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REPLY ARGUMENT

A. THE CHANCELLOR'S GRANTING OF SUMMARY JUDGMENT WAS IMPROPER BECAUSE GENUINE ISSUES OF MATERIAL FACT WERE PRESENT AS TO WHO WAS ENTITLED TO NOTICE WITH REGARD TO THE SECOND TAX DEED.

Notice and the opportunity to be heard are bedrock principles of our law. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). Defendant James Alexander (hereinafter referred to as Defendant) acknowledges this fundamental of law. Ultimately, Defendant maintains his position that Plaintiff Patsy Musgrove (hereinafter referred to as Plaintiff) was not entitled to notice as she was not the record owner of the property with regard to the second tax deed he acquired in 1998 from the 1993 purchase of the 1992 taxes. Defendant is certainly not attempting to take a fourth (4th) bite at the apple. Defendant believes he is the true owner of the property at issue.

Plaintiff asserts that Defendant's tax deed acquired from the August, 1990 sale was set aside and as such, Defendant was not the record owner with regard to the second tax deed. However, Plaintiff fails to mention that the first tax deed acquired from the August, 1990 sale was set aside in an Order dated November 29, 2007; said Order was issued *nunc pro tunc* with regard to the December 12, 2006 granting of summary judgment. This occurred seventeen years after Defendant purchased the taxes and fourteen (14) years after the civil suit was filed. As such, when notice was required, Defendant was the rightful person to whom notice should have been issued. Furthermore, the second tax deed was not acquired from the purchase of the first tax deed, but from the 1993 purchase of the 1992 taxes. In fact, the Mississippi Supreme Court has opined that with regard to notice each deed stands alone. See, *Mississippi Indus. For the Blind v. Jackson*, 95 So. 2d 109, 113 (Miss. 1957).

Defendant acknowledges that property rights are liberally construed to the property owner. Mississippi's long-standing public policy is to protect landowners from loss by sale of their land

for taxes. *Carmadelle v. Custin*, 208 So.2d 51, 55 (Miss.1968). However, Plaintiff has wholly failed to pay taxes since the inception of this suit and has continued to do so. Unfortunately, only the pleadings in the record before you confirm this as there is no open court transcript.

The issue of “record ownership” subject to a tax deed has been before this Honorable Court in the matter of *Moore v. Marathon Asset Mgmt., LLC*. 973 So. 2d 1017 (Miss. Ct. App. 2008). In *Moore*, the Plaintiff purchased property at a foreclosure sale without the benefit of a title inquiry, which would have disclosed the property was encumbered by a tax deed. Though Plaintiff Moore was not the record owner of the property, the tax deed was nevertheless set aside for failure to follow the statutory notice guidelines.

Notably, the above cited case is factually distinguishable because standing was an issue, Moore bought the property at a foreclosure sale and the subject property was encumbered by one tax deed. Obviously, the property at issue in the present appeal was not purchased at a foreclosure sale, standing is not an issue and the subject property was encumbered by two tax deeds, which were both declared void over a decade after the suit was filed.

B. THE FINAL JUDGMENT OF THE CASE IS INCOMPLETE, VAGUE AND INCORPORATES NO SPECIFIC FINDINGS OF FACT AS TO WHAT TAX DEED IS SET ASIDE OR WHO RECEIVES THE FUNDS FROM THE TIMBER HARVESTING

Defendant would assert that contrary to Plaintiff’s stated position, the Chancellor’s Final Judgment does not retain the matter of tax refunds for further examination and adjudication. The Final Judgment states, “that the Defendant James Alexander is granted the money expended for the taxes together with the legal interest rate paid from the date of the void tax sale until paid in full.”(DE 177-178). However, the Final Judgment, as Plaintiff admits in her brief, does not specifically state who paid the taxes for any year, nor does the Final Judgment specify the amount of money Mr. Alexander is owed.

Furthermore, the Final Judgment is wholly silent as to the funds currently held in the registry of the Lawrence County Chancery Court. As of July 31, 2007, the balance of the amount was \$15,683.59. Defendant would assert that said amount of money is significant and should have been incorporated into the Final Judgment to be dispensed per order of the court.

Finally, Defendant maintains his prior argument that the Final Judgment does not specify what tax deed was declared null and void.

CONCLUSION

Defendant's motivation of this appeal is not to simply take a fourth (4th) bite at the apple. Defendant wholeheartedly believes he is the owner of the property in question pursuant to the laws of Mississippi. As such, Plaintiff prays the Chancellor's granting of summary judgment is set aside and his tax deed is confirmed.

CERTIFICATE OF SERVICE

I, Jason T. Barrett, attorney for Appellant James Alexander, certify that I have this day served a copy of the Reply Brief of Appellant via hand delivery to the following:


Kathy Gillis, Supreme Court Clerk
P.O. Box 117
Jackson, Mississippi 39205

Malcolm Taylor Rogers, Esquire
P. O. Box 688
Monticello, Mississippi 39654-0688

and via United States Postal Service, postage prepaid, to the following:

Honorable Larry Buffington
P.O. Box 924
Collins, Mississippi 39428

This the 27th day of April 2011.



Jason T. Barrett
Attorney for Appellant