

IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2009-CA-01191

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REBUILD AMERICA, INC.

APPELLANT

VERSUS

TIM A. NORRIS

APPELLEE

BRIEF OF APPELLANT

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

ORAL ARGUMENT REQUESTED

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REBUILD AMERICA, INC.

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VERSUS

TIM A. NORRIS

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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. Tim A. Norris, Appellee;
3. Stephen G. Younger, Attorney of Record for Appellee;
4. Kimberly P. Turner, Esq. and the law firm of Henry, Barbour, DeCell & Bridgforth, Ltd., Attorneys of Record for Appellant; and
5. Delta Foundation, Inc.

Respectfully submitted,
REBUILD AMERICA, INC.

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

By: 
Kimberly P. Turner (M )

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STATEMENT OF THE ISSUE.

- 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.

STATEMENT OF THE CASE

This appeal is taken from Summary Judgment entered by the Chancery Court of Hinds County on July 20, 2009, by which the Honorable Patricia D. Wise confirmed title in and to the property the subject of the lower court action in Defendant, Tim A. Norris and, in so doing, declared void that conveyance by Tax Deed dated September 10, 2007, to Sass Muni, recorded in the office of the Chancery Clerk of Hinds County in Book 6941 at Page 879, and Quitclaim Deed and Assignment dated October 17, 2008, from Sass Muni to Rebuild America, Inc., recorded in the aforesaid office in Book 6953 at Page 899 (R. at 000141 - 000142). Rebuild America initiated the lower court action by the filing of its Complaint to Quiet and Confirm Tax Title on October 22, 2008, by which Rebuild America sought to quiet and confirm its title acquired by Quitclaim Deed and Assignment from Sass Muni, as well as that tax title acquired by Sass Muni from the Chancery Clerk of Hinds County. (R. at 000001 - 000012).

The State of Mississippi, named by Rebuild America as a nominal defendant pursuant to § 11-17-19, Miss. Code Ann., filed its Answer on November 24, 2008, asserting no interest or claim in the land the subject of the lower court action. (R at 000028 - 000029). Following the filing of his Waiver of Process and Entry of Appearance, Defendant Tim A. Norris, the reputed landowner at the time of expiration of the redemption period, filed his Answer, Affirmative Defenses and Counter-Claim to Set Aside Tax Sale, Remove Cloud and Confirm Title. (R at 000030, 000032 - 000036). None of the remaining defendants filed an answer or responsive pleading to the Complaint of

Rebuild America. The Answer of Rebuild America, with Affirmative Defenses, to the Counter-Claim of Tim A. Norris was filed on April 15, 2009 (R. at 000058 - 000061).

On April 29, 2009, Defendant Tim A. Norris filed his Motion for Summary Judgment, together with supporting memorandum and Itemization of Undisputed Facts. (R. at 000065 - 000085). In opposition, Rebuild America filed its Response, with supporting memorandum attached thereto as Exhibit "A", and Itemization of Undisputed Fact on July 2, 2009. (R. at 000086 - 000131). Following oral argument made by counsel at the hearing upon the Motion for Summary Judgment of Defendant, Tim A. Norris on July 2, 2009, the lower court granted, on the record, the motion of Tim A. Norris. (Tr. at pp. 15- 18). Rebuild America filed its Notice of Appeal prematurely on July 17, 2009, preceding the entry of final judgment by the lower court. (R. at 000132). Thus, Rebuild America filed its Amended Notice of Appeal on July 27, 2009, subsequent to entry and filing of Summary Judgment on July 20, 2009. (R. at 000141 - 000142, 000144).

STATEMENT OF FACTS

This case arises from the August 28, 2006 tax sale to Sass Muni for unpaid and delinquent ad valorem taxes owed for the year ending 2005, of certain commercial property owned by Defendant Tim A. Norris¹, situated in Hinds County, Mississippi, being more particularly described as follows, to-wit:

A parcel of land lying in the Northeast quarter of the Southwest quarter of Section 9, Township 5 North, Range 1 East, Jackson, First Judicial District, Hinds County,

¹ Defendant Tim A. Norris acquired his interest in and to the commercial property the subject of the lower court action by Warranty Deed from his Mother, Ms. Sylvester Collins, dated December 22, 2005 and filed in the office of the Chancery Clerk of Hinds County, Mississippi on December 27, 2005, in Book 6406 at Page 324. (R. at 000070 - 000071, 000077 - 000078).

Mississippi and being more particularly described as follows:

Beginning at an iron pin marking the Northeast corner of Lot 1, Mississippi Addition, a Subdivision according to the map or plat thereof on file in the office of the Chancery Clerk at Jackson, Hinds County, Mississippi in Plat Book 4 at Page 90 and run thence North 55 degrees 35 minutes 35 seconds West 238.84 feet along the North line of Lots 1 and 2, Mississippi Addition, aforesaid and a Westward extension thereof to an iron pin; run thence North 58 degrees 07 minutes 28 seconds East 114.70 feet along the West line of that tract conveyed by Kelton Lowery to J. K. Angelo per Deed Book 1432 at Page 274 to an iron pin; run thence North 00 degrees 50 minutes 44 seconds East 52.92 feet along the West line of that tract conveyed by Kelton Lowery to J. K. Angelo per Deed Book 1432 at Page 274 to an iron pin the North Line thereof; run thence South 55 degrees 47 minutes 44 seconds East 221.54 feet along the North line of that tract conveyed by Kelton Lowery to J. K. Angelo per Deed Book 1432 at Page 274 and along the North line of that tract conveyed by John D. Stavroupoulos to Jimmie K. Angelo and Lambryne Angelo per Deed Book 1278 at Page 463 to an iron pin in the current West right-of-way of Terry Road; run thence South 34 degrees 14 minutes 44 seconds West 149.89 feet along the West right-of-way of Terry Road to point of beginning. Containing 0.732 acres more or less (hereinafter the "Property").

(R at 000008, 000070).

At the time of the 2006 tax sale, three (3) deeds of trust were filed in the land records of the Chancery Clerk of Hinds County, specifically:

- 1) That Deed of Trust executed by Sylvester Collins and Renee Collins in favor of Sun Delta Capital Access Center Inc., dated August 28, 1997, recorded in the aforesaid office in Book 4832 at Page 156, securing an original principal indebtedness in the amount of \$50,000.00, due and payable on September 1, 2007;
 - 2) That Deed of Trust executed by Sylvester Collins and Renee Collins in favor of West Jackson Community Development Corporation, dated August 28, 1997, recorded in the aforesaid office in Book 4832 at Page 166, securing an original principal indebtedness in the amount of \$60,000.00, due and payable on September 1, 2007;
- and

- 3) That Deed of Trust executed by Sylvester Collins and Renee Collins in favor of Delta Foundation Inc., dated August 29, 1997, recorded in the aforesaid office in Book 4832 at Page 176, securing an original principal indebtedness in the amount of \$75,000.00, due and payable on September 1, 2007². (R at 000087 - 000088).

Each Deed of Trust appeared to have expired in accordance with its stated date of maturity. Thus, no lienholder was afforded notice of forfeiture by the Chancery Clerk of Hinds County prior to expiration of the redemption period and no lienholder was named as a defendant in either the quiet title and confirmation action initiated by Rebuild America by its Complaint or the quiet title and confirmation action initiated by Tim A. Norris by his Counter-Claim.

With no redemption having been made the two (2) years following the August 28, 2006 tax sale of the Property, the Chancery Clerk of Hinds County issued an Owner's Notice of Forfeiture on May 29, 2008, and mailed the same to Tim A. Norris, via certified mail, return receipt requested to his residence address of 5026 Raintree Drive in Byram, Hinds County, Mississippi 39272. (R. at 000010). "5026 Raintree Drive, Byram, Mississippi 39272" was the address set forth within the Warranty Deed from Ms. Sylvester Collins, as Grantor, to Tim A. Norris, as Grantee, dated December 22, 2005, and recorded in the office of the Chancery Clerk of Hinds County, Mississippi on December 27, 2005, in Book 6406 at Page 324. (R at 000070 - 000071). Said address was further admitted to comprise the residence address of Mr. Norris. (R.

² Though each Deed of Trust was subsequently modified by "Modification No. 1 to Deed of Trust (MBELP)", dated June 19, 2000, and recorded in the land records of the Chancery Clerk of Hinds County in Book 5252 at Page 629, Book 5252 at Page 623 and Book 5252 at Page 635, the only effect upon the terms and conditions of those Deeds of Trust described herein at Paragraphs 1), 2) and 3) was the release from each respective lien of that property described as Lot 22, Garden Park Terrace, Part 2, and substitution therefor of that property described as Lot 21, Rolling Hills Subdivision, Part 2. (R at 000092, 000110 - 000127).

at 000077 - 000078 (¶ 4)). The Owner's Notice of Forfeiture was delivered and received by Defendant Tim A. Norris on June 6, 2008, as evidenced by Mr. Norris' signature affixed upon the certified receipt returned to the Hinds County Chancery Clerk. (R. at 000011).

The Hinds County Chancery Clerk issued a written Sheriff's Notice directed to Tim A. Norris on May 29, 2008, and delivered the same to the Hinds County Sheriff's Department to perfect personal service upon Mr. Norris at his residence address, i.e., 5026 Raintree Drive, Byram, Mississippi 39272. (R at 000009). Unable to personally serve Defendant Tim A. Norris at his residence address, Deputy Sheriff LaQuintos Hollis posted the Sheriff's Notice to the door of said defendant's residence, and made his return to the Hinds County Chancery Clerk. (R at 000009).

Having failed to perfect personal service upon Tim A. Norris, the Hinds County Chancery Clerk exercised due diligence to ascertain an alternate address for Mr. Norris. Finding no such alternate address, the Hinds County Chancery Clerk executed her Affidavit, memorializing "a diligent effort to locate Tim A. Norris by phone directory, city tax directory and other means. (R. at 000012).

With no redemption having been made on or before August 28, 2008, the Property was forfeited by Tim A. Norris by virtue of Tax Deed delivered from the Hinds County Chancery Clerk to Sass Muni, dated September 10, 2008, and recorded in the land records of the Chancery Clerk's office in Book 6941 at Page 879. (R at 000008). By Quitclaim Deed and Assignment dated October 17, 2008, Sass Muni conveyed all of its right, title and interest in and to the Property to Rebuild America. (R. at 000006).

SUMMARY OF THE ARGUMENT

Well aware of Mississippi precedent, Rebuild America respectfully requests this Court reverse and render Summary 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 notices required therein, provided the Chancery Clerk did attempt to afford the landowner notice by certified mail, personal service and publication.

It is undisputed that Tim A. Norris was afforded notice of forfeiture by the Hinds County Chancery Clerk via certified mail, return receipt requested, and by publication within *The Clarion Ledger* in accordance with statute. (R. at 000129). It is also undisputed that the Hinds County Chancery Clerk issued its Sheriff's Notice and provided the same to the Hinds County Sheriff's Department, which did attempt, albeit unsuccessfully, to personally serve Tim A. Norris with such notice. (R. at 000128). Having failed to effect personal service of the Sheriff's Notice upon Tim A. Norris as evidenced by the return provided by Deputy Sheriff LaQuintos Hollis, 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 Tim A. Norris, executing and filing her Affidavit memorializing her inability to so locate any other address for Mr. Norris at which he may have been personally served with notice.

Rebuild America contends that, despite the failure to personally serve Tim A. Norris with Sheriff's Notice of Forfeiture, the subsequent conveyance of the Property to Sass Muni, by Tax Deed, remains valid given the Chancery Clerk's attempt to provide notice by all three (3) means

prescribed by statute, given the actual receipt of the Owner's Notice of Forfeiture by Tim A. Norris via certified mail, 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 § 27-43-3, MISSISSIPPI CODE ANNOTATED.

A. Standard of Review.

The granting of a motion for summary judgment is a matter of law; therefore, an appellate court employs a de novo standard of review. *Mantachie Natural Gas Dist. v. Miss. Valley Gas Co.*, 594 So. 2d 1170, 1172 (Miss. 1992).

B. The Chancery Clerk Strictly Complied With The Requirements of § 27-43-3, Mississippi Code Annotated and, Therefore, the 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 Exhibit, clearly established that the Chancery Clerk of Hinds County, Mississippi issued a Sheriff's Notice to Tim A. Norris on May 29, 2008, and delivered the same to the Hinds County Sheriff's Department to personally serve and make his return to said chancery clerk, with respect to the impending forfeiture of the Property. The evidence presented by Exhibit also clearly established that the Chancery Clerk of Hinds County, Mississippi issued an Owner's Notice to Tim A. Norris on May 29, 2008, and mailed the same via certified mail, return receipt requested³. Rebuild America asserted within its Complaint and no evidence was proffered to the contrary, that the Chancery Clerk of Hinds County, Mississippi published the name and address of Tim A. Norris, as the reputed owner of the Property, together with a brief legal description thereof, within *The Clarion Ledger*, forty-five days prior to expiration of the redemption period⁴. Thus, the Chancery Clerk, without question, fully complied with the above stated 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 Tim A. Norris.

The evidence presented by Exhibit clearly established that Tim A. Norris received the Owner's Notice of Forfeiture, having signed for the same on June 6, 2008, and the receipt as evidence thereof returned to the Hinds County Chancery Clerk. Given the uncontroverted evidence that Tim A. Norris actually received written notice of forfeiture, it was incumbent upon him to

³ It is implied from the lower court's ruling that it mistakenly believed that no Owner's Notice of Forfeiture was either issued by the Hinds County Chancery Clerk or mailed, via certified mail, return receipt requested, to Tim A. Norris. (Tr. at p. 17).

⁴ It is also implied from the lower court's ruling that it mistakenly believed that no publication had occurred as required by statute (Tr. at pp. 17-18); however, Rebuild America asserted within its Complaint, and maintained during oral argument, that publication had indeed occurred in accordance with statute. Tim A. Norris offered neither evidence nor argument to the contrary.

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 Exhibit further established that, despite the best effort of the Hinds County Chancery Clerk and Deputy Sheriff LaQuintos Hollis, Tim A. Norris was not personally served at his residence located at 5026 Raintree Drive, Byram, Mississippi 39272, as contemplated by § 27-43-3, Miss. Code Ann. However, such a failure to provide the Sheriff’s Notice by personal service was contemplated, and, more importantly, provided for within § 27-43-3, Miss. Code Ann., offering the chancery clerk with instruction as to how next to proceed with the noticing as 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.

Well aware that “posting” the Sheriff’s Notice upon the door of Mr. Norris’ residence was insufficient to establish the personal service required by § 27-43-3, Miss. Code Ann., the Chancery Clerk of Hinds County conducted its second search and inquiry to ascertain a street and/or post office

address for Tim A. Norris, other than that address as provided by the Warranty Deed pursuant to which title was conveyed to Mr. Norris from his Mother. Having found no address other than "5026 Raintree Drive, Byram, Mississippi 39272" for Tim A. Norris 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 upon Mr. Norris. The only action prescribed by § 27-43-3, Miss. Code Ann., and therefore 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."

The lower court mistakenly assumed that personal service of the Sheriff's Notice was attempted upon Tim A. Norris at the physical location of the Property, at which Mr. Norris and his family operate a restaurant, specifically 1439 Terry Road in Jackson, Hinds County, Mississippi. (R. at 000077). However, the only street or post office address available to the Hinds County Chancery Clerk for Tim A. Norris was that address provided within the Warranty Deed by which Mr. Norris acquired title to the Property from his Mother, and the Jackson Area Phone Directory. "5026 Raintree Drive, Byram, Mississippi 39272" was the only known address for Tim A. Norris. The alternate address of Mr. Norris' family restaurant, "1439 Terry Road, Jackson, Mississippi" was wholly unknown to the Hinds County Chancery Clerk and could not have been reasonably obtained, through diligent search and inquiry. Thus, the lower court was erroneous in its assumption and its conclusion based thereupon that personal service upon Tim A. Norris could easily have been achieved given the hours of operation of a restaurant.

The lower court also mistakenly concluded that the language set forth and contained in § 27-43-3, Miss. Code Ann., unequivocally and without exception required personal service of the

Sheriff's Notice upon Tim A. Notice. As stated within her ruling upon the record, and reiterated within the Summary Judgment, the chancellor substantiated her conclusion upon that portion of § 27-43-3, Miss. Code Ann., which requires the sheriff "to serve personal notice as summons issued from the courts are served . . . ". However, neither § 27-43-3, Miss. Code Ann. nor Rule 4 of the Mississippi Rules of Civil Procedure require, without exception, personal service of process. Section 27-43-3, Miss. Code Ann., provides alternate instruction to the chancery clerk, as discussed hereinabove, should either service by mail or personal service be unsuccessful. Similarly, Rule 4 of the Mississippi Rules of Civil Procedure provides alternate instruction

[i]f the defendant in any proceeding in a chancery court, or in any proceeding in any other court where process by publication is authorized, by statute, be shown by sworn complaint or sworn petition, or by a filed affidavit, to be a nonresident of this state or not to be found therein on diligent inquiry and the post office address of such defendant be stated in the complaint, petition, or affidavit, or if it be stated in such sworn complaint or petition that the post office address of the defendant is not known to the plaintiff or petitioner after diligent inquiry, or if the affidavit be made by another for the plaintiff or petitioner, that such post office address is unknown to the affiant after diligent inquiry and he believes it unknown to the plaintiff or petitioner after diligent inquiry by the plaintiff or petitioner, the clerk, upon filing the complaint or petition, account or other commencement of a proceeding, shall promptly prepare and publish a summons to the defendant to appear and defend the suit.

The referral to Rule 4 service of summons within § 27-43-3, Miss. Code Ann., does not require, in every instance and without exception, that personal service of Sheriff's Notice be delivered to every landowner just as Rule 4 itself does not require, in every instance and without exception, that summons be delivered, whether by mail or in person, to every defendant. Just as Rule 4 provides the alternative for service by publication in the event a defendant may not be reasonably found upon diligent search and inquiry therefor, § 27-73-3, Miss. Code Ann., provides for the chancery clerk's execution of an Affidavit, following his or her attestation that he or she has conducted diligent search and inquiry for the whereabouts of the reputed landowner.

Though this Court has held 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 Tim A. Norris to receive personal service of the Sheriff’s Notice. Though not received, notice was given by the Hinds County Chancery Clerk to Tim A. Norris 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 notice by all three (3) means prescribed by statute, and, as such, Tim A. Norris was 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, Summary Judgment must be reversed and rendered.

CONCLUSION

For the above and foregoing reasons, 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 valid 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.

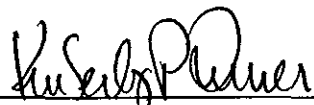
Should this Court affirm the Summary Judgment of the lower court, Appellant requests the Chancery Clerk of Hinds County of Mississippi be compelled to reimburse to Rebuild America that amount presumed to have been paid by Tim A. Norris subsequent to the date of Judgment in redemption of the Property, in addition to statutory interest and penalty thereon, in accordance with statute. Appellant prays for such further relief as may be proper in the circumstances.

Respectfully submitted, this the 22nd day of December, 2009.

REBUILD AMERICA, INC.

By and Through Counsel:

HENRY, BARBOUR, DECELL & BRIDGFORTH, LTD.

By: 

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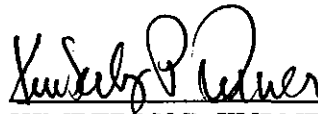
CERTIFICATE OF SERVICE

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 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 22nd day of December, 2009.



KIMBERLY P. TURNER (MBN 