

**IN THE SUPREME COURT OF MISSISSIPPI
THE COURT OF APPEALS**

DELTA HOUSING DEVELOPMENT CORP.

APPELLANT

VS.

NO. 2008-CA-02127

MABEL JOHNSON

APPELLEE

REPLY BRIEF OF APPELLANT

**CARVER A. RANDLE, SR.
ALSEE MCDANIEL
POST OFFICE BOX 546
130 SECOND STREET
INDIANOLA, MS 38751
(662) 887-5436 (TELEPHONE)
(662) 887-5499 (FACSIMILE)**

ATTORNEYS FOR APPELLANT

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STATEMENT OF RELEVANT FACTS

Appellant, Delta Housing Development Corporation (hereinafter "Delta Housing") is a nonprofit housing development corporation which was established in 1971 as a result of storms in the Mississippi Delta that destroyed many homes. It was formed primarily to assist disadvantaged people in obtaining decent housing. (Tr. Vol. IV, p. 425)

The first program that Delta Housing implemented was self-help housing to assist low-income families in building their own homes. Delta Housing provides technical assistance to the families, including credit and housing assistance counseling, the packaging of loan applications for submission to the United States Department of Agriculture Rural Housing (hereinafter "USDA "), and the acquisition and development of land for the construction of the homes. Funding for the self-help program is provided through USDA and local financial institutions. The Sam Thompson - Green Acres Subdivision, which is the subject of the proceeding filed below, is such a self-help housing project which was developed to provide housing for low-income families in Mound Bayou, Mississippi. It was financed by USDA and Planters Bank and Trust Company. (Tr. Vol. IV, pp. 426- 29)

Delta Housing purchased the land used for the said Subdivision herein only after the confirmation of titles had been obtained by the owners, Herman and Alfreta Johnson, who had originally received title as a result of a tax sale. Thereafter, Delta Housing obtained a survey of the land from Hooker Engineering, a licensed surveyor, which set down the stakes and certified the boundary lines based upon the land records of Bolivar County, Mississippi for the Rox C. Sneed Subdivision to the City of Mound Bayou. (Tr. Vol. IV, pp. 433-34)

Appellee, Mabel Johnson, first became aware of the proposed housing development herein in 1995 at the time that Hooker Engineering set down the stakes to the property. (Tr. Vol. IV, pp. 454-55) The plat for the Sam Thompson - Green Acres Subdivision was submitted to the Mayor and Board of Aldermen of Mound Bayou on January 2, 1996. Upon a motion by Alderman William Crockett, the plat was approved by the City. William Crockett was a close associate and friend of Mable Johnson, having leased lands that she owned for over 20 years in the same area of the proposed housing development. (Tr. 42, 271-72, Exh. 25)

In or about March 1996, Clanton Beamon, Executive Director of Delta Housing, made contact with Ms. Johnson to discuss the proposed subdivision development. At that time, Ms. Johnson never indicated that the stakes establishing the boundary lines, as set out by Hooker Engineering, were incorrect. Thereafter, in July 1996, an attorney for Delta Housing sent a letter to Ms. Johnson indicating Delta Housing's intent to begin development of the housing subdivision, and Delta Housing executed a contract on October 4, 1996 with Douglas Construction to begin development. (Tr. 16-18, 165, 435) On October 14, 1996, a letter was forwarded to Delta Housing by Attorney Jeffrey Levingston, on behalf of Ms. Johnson requesting that development be discontinued. (Tr. 18; Exhibit 2). However, Attorney Levingston, after reviewing the land records, including the confirmation of title proceedings, sent a letter to Ms. Johnson on October 22, 1996 advising her that she had no legal claim to the property. (Appellant's Supplemental Record Excerpt)

Delta Housing proceeded with development of the housing subdivision pursuant to its construction contract, including : the installation of lift and pump stations on December 31,

1996; the installation of sewer and water lines completed on June 27, 1997; and the completion of a road bed (gravel, concrete, and storm drains) on August 21, 1997. (Tr. 181, 182).

Thereafter, Delta Housing was served with a Temporary Restraining Order filed on behalf of Ms. Johnson on or about August 25, 1997. At the time of the filing of the injunction proceedings in Bolivar County Chancery Court, the initial construction for the housing development was approximately ninety (90) percent completed.. (Tr. 166)

ARGUMENT

I. THE LOWER COURT DID ERR IN ITS ORDER TO EJECT DELTA HOUSING.

Appellee alleges in her Brief that Mabel Johnson had the senior deed to the real property at issue herein, and, therefore, she is entitled to the removal or ejectment of Delta Housing from said property. While Appellee may be correct regarding Ms. Johnson's deed, her action for mandatory injunction for ejectment is one for equitable relief which may be barred by laches or equitable estoppel. Barron v. Federal Land Bank of New Orleans , 180 So. 74 (Miss. 1938); Bright v. Michel , 137 So.2d 738, 749 (Miss. 1962); Morgan v. Morgan , 431 So.2d 1119, 1121, (Miss. 1983) ; 42 AmJur2d Section 41.

In the instant case, the lower Court did not fully consider evidence of laches raised by Delta Housing, i.e., the Court indicated that it had made a decision on the issue, but that a proffer of evidence by Delta Housing would be allowed to be made at trial. (Tr. 232 -33) The proffer at trial consisted of the following evidence of record, as well as, other evidence proposed to be offered at trial:

- (1) **1995** - Ms. Johnson had actual notice of the initial survey setting the boundary lines for the proposed development of the Sam Thompson-Green Acres Subdivision in ; (Tr. 454 ; Deposition of Mark Hooker)
- (2) **January 2, 1996** - Ms. Johnson had constructive notice of the development through the official action of the Mayor and Aldermen of Mound Bayou in adopting and approving the plat for the Subdivision, upon a motion made by Alderman William Crockett, who had leased Ms Johnson's land for

over 20 years, including the land adjacent to the proposed Subdivision. (Tr. 455)

(3) **March 1996** - Delta Housing Executive Director, Clanton Beamon, met with Ms.

Johnson to discuss the proposed Subdivision development. (Tr. 457)

(4) **July 1997** - Ms. Johnson obtained a survey to establish her claim to the subject

property and filed an action for injunction in August 1997. (Tr. 459)

(5) That in balancing of the equities, at the time that Ms. Johnson filed her action for

mandatory injunction, Delta Housing had expended several thousand dollars in

installing the infrastructure for the development, which would cost approximately

Sixty Thousand Dollars (\$60,000.00) to remove. On the other hand, the

appraised value of the four tenths acre of land (0 - 18 feet) at issue is **Eight**

Hundred Dollars (\$800.00). (Tr. 142 166, 176 , 465)

Based upon the said proffer, the Chancellor ruled that laches did not apply and ordered that

Delta Housing be ejected, including the removal of all structures on the land. (Tr. 465, 478)

In Fratesi v. City of Indianola , 972 So.2d 38, 41-42 (Miss. 2008),

the City of Indianola laid a gravel surface over a ditch to which Fratesi claimed title and

ownership. In an action for trespass seeking injunctive relief to restore the ditch to its original

condition, the chancery court denied the claim for permanent injunction, finding that it would be

“impracticable or impossible” to return the ditch to its original condition. Said ruling was

affirmed by this Court on appeal. Although that case did involve claims of prescriptive easement,

the equitable theory applied by the Court should be applicable in the instant case, insofar as it

would be impracticable or impossible for Delta Housing to restore Ms. Johnson’s property to its

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original condition, considering the costs, as well as, the fact that the value of Ms. Johnson's property has not been diminished, and in fact, has been increased. (Tr. 142, 176)

While Ms. Johnson may claim ownership of the real property at issue, she had both actual and constructive notice of the survey and proposed development by Delta Housing for nearly two years before filing any action for injunctive relief. She waited until Delta Housing, USDA, and Planters Bank had expended thousand of dollars in the development of the land. In the circumstances, the doctrine of equitable estoppel would apply to bar the assertion of her claim for mandatory injunction requiring the restoration of the property to its original condition. Bright v. Michel , supra, 137 So.2d at 749; Fratesi v. City of Indianola , supra, 972 So.2d at 41.

II. WAIVER OF ARGUMENT REGARDING MASTER'S REPORT

Appellee argues, at page 8 of her Brief, that Delta Housing waived any argument that the subject property does not belong to Mabel Johnson by virtue of the Master's Report. It is clear that said Report simply made a determination of the proper boundary line of Ms. Johnson's property based upon the deeds and land records. However, it also determined that the surveyors used by Ms. Johnson and Delta Housing started at the same point, but that the Johnson survey used her deed for a point of reference, and the Delta Housing survey used the Rox C. Sneed plat and description as its point of reference, which was the property subject to a tax sale that was later confirmed by the Bolivar County Chancery Court.

The Master's Report was not a final determination of the issues in the case below. As the Order Accepting Master's Findings of Fact noted, the claims for injunctive relief and damages were to be resolved by the Court at a hearing thereon.

debt
City
Mabel Johnson
property

III. ADOPTION OF THE ROX C. SNEED SUBDIVISION PLAT

Appellee next argues that it was beyond the authority of the City of Mound Bayou to take Mabel Johnson's land by adoption of a Subdivision Plat. The Plat of the Rox C. Sneed Subdivision was adopted by the City of Mound Bayou and recorded in the land records of Bolivar County on July 26, 1947. However, the Minutes of the City reflecting the adoption of said Plat are missing from the City's records. (Tr. 95-97; Exh 8)

The Mississippi Supreme Court has held that the official actions of a governing authority in this State are presumed to be valid. Luter v. Oakhurst , 529 So.2d 889, 894 (Miss. 1988). As relates to the adoption of the Plat herein, it should also be presumed that the City of Mound Bayou took all necessary legal action relating to the adoption of said Plat, including any actions for eminent domain or the establishment of a prescriptive easement on properties purportedly owned by the father of Mabel Johnson. Fratesi v. City of Indianola , supra , 972 So.2d at 42-43.

Despite the absence of the Minutes adopting the Rox C. Sneed Subdivision Plat herein, the Mississippi Rules of Evidence, Rules 6, 8, and 14 makes clear that evidence of the existence of such a record may be found and is self-authenticating if it is the record of a public office shown by the testimony of the custodian or other qualified witness . In the instant case, the Mayor of the City of Mound Bayou, Kennedy Johnson, testified as to procedure used by the City in adopting plats, and that the Plat for the Subdivision herein was in the City's records, but that the Minutes were missing. The Mayor was a qualified witness as to the fact that Minutes would have been part of the City's records relating to the adoption of the Plat and their existence, although missing.

IV. THE DOCTRINE OF RESJUDICATA IS APPLICABLE

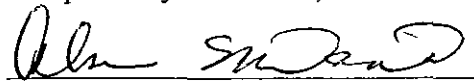
On February 26, 1995, the Chancery Court of Bolivar County, Mississippi rendered a Final Judgment on the Petition to Confirm Tax Title and Remove Clouds From Title filed by Herman and Alfreda Johnson. The Court specifically made a finding that all necessary defendants had been served personally or by publication, and "That the Court has jurisdiction of the parties and the subject matter involved herein." (Record, p.49, Exhibits, p.122)

The Mississippi Supreme Court has held that a final decree of confirmation , valid on its face, is not subject to collateral attack. Hatten v. Jones , 67 So.2d 363 (Miss. 1953); Trotter v. Roper , 92 So.2d 230 (Miss. 1957) In the instant case, Ms. Johnson was not named as a party defendant to the proceeding for confirmation. However, the Court found that the notice by publication to "All Persons having or Claiming Legal or Equitable Interest in the Unplatted Portion of Block 2, Rox C. Sneed Subdivision to the City of Mound Bayou, Bolivar County, Mississippi " , together with personal service on known defendants, provided the Court with jurisdiction of the necessary parties to confirm title. Said Final Judgment is not void on its face and is res judicata on the issue of title contained in the tax deed to the Rox C. Sneed property executed by the Chancery Clerk of Bolivar County.

CONCLUSION

For the foregoing reasons, and based upon the authorities cited herein, the Judgment of the Chancery Court of Bolivar County for ejectment of Delta Housing, should be reversed.

Respectfully Submitted,


CARVER A. RANDLE, ESQ.
ALSEE MCDANIEL, ESQ.

CERTIFICATE OF SERVICE


I, Alsee McDaniel, certify that I have served a copy of the foregoing Appellant's Reply Brief by U.S. Mail, postage prepaid, addressed to the following:

Drew M.. Martin, Esq.
Melissa Selman Martin, Esq.
Martin Law Firm, PLLC
1635 Lelia Drive, Suite 102
Jackson, MS 39216

David Neil McCarty, Esq.
1635 Lelia Drive, Suite 102
Jackson, MS 39216

Derek D. Hopson, Esq.
Hopson Law Firm
Post office Box 266
Clarksdale, MS 38614

This the 26th day of October, 2009.


ALSEE MCDANIEL, MSB# [REDACTED]
ATTORNEY FOR APPELLANT

SUPPLEMENT TO RECORD EXCERPTS OF APPELLANT

LE VINGSTON & LE VINGSTON, PA

ATTORNEYS AT LAW

201 SOUTH PEARMAN AVENUE

P. O. BOX 1327

CLEVELAND, MISSISSIPPI 38732

(601) 843-2791

ALFRED A. LEVINGSTON

JEFFREY LEVINGSTON

FACSIMILE:

(601) 843-2797

October 22, 1996

Ms. Mabel Johnson
PO Box 253
Mound Bayou, MS 38762

EXHIBIT

17

2-8-99

RE: Land Dispute

Dear Ms. Johnson:

On Tuesday, October 22, 1996, I received a telephone call from Carver Randle, who is an attorney in Indianola. Mr. Randle advises me that the work being done on the road which I wrote Clarence Beamon about is not being done by Mr. Beamon, but is, in fact, being done by the Mississippi Delta Housing Authority, of which Mr. Beamon is a director. Since this is the case, the trespass action against Mr. Beamon filed by you in Justice Court should be dismissed since any actions being taken are being done by the Housing Authority and not by Mr. Beamon personally.

Additionally, Mr. Randle advises, and I have checked the records at the Courthouse here in Cleveland, that the property which you are claiming has heretofore been the subject of a court proceeding in Case No. 94-0462 on the docket of the Chancery Court here in Cleveland. I enclose a copy of an order of the Chancery Court with a plat attached indicating the affected property. It seems that Herman and Alfreta Johnson bought the property described as "That part of the unplatted portion of Block 2, Roxie-C-Sneed Addition to the City of Mound Bayou, consisting of 8 acres, more or less, and being further described as parcel/PPIN35056070201100", at tax sale on April 4, 1988, for unpaid taxes. Subsequently, and on April 17, 1990, the Chancery Clerk gave a deed to the property to Mr. Johnson, which is recorded in Book M-186 at Page 70 in the land records here in Cleveland. Mr. Johnson then conveyed his interest in the property to his wife, Alfreta, by deed of record in Book M-198 at Page 517. The suit goes on the state that on May 22, 1967, by deed recorded in Book M-87 at Page 9, a cloud was placed on the title to the property by Mose Coleman and Pearline Coleman, who asserted a claim against a lot measuring 50 feet by 150 feet located in the northeast portion of the property wherein Mr. and Mrs. Coleman stated that they occupied the property and made a claim to it through adverse possession. As you can see, the suit

Ms. Mabel Johnson
October 22, 1996
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was brought against the heirs of Roxie-C-Sneed, the heirs of Cleo Blackburn, the heirs of Mose and Pearline Coleman, and any and all other persons having a claim, either legal or equitable, in the abovedescribed property.

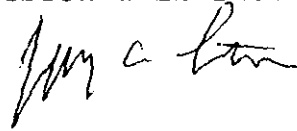
On February 2, 1995, the Chancery Judge signed the enclosed order confirming title in the name of Herman M. Johnson and his successor in title, Alfreta Johnson, and further removed any clouds or claims against the title. The upshot of this is that based on the non-payment of taxes on the property in question, the tax deed to Herman Johnson and the lawsuit, and assuming your property is in the affected area, then you apparently have no legal claim to the property where the road is being built. I am sure that this comes as a surprise to you as it did to me; however, these are the cold hard facts, and unless you know something which I do not know, for example, that the road is going across property which was not subject to the lawsuit, then you have no legal recourse.

If you wish to discuss this matter in greater detail, please call me; however, in the interim, I would again suggest that you drop the criminal charges against Mr. Beamon since there is no basis to charge him with anything in his individual capacity.

Sincerely,

LEVINGSTON & LEVINGSTON

BY:



JAL:mdw