

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2009-CA-00126

REBUILD AMERICA, INC.

APPELLANT

V.

ESTATE OF DANIEL A. WRIGHT, DECEASED

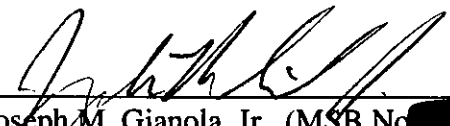
APPELLEE

CERTIFICATE OF INTERESTED PERSONS

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. Rebuild America, Inc., Plaintiff-Appellant
2. Kimberly P. Turner, Counsel for Plaintiff-Appellant
3. Joseph M. Gianola, Jr., Counsel for Plaintiff-Appellant
3. Estate of Daniel A. Wright, Defendant-Appellee
4. Jon H. Powell, Counsel for Defendant-Appellee

This the 23rd day of June, 2009.



Joseph M. Gianola, Jr., (MSB No. [REDACTED])
Attorney for Plaintiff-Appellant

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I. STATEMENT OF THE ISSUES

The issues in this appeal are set forth by Appellant, Rebuild America, Inc., as follows:

- A. Whether the Chancery Court erred in determining the Chancery Clerk failed to comply with the statutorily mandated procedures set forth in Mississippi Code Annotated § 27-43-3 (1972).
- B. Whether the Chancery Court erred in failing to award damages and interest to Rebuild America, Inc. pursuant to Mississippi Code Annotated §§ 27-45-3 and 27-45-27 (1972).

II. STATEMENT OF THE CASE

A. Nature of the Case

This appeal requires the Court to determine whether Chancery Clerk of Hinds County, Mississippi, fulfilled all of her statutory duties as set forth in Mississippi Code Annotated § 27-43-1, *et seq.* (1972), in providing notice to the record landowner prior to the expiration of the redemption period following the sale of real property for taxes. Relying upon the best information available, the chancery clerk notified the property owner of the forfeiture of the property by certified mail and publication in a newspaper published in Hinds County, Mississippi, and of general circulation, *The Clarion Ledger*. Furthermore, the chancery clerk caused for the Deputy Sheriff of Hinds County to attempt to serve the property owner personally. After being unable to personally serve the property owner at the address provided, the chancery clerk took the additional steps of conducting a diligent search and inquiry as to the property owner's street or post office address. However, the clerk was unable to ascertain an alternate address. The chancery clerk documented her efforts and filed her affidavit in the land records of Hinds County, Mississippi, certifying the same. Given the chancery clerk's satisfaction of all her

obligations under Mississippi Code Annotated § 27-43-1, *et seq.* (1972), the subject tax sale was properly conducted and title to the subject property was properly conveyed to the purchaser at the tax sale.

B. Course of Proceedings and Disposition in the Court Below

Upon Daniel A. Wright's failure to remit payment for the 2004 ad valorem taxes or redeem the real property taxes within the two-year redemption period, the Chancery Clerk of Hinds County issued a "Tax Deed" to the subject property to Wachovia Cust Sass Muni V DIR, who subsequently conveyed its interest to Rebuild America, Inc. Shortly thereafter, Rebuild America, Inc. filed its Complaint to Quiet and Confirm Tax Title in the Chancery Court of Hinds County, Mississippi, First Judicial District against Daniel A. Wright, *et al.* (R. at 1.) After limited discovery was conducted, both parties filed Motions for Summary Judgment and a hearing on said motions was held before the Honorable William H. Singletary. (R. at 121 and 181, Hrg. Transcr. at 1 (Dec. 8, 2008)) On December 10, 2008, the chancery court entered its Order Granting Defendant's Motion for Summary Judgment which found personal service of the notice of forfeiture of lands for delinquent taxes was insufficient and the chancery clerk failed to conduct an additional diligent search and inquiry as to the street or post office address of the record property owner. (R. at 196-202.) Upon finding that the property owner was not properly notified of the forfeiture of land for delinquent taxes, the chancery court entered a Final Judgment voiding the Tax Deed to Wachovia Cust Sass Muni V DIR and denying Rebuild America, Inc.'s Motion for Summary Judgment on December 19, 2008. (R. at 203.) Rebuild America, Inc. timely appealed the chancery court's decision to this Court on January 20, 2009. (R. at 205.)

C. Statement of the Facts

The Plaintiff-Appellant, Rebuild America, Inc. (hereinafter referred to as "Rebuild America"), is a Florida Corporation registered to do business in the State of Mississippi and whose principal office is located in Altamonte Springs, Florida. (R. at 1.) The previously named Defendant-Appellee, Daniel A. Wright (now by substitution, Estate of Daniel A. Wright, hereinafter referred to as "Wright"), was at all times relevant to the facts herein an adult resident citizen of Hinds County, Mississippi, and in 2004 was the owner of the following described property (hereinafter referred to as the "subject property"):

A certain parcel of land situated in the NW ¼ of Section 8, Township 5 North, Range 1 East, Hinds County, Mississippi, and being more particularly described by metes and bounds as follows, to-wit:
Commencing at the point of intersection of the line between the East ½ and the West ½ of the NW ¼ of Section 8, T5N, R1E, Jackson, Hinds County, Mississippi and the South right-of-way line of Hill Avenue; run thence East along the said South right-of-way line, 1321.50 feet to a point; thence leaving the said South right-of-way line run South 01 degrees 09 minutes West 681.90 feet to a point, run thence South 89 degrees 17 minutes East 610.40 feet to a point, run thence South 14 degrees 56 minutes East 671.79 feet to a point; run thence North 76 degrees 36 minutes West 937.76 feet to a point, run thence South 89 degrees 00 minutes West 184.89 feet to the Point of Beginning; run thence South 16 degrees 34 minutes East 325.30 feet to a point on the Northerly right-of-way line of US Highway 80; run thence North 71 degrees 12 minutes West along said Northerly right-of-way line 99.10 feet to a point; thence leaving the said Northerly right-of-way line of US Highway 80 run North 16 degrees 34 minutes West 290.80 feet to a point; run thence North 89 degrees 00 minutes East 83.05 feet to the Point of Beginning

Also known as:

BEG INT E/L HATTIESBURG ST & N/L HWY 80 NW/LY 290.8 FT E/LY 83.5 FT SE/LY 325.3 FT W/LY 98.1 FT TO POB PT SW ¼ SEC 8 T5N R1E
Parcel: 219-0001-001 PPIN 2341

(R. at 1, 6, and 16.)

On January 1, 2005, the 2004 ad valorem taxes on the subject property became due and

payable by Wright. Having failed to pay the 2004 ad valorem taxes, the subject property was sold for taxes due on August 29, 2005, by Eddie J. Fair, Tax Collector of Hinds County, to Wachovia Cust Sass Muni V DTR for the sum of forty-four hundred dollars and twelve cents (\$4,400.12). (R. at 9.) After the aforementioned sale was conducted, it remained on file in the office of the Chancery Clerk of Hinds County, Mississippi, for the redemption period of more than two (2) years. Before the expiration of the redemption period, Eddie Jean Carr, the Chancery Clerk of Hinds County, sent on May 23, 2007, via certified mail, return receipt requested an "Owner's Notice" to Wright at 1980 Highway 80 W, Jackson, Mississippi 39204, which is the physical address of the subject property and the address provided for notices to be sent. (R. at 10-11.) The certified letter was received and accepted by Cathy Burkes on behalf of Wright on June 5, 2007. (R. at 145).

On May 23, 2007, a "Sheriff's Notice" was issued by the Chancery Clerk of Hinds County notifying Wright of the aforementioned tax sale and expiration of the redemption period. (R. at 12.) On July 12, 2007, the Deputy Sheriff of Hinds County attempted to personally serve Wright at 1980 Highway 80 W, Jackson, Mississippi 39204, with the "Sheriff's Notice". (R. at 12-13.) Unable to personally serve Wright at the address provided, the sheriff executed an acknowledgment stating that he posted a true and correct copy of the notice on the door of Wright's usual place of abode and that Wright could not be found in any county willing to receive the notice at his usual place of abode. (R. at 13.) Following the sheriff's attempt to personally serve Wright, the chancery clerk certified that she made a diligent effort to locate Wright by searching the phone directory, the city tax directory, and other methods, but was unable to ascertain an alternate address for Wright. (R. at 15.) Furthermore, the chancery clerk on June 18, 2007, caused to be published in *The Clarion Ledger* a notice of forfeiture which

included the name and address of the owner of the subject property and the legal description of the subject property. (R. at 14.)

When Wright failed to redeem the 2004 property taxes after all of the aforementioned notices were given, the chancery clerk conveyed the subject property to Wachovia Cust Sass Muni V DIR on September 10, 2007. (R. at 9.) The "Tax Deed" to Wachovia Cust Sass Muni V DIR was filed for record on October 1, 2007, with the Chancery Clerk of Hinds County, Mississippi, in Book 6770 at Page 743. (R. at 9.) On October 31, 2007, U.S. Bank National Association, as successor in interest to Wachovia Bank as custodian for Sass Muni V DIR, subsequently conveyed the property to Rebuild America by virtue of that certain Quitclaim Deed and Assignment, which was filed of record with the Chancery Clerk of Hinds County, Mississippi, on November 7, 2007, in Book 6791 at Page 354. (R. at 6.) Shortly thereafter, Rebuild America filed its Complaint to Quiet and Confirm Tax Title pursuant to Mississippi Code Annotated § 11-17-19 (1972). (R. at 15.)

On December 8, 2008, a hearing before the Honorable William H. Singletary was held on Cross-Motions for Summary Judgment. (Hrg. Transcr. at 1 (Dec. 8, 2008)). After consideration of the motions and arguments from counsel for both, the chancery court determined that the noticing requirements set forth in Mississippi Code Annotated § 27-43-3 (1972) were not satisfied in order for title to the subject property to be confirmed in the purchaser, Rebuild America. (R. at 196-202.) The court specifically found that the sheriff's attempted service on Wright was defective and that a diligent search and inquiry was not performed by the Chancery Clerk of Hinds County. (R. at 199-202.) Accordingly, the court entered a Final Judgment voiding the Tax Deed and confirming title in Wright. (R. at 203-204.) The court did not award Rebuild America damages sufficient to reimburse it for payment of the taxes, interest, or other

expenses incurred by Rebuild America. (R. at 203-204.)

III. SUMMARY OF THE ARGUMENT

Rebuild America respectfully submits the chancery court's decision is an erroneous interpretation of the law as applied to the facts of this case and must be reversed with a judgment as a matter of law rendered in favor of Rebuild America and title to the subject property being confirmed in Rebuild America. Alternatively, genuine issues of material fact exist which precluded a judgment as a matter of law being rendered in favor of Wright. Furthermore, and in the event this Court affirms the chancery court's erroneous decision, this matter should be remanded for a determination of the amounts due and owed to Rebuild America for reimbursement of the taxes, interest, and expenses it incurred as a result of Wright's failure to pay the ad valorem taxes.

IV. ARGUMENT

A. Standard of Review

Despite the Hinds County Chancery Clerk's strict compliance with the noticing procedures mandated by statute, the chancery court found that Wright was not properly served with the redemption notice and no substantive evidence existed that a diligent search and inquiry was conducted. Therefore, the court granted summary judgment in favor of Wright. The granting of a motion for summary judgment is a matter of law; therefore, an appellate court employs a de novo standard of review regarding such a matter. *Mantachie Natural Gas Dist. v. Miss. Valley Gas Co.*, 594 So.2d 1170, 1172 (Miss.1992).

According to Rule 56(c) of the Mississippi Rules of Civil Procedure, a court may grant summary judgment "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact

and that the moving party is entitled to a judgment as a matter of law." "A fact is material if it tends to resolve any of the issues, properly raised by the parties." *Webb v. Jackson*, 583 So.2d 946, 949 (Miss.1991) (quoting *Mink v. Andrew Cas. Ins. Co.*, 537 So.2d 431, 433 (Miss.1988)). "The focal point of our standard for summary judgment is on material facts." *Warren ex rel. v. Glascoe*, 880 So.2d 1034, 1036 (Miss.2004). In order to avoid entry of an adverse judgment, the party opposing summary judgment must present "significant probative evidence demonstrating the existence of the triable issue of fact." *Frye v. Southern Farm Bureau Casualty Ins. Co.*, 915 So.2d 486, 493 (Miss.Ct.App.2005) (quoting *Reich v. Jesco, Inc.*, 526 So.2d 550, 552 (Miss.1988)).

The moving party bears the burden of showing that no genuine issue of material fact exists. *Tucker v. Hinds County*, 558 So.2d 869, 872 (Miss.1990). Additionally, the evidence must be viewed in the light most favorable to the non-moving party. *Russell v. Orr*, 700 So.2d 619, 622 (Miss.1997). A motion for summary judgment must be considered with a skeptical eye, because it is better to err on the side of denying the motion. *Ratliff v. Ratliff*, 500 So.2d 981 (Miss.1986). This Court has previously noted, "[n]otwithstanding our respect for and deference to the trial judge, on matters of law it is our job to get it right. That the trial judge may have come close is not good enough." *UHS-Qualicare, Inc. v. Gulf Coast Community Hosp., Inc.*, 525 So.2d 746, 754 (Miss.1987).

B. The Chancery Court erred in determining the Chancery Clerk failed to comply with the statutorily mandated procedures set forth in Mississippi Code Annotated § 27-43-3 (1972).

The jurisprudence in Mississippi has consistently supported strict compliance with the statutory procedures prior to divesting property owners of title to real property due to the property owner's failure to pay ad valorem taxes. "Statutes dealing with land forfeitures for

delinquent taxes should be strictly construed in favor of the landowners.” *Roach v. Goebel*, 856 So.2d 711, 716 (Miss.Ct.App.2003) (citing *Brown v. Riley*, 580 So.2d 1234, 1237 (Miss.1991)). “Any deviation from the statutorily mandated procedures renders the sale void.” *Id.* (citing *Hart v. Catoe*, 390 So.2d 1001, 1003 (Miss.1980)). However, when the clerk has strictly and fully complied with the noticing procedures, Mississippi Courts uphold and enforce the rights of tax sale purchasers. *See Rush v. Wallace Rentals, LLC*, 837 So.2d 191 (Miss.2003); *DeWeese Nelson Realty, Inc. v. Equity Services Co.*, 502 So.2d 310 (Miss.1986).

This Court has also recognized that “Mississippi law . . . simply does not permit landowners to be inattentive to their annual property taxes.” *Rush*, 837 So.2d at 200. “It is incumbent upon a landowner to be knowledgeable about the assessment on his property and to be diligent to make sure that his taxes are paid.” *Rains v. Teague*, 377 So.2d 924, 927 (Miss.1979). A landowner must exert some reasonable effort and diligence in assuring the payment of his property taxes. *Id.*

This appeal involves the noticing procedures following the sale of a parcel of property for ad valorem taxes due pursuant to Mississippi Code Annotated § 27-45-1, *et seq.* (1972). The chancery clerk of the county in which the property is located is required to notice the property owner that the sale will become absolute in the purchaser if the taxes are not redeemed prior to the expiration of the redemption period provided in Mississippi Code Annotated § 27-45-3 (1972). The noticing procedures the clerk is required to perform state in part the following:

The clerk shall issue the notice to the sheriff of the county of the reputed owner's residence, if he be a resident of the State of Mississippi, and the sheriff shall be required to serve personal notice as summons issued from the courts are served, and make his return to the chancery clerk issuing same. The clerk shall also mail a copy of same to the reputed owner at his usual street address, if same can be ascertained after diligent search and inquiry, or to his post office address if only that can be ascertained, and he shall note such action on the tax sales record. The clerk shall also be required to publish the name and address of the reputed owner

of the property and the legal description of such property in a public newspaper of the county in which the land is located, or if no newspaper is published as such, then in a newspaper having a general circulation in such county. Such publication shall be made at least forty-five (45) days prior to the expiration of the redemption period.

If said reputed owner is a nonresident of the State of Mississippi, then the clerk shall mail a copy of said notice thereto in the same manner as hereinabove set out for notice to a resident of the State of Mississippi, except that personal notice served by the sheriff shall not be required.

Notice by mail shall be by registered or certified mail. In the event the notice by mail is returned undelivered and the personal notice as hereinabove required to be served by the sheriff is returned not found, then the clerk shall make further search and inquiry to ascertain the reputed owner's street and post office address. If the reputed owner's street or post office address is ascertained after the additional search and inquiry, the clerk shall again issue notice as hereinabove set out. If personal notice is again issued and it is again returned not found and if notice by mail is again returned undelivered, then the clerk shall file an affidavit to that effect and shall specify therein the acts of search and inquiry made by him in an effort to ascertain the reputed owner's street and post office address and said affidavit shall be retained as a permanent record in the office of the clerk and such action shall be noted on the tax sales record. If the clerk is still unable to ascertain the reputed owner's street or post office address after making search and inquiry for the second time, then it shall not be necessary to issue any additional notice but the clerk shall file an affidavit specifying therein the acts of search and inquiry made by him in an effort to ascertain the reputed owner's street and post office address and said affidavit shall be retained as a permanent record in the office of the clerk and such action shall be noted on the tax sale record.

...

The failure of the landowner to actually receive the notice herein required shall not render the title void, provided the clerk and sheriff have complied with the duties herein prescribed for them.

...

Should the clerk inadvertently fail to send notice as prescribed in this section, then such sale shall be void and the clerk shall not be liable to the purchaser or owner upon refund of all purchase money paid.

Miss. Code Ann. § 27-43-3 (1972). After the Court strictly applies the plain and unambiguous language of this statute to the facts *sub judice*, this Court will find that the chancery court's

decision is erroneous as a matter of law and should be reversed.

1. Notice by Personal Service.

As required by section 27-43-3, the Chancery Clerk of Hinds County, Mississippi, on May 23, 2007, issued a redemption notice to the sheriff of the county of Wright's residence (hereinafter referred to as the "Sheriff's Notice"). (R. at 12.) The Sheriff's Notice was addressed to Daniel A. Wright at the subject property's physical address and the address provided to the clerk for notices to be sent. (R. at 12.) On July 12, 2007, the sheriff attempted to personally serve Wright at this address. Unable to hand deliver the Sheriff's Notice on said day, the sheriff posted the same on the "door of Defendant's usual place of abode" at the address above. (R. at 13.) The sheriff's return proof of service further provided "said defendant could not be found in any county, nor could I find any member of said defendant's family over the age of sixteen years, willing to receive the same at his usual place of abode." (R. at 13.)

Whether Wright was personally served by the sheriff is not disputed. The sheriff attempted to serve Wright at the address Wright provided and then took an additional step beyond what is required by statute to assure Wright received notice by posting it on the door of the subject property. Unable to serve him personally, the sheriff advised the chancery clerk of the same and returned his proof of service to the chancery clerk. The fact that Wright was not personally served does not render the Tax Deed void. This Court has held that the lack of personal service does not render the Tax Deed void when the clerk complies with all other duties prescribed by statute. *Moore v. Marathon Asset Management, LLC*, 973 So.2d 1017, 1021 (Miss.Ct.App.2008).

In support of its decision to void the Tax Deed to the property, the chancery court relied upon the Court of Appeal's decision in *Viking Investments v. Addison Body Shop*, 931 So.2d 679

(Miss.Ct.App.2006). The Mississippi Court of Appeal's decision in *Viking* held the posting of the sheriff's notice to the property failed to comply with the procedures set forth in Rule 4 and thus was not proper personal service by the sheriff. *Id.* at 683. That issue is entirely undisputed. Rebuild America did not request the chancery court to "ignore" this precedent. (R. at 200.) However, Rebuild America did request the Court to recognize a significant factual deviation from the facts in *Viking*. In *Viking*, it appears that no additional diligent search and inquiry was performed following the Sheriff's Notice being returned not found. Those are not the facts before this Court. Although the sheriff in this matter did not personally serve Wright and posted the notice to the door, the clerk took the additional steps of conducting further search and inquiry as provided by statute.¹ This factual distinction makes the two cases very distinguishable and requires this Court to reach a different result. Despite the sheriff's lack of personal service, the chancery clerk's fulfillment of her remaining obligations under the statute compels a reversal of the lower court's erroneous decision.

2. Notice by Certified Mail.

In addition to the Sheriff's Notice, the Chancery Clerk of Hinds County, Mississippi, on May 23, 2007, issued a redemption notice to the Daniel A. Wright and sent the same via certified mail, return receipt requested to the address on file with the clerk (hereinafter referred to as the "Owner's Notice"). (R. at 10-11.) This is the same address where the sheriff attempted to serve Wright personally. The Owner's Notice was received on June 5, 2007, and accepted by Cathy Burkes on behalf of Daniel A. Wright. (R. at 12.) The receipt of the certified mail by Wright

¹ Rebuild America also submits that such additional search and inquiry was not required by Mississippi Code Annotated § 27-43-3 (1972). See Appellant's Brief at 12. This legal issue was also not addressed by the Mississippi Court of Appeals in *Viking*.

extinguishes any lack of due process concerns. The clerk's compliance with providing the Owner's Notice was not disputed in the lower court proceedings.

3. Notice by Publication.

In further compliance with the statutorily mandated procedures, the Chancery Clerk of Hinds County, Mississippi, on June 18, 2007, caused to be published in *The Clarion Ledger*, the redemption notice which included Wright's name, address, and a legal description of the subject property. (R. at 14.) The clerk's compliance with causing the same to be published was likewise not disputed in the lower court proceedings.

4. Duty of Clerk if Notice by Personal Service and Certified Mail are returned undeliverable or not found.

As anticipated by the Mississippi Legislature, if the Owner's Notice *and* the Sheriff's Notice are returned undeliverable or not found, "then the clerk shall make further search and inquiry to ascertain the reputed owner's street and post office address." Miss. Code Ann. § 27-43-3 (1972). According to the plain and unambiguous language of the statute, the clerk's additional search and inquiry is not required unless the Owner's Notice *and* the Sheriff's Notice are returned undeliverable. *Id.* A strict interpretation, which this Court applies, of Mississippi Code Annotated § 27-43-3 (1972) unambiguously reveals that if either the Owner's Notice or the Sheriff's Notice is received by the property owner, then the clerk has no duty to perform any further additional search and inquiry. *See Lamar Life Ins. Co. v. Mente & Co., Inc.*, 181 Miss. 479, 480 (1938) ("It is a harsh and summary method for collection of taxes and the statutes applicable to the procedure should receive strict interpretation."); *See also Lawrence v. Rankin*, 870 So.2d 673, 676 (Miss.Ct.App.2003) ("The statute involved (Miss. Code Ann. § 27-43-3) in the present case must be given strict construction."). As this Court has stressed before, strict

compliance with the requirements of Mississippi Code Annotated § 27-43-3 (1972) is mandated. *See Rush*, 837 So.2d at 199 (“After all . . . it is strict compliance with the statute which is mandated.”) If the clerk has strictly complied with the notice requirements of the statute, even though the property owner may have not received notice, the tax sale is not void. Miss. Code Ann. § 27-43-3 (1972).

As applied to the facts *sub judice*, the chancery clerk, upon the return of the signed receipt of the notice by certified mail, was under no further duty to conduct an additional search and inquiry despite the sheriff’s notice being returned “not found.” Wright received a copy of the Owner’s Notice which was mailed to the address of the subject property. The notice was sent certified mail, return receipt requested. The signed receipt was returned to the chancery clerk and was not returned “undelivered” or “not found.” Pursuant to the plain and unambiguous language of Mississippi Code Annotated § 27-43-3 (1972), the clerk was relieved of any further search and inquiry because the Owner’s Notice *and* the Sheriff’s Notice was not returned “undeliverable” or “not found”. This Court’s inquiry as to whether the clerk strictly complied with the statute should cease here without any further discussion. Any further steps taken by the clerk were unnecessary and over and above what is mandated by statute.

Even though not required, the chancery clerk conducted an additional search and inquiry. Eddie Jean Carr, the Chancery Clerk, certified that she made a diligent effort to locate Daniel A. Wright whose property is involved in Tax Sale No. 2341 by searching the phone directory, the city tax directory, and other methods. Ms. Carr’s affidavit was filed of record with the Chancery Clerk of Hinds County on September 19, 2007, in Book 6766 at Page 517. (R. at 15.) Interestingly, the clerk completed a “check list form affidavit” which has been suggested by this Court as the proper method by which to document the clerk’s efforts. *See Rush*, 837 So.2d at

200 (“As a matter of suggestion, the chancery clerks could perhaps consider a ‘check list’ form affidavit containing a general list of the description of actions normally taken in a search and inquiry, and then merely ‘check off’ on the list the action actually taken in any particular search and inquiry.”). This is exactly what was performed by the clerk. (R. at 15.) She “checked off” that she searched the phone directory, the city tax directory, and other methods of inquiry. (R. at 15.) Even though a further search and inquiry was not required, the clerk’s efforts and affidavit fulfilled any further obligations she had under the statute and complied with the precedent set by this Court.

Despite the clerk’s affidavit, the chancellor, without any testimony from the clerk, found that there was “no **substantive** evidence that a diligent search was had.” (R. at 1201-202.) However, the only substantive evidence in the record was that the clerk checked the phone directory, the city tax directory and other methods of search and inquiry. Absolutely no evidence was presented which proved the clerk did not perform these tasks. This Court has previously stated the courts “have a right to expect that when any one, but especially a public official, signs an affidavit under oath, the statements and allegations contained in the affidavit will in fact be true.” *Rush*, 837 So.2d at 200.

Instead of giving deference to the clerk’s affidavit, the chancellor relied upon a March 7, 2008, Hinds County Landroll statement, a June 2008 *The Real Yellow Pages* telephone directory and a 2006-2007 *Yellow Book* telephone directory portraying Wright’s now known residential address. (R. at 176-180, 201.) First, the chancellor’s reliance upon the March 7, 2008, Hinds County Landroll statement and a June 2008 telephone directory is erroneous in itself as the chancery clerk would not have been privy to such information in May – August of 2007 when the noticing was due to be performed. The chancellor’s reliance upon after-the-fact information

is clear error. Second, all of the above sources of information do not reflect the exact name of the owner of the property in the case *sub judice*. The subject property was held and taxes were assessed in the name of Daniel A. Wright. (R. at 134.) The chancellor in his opinion stated, "Both of these phone listings were for Dan A. Wright." (R. at 134.) However, neither of the telephone directories lists the name "Dan A. Wright." (R. at 176-180.) None of the information relied upon by the chancellor reflected the name "Daniel A. Wright." Instead, the chancery court decided the clerk should have assumed "Dan Wright" and "Daniel A. Wright" are one and the same person and notice should have been issued to such address. The court requiring such assumptions and inferences to be made by the clerk is beyond what the clerk is obligated by statute to do. The chancery clerk performed an additional search and inquiry, certified and documented the same, and filed it of record. Having fully complied with the statute, the chancery court erred in second guessing the efforts of the clerk and in relying upon information which was not available to the clerk at the time the search was performed.

In the event this Court were to decide that the clerk was required to conduct a diligent search and inquiry and that the clerk's affidavit upon its face is not sufficient to enter a judgment as a matter of law in favor of Rebuild America, then this Court should remand this matter back to the chancery court, because a genuine issue of material fact exists as to whether a diligent search and inquiry was performed by the clerk. The only information which the chancellor relied upon that was available during the time the search was performed was the 2006-2007 *Yellow Book* telephone directory. However, the clerk certified the phone directory was checked. Additionally, there were other Daniel Wright's listed in the phone directories.² The clerk should

² None of whom were the Defendant-Appellee.

not be charged with sending notice and the sheriff to every individual in a phone directory whose name resembles that of the landowner. Hypothetically, the clerk may have checked the phone directory and called the number provided for Dan Wright to determine whether in fact the same was Daniel A. Wright. Without further inquiry as to what steps the clerk took in searching the phone directory and other methods which may include the landroll records, genuine issues of material fact exist as to whether a diligent search and inquiry was performed.

C. The Chancery Court erred in failing to award damages and interest to Rebuild America, Inc. pursuant to Mississippi Code Annotated §§ 27-45-3 and 27-45-27 (1972).

In the event this Court were to affirm the chancery court's decision, Rebuild America respectfully requests that this matter be remanded back to the chancery court for a determination of damages and interest pursuant to Mississippi Code Annotated §§ 27-45-3 and 27-45-27 (1972). The chancery court's Final Judgment in this matter voided the Tax Deed and, in effect, set aside the tax sale conducted in favor of Wachovia Bank, N.A., as Custodian for Sass Muni V.³ However, the chancery court did not order for the property owner to redeem or reimburse Rebuild America for payment of the 2004 ad valorem taxes. As provided by statute, a purchaser of land at a tax sale is entitled to a lien on such property and repayment of the taxes plus interest and expenses. The rights of purchasers at a tax sale are set forth as follows:

The amount paid by the purchaser of land at any tax sale thereof for taxes, either state and 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 the 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. The purchaser and the

³ Rebuild America, as successor in interest to Wachovia Bank, N.A., as Custodian for Sass Muni V, would be entitled to the repayment of taxes, interest and expenses.

holder of the legal title under him by descent or purchase, may enforce the lien by bill in chancery, and may obtain a decree for the sale of the land in default of payment of the amount within some short time to be fixed by the decree. In all suits for the possession of land, the defendant holding by descent or purchase, mediate or immediate, from the purchaser at tax sale of the land in controversy, may set off against the complainant the above-described claim, which shall have the same effect and be dealt with in all respects as provided for improvements in a suit for the possession of land. But the term "suits for the possession of land," as herein used, does not include an action of unlawful entry and detainer.

Miss. Code Ann. § 27-45-27 (1972). Furthermore, the redemption of land sold for taxes states in pertinent part, as follows:

The owner, or any persons for him with his consent, or any person interested in the land sold for taxes, may redeem the same, or any part of it . . . by paying to the chancery clerk, regardless of the amount of the purchaser's bid at the tax sale, the amount of all taxes for which the land was sold, with all costs incident to the sale, and five percent (5%) damages on the amount of taxes for which the land was sold, and interest on all such taxes and costs at the rate of one and one-half percent (1-1/2%) per month, or any fractional part thereof, from the date of such sale, and all costs that have accrued on the land since the sale, with interest thereon from the date such costs shall have accrued, at the rate of one and one-half percent (1-1/2%) per month, or any fractional part thereof.

Miss. Code Ann. § 27-45-3 (1972).

Despite the Plaintiff's prayer for such relief, the chancery court failed to award Rebuild America or order Wright to pay the amount of taxes due, interest and damages as provided by statute. The Mississippi Court of Appeals has previously found that it is manifest error for a lower court to fail to award the purchaser at a tax sale such amounts as provided by statute upon setting aside a Tax Deed. *See Lawrence v. Rankin*, 870 So.2d 673, 676-77 (Miss.Ct.App.2003) ("We find that the chancellor erred in not ordering that Rankin pay to Lawrence the interest due him as provide by the statute at one and one-half percent per month, together with damages thereon at a rate of 5% per annum on such amount due as provided by statute."). Due to the clear error committed by the chancery court, this matter should be remanded back to the chancery

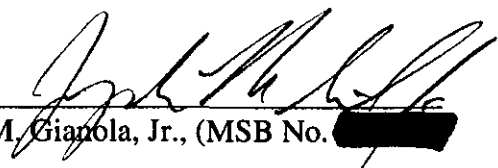

court for a determination of the amount of taxes due and owed, plus interest and damages, to Rebuild America.

V. CONCLUSION

The chancery court's decision in its Order Granting Defendant's Motion for Summary Judgment and Final Judgment is erroneous as a matter of law and must be reversed with a decision rendered in favor of Rebuild America, Inc. The Tax Deed issued by the Chancery Clerk of Hinds County, Mississippi, should be upheld and title confirmed in Rebuild America, Inc. In the alternative, genuine issues of material fact exist as to whether the chancery clerk conducted a diligent search an inquiry pursuant to the statutory mandates. In the unlikely event the chancery court's decision is upheld, this matter should be remanded to the chancery court for a determination of the amount of taxes due and owed, plus interest and damages, to Rebuild America, Inc. with all costs of this appeal being assessed to the Appellee.

RESPECTFULLY SUBMITTED, this the 23rd day of June, 2009.

REBUILD AMERICA, INC.

By: 
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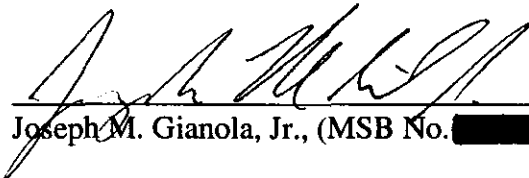
CERTIFICATE OF SERVICE

I, Joseph M. Gianola, Jr., attorney for Rebuild America, Inc., do hereby certify that I have this day served via United States Mail, postage prepaid, a true and correct copy of the above and foregoing Brief of Appellant to the following:

Jon H. Powell, Esq.
ShowsPowell, PLLC
2950 Layfair Drive, Suite 101
Flowood, Mississippi 39232

Honorable William H. Singletary
Hinds County Chancery Judge
Post Office Box 686
Jackson, Mississippi 39205-0686

THIS, the 23rd day of June, 2009.



Joseph M. Gianola, Jr., (MSB No. [REDACTED])