

COPY

IN THE SUPREME COURT OF MISSISSIPPI  
THE COURT OF APPEALS

LOUIS HOWARD,

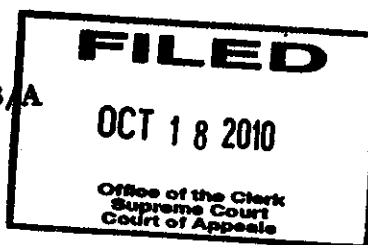
Appellant

v.

No. 2009-CA-01587

JOHNNY JOE GUNNELL, D/B/A  
4-S COMPANY

Appellee



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REPLY BRIEF OF APPELLANT LOUIS HOWARD

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On Appeal from the Chancery Court of  
Lincoln, County Mississippi  
No. 2005-0164

**ORAL ARGUMENT REQUESTED**

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## ARGUMENT

### **I. 4-S's Claim That Mr. Howard Waived His Notice Of The Void Tax Sale Is Disingenuous At Best And Serves As No Basis To Enforce A Void Judgment.**

First, it appears from Appellee's brief, that 4-S is engaging in some revisionist history. 4-S claims that Mr. Howard did not assert lack of notice of the invalid tax sale before the trial court. This is simply not true. Mr. Howard clearly asserts in his Complaint at ¶6 that he received no notice of the sale of his property for delinquent 1998 taxes. *See* R. at 5. After 4-S amended its counterclaim to claim an interest in the subject property by virtue of a tax sale for delinquent 2003 taxes, Mr. Howard responded denying the that the tax sale was lawful and valid, i.e. that it lacked proper notice to Mr. Howard. *See* R. at 33.

Mississippi law requires that notice be given to the property owner and any lienholder of a tax sale before a valid tax deed may be issued to a tax sale purchaser. Miss. Code Ann. §§ 27-43-3 and 5. The purchaser at a tax sale is deemed to know the existence of every defect in the proceedings and any neglect or default in those proceedings is considered to be due to the want of proper care and diligence on the part of the purchaser. *Rebuild America, Inc. v. Johnson*, 2010 WL 1445191,\*5 (Miss. Ct. App. 2010). When the statutory requirements for the relief requested are not satisfied a judgment subsequently entered is invalidated and void. *Barrett v. Ballard*, 483 So. 2d 304, 306 (Miss. 1985). "A judgment must be according to establish modes governing the class to which the case belongs, and . . . not transcend, in the extent and character of its judgment, the law which is applicable to it." *Id.* (internal citations and quotations omitted).

In the instant case the tax sales through which 4-S claims to have acquired an interest in the subject property are invalid and the subsequently issued tax deeds are void. It is undisputed that Mr. Howard, the record owner of the subject property, did not receive notice of the delinquent 1998 taxes or the delinquent 2003 taxes or resulting tax sales. As he never received the required statutory notice any tax sale of his property was invalid any tax deed issued to any third party is void.

Therefore the trial court was without authority to approve or enter any order that adjudicated the ownership of the subject property in any party other than Mr. Howard. The December 10, 2007 Agreed Order transcends in extent and character the laws applicable to tax sales in Mississippi and is therefore void.

**II. Mr. Howard Did Not Know He Had Cause To Seek Relief From The December 2007 Judgment Until 4-S Refused To Relinquish Its Claimed Interest In The Property On October 7, 2008.**

It was not until October 8, 2008, when 4-S rejected Howard's tender of payment, instead demanding additional sums not contemplated by the 2007 Order, that Howard had cause to see relief from the December 2007 Order. Mr. Howard substantially complied with the 2007 Order by paying the principle amount of \$8,075.26 prior to the deadline in the 2007 Order and sought through his trial counsel in good faith to obtain the amount of interest owed, first through counsel for 4-S and then through the trial court when it became apparent that 4-S did not intend to relinquish its claimed interest. He failed only to pay the interest, a minimal amount which was not explicitly calculated in the Order and which was in dispute as between the parties. 4-S on the other hand, showing its lack of good faith in this transaction, waited until the deadline passed to demand from Mr. Howard not only interest but an additional \$898.52 not contemplated by the 2007 Order and refused to accept Mr. Howard's tender of \$8,075.26. 4-S cannot now claim that Howard should have appealed the 2007 order. 4-S cannot be allowed to lay a procedural trap whereby it refuses to accept tender and relinquish its claimed interest in the subject property as required by the 2007 Order, then claim Howard waited too late to complain about the terms of the 2007 Order. Such a holding would result in manifest injustice.

**CONCLUSION**

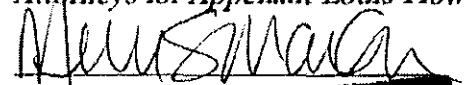
Mr. Howard has not waived his claim that the tax sales were void for lack of notice to Howard as the landowner. As a result of the void tax sales the December 10, 2007, Agreed Order

violates Mississippi law is therefore void along with any subsequent order seeking to enforce it. The trial court did not have the legal authority to enter or approve the Agreed Order transferring Mr. Howard's property to 4-S for Mr. Howard's failure to tender a disputed and minimal interest payment. 4-S cannot be rewarded for its unclean hands and procedural traps. The judgment of the Chancery Court of Lincoln County adjudicating an ownership interest of 4-S in the subject property should be reversed.

Filed this the 18<sup>th</sup> day of October, 2010.

Respectfully submitted,

*Attorneys for Appellant Louis Howard*



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CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that I have served by United States mail, postage prepaid, a true and correct copy of the above and foregoing document, to the following persons at these addresses:

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Chancellor  
Post Office Box 707  
Hazlehurst, MS 39083

THIS the 18<sup>th</sup> day of October, 2010

  
Meliska Selman Martin