

IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2009-CA-01188

REBUILD AMERICA, INC.

APPELLANT

VERSUS

ROBERT McGEE, MATTIE McGEE, ET AL

APPELLEE

BRIEF OF APPELLANT

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

ORAL ARGUMENT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

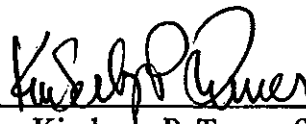
The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Rebuild America, Inc., Appellant;
2. Robert McGee, Appellee;
3. Mattie P. McGee, Appellee;
4. Merchants & Farmers Bank, Appellee;
5. Henry, Barbour, DeCell & Bridgforth, Ltd., inclusive of attorney Kimberly P. Turner, Attorney of Record for Appellant; and
5. Rawlings & MacInnis, P. A., inclusive of attorneys Jeff D. Rawlings and Jon J. Mims, Attorneys of Record for Appellee, Merchant & Farmers Bank.

Respectfully submitted,
REBUILD AMERICA, INC.

By and Through Counsel:
HENRY, BARBOUR, DECELL & BRIDGFORTH,
LTD.

By:



Kimberly P. Turner (MB [REDACTED])

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STATEMENT OF ISSUES

- I. THE LOWER COURT ERRED, AS A MATTER OF LAW, IN FINDING THE CHANCERY CLERK OF HINDS COUNTY FAILED TO FULLY COMPLY WITH THE REQUIREMENTS OF MISSISSIPPI CODE ANNOTATED § 27-43-3, AND THEREFORE ERRED IN SETTING ASIDE EACH RESPECTIVE TAX SALE AND TAX DEED.

STATEMENT OF THE CASE

This Appeal is taken from that Order and Final Judgment Setting Aside and Voiding Tax Sales entered by the Chancery Court of Hinds County, Mississippi on June 23, 2009 and July 21, 2009, respectively, pursuant to which the Honorable William H. Singletary voided, set aside and held for naught that certain Tax Deed dated September 10, 2007 and recorded in the land records of the Hinds County Chancery Clerk in Book 6770 at Page 741, and also, that certain Tax Deed dated September 10, 2007 and recorded in the aforesaid office in Book 6770 at Page 740.

The lower court case was comprised of two (2) separately filed actions, each initiated by the filing of a Complaint¹, on December 11, 2007, by Appellant herein, Rebuild America, Inc., to Quiet and Confirm Tax Title, by which Rebuild America sought to quiet and confirm its title acquired by two (2) separate Quitclaim Deed(s) and Assignment(s) from Wachovia Bank, N.A., as Custodian for Sass Muni V, dated October 31, 2007. (R. at 000002 -000020, 000138-000154). Defendant Robert McGee and Mattie P. McGee filed their Answer to Complaint to Quiet and Confirm Tax Title and Counterclaim to Set Aside and Void Tax Sale on February 1, 2008. (R. at 000043 - 000047, 000181 - 000185). Defendant Merchants & Farmers Bank likewise filed its Answer to Complaint to Quiet

¹ *Rebuild America, Inc. v. Robert McGee, et al*, Hinds County Chancery Court, bearing Civil Action No. G2007-2239 S/2, and *Rebuild America, Inc. v. Robert McGee, et al.*, Hinds County Chancery Court, bearing Civil Action No. G2007-2240 O/3 were consolidated by Order of the Court upon the Joint Motion of Rebuild America, Robert McGee, Mattie P. McGee and Merchants & Farmers Bank. (R. at 000219 - 000220).

and Confirm Tax Title and Counterclaim to Set Aside and Void Tax Sale on February 5, 2008. (R. at 000048 - 000053, 000169 - 000173). But for the State of Mississippi², none of the remaining named defendants filed an answer or responsive pleading to the Complaint(s) of Rebuild America to Quiet and Confirm Tax Title, within either pending action.

On February 21, 2008, Defendant Merchants & Farmers Bank filed its Motion for Summary Judgment³, to which Rebuild America filed its Response in Opposition, with Supporting Memorandum on April 15, 2008. Finding genuine issues of material fact resulting in “triable issues”, the lower court entered its Order Denying Motion for Summary Judgment on September 4, 2008. (R. at 000086 - 000088). Though a trial upon the merits was scheduled to occur on December 10, 2008, the parties agreed to submit to the court a Stipulation of Undisputed Fact, with supporting Affidavits, in lieu thereof, upon which the court could render its Opinion and Judgment. (R. at 000095 - 000120).

An Order was entered by the lower court on June 23, 2009, by which each respective tax sale was set aside and Defendants Robert McGee and Mattie P. McGee were afforded the opportunity to redeem their property from the Chancery Clerk of Hinds County. (R. at 000126). Final Judgment Setting Aside and Voiding Tax Sales was subsequently entered by the Chancellor on July 21, 2009, from which Rebuild America filed the instant appeal. (R. at 000128).

² The State of Mississippi filed its Answer to the Complaint on April 21, 2008, asserting no claim or interest in the land the subject of each respective action. (R. at 000082 - 000083).

³ Defendants Robert McGee and Mattie P. McGee, *pro se*, filed their Joinder in the Motion for Summary Judgment of Merchants & Farmers Bank on or about April 22, 2008. (R. at 000084 - 000085).

STATEMENT OF FACTS

This case arises from two (2) August 29, 2005 tax sales to Wachovia Bank, as custodian for Sass Muni V, for unpaid, delinquent ad valorem taxes owed for the year ending 2004, of certain investment property then-owned by Defendants Robert McGee and Mattie P. McGee, situated in Hinds County, Mississippi, being more particularly described as follows, to-wit:

Parcel I (hereinafter the "Langley Street Property"):

A part of Lot Six (6) of Block "F" of Nancy Hunt Survey, according to a map or plat thereof of record in the office of the Chancery Clerk of Hinds County, at Jackson, Mississippi, in Surveyor's Record Book "A" at Page 201 thereof, which is described as follows:

Beginning at a point on the west line of said Lot 6 a distance of 100 feet measured northerly along said line from the Southwest corner of said Lot 6; run thence North 45 feet 6 inches to a point; run thence east parallel with Guidici Street 81 feet to the East line of said Lot 6; run thence South 45 feet 6 inches; run thence West 81 feet to the point of beginning. This being the same land conveyed by Louis E. Brown to L. G. Busick, by deed dated April 27, 1950, and recorded in Book 646 at Page 158 of the records of said Chancery Clerk.

Parcel II (hereinafter the "Guidici Street Property"):

One hundred (100) feet off the South end of Lot Six (6), Block "F" off the Nancy Hunt Survey, a subdivision in the City of Jackson, First Judicial District of Hinds County, State of Mississippi, according to the map or plat thereof, on file and of record in the office of the Chancery Clerk of Hinds County, at Jackson, Mississippi, recorded in surveyor's Record Book "A" at Page 201 hereof, reference to which is hereby made.

(R. at 000010, 000146, 000020).

At the time of the 2004 tax sale(s), Defendant Merchants & Farmers Bank held a lien against the Guidici Street Property and Langley Street Property (sometimes hereinafter collectively referred to as the "Property") by virtue of a Deed of Trust executed by Defendants Robert McGee and Mattie McGee, dated October 8, 2002, and recorded in the land records of the office of the Chancery Clerk of Hinds County, Mississippi in Book 5655 at Page 898; as modified by separate instrument dated

June 29, 2007, and recorded in the aforesaid office in Book 6728 at Page 261 (hereinafter the "Deed of Trust") (R. at 000107 - 000111).

The Guidici Street Property:

With no redemption having been made the two (2) years following the August 29, 2005 tax sale of the Guidici Street Property, the Chancery Clerk of Hinds County, Mississippi issued an Owner's Notice of Forfeiture on May 23, 2007, and mailed the same to Robert McGee, via certified mail, return receipt requested to his residence address of 21332 Highway 17 North, in Lexington, Holmes County, Mississippi⁴. (R. at 000112 - 000116, 000197). The Chancery Clerk of Hinds County, Mississippi also issued a separate Owner's Notice of Forfeiture on May 23, 2007, and mailed the same to Mattie McGee, via certified mail, return receipt requests to her residence address of 21332 Highway 17 North, in Lexington, Holmes County, Mississippi. (R. at 000112 - 000116, 000198). The receipt returned to the Hinds County Chancery Clerk for each Owner's Notice of Forfeiture was signed by Robert McGee on June 2, 2007. (R. at 000112 - 000116, 000202).

The Hinds County Chancery Clerk issued a written Sheriff's Notice directed to Robert McGee on May 23, 2007, and mailed the same to the Holmes County Sheriff's Department to perfect personal service upon Robert McGee at his last-known residence address, i.e., 21332 Highway 17 North, Lexington, Holmes County, Mississippi. (R at 000112 - 000116, 000200). A separate written Sheriff's Notice, directed to Mattie McGee, likewise was issued by the Hinds County Chancery Clerk on May 23, 2007 and mailed to the Holmes County Sheriff's Department so as to perfect personal service upon Mattie McGee at her last-known residence address, i.e., 21332 Highway 17

⁴ "21332 Highway 17 North, Lexington, Mississippi 39095" was the address set forth within the Warranty Deed from Robert Teague, as Grantor, to Robert McGee and Mattie Pearl McGee, as Grantee, dated October 8, 2002, and recorded in the office of the Chancery Clerk of Hinds County, Mississippi in Book 5650 at Page 784 (R. at 000018).

North, Lexington, Holmes County, Mississippi. (R. at 000112 - 000116, 000201). It is unknown as to whether a return was provided to the Hinds County Chancery Clerk by the Holmes County Sheriff's Department; however, there are no sheriff's returns in the Chancery Clerk's file. (R. at 000112 - 000116).

A written Notice to Mortgagee was issued by the Hinds County Chancery Clerk on May 25, 2007, and mailed to Merchants & Farmers Bank via certified mail, return receipt requested to Post Office Box 520, Kosciusko, Mississippi 39090⁵. The receipt returned to the Hinds County Chancery Clerk was signed by Will Jordan. (R. at 000112 - 000116, 000199, 000202).

Having failed to perfect personal service upon Robert McGee and Mattie McGee, the Hinds County Chancery Clerk exercised due diligence to ascertain an alternate residence address for either landowner. Finding no such alternate address, the Hinds County Chancery Clerk executed her Affidavit, memorializing "a diligent effort to locate" Robert McGee by phone directory, city tax director and other means. (R. at 000112 - 000116, 000203). Similarly, a separate Affidavit was executed by the Hinds County Chancery Clerk memorializing "a diligent effort to locate" Mattie P. McGee by phone directory, city tax directory or other means. (R. at 000112 - 000116, 000204).

With no redemption having been made on or before August 30, 2006, the Guidici Street Property was forfeited by Robert McGee and Mattie P. McGee, as well as by lienholder Merchants & Farmers Bank, by virtue of Tax Deed delivered from the Hinds County Chancery Clerk to Wachovia Bank as Custodian for Sass Muni V, dated September 10, 2007, and recorded in the land

⁵ "Post Office Box 520, Kosciusko, Mississippi 39090" was the address set forth within the Deed of Trust by which Merchants & Farmers Bank acquired its lien and interest in and to the Guidici Street Property, specifically that Deed of Trust dated October 9, 2002, and recorded in the office of the Chancery Clerk of Hinds County, Mississippi in Book 5655 at Page 898. (R. 000107 - 000111).

records of the Chancery Clerk's office in Book 6770 at Page 741. (R at 000146). By Quitclaim Deed and Assignment dated October 31, 2007, U. S. Bank, N.A., as successor in interest to Wachovia Bank, as Custodian for Sass Muni V conveyed all right, title and interest in and to the Guidici Street Property to Rebuild America, Inc. (R. at 000143 - 000145).

The Langley Street Property:

With no redemption having been made the two (2) years following the August 29, 2005 tax sale of the Langley Street Property, the Chancery Clerk of Hinds County, Mississippi issued an Owner's Notice of Forfeiture on May 23, 2007, and mailed the same to Robert McGee, via certified mail, return receipt requested to his residence address of 21332 Highway 17 North, in Lexington, Holmes County, Mississippi⁶. (R. at 000112 - 000116, 000205). The Chancery Clerk of Hinds County, Mississippi also issued a separate Owner's Notice of Forfeiture on May 23, 2007, and mailed the same to Mattie McGee, via certified mail, return receipt requests to her residence address of 21332 Highway 17 North, in Lexington, Holmes County, Mississippi. (R. at 000206, 000112 - 000116). The receipt returned to the Hinds County Chancery Clerk for each Owner's Notice of Forfeiture was signed by Robert McGee on June 2, 2007. (R. at 000112 - 000116, 000210).

The Hinds County Chancery Clerk issued a written Sheriff's Notice directed to Robert McGee on May 23, 2007, and mailed the same to the Holmes County Sheriff's Department to perfect personal service upon Robert McGee at his last-known residence address, i.e., 21332 Highway 17 North, Lexington, Holmes County, Mississippi. (R at 000112 - 000116, 000208). A separate written Sheriff's Notice, directed to Mattie McGee, likewise was issued by the Hinds County Chancery

⁶ "21332 Highway 17 North, Lexington, Mississippi 39095" was the address set forth within the Warranty Deed from Robert Teague, as Grantor, to Robert McGee and Mattie Pearl McGee, as Grantee, dated October 8, 2002, and recorded in the office of the Chancery Clerk of Hinds County, Mississippi in Book 5650 at Page 784 (R. at 000018).

Clerk on May 23, 2007 and mailed to the Holmes County Sheriff's Department so as to perfect personal service upon Mattie McGee at her last-known residence address, i.e., 21332 Highway 17 North, Lexington, Holmes County, Mississippi. (R. at 000112 - 000116, 000209). It is unknown as to whether a return was provided to the Hinds County Chancery Clerk by the Holmes County Sheriff's Department; however, there are no sheriff's returns in the Chancery Clerk's file. (R. at 000112 - 000116).

A written Notice to Mortgagee was issued by the Hinds County Chancery Clerk on May 25, 2007, and mailed to Merchants & Farmers Bank via certified mail, return receipt requested to Post Office Box 520, Kosciusko, Mississippi 39090⁷. The receipt returned to the Hinds County Chancery Clerk was signed by Will Jordan. (R. at 000112 - 000116, 000207, 000210).

Having failed to perfect personal service upon Robert McGee and Mattie McGee, the Hinds County Chancery Clerk exercised due diligence to ascertain an alternate residence address for either landowner. Finding no such alternate address, the Hinds County Chancery Clerk executed her Affidavit, memorializing "a diligent effort to locate" Robert McGee by phone directory, city tax director and other means. (R. at 000112 - 000116, 000211). Similarly, a separate Affidavit was executed by the Hinds County Chancery Clerk memorializing "a diligent effort to locate" Mattie P. McGee by phone directory, city tax directory or other means. (R. at 000112 - 000116, 000212).

With no redemption having been made on or before August 30, 2006, the Langley Street Property was forfeited by Robert McGee and Mattie P. McGee, as well as by lienholder Merchants

⁷ "Post Office Box 520, Kosciusko, Mississippi 39090" was the address set forth within the Deed of Trust by which Merchants & Farmers Bank acquired its lien and interest in and to the Guidici Street Property, specifically that Deed of Trust dated October 9, 2002, and recorded in the office of the Chancery Clerk of Hinds County, Mississippi in Book 5655 at Page 898. (R. 000107 - 000111).

& Farmers Bank, by virtue of Tax Deed delivered from the Hinds County Chancery Clerk to Wachovia Bank as Custodian for Sass Muni V, dated September 10, 2007, and recorded in the land records of the Chancery Clerk's office in Book 6770 at Page 740. (R at 000010). By Quitclaim Deed and Assignment dated October 31, 2007, U. S. Bank, N.A., as successor in interest to Wachovia Bank, as Custodian for Sass Muni V conveyed all right, title and interest in and to the Langley Street Property to Rebuild America, Inc. (R. at 000007 - 000009).

SUMMARY OF THE ARGUMENT

Well aware of Mississippi precedent, Rebuild America respectfully requests this Court reverse and render the Final Judgment of the lower court based upon the specific facts presented herein, and upon a literal interpretation of the relevant statute, § 27-43-3, Miss. Code Ann. Section 27-43-3, Miss Code Ann., clearly contemplates a valid conveyance by a Chancery Clerk subsequent to tax sale and expiration of the two (2) year period of redemption, even if the landowner wholly fails to receive the notice required therein, provided the Chancery Clerk did indeed attempt to afford the landowner notice by all three (3) means, i.e., certified mail, personal service and publication.

It is undisputed that Robert McGee and Mattie McGee were afforded notice of forfeiture by the Hinds County Chancery Clerk by certified mail, return receipt requested, and by publication within *The Clarion Ledger* in accordance with statute. (R. 000017, 000150). Similarly, it is undisputed that Merchants & Farmers Bank was afforded statutory notice of forfeiture by the Hinds County Chancery Clerk by certified mail, return receipt requested.

It is also undisputed that neither Robert McGee nor Mattie McGee were afforded personal service of notice of forfeiture by the Holmes County Sheriff's Department, despite every effort and attempt on the part of the Hinds County Chancery Clerk to effect personal service upon these landowners. Having failed to receive a Sheriff's Return, and in accordance with the requirements of § 27-43-3, Miss. Code Ann., the Chancery Clerk conducted further search and inquiry to ascertain an alternate address for Robert McGee and Mattie McGee, executing and filing her Affidavit memorializing her inability to so locate any other address for Robert McGee or Mattie McGee, at which either may have been personally served with notice of forfeiture.

Rebuild America contends that, despite the failure to personally serve either Robert McGee

or Mattie McGee with notice of forfeiture, the conveyance(s) by Tax Deed(s) 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 compliance with a literal interpretation of § 27-43-3, Miss. Code Ann.

ARGUMENT

- I. THE LOWER COURT ERRED, AS A MATTER OF LAW, IN FINDING THE CHANCERY CLERK OF HINDS COUNTY FAILED TO FULLY COMPLY WITH THE REQUIREMENTS OF MISSISSIPPI CODE ANNOTATED § 27-43-3, AND THEREFORE ERRED IN SETTING ASIDE EACH RESPECTIVE TAX SALE AND TAX DEED.

A. Standard of Review.

By entering its Order and Final Judgment based upon the Stipulation of Undisputed Fact submitted by the agreement of the parties, this court employs a de novo standard of review.

B. The Chancery Clerk Strictly Complied With The Requirements of § 27-43-3, Mississippi Code Annotated and, Therefore, Conveyance by Tax Deed of the Property Was Valid.

Sections 27-43-1 and 27-43-3, Miss. Code Ann., set forth the specific obligations of the Chancery Clerk to provide notice of forfeiture to the record owner of land sold for taxes as of 180 days prior to expiration of the redemption period, providing, in relevant part, that

[t]he 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, . . . 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 expiration of the redemption period.

The evidence presented by Affidavit and Exhibit, clearly established that the Chancery Clerk of Hinds County, Mississippi issued a Sheriff's Notice to Robert McGee and separate Sheriff's Notice to Mattie McGee on May 23, 2007, and delivered the same to the Holmes County Sheriff's Department to serve and make his return to said chancery clerk, with respect to the impending forfeiture of the Property. The evidence presented by Affidavit and Exhibit also clearly established that the Chancery Clerk of Hinds County, Mississippi issued an Owner's Notice to Robert McGee and separate Owner's Notice to Mattie McGee on May 23, 2007, and mailed the same via certified mail, return receipt requested. The evidence presented further established that the Chancery Clerk of Hinds County, Mississippi published the name and address of Robert McGee and Mattie McGee, as the reputed owners of the land previously sold for taxes, together with a brief legal description of the Guidici Street Property and Langley Street Property, within *The Clarion Ledger*, forty-five days prior to expiration of the redemption period. Thus, the Chancery Clerk, without question, fully complied with this relevant portion of § 27-43-3, Miss. Code Ann., by issuing the required notices, within the required time period, and making the required attempts at service upon Robert McGee and Mattie McGee.

The evidence presented by Affidavit and Exhibit clearly established that Robert McGee and Mattie McGee received each Owner's Notice, with respect to the Property, having signed for the same on or about June 7, 2007, and the receipts returned to the Hinds County Chancery Clerk. Given the uncontroverted evidence that Robert McGee and Mattie McGee (as well as Merchants & Farmers Bank) each actually received written notice of forfeiture, it was incumbent upon either the landowners or lienholder to exercise some reasonable effort and diligence in assuring the prompt

payment of outstanding and delinquent property taxes. *Rains v. Teague*, 377 So. 2d 924, 927 (Miss. 1979)(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). “Mississippi law . . . simply does not permit landowners to be inattentive to their annual property taxes.” *Rush v. Wallace Rentals, LLC*, 837 So. 2d 191 (Miss. 2003).

The evidence presented by Affidavit further established, however, that, despite the effort of the chancery clerk, the Holmes County Sheriff’s Department either failed to personally serve Robert McGee and Mattie McGee at their residence in Holmes County, Mississippi or failed to make its return(s) to the Hinds County Chancery Clerk. Such a failure to provide notice personally by Sheriff’s Notice or Owner’s Notice by certified mail was contemplated, and, more importantly, provided for with § 27-43-3, Miss. Code Ann., offering the chancery clerk with instruction as to how next to proceed with the noticing required by said statute.

[i]n 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 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.

Absent a sheriff’s return, the Chancery Clerk of Hinds County conducted its second search and inquiry to ascertain a street and/or post office address for Robert McGee and Mattie McGee, other than that address as provided by the Warranty Deed pursuant to which title was conveyed to Robert McGee and Mattie McGee. Having found no address other than “21332 Highway 17 North,

Lexington, Mississippi ” for either Robert McGee or Mattie McGee within the phone directory, city tax directory or by any other means available to the Chancery Clerk, it was unnecessary to issue additional notice, or to make further attempt at personal service of the Sheriff’s Notice(s) upon Robert McGee and Mattie McGee. The only action required of the Chancery Clerk at this point was to file her Affidavit “specifying therein the acts of search and inquiry made by her in an effort to ascertain the reputed owner’s street and post office address.”

Though this Court has held, as did the lower court in rendering its Order, that “notice must be given by personal service, mail and publication before a landowner’s rights are finally extinguished by the maturing of a tax deed”, a literal reading of § 27-43-3, Miss. Code Ann., does not support such an interpretation. (R at 000125). In fact, such an interpretation virtually renders the entire third paragraph of § 27-43-3, Miss. Code Ann., obsolete and contradicts the last sentence of the fourth paragraph of said statute in which it is stated that “[t]he 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.”

The purpose and intent of § 27-43-3, Miss. Code Ann., is to afford the reputed landowners, identified within 180 days prior to expiration of the applicable redemption period, constitutional due process as provided within the Fourteenth Amendment of the United States Constitution. Consistent with the last sentence of the fourth paragraph of § 27-43-3, Miss. Code Ann., the United States Supreme Court has repeatedly held that the States are not required to provide actual notice, but must simply attempt to provide actual notice. *Dusenbery v. United States*, 534 U. S. 161, 170, 122 S. Ct. 694, 701, 151 L. Ed. 2d 597 (2002); *Mennonite Bd. of Missions v. Adams*, 462 U. S. 791, 797, n. 3, 103 S. Ct 2706, 77 L. Ed 2d 180 (1983); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306, 319, 70 S. Ct 652, 94 L. Ed. 865 (1950).

The Hinds County Chancery Clerk did strictly and fully comply with the notice requirements prescribed by § 27-43-3, Miss. Code Ann., despite the failure of Robert McGee and Mattie McGee to receive personal service of the respective Sheriff's Notice. Though not received, notice was given by the Hinds County Chancery Clerk to Robert McGee and Mattie McGee by personal service, mail and publication. See § 27-43-3, Miss. Code Ann. (the failure of the landowner to actually receive the notice herein required shall not render the title void); *Viking Investments, LLC v. Addison Body Shop, Inc.*, 931 So. 2d 679, 681 (Miss. 2006); *DeWeese Nelson Realty, Inc. v. Equity Services, Co.*, 502 So. 2d 310, 312 (Miss. 1986). Said chancery clerk did attempt, in compliance with statute, to provide all three (3) forms of notice, and, as such, Robert McGee and Mattie McGee were afforded the constitutional safeguards derived through the Fourteenth Amendment of the United States Constitution, and § 27-43-3, Miss. Code Ann. Rebuild America respectfully contends that the lower court applied an inaccurate legal standard to the facts presented by this case; accordingly, the Final Judgment must be reversed and rendered.

C. The Chancery Clerk Strictly Complied With The Requirements of § 27-43-5, Mississippi Code Annotated and, Therefore, Conveyance by Tax Deed of the Property Was Valid.

Section 27-43-5, Miss. Code Ann., sets forth the specific obligation of the Chancery Clerk to provide notice of forfeiture to all mortgagees, beneficiaries and holders of vendors liens of all lands sold for taxes, via certified mail, with return receipt requested, within the time fixed by law for notifying landowners, i.e., within 180 days but not less than sixty (60) days prior to expiration of the redemption period, or the date of forfeiture. On May 25, 2007, ninety-six (96) days prior to expiration of the redemption period on August 30, 2007, the Chancery Clerk of Hinds County, Mississippi issued notice, in the requisite form, to Merchants & Farmers Bank, and mailed the same via certified mail, return receipt requested, to the address set forth and contained within the Deed of

Trust. The receipts, bearing article number 7155 5474 4100 5015 7762 as to the Guidici Street Property, and 7155 5474 4100 4248 7266 as to the Langley Street Property, were returned to the Chancery Clerk signed by "Will Jordan". The Chancery Clerk therefore fully complied with § 27-43-5, Miss. Code Ann. *See Lamar Life Ins. Co. v. Mente & Co.*, 178 So. 89 (Miss. 1938)(when a chancery clerk sends the requisite notice by registered mail, "whether the lienor receive it or not is of no consequence, for the statute will have been complied with.").

CONCLUSION

For the above and foregoing reasons, 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 Final Judgment of the lower court, Appellant requests the Chancery Clerk of Hinds County of Mississippi be compelled to reimburse to 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. Appellant prays for such further relief as may be proper in the circumstances.

Respectfully submitted, this the 21st day of December, 2009.

REBUILD AMERICA, INC.
By and Through Counsel:

HENRY, BARBOUR, DECELL & BRIDGFORTH, LTD.

By: 
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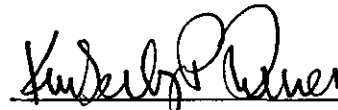
CERTIFICATE OF SERVICE

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 Record Excerpts, to the following:

Jeff D. Rawlings, Esq.
Jon M. Mims, Esq.
Rawlings & MacInnis, P. A.
Post Office Box 1789
Madison, Mississippi 39130-1789

Hon. William H. Singletary
Chancellor, Hinds County
Post Office Box 686
Jackson, Mississippi 39205-0686

DATED, this the 21st day of December, 2009.



KIMBERLY P. TURNER (MBE) 