

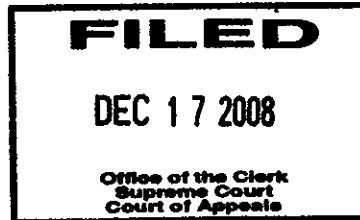
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COURT OF APPEALS OF THE STATE OF MISSISSIPPI  
CASE NO. 2008-CA-01575

SKL INVESTMENTS, INC.

V.

GENISE ROLAND, ET AL.



APPELLANT

APPELLEE

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

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BRIEF OF APPELLANT

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ORAL ARGUMENT REQUESTED

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**REQUEST FOR ORAL ARGUMENT**

Appellant respectfully requests that this Court allow oral argument in this matter.

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

SKL INVESTMENTS, INC.

APPELLANT

V.

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 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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## **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 Miss. Code Ann. §27-43-5 and §27-43-9?
- 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 Miss. Code Ann. §27-45-3.

## **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. American General Financial Services, Inc. (hereinafter "American General") answered the suit and asserted their lien should not be extinguished due to lack of notice. After trial of the matter, the Chancery Court of Prentiss County confirmed the tax sale to SKL subject to American General's lien. 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.

### **Course of Proceedings 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 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. On July 10, 2008, the date of trial, the only parties before the court were SKL and American General. Genise Roland, of whom the property was accessed, failed to answer the complaint. The sole issue presented to the court was the adequacy of the notice of sale to American General. Two witnesses were called whose testimony revealed that American General received a delinquent tax notice via certified mail and the form of the notice was in the manner of all delinquent notices that the Prentiss County Chancery Clerk's office issued. At the conclusion of the trial, the court requested 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 and as such the tax sale was confirmed to SKL subject to American General's lien.

### **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; thence North 209 feet; thence East 209; thence South 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. A second 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).<sup>1</sup>

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. The complaint alleged that SKL acquired the subject 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 response, American General specifically admitted receiving, via certified mail, a Notice of Forfeiture to Leinor by the Chancery Clerk of

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<sup>1</sup> The 2001 Deed of Trust is the only one at issue in the case.



Prentiss County, but denied the notice met the requirements as required under the Code. (T-Ex. 4).

At trial<sup>2</sup>, the parties stipulated to the above facts. (T-Ex. 4). The sole issue presented to the court was the adequacy of the Notice of Forfeiture to American General. The first witness called by American General was Gary Castle. (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 the Notice of Forfeiture via certified mail, but could not recall if any additional documentation was attached.<sup>3</sup> (*Id.* at 6). On cross examination, Castle admitted writing "Cheryl, important locate who this is and advise me" on the notice American General received. (T-8, Ex. 1).

The only other individual to testify at the trial was Sheila Holley, Chancery Clerk for Prentiss County.<sup>4</sup> (T-11). Mrs. Holley testified that attached to the Notice of Forfeiture sent to American General would have been a sheet of paper containing the name of the delinquent taxpayer, the property identification number and deed of trust book and page.<sup>5</sup> (T-12). Mrs. Holley provided the court with examples of Notice of Forfeitures that were sent during 2001 whereas the name of the delinquent taxpayer, property identification number and deed of trust book and page were attached to the notice. (T-12, 13, Ex. 2). Testimony revealed that this was

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<sup>2</sup> The only parties before the Court at trial were SKL and American General.

<sup>3</sup> The Notice of Forfeiture did not identify the Deed of Trust book and page on the face of the document. (T-Ex. 1).

<sup>4</sup> In 2004, Ms. Holley was a deputy clerk for Prentiss County.

<sup>5</sup> Mr. Castle testified that staple marks existed on the Notice of Forfeiture. (T-7).

the normal practice of the clerk's office to send notices in this manner during 2001 and the previous tax years. (T-12,14).

At the conclusion of trial, the court requested each party submit a brief on their respective position. 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 Miss. Code. Ann. §27-43-5 and §27-43-9. (R-197-200). As such, the court confirmed the tax sale to SKL subject to American General's lien. (R-200).

### **SUMMARY OF THE ARGUMENT**

The trial court's ruling and this appeal are essentially about two issues: the court's finding that American General did not receive proper notice of the tax sale and confirming the tax sale to SKL subject to American General's lien.

American General received notice via certified mail that the subject property was going to be sold for taxes. In fact, the manager specifically instructed his employee to check on the matter and advise. American General by their own negligence allowed the tax sale to take place and the property to be lost. Only did they take action years later when a summons was received. They now appear before the court attempting to void the sale on a mere technicality, which only serves to reward their negligence and established a precedent whereas lienholders will not held accountable for their inactions. Therefore, the Court of Appeals should find that American General received notice of the sale, and the decision of the chancery court should be reversed with the case being rendered.

The trial court in confirming the tax sale to SKL did by operation of law extinguished the

lien of America General. The law is clear that once a sale is confirmed, the lien is extinguished. There is no statutory authority for property purchased at a tax sale, once confirmed, to be subject to a lien. Either the sale is valid and the property is confirmed, or the sale is void and the property is not confirmed.

Additionally, the trial court found that the Chancery Clerk did not comply with the notice requirements of the statute. As such, SKL should have been entitled to a hearing on damages and interest. The court erred in failing to allow SKL a hearing on damages and interest for the clerk's noncompliance with the statute.

Based on the foregoing, the Mississippi Court of Appeals should reverse the decision of the Prentiss County Chancery Court.

## ARGUMENT

### STANDARD OF REVIEW

The standard of review utilized by the Mississippi Court of Appeals for review of a Chancellor's decision is abuse of discretion. *Stokes v. Campbell*, 794 So.2d 1045, 1048 (Miss. Ct. App. 2001) (citing *McNeil v. Hester*, 753 So.2d 1057 (Miss. 2000)). The standard of review for questions of law is de novo. *Gillespie v. Kelly*, 809 So.2d 702, 705 (Miss. Ct. App. 2001) (citing *Consolidate Pipe & Supply Co. v. Colter*, 735 So.2d 958, 961 (Miss. 1999)).

- I. Did the trial court err in finding that American General Financial Services, Inc. failed to receive proper notice as required by Miss. Code Ann. §27-43-5 and §27-43-9?**

The trial court erred in finding that American General failed to receive proper notice of the tax sale when testimony revealed that a notice was sent by the Prentiss County Chancery

Clerk via certified mail and signed for and received by said American General.

Miss. Code Ann §27-43-5, provides that the Chancery Clerk shall provide notice to lienors by certified mail. The Prentiss County Chancery Clerk provided notice by certified mail to American General and the return receipt was signed as required by the statute. Any lack of notice defense is without merit.

This case is being litigated solely due to the negligence of American General. As set forth, they received notice of the sale, but did nothing. Only after receiving a summons did they take formal action. Formal action being to blame everyone for what was done wrong with the sale instead of being held accountable for their own inactions. While SKL concedes that the Notice of Forfeiture did not follow the exact form as prescribed in §27-43-5 and an entry was not upon tax sale book as prescribed in §27-43-9, the Prentiss County Chancery Clerk followed the diligent efforts standard as recognized by the Mississippi Supreme Court.

In 2003, the Mississippi Supreme Court adopted the diligent efforts standard for notice of a tax sale. *See Rush v. Wallace Rentals, LLC*, 837 So.2d 191 (Miss. 2003). The *Rush* case centers around a lot located in Lauderdale County. *Rush* conveyed the lot on June 23, 1997, to Moffite. *Id.* at 192. At the time of the sale on August 31, 1998, the property was still assessed in *Rush's* name and was sold to Oliver Limerich who later conveyed the property to *Wallace Rentals, LLC*. On June 27, 2000, the Lauderdale County Chancery Clerk tried to notify Moffite by certified mail of her right to redeem her property. *Id.* at 192. However, the notice was returned. The sheriff was also unable to personally serve Moffite. Following this, the Chancery

Clerk published for *Rush*<sup>6</sup> and signed an affidavit to the effect. *Id.* at 192. Upon *Wallace Rentals* filing a suit to confirm the tax sale, Moffite alleged the sale was void for lack of notice. The Chancellor in finding that the Chancery Clerk made diligent efforts to locate Moffite stated “Lauderdale [County] Chancery Clerk’s office made a diligent search and inquiry to ascertain Eloise Moffite’s street and post office address. This Court finds that Eloise Moffite has exerted no effort to correct the incorrect information in the quitclaim deed or to otherwise supply her address so the taxing authorities could notify her of her right of redemption. This Court finds further that Eloise Moffite has exerted no effort to pay the property taxes owed on the subject property. Thus, the Court finds that the tax sale is valid and that the tax deed vests title in the tax purchaser.” *Id.* at 194.

Justice Carlson in writing for the majority and upholding the Chancellor’s decision set forth that Mississippi law “does not permit landowners to be inattentive to their annual property tax.” *Id.* at 200. “It is incumbent upon the landowner to be knowledgeable about the assessment on his property and to be diligent to make sure that his taxes are paid.” *Id.* at 200.

The *Rush* case clearly establishes that the Mississippi Supreme Court will uphold tax sales where the chancery clerk’s office made diligent efforts to locate the taxpayer. The case also indicates that the Court is going to make landowners accountable for their inactions. While *Rush* is dealing with the actual landowner, its rationale is applicable to a lienor. American General received all statutory notice and was simply “inattentive” to the fact the land was going to be sold for taxes. American General, as a business entity who deals primarily in real property, had a

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<sup>6</sup> The Chancery Clerk published in the wrong name. The property had been transferred to Moffite.

heightened duty to investigate the notice received by certified mail, but simply failed to do so. Their inactions should result in a cancellation of their deed of trust.

The trial court opined that “even if American General had received notice mandated by § 27-43-5, failure of the clerk to enter the appropriate notations or certification in the Tax Sale Book as required by Section 27-43-9 renders the tax sale void as to the lienholder.” (R-199). Code sections such as 27-43-9 are archaic and routinely not followed by Chancery Clerks throughout the state. For example, Miss. Code Ann. §89-5-21 specifically requires that satisfaction of a deed of trust be marked in the margin. However, with the widespread use of computers and the scanning of instruments, many Chancery Clerks no longer mark the satisfaction on the actual instrument. Likewise, the entry on the tax sale book has been replaced with an affidavit of diligent search and inquiry. American General by asserting the “tax book” defense is simply another attempt to escape on a technicality and avoid repercussions for their own malfeasance.

**II. Did the trial court err in confirming the tax sale to SKL Investments, Inc. subject to American General Financial Services, Inc.’s lien?**

The Chancellor found “the tax sale defective and therefore void as to American General. The court confirms the tax sale to SKL, Investments, Inc. SKL investments, Inc., takes the property subject to American General’s lien.” (R-200). The findings of the trial court are contradictory, being the sale is defective, but yet confirmed. The Chancellor by confirming the tax sale to SKL extinguished American General’s lien by operation of law. It is well settled that a valid tax sale that is not redeemed within the statutory two year time period extinguishes the lien of deed of trust. *Hancock Bank v. Ladner*, 727 So.2d 743, 746 (Miss. Ct. App. 1998).

The trial court was correct in confirming the tax sale, but erred in making it subject to

American General's lien. Simply stated, the Chancellor was without sufficient legal grounds to do so and accordingly the lien should have been extinguished.

**III. Did the trial court err in failing to award damages and interest to SKL Investments, Inc. as required by Miss. Code Ann. §27-45-3?**

The trial court erred in by failing to award SKL damages and interest as required by Miss. Code Ann. §27-45-3. This court has opined that under the statute governing redemption of land sold at taxes, a tax sale purchaser whose deed was held void for chancery clerk's noncompliance with statutory notice requirements was entitled to damages and interest under Miss. Code Ann. §27-45-3. *Lawrence v. Rankin*, 870 So.2d 673, 677 (Miss. Ct. App. 2004). *See Also Edwards v. Butler*, 94 Miss. 678 (Miss. 1908).

This ruling also coincides with Miss. Code Ann. §27-45-27 which states:

The amount paid by the purchaser of land at any tax sale thereof for taxes, either state or county, levee or municipal, and interest on the amount paid by the purchaser at the rate of one and one-half percent (1-1/2%) per month, or any fractional part thereof, and all expenses of the sale and registration, thereof shall be a lien on the land in favor of the purchaser and the holder of legal title under him, by descent or purchase, if the taxes for which the land was sold were due, **although the sale was illegal on some other ground.**

SKL comes before this Court in good faith and with clean hands seeking only to confirm a tax deed. If notice is deemed insufficient, SKL is entitled to statutory damages as set forth as well as **"all expenses of the sale."** Equity and the statutes require that a hearing be held on damages and that SKL be afforded the opportunity to submit all expenses of the sale including reasonable attorneys' fees. Upon the hearing taking place, any award of damages shall 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

A tax collector's deed is prima facie evidence that all things essential to the collector's power to sell the land were done correctly. *Trotter v. Roper*, 92 So.2d 230, 231 (Miss. 1957). The prima facie legal presumption raised by the tax deed covers every act and step necessary to be performed by the officers or any of them towards a valid sale. *Griffith's Mississippi Chancery Practice*, 2d ed., Section 220, p. 207. On August 31, 2002, the subject property was sold to SKL for 2001 taxes. It matured on August 31, 2004, and a tax deed was issued on October 6, 2004. This tax deed, as set forth above, raises the presumption that the Prentiss County Chancery Clerk statutorily performed all obligations associated with the sale. In response to this presumption, American General asserted lack of notice and the appropriate mark was not made in the tax sale book. American General received notice via certified mail and constructive notice by publication. The tax sale book defense is a vain attempt to avoid being held accountable for their own negligence and inattentiveness.

The trial court was correct in confirming title in SKL. The error occurred in doing so subject to American General's lien. By confirming title in SKL the Chancellor, whether he meant to or not, extinguished the lien.

The central issue on a suit to confirm tax title is notice, meaning did the lienholder receive notice of the sale. The answer in this case is yes. Mistakes were made by the Chancery Clerk, but American General did have notice of the sale and simply failed to act. Their failure to act should not be rewarded when SKL comes before the Court with clean hands. However, if this Court deems notice not sufficient, SKL should be awarded damages and interest.


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 17th day of December, 2008.

SKL INVESTMENTS, INC.

  
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**CERTIFICATE OF SERVICE**

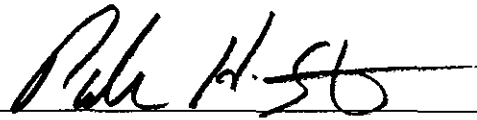
I, Parker H. Still, one of the attorneys for the Appellant, do hereby certify that I have this day mailed, postage prepaid by United State mail, a true and correct copy of the above and foregoing Brief of Appellant to:

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This the 17th day of December, 2008.

  
\_\_\_\_\_  
PARKER H. STILL