

**SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

CASE NO. 2008-TS-02127

DELTA HOUSING DEVELOPMENT CORPORATION

APPELLANT

VS.

MABLE JOHNSON

APPELLEE

APPELLANT'S BRIEF

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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 disqualification or recusal:

- | | | |
|---|---|-------------------------|
| (1) Delta Housing Development Corporation
Indianola, MS | - | Appellant |
| (2) Clanton Beamon, Executive Director
Delta Housing Development Corporation | - | Appellant |
| (3) Mable Johnson
Mound Bayou, MS | - | Appellee |
| (4) Carver A. Randle, Sr. Esq.
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(5) Derek D. Hopson, Esq.
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- Attorney for Appellee

(6) Hon. Jon M. Barnwell
P.O. Box 1579
Greenwood, MS 38930

- Chancellor
7th Chancery District

SO CERTIFIED this 16th day of June, 2009.



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STATEMENT OF ISSUES

- I. THE ADOPTION OF THE PLAT OF THE ROX C. SNEED SUBDIVISION BY
THE CITY OF MOUND BAYOU IS PRESUMPTIVELY VALID

- II. THE ACTION FILED BY APPELLEE HEREIN IS BARRED BY RES JUDICATA

- III. APPELLEE'S ACTION FOR MANDATORY INJUNCTION IS BARRED BY ESTOPPEL
AND LACHES

STATEMENT OF THE CASE

This action was instituted by Appellee, Mabel Johnson, seeking a mandatory injunction and other relief against Appellant, Delta Housing Development Corporation (hereinafter “Delta Housing”) for alleged trespass or encroachment upon her real property located in Mound Bayou, Bolivar County, Mississippi. Appellee filed her Petition For temporary Restraining Order on August 19, 1997, and an Order Granting Temporary Restraining Order was entered on the same day. No preliminary injunction was ever entered, and the Temporary Order expired after August 28, 1997.

Thereafter, Appellee filed amended petitions to allege a claim of adverse possession and to add other parties, including the United states of America - Rural Development, which had provided funding to Delta Housing for the construction of a self-help housing subdivision adjacent to the disputed property. By reason of the United States defendant, the action was removed to the United States District Court for the Northern District of Mississippi. The Court there granted a summary judgment on Appellee’s adverse possession claim which was affirmed on appeal to the Fifth Circuit Court of Appeals. (Record, pages 148-155). The United States - Rural Development was subsequently dismissed as a party-defendant in this action, and the case was remanded to the Chancery Court of Bolivar County for trial of the remaining claims.

Upon a trial of this cause, the Chancery Court of Bolivar County entered a Judgment on November 21, 2008 granting Appellee’s claim for ejectment and directing Delta Housing to remove all infrastructure and other structures located in the disputed area. Appellant duly filed its Notice of Appeal to this Court on December 19, 2008.

STATEMENT OF FACTS

Deraignment of Title

The real property at issue herein consists of a parcel approximately four tenths(.4) of an acre in an area ranging from zero to eighteen (0 - 18) feet located west of Highway 61 in the City of Mound Bayou, Mississippi. (Tr. Vol. II, p. 141; Exhibit No. 13). Appellee, Mabel Johnson claims ownership of said land by virtue of a deed to her father in or about 1944. (Tr. Vol. III, p. 363; Exhibits, p. 231)

In or about July 1947, the City of Mound Bayou adopted a plat of the Rox C. Sneed Subdivision which was recorded in the land records in the office of the Bolivar County Chancery Clerk on July 26, 1947 in Plat Book 3, Page 21. (Tr. Vol. I, p. 97 ; Exhibit No. 8). Said Plat, as adopted, included the above-described overlapped area in dispute herein. (Tr. Vol. IV, p. 378; Record, p. 11, 48).

On April 4, 1988, the said parcel of land in the Rox C. Sneed Subdivision was sold for taxes by the Bolivar County Tax Collector. After the passing of the requisite redemption period, a Chancery Clerk's Conveyance of Land for taxes was executed and filed for record on April 17, 1990 in Deed Book M-186, page 70, in which the subject property was conveyed to Herman Johnson (Record, p. 34).

On March 26, 1993, Herman Johnson executed a Quitclaim Deed conveying the said property to his wife, Alfreta Johnson, as recorded in Deed Book M-198, page 517. (Record, p. 35). Thereafter, on December 12, 1994, Alfreta Johnson and Herman Johnson filed a Petition to Confirm Title and remove clouds on the property in the Chancery Court of Bolivar

County, Cause No. 94-0462. A Final Judgment confirming title was entered on February 2, 1995. (Record, p. 149; Exhibits, p. 222).

On September 27, 1995, Alfreta Johnson conveyed the subject property containing 6.02 acres, more or less, by Warranty Deed to Appellant, Delta Housing recorded in Deed Book — 211, page 5 of the land records of Bolivar County. (Record, p. 36)

Development of Sam Thompson- Green Acres Subdivision

Appellant, Delta Housing, was first begun in 1971 to assist persons in the Mississippi Delta, particularly those who live in economically disadvantaged communities. Their initial projects were “ self-help “ housing funded through the USA Farmers Home Administration (Tr. Vol. IV, p. 425-26).

At the time that Delta Housing acquired the subject property herein located in the Rox C. Sneed Subdivision, there was a need for housing in the Mound Bayou community to serve low-income families. Prior thereto, Farmers Home had imposed a moratorium on new housing construction in the city for about 15-20 years. (Tr. Vol. IV, p. 429. An option to purchase the land was obtained from Rural Development, and a loan was obtained to purchase the land for \$16,500.00. (Tr. Vol. IV, p.428-29; Tr. Vol. I, p. 23; Exhibit 4).

The initial survey of the 6.02 acres of property purchased by Delta Housing was performed by Hooker Engineering Services on April 28, 1994, prior to the Final Judgment confirming the said tax sale herein. (Exhibits, p. 39). After receiving a Warranty Deed to the subject property, Clanton Beamon, Executive Director of Delta Housing, submitted a preliminary plat to the Mayor and Board of Aldermen of Mound Bayou for the development of a subdivision

to be called the Sam Thompson- Green acres Subdivision. The preliminary plat was approved on November 7, 1995 and submitted to Bolivar County for approval on November 8, 1995.

(Exhibits, p. 23). The Plat was finally adopted by the City of Mound Bayou on January 2, 2006 upon a motion by Board member William Crockett. Mr. Crockett had been farming land owned by Appellee Johnson since the 1980s. (Tr. Vol. I, p. 428; Tr. Vol. III, p. 271; Exhibits, p. 71).

In or about March 1996, Mr. Beamon met with Mrs. Johnson and discussed the proposed subdivision development. At that time, she did not indicate the boundary lines as set off with stakes were incorrect. (Tr. Vol. IV, p. 432). However, before beginning any Construction, Mr. Beamon contacted the engineer, Hooker Engineering, to “ double-check” the boundary lines to make sure they were correct. He also went back to Mrs. Johnson and was informed that she had had a survey done which lined with the Hooker survey. (Tr. Vol IV, p.434) Thereafter, Delta Housing had an attorney to write a letter to Mrs. Johnson on July 23, 1996 indicating its intent to begin construction and requesting any documentation that the boundary lines were not correct (Exhibit 1). Although Mrs. Johnson had an attorney initially to write a letter expressing opposition to the construction based on her alleged interest in the property, the attorney subsequently informed her that she did not have a legal basis for objection. (Exhibit 2).

On October 4, 1996, Delta Housing entered a contract with Douglas Construction in the amount of \$129,600.00 to install infrastructure for the subdivision, including sewage, water, and streets. The work began on October 18, 1996. (Tr. Vol. II, p. 164, 166; Exhibit 16).

On July 31, 1997, Mrs. Johnson obtained a survey by Allen & Hoshall, Ltd. in which it

was determined that the Sam Thompson- Green Acres Subdivision overlapped on to Mrs. Johnson's property by zero to 18 feet as noted herein above. The survey further determined that this overlap was created in the original plat of the Rox C. Sneed Subdivision (Record, p. 63). Thereafter, Mrs. Johnson filed her Petition for restraining order on August 19, 1997. At the time of the filing of said Petition, construction on the infrastructure was substantially (approximately 90 percent) completed, including sewage, water lines, manholes, and the base of the street. (Tr. Vol. II, p. 166; Tr. Vol. IV, p. 436.). Delta Housing had already expended substantial funds, including \$16,500 to purchase the land and over \$100,000 for the initial construction on the infrastructure. (Tr. Vol. II, p. 166).

At the trial of this cause, evidence was presented that it would cost approximately \$60,000.00 to remove the infrastructure if a mandatory injunction were issued.(Tr.Vol. II, p.176). Comparatively, the value of the four tenths acre of land at issue herein was approximately Eight Hundred Dollars (\$800.00) (Tr. Vol. II, p. 142). Prior to its ordering a mandatory injunction, the Court only received a proffer of Appellant's proof on the issue of laches. (Tr. Vol. IV, p. 465; Record, p.225)

SUMMARY OF ARGUMENT

The real property at issue herein was included as a part of the Rox C. Sneed Subdivision Plat adopted by the City of Mound Bayou and duly recorded in the land records of Bolivar County, Mississippi on July 26, 1947. This adoption of said Plat is presumed to be valid and is subject to attack only by a showing that the action was arbitrary, capricious, discriminatory, or beyond the legal authority of the City. Further, since the alleged overlap on to Appellee's land was contained in the original Rox C. Sneed Plat, the City of Mound Bayou is a necessary party to this proceeding in order for the Court to grant complete relief.

The disputed land herein, as recorded in the Bolivar County tax rolls, was subject to a tax sale in 1988, and a tax deed issued pursuant thereto by the Chancery Clerk of Bolivar County. Said conveyance, after the statutory redemption period vested in the purchaser, Herman Johnson, a good and perfect title under the law. The Final Judgment confirming said title entered in the Chancery Court of Bolivar County is res judicata on Appellee's claim to ownership of said property, in the absence of any evidence establishing that the adoption of the Rox C. Sneed Subdivision by the City of Mound Bayou was not valid.

This action is further barred by the doctrine of estoppel and laches. In seeking a mandatory injunction for the removal of structures constructed in the disputed area herein, Appellee was required to act "promptly". In the instant case, Appellee became aware of the boundary lines set by Hooker Engineering in April 1994 when the 6.02 acres constituting the Sam Thompson - Green Acres Subdivision was surveyed. She was further informed about the proposed development in or about March 1996 and July 1996 by representatives from Delta

Housing. Moreover, William Crockett, a farmer who had rented Mrs. Johnson's farm land for over 20 years was on the Board of Aldermen of the City of Mound Bayou at the time that the Subdivision Plat was approved and made the motion for its approval. Mr. Crockett had regular contact with Mrs. Johnson and discussed the project. Nevertheless, Appellee did not file any action for restraining order until three years after she became aware of the initial survey for the subdivision. At that time, Delta Housing had expended over \$100,000.00 for construction of the infrastructure and street and had been extended loans by Planters Bank for the purchase of the land, as well as, obtained approvals from Rural development for the self-help housing project. If the mandatory injunction were upheld, it would cost \$60,000.00 to remove the infrastructure which would constitute an impossibility for Delta Housing. In balancing the equities, the value of the four tenths acre of land is approximately \$800.00. It is clear from the record that Delta Housing did not intentionally encroach upon Mrs. Johnson's land and relied upon valid surveys of the Rox. C. Sneed Subdivision as originally platted.

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ARGUMENT

I. THE ADOPTION OF THE PLAT OF THE ROX C. SNEED SUBDIVISION BY THE CITY OF MOUND BAYOU WAS PRESUMPTIVELY VALID.

The Mississippi Supreme Court has held that the actions of a mayor and board adopting a subdivision plat is presumptively valid , and any party seeking to attack its validity has the burden to show that said action was arbitrary, capricious, discriminatory, or beyond the legal authority of the board. Taquino v. City of Ocean Springs, 253 So.2d 854, 855 (Miss. 1971); Luter v. Oakhurst , 529 So.2d 889, 894 (Miss. 1988). In the latter case, the Court concluded:

The official action of the governing authorities of a Municipal corporation in this State are presumed valid... What this means... is that those who would challenge the formal regularity of the prior act of a municipal corporation bear the burden of demonstrating affirmatively wherein the failures occurred. (Citing other authorities). No doubt as a practical matter proof of a negative may be difficult where a number of years have elapsed. Yet we regard the presumption vital in that otherwise untold scores of official actions may be invalidated .
(EMPHASIS ADDED)

*Not challenge official action
but outcome
negative*

Luter v. Oakhurst, 529 So.2d 894

The plat of the Rox C. Sneed Subdivision was adopted by the City of Mound Bayou in or about 1947 and duly recorded in the land records of Bolivar County, Mississippi. Although the Minutes of the City of Mound Bayou reflecting the adoption of said plat could not be located after diligent search and inquiry by City officials, the usual procedure of the City would have required the adoption of the plat prior to its being recorded in the county land records. Tr. Vol. I,

pages 97-98; Tr. Vol. IV, p. 378; Record, p. 60;).

To the extent that Appellee Johnson alleges an overlap by the original Rox C. Sneed Sneed plat, as determined by her surveyor, Allen & Hoshall, she has the burden of showing that the action by the City of Mound bayou was not valid by reason of it being arbitrary, capricious, discriminatory, or beyond its authority. There is clearly no evidence of record adduced by Appellee to carry this burden., and the adoption of the Rox C. Sneed plat should be declared valid, as well as, all of the conveyances made thereafter, including: (1) the Conveyance of Land for Taxes from Bolivar County to Herman Johnson; (2) the Quitclaim Deed from Herman Johnson to alfreta Johnson; and (3) the Warranty Deed from Alfreta Johnson to Delta Housing Development Corporation. Otherwise, as the Court noted in Luter v. Oakhurst, supra, these presumptively valid actions and conveyances based upon the original plat would be effectively invalidated.

In light of Appellee's burden of proof regarding the said plat, it would also appear clear that the city of Mound Bayou is a necessary party to this action pursuant to Miss. R. Of Civ. Pro. Rule 19, if the Court is to grant complete relief.

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II. THE ACTION FILED BY APPELLEE HEREIN IS BARRED BY RES JUDICATA

Miss. Code Ann. Section 27-45-23 provides that a conveyance to a purchaser at tax sales by the chancery clerk, after the period of redemption under law, vests in the purchaser a perfect title with the immediate right of possession, when acknowledged and recorded as land records. Section 27-41-79 further provides that the certified list of lands struck for tax sale shall be notice to all persons in the same manner as are deeds when filed for record.

The Mississippi Supreme Court, in several early decisions, has concluded that the confirmation of a tax title vests the purchaser with a perfect title, even against those asserting a right of ownership under a prior conveyance. Dimitry v. Jones, 115 So. 786, 787 (Miss. 1928); Reliance Inv. Co. V. Johnson, 194 So. 749 (Miss. 1949); Harris v. Lollar, 17 So.2d 325 (Miss. 1944). In Dimitry, supra, the Court held that "In a contest between the owner of a Spanish land grant and the purchaser at a tax sale, the tax title, if otherwise valid, will prevail over the Spanish land grant claim." 115 So. At 787.

In the instant case, as noted herein above, the Rox C. Sneed plat is presumptively valid in the absence of proof of its invalidity. The tax sale and title herein, as confirmed by the Final Judgment entered in the Chancery Court of Bolivar County, vested clear title in the purchaser at tax sale and subsequent conveyances.

Appellee's action filed herein should, therefore, be dismissed as barred by res judicata arising from the tax sale and Final Judgment confirming title. Trotter v. Roper, 92 So.2d 784 (Miss. 1957).

III. APPELLEE'S ACTION FOR MANDATORY INJUNCTION IS BARRED BY
ESTOPPEL AND LACHES'

General treatises of law provides that "equity aids the vigilant"; equitable relief is available to those who show reasonable diligence in asserting their rights and will be denied to those who sleep upon their rights to the prejudice of the party against whom relief is asked.... The nature of the relief provided by mandatory injunctions calls for prompt action on the part of one seeking such relief. This is particularly true where the injunction is sought to compel the removal of structures, and any unreasonable delay in such cases will bar the right to the remedy, even though the injury is clear. 42 AmJur2d Section 41.

The Mississippi Supreme court, in an earlier decision on facts similar to issues herein, held as follows:

The authorities agree that every case of equitable estoppel must rest on the particular facts involved. The cases involving equitable estoppel vary as to the facts from case to case. If the owner of land with full knowledge, or with sufficient notice or Means of knowledge, of his rights and of all the material facts, knowingly, though passively looks on while another person expends money on the land under an erroneous opinion of title, it would be an injustice to permit the owner to exercise his legal rights against such other person. The owner is bound by the doctrine of equitable estoppel.

But I don't know how clear

Bright v. Michel , 137 So.2d 738, 749 (Miss. 1962)

In the instant case, Appellee, Mrs Johnson, had actual notice of the initial survey of the Sam Thompson-Green Acres Subdivision in April 1994 ,prior to the confirmation action filed By Herman and Alfreta Johnson. The Executive Director personally met with her in March 1996

and discussed the subdivision development more than a year before any action was filed in this action for injunction in August 1997. At that time, Delta Housing had expended over \$100,000.00 for the construction of infrastructure and streets utilizing funds from Rural Development and Planters Bank. A mandatory injunction, as ordered by the Chancery Court in this cause, would require the removal of said infrastructure at a cost of some \$60,000.00.

In the circumstances herein, Appellee Johnson clearly did not act promptly to assert her claim to the property herein, even assuming her claim is correct based upon an erroneous plat adopted in 1947, to property valued at \$800.00. A balancing of the equities would clearly be in favor of Appellant, and Appellee's action should be barred by estoppel and laches.

CONCLUSION

Based upon the foregoing authorities, the plat of the Rox C. Sneed subdivision which contains an overlap on to Appellee's land is presumptively valid in the absence of any proof by Appellee as to its invalidity. The tax sale and confirmation of title based upon said plat is res judicata of Appellee's claim of ownership of the disputed land herein. In any event, Appellee's action is barred by estoppel and laches arising from her failure to act promptly in seeking a mandatory injunction and the Judgment entered below should be reversed.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I, Alsee McDaniel, certify that I have served a copy of the foregoing Appellant's Brief
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This the 16th day of June, 2009.


ALSEE MCDANIEL