

IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2009-CA-01191

RT

REBUILD AMERICA, INC.

APPELLANT

VERSUS

TIM A. NORRIS

APPELLEE

APPELLANT'S REPLY BRIEF

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

ORAL ARGUMENT REQUESTED

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STATEMENT OF ISSUES UPON REBUTTAL

- I. WHETHER A TAX DEED MAY BE SET ASIDE BY REASON OF THE FAILURE OF A LIENHOLDER TO RECEIVE STATUTORY NOTICE PREVIOUS TO CONVEYANCE.
- II. WHETHER DAMAGES SHOULD BE IMPOSED UPON REBUILD AMERICA, INC. FOR SEEKING APPEAL OF THE LOWER COURT JUDGMENT.

SUMMARY OF REBUTTAL

Whether the alleged lienholder, Delta Foundation, Inc., received that statutory notice required of the Chancery Clerk of Hinds County, Mississippi prior to expiration of the respective redemption period is of no consequence to Appellee, Tim A. Norris and does not invalidate the underlying tax sale. A failure to provide the required notice to a lienor of record renders the tax title void as to that lienor, and as to it only. § 27-43-11, Miss. Code Ann. (Rev. 2006).

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 October 22, 2008.

ARGUMENT

- I. WHETHER A TAX DEED BE SET ASIDE BY REASON OF THE FAILURE OF A LIENHOLDER TO RECEIVE STATUTORY NOTICE PREVIOUS TO CONVEYANCE.

Contrary to the assertion of Appellee, the alleged failure to notify the lienholder, Delta Foundation, Inc., does not render the tax sale void, and is not a basis upon which to set aside the Tax Deed or subsequent conveyance by Quitclaim Deed and Assignment. Delta Foundation, Inc. is not a party to this action, having not been named as a defendant or party in interest by Rebuild

America within its Complaint of October 22, 2008. Thus, no evidence was proffered nor argument advanced by Rebuild America relative to the validity of that lien alleged to be held by Delta Foundation, Inc., or the noticing afforded said lienor by the Chancery Clerk of Hinds County, Mississippi. By its intentional omission from the Complaint, Rebuild America did not seek, at that time, to challenge the validity of, or set aside, that lien, if any, of Delta Foundation, Inc. based upon the tax sale or resulting Tax Deed.

The Appellee seeks to advance that argument which rightfully belongs to Delta Foundation, Inc. to further persuade this Court to affirm the Judgment of the lower court which held the Tax Deed and subsequent conveyance void. Appellee, however, is limited to only those arguments premised upon the notice, or sufficiency thereof, provided to Mr. Norris to maintain the invalidity of the tax sale and resulting Tax Deed. Mississippi Code Annotated § 27-43-11 (Rev. 2006) states, in pertinent part, that,

[a] failure to give the required notice to such lienors shall render the tax title void as to such lienors, and as to them only, and such purchaser shall be entitled to a refund of all such taxes paid the state, county or other taxing district after filing his claim therefor as provided by law.

See SKL Investments, Inc. v. American General Finance, Inc., 22 So. 3d 1247, 1250 (Miss. Ct. App. 2009); *Gober v. Chase Manhattan Bank*, 918 So. 2d 840, 843 (¶ 10)(Miss. Ct. App. 2005). Contrary to Appellee's assertion, the alleged failure to provide the statutorily required notice to Delta Foundation, does not render the underlying tax sale void in its entirety. In fact, should this Court reverse the Judgment of the lower court, title to the property at issue may be confirmed in Rebuild America, as to all defendants named within the Complaint. This argument as advanced by Appellee is wholly without merit and is of no consequence to the Court's consideration and determination of reversible error on the part of the lower court, as discussed within the Brief of

Appellant.

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

Appellee seeks the imposition of sanctions against Rebuild America based upon its familiarity and awareness of Mississippi statute and precedent relevant to the issues presented herein, and the unsuccessful appeal of Rebuild America as memorialized by *Rebuild America, Inc. v. Milner*, 7 So. 3d 972 (Miss. 2009). First, knowledge of the law should not be cause to impose sanctions. Appellee premises his argument primarily upon *Viking Investments, LLC v. Addison Body Shop, Inc.*, 931 So. 2d 679 (Miss. 2006), a case in which a tax deed was set aside by reason of a Sheriff's posting of the owner's notice of forfeiture to the door of the owner's residence. Though the Sheriff's Deputy herein did also post the owner's notice of forfeiture to the door of Mr. Norris' residence, this case is not identical to, but distinguishable from, *Viking Investments* by virtue of the Chancery Clerk's exercise of additional due diligence thereafter to ascertain an alternate residence address for Mr. Norris, and execution of Affidavit, neither of which was completed by the chancery clerk in *Viking Investments*.

Secondly, 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 an 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 Appellee, Tim A. Norris, 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 § 27-43-7, 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 the lienor of record notice pursuant to § 27-43-7, Miss. Code Ann., are issues before the Court herein.

Lastly, 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*, which warranted remand to the lower court therein. Thus, Rebuild America has, at a minimum, some hope for success. Within its Complaint filed October 22, 2008, Rebuild America requested alternative relief, stating therein at Paragraph 15 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 Summary 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 Tim A. Norris subsequent to the date of Judgment in redemption of the Property, in addition to statutory interest and penalty thereon, in accordance with statute.

Brief of Appellant at p. 13. Pursuant to §§ 27-45-3 and 27-45-27, Rebuild America is entitled to

reimbursement of all taxes paid, inclusive of 2005 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. Norris of those amounts paid in outstanding taxes, interest due thereon and statutory damages as provided by statute.

Redemption is required by Mr. Norris, for which he has received actual notice by virtue of this action. It was manifest error on the part of the chancellor to not order Appellee 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. Norris a time certain within which to redeem the property the subject of this action, 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. Norris, Rebuild America further requests that, should Mr. Norris fail to redeem the property 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 *Viking Investments* and this action, as well as that distinction between *Milner* and this action, together with reasons as set forth herein and in the Brief of Appellant which afford Rebuild America a legitimate basis upon which to maintain the appeal of the lower court's judgment, 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 Summary Judgment be reversed and rendered, thereby vesting in Rebuild America, Inc. perfect title by virtue of that certain Quitclaim Deed and Assignment from Sass Muni, dated October 17, 2008, and previous conveyance by Tax Deed to Sass Muni, dated September 10, 2008. Alternatively, Rebuild America respectfully requests that Summary Judgment be reversed and the action remanded to the lower court for a full trial upon the merits so as to ascertain the specific efforts made by the Hinds County Sheriff's Department to perfect personal service of Notice of Forfeiture upon Tim A. Norris and/or the specific efforts made by the Hinds County Chancery Clerk to ascertain an alternate address for Mr. Norris.

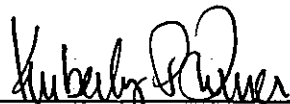
Should this Court affirm the Summary Judgment of the lower court, Appellant requests this matter be remanded to the chancery court for a determination of the redemption amount owed to Rebuild America by Appellee, Tim A. Norris, together with statutory interest and penalty thereon, and entry of Amended Judgment affording Tim A. Norris a time certain within which to tender all amounts due to Rebuild America, further providing that, should Appellee 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. Norris actual notice of his right to redeem said property.

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

Respectfully submitted, this the 15th 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 Brief of Appellant, to the following:

Stephen G. Younger, Esq.
850 East River Place, Suite 302
Jackson, Mississippi 39202

Hon. Patricia D. Wise
Chancellor, Hinds County
Post Office Box 686
Jackson, Mississippi 39205-0686

DATED, this the 15th day of March, 2010.



KIMBERLY P. TURNER (MBN [REDACTED])