

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

AMERICAN PUBLIC FINANCE, INCORPORATED

APPELLANT

VERSUS

LLOYD A. SMITH

APPELLEE

SUPREME COURT DOCKET NO. 2009-CA-00608

**APPEAL FROM THE CHANCERY COURT
OF HARRISON COUNTY, FIRST JUDICIAL DISTRICT**

BRIEF OF APPELLEE, LLOYD A. SMITH

ORAL ARGUMENT REQUESTED

ATTORNEY FOR APPELLEE:

**G. Martin Warren, Jr., Miss. Bar No. [REDACTED]
Law Offices of G. Martin Warren, Jr., PLLC
Post Office Box 37
Gulfport, Mississippi 39502
Telephone - 228/897-9975
Fax- 228/897-9976**

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

AMERICAN PUBLIC FINANCE, INCORPORATED

APPELLANT

VERSUS

LLOYD A. SMITH

APPELLEE

SUPREME COURT DOCKET NO. 2009-CA-00608

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 Courts of Appeal may evaluate possible disqualifications or recusal.

Honorable Margaret Alfonso	Chancellor, Eighth District
Lloyd A. Smith	Appellee/Plaintiff
American Public Finance, Inc.	Appellant/Attempted Intervenor
Deep Woods Investment Company, L.L.C.	Defendant
Dennis Joslin	Defendant
ARF, LLC d/b/a Wolf Run	Defendant
Suresh Shah	Defendant
James E. Renfroe, Esq. Roy J. Perilloux, Esq. T. Mitchell Kalom, Esq.	Attorneys for Appellant
G. Martin Warren, Jr., Esq.	Attorney for Appellee

G. MARTIN WARREN, JR.

Respectfully submitted,

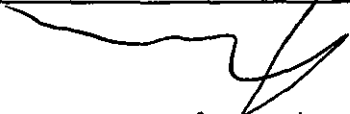
A handwritten signature in black ink, appearing to be 'G. Martin Warren, Jr.', written over a horizontal line.

TABLE OF CONTENTS

Certificate of Interested Persons	i
Table of Contents	iii
Table of Authorities	iv
Reasons for Oral Argument	vi
Summary of the Argument	1
Argument	2
Conclusion	13
Certificate of Service	14
Certificate of Filing	15

TABLE OF AUTHORITIES

CASES

<i>Aldridge v. Aldridge</i> , 527 So. 2d 96 (Miss. 1988)	5
<i>Buchanan v. Stinson</i> , 335 So. 2d 912 (Miss. 1976)	11
<i>Collier v. King</i> , 170 So. 2d 632 (Miss. 1965)	11
<i>Harrell v. Lamar Company, LLC</i> , 925 So. 2d 870 (Miss. App. 2005)	10
<i>Hatten v. Jones</i> , 67 So. 2d 363 (Miss. 1953)	2
<i>In re Last Will and Testament of Wilcher</i> , 2006-CA-01133-COA (Miss. App. 2007), <i>rev'd on other grounds</i> , 2006-CT-01133-SCT (Miss. 2008)	9, 10
<i>Jenkins v. Terry Investments, LLC</i> , 947 So. 2d 972 (Miss. App. 2006)	3
<i>Johnson v. Weston Lumber & Building Supply Company</i> , 566 So. 2d 466 (Miss. 1990)	5, 6
<i>Ladner v. Quality Exploration Company</i> , 505 So. 2d 288 (Miss. 1987)	6
<i>Lamar Life Ins. Co. v. Billups</i> , 175 Miss. 771, 169 So. 32 (1936)	3
<i>Marathon Asset Mgt., LLC v. Otto</i> , 977 So. 2d 1241 (Miss. App. 2008)	3
<i>McKinley v. Lamar Bank</i> , 918 So. 2d 689 (Miss. App. 2004), <i>rev'd in part on other grounds</i> , 919 So. 2d 918 (Miss. 2005)	10, 11
<i>Minge v. Davidson</i> , 94 Fla. 1197, 115 So. 510 (1928)	3

<i>Quates v. Griffin</i> , 239 So. 2d 803 (Miss. 1970)	10
<i>Trilogy Communications, Inc. v. Thomas Truck Lease, Inc.</i> , 733 So. 2d 313 (Miss. App. 1998)	7
<i>TXG Intrastate Pipeline Company v. Grossnickle</i> , 716 So. 2d 991 (Miss. 1997)	5

STATUTES

Miss. Code Ann. § 11-17-1 (1972)	2, 4, 5, 6, 12
Miss. Code Ann. § 11-17-29 (1972)	8, 11, 12
Miss. Code Ann. § 11-47-3 (1972)	8
Miss. Code Ann. § 11-47-9 (1972)	9

RULES

Miss. R. Civ. P. 19	5
Miss. R. Civ. P. 25	4, 5
Miss. R. Civ. P. 60	6, 7

REASONS FOR ORAL ARGUMENT

The Appellee, Lloyd A. Smith, pursuant to Rule 34(b) of the Mississippi Rules of Appellate Procedure, submits that oral argument of this appeal will be helpful to the court. The statutory title confirmation requirements applicable to this case, including those involving joinder of parties, are distinguishable from other cases where joinder of parties was allowed or mandated. In addition, the unique facts of this case are distinguishable from other cases where joinder of parties was allowed or mandated.

SUMMARY OF THE ARGUMENT¹

The Appellant, American Public Finance, Incorporated ("APF"), is requesting that this Court reverse the Chancellor's Order Denying Motion to Add Third Party, allow it to be added as a necessary party to concluded litigation, and set aside the Final Judgment Confirming and Quieting Tax Title and Confirming and Quieting Title.

However, the Appellee/Plaintiff, Lloyd A. Smith ("Smith"), would submit that (1) the Complaint brought all necessary parties required by statute before the Court; (2) APF, as a successor in title to Deep Woods Investment Company, L.L.C. ("Deep Woods"), is bound by the judgment rendered against Deep Woods; (3) APF cannot be added as a necessary party to litigation that is properly concluded; (4) APF does not have standing to bring a Rule 60(b) motion to set aside; and (5) APF has no grounds to rely on the lis pendens statute.

APF obtained a Quitclaim Deed from Deep Woods on August 13, 2007, recorded on August 27, 2007, with the deed indicating that no title examination was performed. A cursory review of the land records in the Harrison County Chancery Clerk's Office at those times would have shown that:

- (1) subsequent to Deep Woods acquiring an interest in the subject property in 1998, two tax deeds conveyed the subject property to others in 2004 and 2005, and
- (2) the Plaintiff, Lloyd A. Smith, acquired a Quitclaim Deed to the subject property and granted a Deed of Trust in the sum of \$100,000 to Suresh Shah in March 2006.

APF's claims are without merit. The Plaintiff, Lloyd A. Smith, respectfully requests that the Chancery Court's Order Denying Motion to Add Third Party be affirmed.

¹ In this brief, the following abbreviations are used: C.P. for Clerk's Papers, Supp. C.P. for Supplemental Clerk's Papers (supplemental volume), and T. for Transcript.

ARGUMENT

- A. Whether the Chancery Court erred in refusing to join appellant American Public Finance, Inc. ("APF") as a necessary party, pursuant to Miss. R. Civ. P. Rule 19, in the civil action by appellee Lloyd A. Smith ("Smith") to confirm and quiet tax title and title to the subject property, where APF acquired title to the subject property after the action had been commenced.**

The Plaintiff submits that his legal obligation is to "set forth in his complaint . . . all persons interested in the land," Mississippi Code Section 11-17-1, not to set forth persons who attempt to obtain an interest in the subject property *after the complaint to confirm tax title is filed*. Mississippi law provides in part as follows:

11-17-1. Confirming and quieting tax title.

Any person holding or claiming under a tax title lands heretofore or hereafter sold for taxes, when the period of redemption has expired, may proceed by sworn *complaint* in the chancery court to have such title confirmed and quieted, and *shall set forth in his complaint* his claim under the tax sale, and the *names and places of residence of all persons interested in the land*, so far as known to plaintiff, or as he can ascertain by diligent inquiry. . . Such suits shall be proceeded with as other cases; and if the complaints be taken for confessed, or if it appear that plaintiff is entitled to a judgment, it shall be rendered, confirming the tax title against all persons claiming to hold the land by title existing at the time of the sale for taxes. Such judgment shall vest in the plaintiff, without any conveyance by a master or commissioner, a good and sufficient title to said land; and such judgment shall, in all courts of this state, be held as conclusive evidence that the title to said land was vested in the plaintiff, as against all persons claiming the same under the title existing prior to the sale for taxes. (Emphasis added).

Miss. Code Ann. § 11-17-1 (1972).

The Mississippi Supreme Court has stated that "[t]he purpose of this statute providing for the confirmation of a tax title, is that by such a proceeding any further litigation between the same parties, or *their successors in title*, as to the validity of the tax title, shall be precluded." *Hatten v. Jones*, 67 So. 2d 363, 365 (Miss. 1953) (emphasis added). In an earlier case, the Mississippi Supreme Court had similarly stated that "[t]he purpose of the

suit to confirm the tax title is not only to settle contentions between the main parties, but is to make the tax title a good and perfect title against all persons whatsoever, so that there may be no further litigation concerning the validity of the tax title." *Lamar Life Ins. Co. v. Billups*, 175 Miss. 771, 783, 169 So. 32 (1936). The Florida Supreme Court has also weighed in on this issue, stating that "[t]he purchaser of the land and the assignments of the judgments all occurred pendente lite. If [the purchaser], under the circumstances, is entitled to appear as a party defendant, then any assignee of his would be entitled to appear and the litigation could be protracted without end." *Minge v. Davidson*, 94 Fla. 1197, 1200, 115 So. 510 (1928).

In addition, it should be pointed out that APF is bound by the actions, or inactions, of Deep Woods, its predecessor in title. See *Marathon Asset Mgt., LLC v. Otto*, 977 So. 2d 1241, 1246 (Miss. App. 2008) (owner's knowledge of foreclosure sale and possibility of redemption period extension is imputed to successor in interest); *Jenkins v. Terry Investments, LLC*, 947 So. 2d 972, 978 (Miss. App. 2006) (successors in interests are in privity for purposes of res judicata). As pointed out by the Chancellor in paragraph 8 of the Order Denying Motion to Add Third Party, although proper service was made on Deep Woods, no evidence was presented as to whether Deep Woods informed APF of the suit, and an entry of default was taken against Deep Woods prior to Judgment. (C.P. pp. 171-78).

Pursuant to the above statute, the Final Judgment entered in this matter on January 8, 2008 confirmed the tax title "against all persons claiming to hold the land by title existing at the time of the sale for taxes." Such judgment is "conclusive evidence that the title to said land was vested in the plaintiff, as against all persons claiming the same under the title

existing prior to the sale for taxes.” Miss. Code Ann. § 11-17-1 (1972).

APF's claim to title to the subject property is through Deep Woods. However, Deep Woods, a Defendant in this litigation, has no title in the subject property, as any such title existing “at the time of the sale for taxes” was foreclosed by the Final Judgment rendered in the litigation. As such, APF has no interest to obtain through Deep Woods. Pursuant to the above law, any further litigation on this issue must be precluded.

In addition, APF attempts to place a duty on the Plaintiff to continually update the title subsequent to the filing of the Complaint. However, APF has cited no authority for this proposition. In fact, § 11-17-1 of the Mississippi Code states that title confirmation actions act as conclusive evidence “against all persons claiming the same under the title existing prior to the sale for taxes.” Mississippi law does not place such duty on the Plaintiff.

Furthermore, APF asks this Court to gloss over Rule 25 of the Mississippi Rules of Civil Procedure, which addresses “Substitution of Parties”. Rule 25(c) states as follows:

(c) Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.

Miss. R. Civ. P. 25(c).

The Comment to Rule 25 states in part as follows:

The most significant feature of Rule 25(c) is that it does not require that any action be taken after an interest has been transferred; the action may be continued by or against the original party and the judgment will be binding on his successor in interest even though he is not named. An order of joinder in such a situation is merely a discretionary determination by the trial court that the transferee's presence would facilitate the conduct of the litigation.

Miss. R. Civ. P. 25, Comment.

As set out by the Mississippi Supreme Court in *TXG Intrastate Pipeline Company v. Grossnickle*, 716 So. 2d 991 (Miss. 1997), a case involving determination of ownership of gas well interests, Rule 19 and Rule 25(c) “are to be viewed together, and not as one trumping the other.” *Id.* at 1023. Smith would also submit to the Court that when a tax title action is involved, its statutory requirements should be added to such consideration.

Rule 25(c), when read in conjunction with Mississippi Code Section 11-17-1, mandates a finding that Smith brought his Complaint pursuant to the requirements of applicable law, and that a transfer of interest by Deep Woods subsequent to the filing of the Complaint does not require that APF be made a party in the instant case.

APF, in an attempt to support its argument that it is entitled to be joined in this concluded litigation, cites several cases which apply Rule 19 of the Mississippi Rules of Civil Procedure to effect joinder. However, those cases are not analogous to the case at bar.

In *Aldridge v. Aldridge*, 527 So. 2d 96 (Miss. 1988), the court required that purchasers of property who received a warranty deed after litigation was commenced, along with their lienholder, should be joined in the suit. *Id.* at 100. However, *Aldridge* involved a contempt proceeding following a divorce (not a statutory title confirmation suit), a warranty deed (not a quitclaim deed), and the purchasers were deemed to be bona fide purchasers (APF is not a bona fide purchaser). *Id.* at 98-100. The *Aldridge* case provides no support for APF’s argument.

In *Johnson v. Weston Lumber & Building Supply Company*, 566 So. 2d 466 (Miss. 1990), the court set aside a judgment for the defendant under Rule 60 and also ordered that a purchaser of plaintiff’s property be added as a necessary party. *Id.* at 469.

However, this case involved a complaint to set aside an easement (not a statutory title confirmation suit), and the focus of the case was on the lack of notice to the plaintiff of the trial setting. *Id.* at 466-67. Furthermore, during the pendency of the case, the party to be added purchased the property *from the plaintiff*, facts certainly not analogous to the case at bar. The *Johnson* case is not on point here.

In *Ladner v. Quality Exploration Company*, 505 So. 2d 288 (Miss. 1987), the court ruled, in a claim involving a surface trespass, that all of the owners of the mineral interests should be joined as necessary parties under Rule 19. *Id.* at 291. However, this case did not involve a statutory title confirmation suit. More importantly, it appears the non-joined owners were record title owners at the time of the filing of the suit. *Id.* at 289.

In summary, these cases cited by APF do not support its position, as they do not involve the statutes at issue, Mississippi Code Section 11-17-1, *et seq.*, and do not contain the same facts. In addition, the reason for Smith's repeated references above that none of these cases involve title confirmation actions is that the title confirmation statutes set forth specific joinder requirements. Smith complied with those statutory requirements.

B. Whether the Chancery Court erred in refusing to grant APF relief, pursuant to Miss. R. Civ. P. Rule 60(b), by setting aside the judgment entered in favor of Smith.

Initially, the Plaintiff respectfully submits to the Court that APF has no standing to pursue a Motion to Set Aside pursuant to Rule 60(b) of the Mississippi Rules of Civil Procedure.

Rule 60(b) of the Mississippi Rules of Civil Procedure states in part as follows:

b) Mistakes; Inadvertence; Newly Discovered Evidence; Fraud, etc.
On motion and upon such terms as are just, *the court may relieve a party or his legal representative from a final judgment, order, or proceeding*
(Emphasis added).

Miss. R. Civ. P. 60(b).

As APF was not a named party to the underlying litigation, it is not a "party or his legal representative," and has no standing to bring such a motion. The motion should be dismissed on these grounds.

In addition, in ruling on a 60(b) motion "a balance must be struck between granting a litigant a hearing on the merits with the need and desire to achieve finality in litigation." *Trilogy Communications, Inc. v. Thomas Truck Lease, Inc.*, 733 So. 2d 313, 316 (Miss. App. 1998). Rule 60(b) motions should be denied where they are merely an attempt to relitigate the case. *Id.* Furthermore, Rule 60(b) provides for extra ordinary relief to be granted only upon a showing of exceptional circumstances, and not because *a party* is unhappy with the judgment. *Id.* (emphasis added).

The Plaintiff would also submit that insofar as APF is requesting that the Court add it as a necessary party, such remedy is not available to APF, as this litigation was concluded on January 8, 2008 and its motion was not brought until April 17, 2008, well after the Judgment became final (February 7, 2008).

- C. **Whether the Chancery Court erred in applying the doctrine of bona fide purchaser for value as the basis for its ruling that APF was not entitled to be joined as a party and not entitled to have the judgment in favor of Smith set aside.**
- D. **Whether the Chancery Court erred by failing to give proper weight to Smith's failure to record a notice of lis pendens, and by failing to follow the requirements of Miss. Code Ann. § 11-17-29.**

As both of these issues raised by APF are related and involve the filing of a notice of lis pendens, Lloyd Smith will address them together.

Mississippi Code Section 11-47-3, which addresses Lis Pendens, requires that a lis pendens notice be filed as follows:

When any person shall begin a suit in any court, whether by declaration or bill, or by cross-complaint, to enforce a lien upon, right to, or interest in, any real estate, *unless* the claim be founded upon an instrument which is recorded, or upon a judgment duly enrolled, in the county in which the real estate is situated, such person shall file with the clerk of the chancery court (Emphasis added).

Miss. Code. Ann. § 11-47-3 (1972).

In this matter, the Plaintiff's Complaint to Confirm and Quiet Tax Title and to Confirm and Quiet Title was founded upon both the *recorded* Tax Deed to Suresh Shah and the *recorded* Quitclaim Deed from Suresh Shah to Lloyd Smith. Therefore, Plaintiff's claim in this matter was founded upon "instruments which were recorded." APF's lis pendens argument is without merit.

In addition, the Quitclaim Deed from Deep Woods to APF, which is the basis of APF's claims in this matter, and which was drafted by APF's owner/counsel, clearly states that "TITLE NOT EXAMINED - NO SURVEY PROVIDED". (Supp. C.P. pp. 40-44). This fact was confirmed by Mr. Kalom in his testimony at the hearing on APF's motion, although he testified a title search was conducted on or about September 4, 2007, approximately

three weeks after APF obtained its deed and approximately one week after it was recorded. (T. pp. 44-46). Obviously, if the title was not examined prior to the receipt and recording of the deed, the filing of a lis pendens notice has no relevance here, as such notice would not have been found by APF prior to it obtaining a Quitclaim Deed from Deep Woods. Furthermore, if APF had examined the title, it would have learned (if it did not already know) that subsequent to Deep Woods acquiring the subject property in 1998, two tax deeds had been conveyed, Mr. Smith had obtained a Quitclaim Deed from Mr. Shah, and Mr. Smith had granted a \$100,000 Deed of Trust to Mr. Shah. Therefore, for APF to argue that a lis pendens notice was required and that such a notice would have alerted it to the pending suit is disingenuous.

Furthermore, even if a lis pendens notice had been necessary, the failure to file such notice only protects "the rights of bona fide purchasers or incumbrancers of such real estate" Miss. Code Ann. § 11-47-9 (1972). Mississippi law is quite clear that without examining the land records, APF cannot claim to be a bona fide purchaser. The Mississippi courts have stated as follows:

Our law seeks to protect bona fide purchasers for value without notice and defines a *bona fide purchaser as one who has in good faith paid a valuable consideration without notice of the adverse rights of another*. [citations omitted]. But, a purchaser of land has the duty to examine all deeds and conveyances previously executed and placed of record by his grantor - either immediately or remote - if such deeds or conveyances in any way affect his title. And if in such deed or conveyance there is contained any recital sufficient to put a reasonably prudent man on inquiry as to the sufficiency of the title, then he is charged with notice of all those facts which could and would be disclosed by a diligent and careful investigation. (Emphasis added).

In re Last Will and Testament of Wilcher, 2006-CA-01133-COA (¶ 7) (Miss. App. 2007), *rev'd on other grounds*, 2006-CT-01133-SCT (Miss. 2008).

In *Wilcher*, the chancellor found that the purchasers were on notice of the possibility of a break in the chain of title due to the statement appearing in the deed that it was prepared without title examination. *Id.*

In another case rejecting a bona fide purchaser argument, the appeals court recently stated the following:

A purchaser of land is charged with notice not only of every statement of fact made in the various conveyances constituting his chain of title, but he is also bound to take notice of and to fully explore and investigate all facts to which his attention may be directed by recitals in said conveyance contained. The duty is also imposed on him to examine all deeds and conveyances previously executed and placed of record by his grantor - either immediate or remote - if such deeds or conveyances in any way affect his title. And if any such deed or conveyance there is contained any recital sufficient to put a reasonably prudent man on inquiry as to the sufficiency of the title, then he is charged with notice of all facts which could and would be disclosed by a diligent and careful investigation.

Harrell v. Lamar Company, LLC, 925 So. 2d 870, 876 (Miss. App. 2005) (citations omitted).

In addition, the Mississippi Supreme Court has stated that "a purchaser may not discount the knowledge afforded him by the record with the explanation that he did not look." *Quates v. Griffin*, 239 So. 2d 803, 808-09 (Miss. 1970). The court further explained that a "party is deemed to be affected with notice not only of the particulars which the records would have disclosed, but also of any additional particulars concerning which he might have acquired information if he had followed up the investigation in the manner and to the extent that would have been suggested to a prudent person by the contents of the records themselves." *Id.* at 809.

The failure of a party to investigate the state of a title is negligence on his part, and equity will not relieve one who is perfectly acquainted with his rights, or has the means of becoming so, by examining the land records or otherwise. *McKinley v. Lamar Bank*, 918

So. 2d 689, 695 (Miss. App. 2004), *rev'd in part on other grounds*, 919 So. 2d 918 (Miss. 2005); *Buchanan v. Stinson*, 335 So. 2d 912, 914 (Miss. 1976); *Collier v. King*, 170 So. 2d 632, 634 (Miss. 1965).

As set out by the Chancellor in paragraph 12 of the Order Denying Motion to Add Third Party:

The relief APF is seeking asks this Court to ignore the actions of its attorney-owner in failing to discover the lawsuit at bar and/or failing to adequately research the title of the property. APF wants this Court to place the onus upon Smith to constantly update and/or check the land records subsequently to filing the lawsuit to ensure that all interested parties are included. The Court has found no authority to support the position of APF nor have the parties supplied such authority. To the contrary, as previously mentioned, Smith followed the statutory mandate in filing this matter.

(C.P. pp. 171-78).

The Chancellor further stated in paragraph 15 of the Order:

The tax sale deeds were "sufficient to put a reasonably prudent man on inquiry as to the sufficiency of the title" and necessitate further inquiry. Accordingly, APF "is charged with notice of all those facts which could and would be disclosed by a diligent and careful investigation." Under the facts of this case, APF is not a bona fide purchaser without notice.

(C.P. pp. 171-78).

Finally, APF argues that the language of Mississippi Code Section 11-17-29, involving confirmation of title, places a duty on Smith to constantly update and check the land records after filing the lawsuit right up to the date of the final hearing. Such argument strains the language of this statute, which states in part as follows:

The owner in possession of any land, or the owners thereof who may be out of possession, if there be no adverse occupancy thereof, may file a bill in the chancery court to have his title confirmed and quieted. *The law for notice, process, proceedings, and practice, as provided for confirming and quieting tax titles shall apply, no matter by what tenure the complainant may hold.* Unknown and nonresident parties may be made defendants as they are made defendants to proceedings to confirm tax titles. If on the final

hearing of any such suit, the court shall be satisfied that the complainant is the real owner of the land, it shall so adjudge, and its decree shall be conclusive evidence of title as determined from the date of the decree as against all parties defendant. (Emphasis added).

Miss. Code Ann. § 11-17-29 (1972).

As set out in the statute, the law “for confirming and quieting tax titles shall apply.” That statute requires that the complaint name “all persons interested in the land.” Miss. Code Ann. § 11-17-1 (1972). Smith did so in the instant case.

In this matter, a lis pendens notice (1) was not required, (2) would not have provided any notice to APF prior to its acquiring and recording its Quitclaim Deed, as no title examination was performed prior to it obtaining a deed to the subject property, and (3) even if required, would have provided no protection to APF as it was not a bona fide purchaser.

E. Whether the Chancery Court erred in giving undue weight to one of the principals of APF being an attorney.

Lloyd Smith submits to the Court that this issue is without merit. Although the Chancellor correctly recognized that the principal of APF was an attorney, the Chancellor’s order placed no higher burden on APF due to this fact. In fact, the Chancellor’s Order stated in paragraph 15 that “[t]he tax sale deeds were ‘sufficient to put a *reasonably prudent man on inquiry* [not an attorney] as to the sufficiency of the title’ and necessitate further inquiry.” (Emphasis added). (C.P. pp. 171-78). The Chancellor’s Order sets out the correct standard as to investigation of a title.

CONCLUSION

American Public Finance, Incorporated, has requested that this Court allow it to be added as a necessary party to previously concluded litigation, and that this Court set aside the Final Judgment Confirming and Quieting Tax Title and Confirming and Quieting Title. However, when the law is applied to the facts of this case, it is clear that (1) the Complaint brought all necessary parties required by statute before the Court; (2) APF, as a successor in title to Deep Woods, is bound by the judgment rendered against its predecessor in title, Deep Woods; (3) APF cannot be added as a necessary party to litigation that is properly concluded; (4) APF does not have standing to bring a Rule 60(b) motion to set aside; and (5) APF has no grounds to rely on the lis pendens statute.

Accordingly, the Plaintiff, Lloyd A. Smith, requests that the Chancellor's Order Denying Motion to Add Third Party be affirmed.

CERTIFICATE OF SERVICE

I, G. Martin Warren, Jr., do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing brief to the following:

Honorable Margaret Alfonso
Chancellor, Harrison County Chancery Court
Post Office Box 986
Gulfport, Mississippi 39502

James Eldred Renfroe, Esquire
Roy S. Perilloux, Esquire
648 Lakeland East, Suite A
Flowood, Mississippi 39232

T. Mitchell Kalom, Esquire
971 Division Street
Biloxi, Mississippi 39530

SO CERTIFIED, this the 14th day of January, 2010.




G. MARTIN WARREN, JR.

CERTIFICATE OF FILING

I, G. Martin Warren, Jr., attorney for Appellee, Lloyd A. Smith, do hereby certify that I have this date filed Brief of Appellee by depositing an original and three copies of Brief of Appellee with the United States Postal Service, first class postage prepaid, addressed to Kathy Gillis, Clerk, Supreme Court and Court of Appeals, Post Office Box 249, Jackson, Mississippi 39205-0249.

THIS, the 14th day of January, 2010.



G. MARTIN WARREN, JR.