

**IN THE SUPREME COURT OF MISSISSIPPI**

**CASE NO. 2009-CA-01188**

**REBUILD AMERICA, INC.**

**APPELLANT**

**VERSUS**

**ROBERT McGEE, MATTIE McGEE, ET AL**

**APPELLEE**

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***APPELLANT'S REPLY BRIEF***

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***APPEAL FROM THE CHANCERY COURT OF  
HINDS COUNTY, MISSISSIPPI***

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***ORAL ARGUMENT REQUESTED***

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## STATEMENT OF ISSUES UPON REBUTTAL

- I. WHETHER MERCHANT & FARMERS BANK RECEIVED PROPER NOTICE OF THE EXPIRATION OF THE REDEMPTION PERIOD.
- II. WHETHER SANCTIONS SHOULD BE IMPOSED UPON REBUILD AMERICA, INC. FOR SEEKING APPEAL OF THE LOWER COURT JUDGMENT.

## SUMMARY OF REBUTTAL

Rebuild America, as set forth within the Brief of Appellant, does not contend that "the mere mailing of the sheriff's notice of the sheriff's department for service by the Chancery Clerk is sufficient." In reliance upon a strict and literal interpretation of § 27-43-3, Miss. Code Ann., Rebuild America contends that, despite the failure to personally serve either Robert McGee or Mattie McGee with notice of forfeiture, the conveyances by Tax Deed remain valid given the Chancery Clerk's attempt at service of notice by all three (3) means as prescribed by statute, given the actual receipt of notice of forfeiture by all interested parties herein, namely Robert McGee, Mattie McGee and Merchants & Farmers Bank, and given the Chancery Clerk's execution of an Affidavit, which memorialized her effort to ascertain an alternate street address for Robert and Mattie Magee, following diligent search and inquiry therefor.

Contrary to the argument of Merchant & Farmers Bank, the Affidavit, logically and in accordance with statute, is to be executed at some time subsequent to the clerk's search and inquiry for an alternate street and/or post office address for the reputed landowner, following either return of the owner's notice of forfeiture by mail as undelivered, or personal notice as is to be provided by the sheriff is returned as "not found". The purpose of the Affidavit is to memorialize the clerk's efforts of due diligence, and therefore cannot be prepared prior to his or her "meaningful inquiry", which itself is not undertaken until after an attempt at delivery of notice of forfeiture is returned either as undeliverable or "not found". The Affidavit only is

required to be maintained in office records and noted on the tax sale records, but no requirement is imposed upon the chancery clerk as to when such Affidavit must be filed, whether it be prior to expiration of the respective redemption period or thereafter.

In the absence of any evidence whatsoever to the contrary, the Hinds County Chancery Clerk's Affidavit does indeed provide substantive and uncontroverted proof that additional search and inquiry was conducted by said clerk in accordance with § 27-43-3, Miss. Code Ann. There is absolutely no testimony or documentary evidence within the record to challenge the diligence or sufficiency of the Hinds County Chancery Clerk's inquiry undertaken subsequent to discovery that the personal notice attempted by the Holmes County Sheriff actually had not been completed.

In addition, the printed form of the Affidavit has been upheld by the Mississippi Supreme Court as sufficient noting that "the practical effect of having to 'personalize' an affidavit for each of the approximately one thousand delinquent taxpayers as revealed by this record would be mind-boggling, to say the least." *O. C. Rush v. Wallace Rentals, LLC*, 837 So. 2d 191, 200 (¶ 25)(Miss. 2003).

The issues brought before this Court in *Rebuild America, Inc. v. Milner*, 7 So. 3d 972 (Miss. 2009) were distinct from those raised within this appeal, and cannot provide a reasonable basis upon which to award sanctions against Rebuild America herein. Furthermore, Rebuild America is, at least, entitled to remand of this case to the lower court for its determination as to damages owed to Rebuild America pursuant to §§ 27-45-3 and 27-45-27, Miss. Code Ann., as originally requested within the Complaint filed on or about December 11, 2007.

## ARGUMENT

### I. WHETHER MERCHANT & FARMERS BANK RECEIVED PROPER NOTICE OF THE EXPIRATION OF THE REDEMPTION PERIOD.

Mississippi Code Annotated §27-43-5 requires the clerk of the chancery court to examine the record of deeds, mortgages and deeds of trust in office and to send notice of expiration of the redemption period for a conducted tax sale via certified mail with return receipt requested to the holding lienor at its address located on any existing deeds of trust or mortgages. The notice must be sent within one hundred eighty (180) days and not less than Sixty (60) days prior to the expiration of the time of redemption with respect to land sold for taxes. *See* §27-43-1, Miss. Code Ann.

The Chancery Court records in the subject cause of action reflect that the Hinds County Chancery Clerk issued the required notice of expiration on or about May 25, 2007, which was 96 days prior to the date of expiration and within the time period prescribed by §27-43-1, Miss. Code Ann. Said notice was sent by the clerk via certified mail to the then existing lien holder, Merchants & Farmer's Bank, at its address listed on the then existing Deed of Trust, filed in the land records for Hinds County in Book 5655 at Page 898. The records further reflect that the notice was signed for and received by a representative of Merchants and Farmer's Bank. Therefore, the Hinds County Chancery Clerk complied with her statutory requirements with regard to notifying the lien holder of the expiration of the subject redemption period.

Appellee Merchants & Farmer's Bank contends that the notice provided was not sufficient in that was not delivered to and/or signed for by an officer or designated agent authorized by law to receive process. There is however no such requirement under Mississippi law that mandates such action. Furthermore, not only is there is no

requirement that the notice be sent to a specific officer or director, there is no requirement that the lienor actually receive the notice under Mississippi law. The Mississippi Supreme Court held in the case of *Lamar Life Insurance Co. v. Mente & Co.* that when a chancery clerk sends the requisite notice by registered mail, "whether the lienor receives it or not is of no consequence, for the statute will have been complied with". *Lamar Life Ins. Co.*, 178 So. 89 (Miss. 1938). Not only did the Chancery Clerk forward the requisite notice to the address listed on the purported deed of trust with return receipt requested in the subject case, Appellee Merchants and Farmer's Bank received said notice. Therefore, its claim to set aside the subject Tax Deed upon this basis is wholly without merit.

II. WHETHER DAMAGES SHOULD BE IMPOSED UPON REBUILD AMERICA, INC. FOR SEEKING APPEAL OF THE LOWER COURT JUDGMENT.

Appellee requests this Court impose sanctions against Rebuild America based upon the unsuccessful appeal of *Rebuild America, Inc. v. Milner*, 7 So. 3d 972 (Miss. 2009). Contrary to Appellee's representation to the Court, the only similarity between this case and that of *Milner* is that both cases, in seeking to confirm title acquired by tax deed, were challenged based upon the alleged insufficiency of the statutorily-required noticing provided by each respective chancery clerk to the reputed owners and/or lienors. *Milner*, as wrongfully implied by Appellee, did not consider the issues before the Court in this case.

Whereas this case turns upon whether the clerk's execution of an Affidavit subsequent to the Sheriff's failure to perfect personal service of notice of forfeiture upon Robert and Mattie McGee is sufficient to constitute strict compliance with § 27-43-3, Miss. Code Ann., *Milner* reviewed (1) the lower court's denial of a motion to dismiss based upon the previous owners' delivery of a Quitclaim Deed to Rebuild America subsequent to commencement of the lower court action, and therefore a lack of standing on the part of the Milners, (2) the lower court's setting aside of said

Quitclaim Deed delivered by the Milners to Rebuild America based upon a lack of consideration, and (3) the chancery clerk's failure to forward via certified mail notice of forfeiture to the correct address of the lienor of record pursuant to § 27-43-5, Miss. Code Ann. The *Milner* case is clearly distinguishable from this case, and none of those issues considered by the Court in *Milner*, including the clerk's failure to afford separate owner's notice of forfeiture to Patricia K. Milner, are issues before the Court herein.

Furthermore, this appeal cannot be considered frivolous in that it presents an issue identical to that recently before the Court in *Rebuild America, Inc. v. The Estate of Daniel A. Wright, Deceased*, – So. 3d –, 2010 WL 432278, Feb. 9, 2010 (No. 2009-CA-00126-COA), which warranted remand to the lower court therein. Thus, Rebuild America has, at a minimum, some hope for success. Within its Complaint filed December 11, 2007, Rebuild America requested alternative relief, stating therein at Paragraph 14 and in its final prayer for relief as follows: Should this Court deem any notice insufficient or any party file an appearance, answer or other responsive pleading, and upon final hearing hereof, the Tax Deed be set aside, Plaintiff requests all court costs and expenses, including reasonable attorneys' fees, in addition to reimbursement of all tax payments, including eight percent (8.0%) interest thereon.

Rebuild America raised this issue again within its Appellant's Brief, stating

[s]hould this Court affirm the Final Judgment of the lower court, Appellant requests the Chancery Clerk of Hinds County, Mississippi be compelled to reimburse Rebuild America that amount presumed to have been paid by Robert McGee and Mattie P. McGee subsequent to the date of Judgment in redemption of the Langley Street and Guidici Street properties, in addition to statutory interest and penalty thereon, in accordance with statute.

*Brief of Appellant* at p. 15. Pursuant to §§ 27-45-3 and 27-45-27, Rebuild America is entitled to reimbursement of all taxes paid, inclusive of 2004 Hinds County Ad Valorem taxes and all years subsequent thereto, together with interest at the rate of one and one-half percent (1 ½% per month) and damages comprised of five percent (5%) per annum. *See Lawrence v. Rankin*, 870 So. 2d 673,



676-77 (Miss. Ct. App. 2003). Despite Appellant's prayer for relief, the lower court failed to consider or award Rebuild America reimbursement by Mr. and Mrs. Robert McGee and/or Merchant & Farmers Bank of those amounts paid in outstanding taxes, interest due thereon and statutory damages as provided by statute.

Redemption is required by Mr. and Mrs. Robert McGee and/or Merchant & Farmers Bank, for which each has received actual notice by virtue of this action. It was manifest error on the part of the chancellor to not order said Appellees herein to pay to Rebuild America those taxes paid in 2005 and all subsequent years thereafter, monthly interest thereon and damages. *See Lawrence v. Rankin*, 870 So. 2d at 676-677. Remand is appropriate for this reason, if not for those as further discussed in the Brief of Appellant, for entry of judgment by the Chancery Court affording Mr. and Mrs. Robert McGee and/or Merchants & Farmers Bank a time certain within which to redeem the Langley Street and Guidici Street Properties, not to exceed sixty (60) days from the issuance of this Court's mandate. *See Hammett v. Johnson*, 624 So. 2d 58, 60 (Miss. 1993). Given the actual notice provide Mr. and Mrs. McGee, as well as Merchant & Farmers Bank, Rebuild America further requests that, should Mr. and Mrs. McGee and Merchant & Farmers Bank fail to redeem said properties within the time certain provided by the lower court, that title thereafter be confirmed in its name, against all defendants so named by the Complaint.

By reason of the distinction between *Milner* and this action, together with the reasons as set forth herein and in the Brief of Appellant, Rebuild America has a legitimate basis upon which to maintain this appeal of the lower court's judgment and, as such, the imposition of sanctions against Rebuild America is not appropriate.

## CONCLUSION

For the above and foregoing reasons as well as those set forth with the Brief of Appellant, Rebuild America, Inc. respectfully requests that the Final Judgment Setting Aside and Voiding Tax Sales be reversed and rendered, thereby vesting in Rebuild America, Inc. perfect title by virtue of that certain Quitclaim Deed and Assignment from U. S. Bank N. A., as successor in interest to Wachovia Bank, as Custodian for Sass Muni V, dated October 31, 2007 and recorded in Book 6791 at Page 348 of the office of the Chancery Clerk of Hinds County, Mississippi and previous conveyance by Tax Deed dated September 10, 2007, as recorded in Book 6770 at Page 740 with respect to the Langley Property; and Quitclaim Deed and Assignment from U. S. Bank N. A., as successor in interest to Wachovia Bank, as Custodian for Sass Muni V, dated October 31, 2007 and recorded in Book 6791 at Page 351 of the office of the Chancery Clerk of Hinds County, Mississippi and previous conveyance by Tax Deed dated September 10, 2007, as recorded in Book 6770 at Page 741 with respect to the Guidici Property.

Should this Court affirm the Summary Judgment of the lower court, Appellant requests this matter be remanded to the chancery court for a determination of the redemption amount owed to Rebuild America by Appellees, Robert and Mattie McGee and/or Merchant & Farmers Bank, together with statutory interest and penalty thereon, and entry of Amended Judgment affording Robert and Mattie McGee and/or Merchant & Farmers Bank a time certain within which to tender all amounts due to Rebuild America, further providing that, should Appellee(s) fail to so tender said amount determined to be owed Rebuild America within the specified time certain, title be confirmed in Rebuild America, the lower court action deemed to have provided Mr. and Mrs. Robert McGee and Merchant & Farmers Bank actual notice of their respective rights to redeem said properties.

Appellant prays for such further relief as may be proper in the circumstances.

Respectfully submitted, this the 18th day of March, 2010.

REBUILD AMERICA, INC.

By:   
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CERTIFICATE OF SERVICE

I, Kimberly P. Turner, do hereby certify that I have this date served by First Class United States mail, postage prepaid thereon, a true and correct copy of the above and foregoing, to the following:

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DATED, this the 18th day of March, 2010.

  
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