishes a deed of trust. Thus, the Chancellor's decision has extinguished American General's deed of trust, and the case should be rendered in accordance with the applicable law.

### **III. The Trial Court erred in failing to award damages and interest to SKL Investments, Inc.**

American General sets forth in their Brief that if SKL were awarded damages and interest, there would be a windfall since they would have their interest in the subject property along with damages and interest. (Appellant's Brief at 18). The Appellee is correct in this assessment. Therefore, the subject property should be confirmed to SKL with American General's lien extinguished or the deed should be held void for the Chancery Clerk's non-

compliance with the statutory notice requirements, and a hearing should be held on damages pursuant to Miss. Code Ann. §27-45-3. *See Lawrence v. Rankin*, 870 So.2d 673, 677 (Miss. Ct. App. 2004). If SKL's deed is held void, there is no question that they are entitled to damages, interest and all expenses of the sale as set forth in the *Lawrence* case. After such hearing, the award of damages should be a lien on the property and given priority over all judgments, executions, encumbrances, or liens, regardless of when they were created and attach to the property assessed as provided in Miss. Code Ann. §27-35-1.

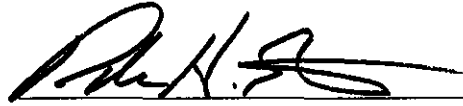
### CONCLUSION

Now, more than ever, the actions and inactions of financial institutions are being called into question. Over the course of recent years, time after time, financial institutions have not been held accountable for their own negligence and in many cases have been rewarded. American General seeks to continue this pattern by having failed to be attentive to their property taxes, but yet still seeks to be rewarded. American General received notice that the property was about to mature to SKL, understood the urgency, failed to act and now seeks to not be held accountable. Financial institutions must be held accountable for their acts, and American General should be held accountable by having their lien extinguished.

Therefore, the trial court's decision should be reversed with the subject property being confirmed to SKL in fee simple absolute free of all liens and encumbrances.

Respectfully submitted, this the 31st day of March, 2009.

SKL INVESTMENTS, INC.



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**CERTIFICATE OF SERVICE**

I, Parker H. Still, one of the attorneys for the Appellant, do hereby certify that I have this day mailed, postage prepaid by United State mail, a true and correct copy of the above and foregoing Reply Brief of Appellant to:

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This the 31st day of March, 2009.

  
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