

BRIEF OF APPELLANT

CERTIFICATE OF INTERESTED PARTIES

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 this Court may evaluate possible disqualification or refusal:

1. The parties listed in the title of this case.
2. Jason T. Barrett, counsel for Appellant on appeal.
3. Malcolm T. Rogers, counsel for Appellee on appeal and at trial.
4. Malcolm T. Rogers, counsel for Lawrence County Board of Supervisors at trial.
5. J. Cliff Thomas, Jr., former counsel for Appellee at trial.
6. James F. Noble, Jr., former counsel for Appellant at trial.
7. Jesse C. Pennington, former counsel for Appellant at trial.
8. John Sutton, former counsel for Appellant at trial.
9. Gary L. Honea, counsel for Appellant Jayess Wood, Inc. and Jerry Wayne Smithie at trial and on appeal (Appellant was dismissed October 13, 2010).
10. Hugh Tedder, Jr., Counsel for Office of Attorney General (An uninterested party).
11. Honorable Larry Buffington, Chancery Court Judge.
12. Honorable Harris Sullivan, Chancery Court Judge.

This the 23rd day of November 2010.


Counsel for Appellant

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TABLE OF AUTHORITIES

CASES:

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Hart v. Catoe, 390 So.2d 1001, 1003 (Miss. 1980)
Hartford Cas. Ins. Co. v. Halliburton Co., 826 So.2d 1206, 1209 (Miss. 2001)
Lee v. Golden Triangle Planning & Dev. Dist. Inc., 797 So. 2d 845, 847 (Miss. 2001)
Leslie v. City of Biloxi, 758 So.2d 430, 431 (Miss. 2000)
O'Neal Street, Inc. v. Millette, 797 So.2d 869, 872 (Miss. 2001)
Rains v. Teague, 377 So. 2d 924, 927 (Miss. 1979)
Roach v. Goebel, 865 So.2d 711, 716 (Miss. Ct. App. 2003)(quoting *Brown v. Riley*, 580 So.2d 1234, 1237 (Miss. 1991))
Van Eaton v. Hamlin, 16 So. 594 (Miss. 1895)

STATUTORY AUTHORITY:

Miss. Code Ann. Sec. 27-43-1
Miss. Code Ann. Sec. 27-43-3
Miss. Code Ann. Sec. 27-45-3
Miss. Code Ann. Sec. 27-43-5
Miss. Code Ann. Sec. 27-45-23

MISSISSIPPI RULES OF PROCEDURE:

Miss R. Civ. P. 56

SECONDARY SOURCES:

Cameron, Mack, 1980-1390 *Op. Miss. Atty. Gen.* (May 20, 1980)
Shelson, Sandra, 1996-0629 *Op. Miss. Atty. Gen.* (September 27, 1996)

STATEMENT OF ISSUES

1. 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.
2. THE FINAL JUDGMENT OF THE CASE IS INCOMPLETE, VAGUE AND INCORPORATES NO SPECIFIC FINDINGS OF FACT AS TO WHAT TAX DEEDS ARE SET ASIDE OR WHO RECEIVES THE FUNDS FROM THE TIMBER HARVESTING.
3. IN THE ALTERNATIVE, APPELLANT SHOULD BE ENTITLED TO THE FUNDS COLLECTED FOR THE HARVESTING OF THE TIMBER AS HE WAS THE OWNER OF RECORD.

STATEMENT OF THE CASE

A. NATURE OF THE CASE

In the present case, two separate and distinct deeds were issued on the subject land to the Appellant. One was issued on October 7, 1993 for the non-redemption of the 1989 Ad Valorem taxes, which were purchased by Appellant on August 27, 1990; the second tax deed was issued on July 22, 1998 for the non-redemption of the 1992 Ad Valorem taxes, which were sold on August 30, 1993. Chancery Judge Larry Buffington cancelled both tax deeds on summary judgment at two separate settings. Appellant challenges the granting of the summary judgment with regard to the second tax deed for the reasons stated herein.

B. COURSE OF THE PROCEEDINGS AND DISPOSITION IN THE COURT BELOW:

Plaintiff-Appellee, Patsy Phillips Musgrove (hereinafter referred to as Appellee) filed this civil action to cancel a tax deed as a cloud upon the title to real estate and to confirm title in the real estate against Defendant-Appellant James Alexander, (hereinafter referred to as Appellant). Appellee alleges that statutory notice was not received for said taxes pursuant to Miss. Code Ann. §27-43-3. On October 7, 1993, Appellant obtained a tax deed from Sherrod Rayborn, then Chancery Clerk of Lawrence County, for taxes assessed thereon for the year 1989 and was filed and recorded in Deed Book A-101 at Page 617 of the land records of Lawrence County, Mississippi.(DE 9; RE 13). On November 15, 1993, in the Chancery Court of Lawrence County, this suit was filed. (DE 4-10).

On December 16, 1993, Appellant filed a Motion to Dismiss due the Appellee's failure to join Sherrod Rayborn, Chancery Clerk of Lawrence County, as a necessary party pursuant to Rule 19 of the Mississippi Rules of Civil Procedure. (DE 12). Said motion was sustained

February 17, 1994. (DE 17). Thereafter, Appellee filed an Amended Complaint on February 28, 1994, reasserting her prior claims, but including Sherrod Rayburn as a Defendant.(DE 18-24). Sherrod Rayburn filed an Answer to Amended Complaint on April 7, 1994, admitting that the statutory notice was not given to Appellee. (DE 27). Appellee filed another Amended Complaint on May 16, 1995, reasserting prior claims, yet adding Jayess Wood, Inc. and Jerry Wayne Smithie as Defendants.(DE 29-40). Appellee alleged that Appellant employed Jayess Wood, Inc. and its agent to remove from said property. In addition, Appellee alleged that in October 1993, a *Lis Pendens* Notice concerning this civil action was filed in the land records of Lawrence County in *Lis Pendens* Book 3 and Page 66. (DE 10; RE 15). Counsel for Jayess Wood, Inc. and Jerry Wayne Smithie filed their Answer to Amended Complaint on June 22, 1995, which included, as Exhibit "A," an Order interpleading funds held by Jayess Wood in the amount of \$14,807.60 into the registry of the Chancery Court of Lawrence County, Mississippi.(DE 49-53). As of July 31, 2007, the balance of the amount was \$15,683.59. (DE 167). Appellant filed his Answer to Amended Complaint on July 5, 1995.(DE 55-57).

Appellee filed a Motion for Partial Summary Judgment on the Pleadings, or in the Alternative, Partial Summary Judgment on July 20, 1998. The basis for said motion was Appellant's prior counsel's failure to respond to Requests for Admissions (DE 66).

Out of an abundance of caution, in securing his property, Appellant acquired a second tax deed on July 22, 1998, for the Ad Valorem taxes assessed against the property in dispute for the year 1992. Said deed was recorded in Book A118 at Page 567. (DE 90;RE 14).

On August 26, 1998, a Second Amended Complaint was filed reasserting prior claims and seeking cancellation of the second tax deed, which was acquired for the non-redemption of the 1992 ad valorem land taxes that were sold on August 30, 1993 to Appellant.(DE 74-90).

Importantly, said taxes from 1992 were not redeemed by Appellee during the entire course of proceedings of this civil suit, notwithstanding the fact the suit was filed November 1993.

On October 9, 1998, Jayess Wood, Inc. and Jerry Wayne Smithie filed their Answer to the Second Amended Complaint (DE 91-94); on that same day, Jayess Wood, Inc. and Jerry Wayne Smithie filed their Cross-Complaint against Appellant.(DE 95-98). Appellant filed his answer to the Cross-Complaint on November 13, 1998.(DE 99-101). Also on October 9, 1998, Appellant filed his Answer to Third (Titled "Second" Amended) Complaint.(DE 102-112). Significantly, Appellant averred that Appellee failed to pay taxes on said land for the years: 1992, 1993, 1994, 1995, 1996 and 1997, all of which, plus 1989 and 1990, were paid by Appellant. Again, this civil action was initially filed November 15, 1993. (Of note, Appellee did not pay the Ad Valorem taxes for 1998, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008 or 2009, as these taxes were paid by Appellant. The Lawrence County Tax Assessor has no knowledge of who paid the 1999 and 2000 taxes.)

A Fourth Amended Complaint was filed on May 12, 2000.(DE 117-139). Attached to said Complaint as Exhibit "E" is a Notice from the State of Mississippi, acting through the Office of the Secretary of State, Public Lands Division, which stated that all lands sold to the State of Mississippi for taxes for the tax ears 1970 through 1993 were cancelled.(DE 135). A similar notice, dated December 23, 1996, attached to the Fourth Amended Complaint as Exhibit "F" extended the period of time when all tax sales to the State of Mississippi for Lawrence County were stricken from land sale records for the years 1953-1994.(DE 138). The State of Mississippi filed its unsigned Answer to the Fourth Amended Complaint on June 6, 2000, asserting it has no interest in the subject property.(DE 146-149).

On November 6, 2006, Appellee filed a Motion for Summary Judgment praying that the tax sale and/or the tax deed delivered pursuant thereto for the 1989 taxes on the parcel at issue be set aside for failure to properly notice Appellee pursuant to §27-43-1 et seq., Mississippi Code of 1972, Annotated.(DE 154-156). Said Summary Judgment was noticed for hearing on November 13, 2006.(DE 157-158). No transcript exists to determine if said Summary Judgment was in fact heard.

On November 14, 2007, Appellee filed an Amended Motion for Summary Judgment averring that on the 12th day of December 2006, the court granted partial Summary Judgment, canceling and setting aside Appellant's first tax deed for the sale of the 1989 Ad Valorem taxes recorded in Deed Book A101, at Page 617. (DE 168-173). This Amended Motion for Summary Judgment was noticed for hearing on November 29, 2007.(DE 159-160).

On November 29, 2007, an Order Granting Partial Summary Judgment as to the 1993 Tax Deed was filed eleven months after the December 12, 2006 hearing.(DE 174-176; RE 9-11). Said Order was issued *nunc pro tunc* with regard to the December 12, 2006, granting of summary judgment.

Finally, on April 28, 2010, the Chancery Court of Lawrence County, Mississippi, entered a Final Judgment finding "that the tax deed issued as a result of that void tax sale is set aside and declared null and void." (DE 177-178; RE 7-8).

Appellant filed his Notice of Appeal on May 20, 2010. (DE179; RE 8). Afterwards, a letter brief dated January 31, 2008, by Appellant's prior counsel was filed with the Chancery Court on May 27, 2010. (DE 180-190).

C. STATEMENT OF THE FACTS:

This case presents a very unusual fact pattern. Initially, this lawsuit was filed seventeen years ago on November 15, 1993 to cancel a tax deed as a cloud upon the title. The basis for the civil suit was improper notice. The property at issue encompasses 40.45 acres located in Lawrence County, Mississippi. Appellant purchased the unpaid 1989 Ad Valorem taxes on August 27, 1990. Appellee paid for the 1991 ad valorem taxes and did so on December 6, 1991. Thereafter, Appellant paid for the taxes in 1992. Furthermore, the taxes from: 1993, 1994, 1995, 1996, 1997, 1998, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008 and 2009 were paid by the Appellant. Importantly, Appellant paid the taxes almost entirely during the pending suit.

On October 7, 1993, a tax deed was issued to Appellant for the August 27, 1990 purchase of the 1989 Ad Valorem taxes. Said tax deed was recorded in Book A101 at Page 617. (DE 9; RE 13). As the owner of record, Appellant entered into a timber cutting contract wherein the timber would be harvested and Appellant would be compensated for the same. Thereafter, Appellant acquired a second tax deed on July 22, 1998, for the Ad Valorem taxes assessed against the property in dispute for the year 1992. Said deed was recorded in Book A118 at Page 567. (DE 90; RE 14).

On November 6, 2006, Appellee filed a Motion for Summary Judgment praying that the first tax deed issued for the sale of the 1989 be set aside for failure to properly notice Appellee pursuant to §27-43-1 et seq., Mississippi Code of 1972, Annotated. Said Motion for Summary Judgment was noticed for hearing before the Honorable Larry Buffington on November 13, 2006. No transcript exists as to if this hearing took place. Interestingly, on November 14, 2007, Appellee filed an Amended Motion for Summary Judgment averring that on the 12th day

of December 2006, the court granted partial Summary Judgment, canceling and setting aside Appellant's first tax deed for the sale of the 1989 Ad Valorem taxes recorded in Deed Book A101, at Page 617. This Amended Motion for Summary Judgment was noticed for hearing on November 29, 2007. However, no record or transcript exists as to if said hearing was held. Nonetheless, on November 29, 2007 an Order Granting Partial Summary Judgment was filed.(DE; 174-176; RE 9-11) In paragraph two, this order states a hearing was held on December 12, 2006; paragraph four states that counsel for Appellant appeared and objected to the granting of the Motion for Summary Judgment. Again, no transcript or record exists as to what transpired with regard to this 2006 hearing regarding the first tax deed. Furthermore, the Order filed on November 29, 2007, granted Summary Judgment as to the tax deed issued on October 7, 1993 recorded in Deed Book A101, at Page 617. This Order was issued *nunc pro tunc*.

On April 28, 2010, a Final Judgment was filed wherein the Court found that the tax deed issued as a result of the void tax sale is set aside. (DE 177-178; RE 7-8). Appellant filed his Notice of Appeal on May 20, 2010. (DE179; RE 12).

SUMMARY OF ARGUMENT

The Appellant contends that summary judgment was improper with regard to the second tax deed as Appellee, under all applicable Mississippi law, was not entitled to notice as Appellant was the record owner of said land. In the alternative, if Appellee was entitled to notice, she made an entry of appearance in said case, yet willfully continued to not redeem the taxes, thus allowing Appellant's interest to mature into a second tax deed.

Furthermore, Appellant asserts the Final Judgment issued by Chancellor Larry Buffington is incomplete, vague, and lacks specific findings of fact to sustain the same. Significantly, the judgment fails to render a ruling with regard to the proceeds being held in the registry of the Lawrence County Chancery Clerk from the harvesting of the timber. In addition, the language regarding the tax deed is vague as to what deed is set aside and why the deed was set aside. Finally, Appellant would state that the monetary judgment granted to him was not rendered with judicial certainty.

In conclusion, Appellant prays that should the Final Judgment of the Lawrence County Chancery Court be affirmed, Appellant be awarded the proceeds from the harvesting of the timber as, for all intents and purposes, he was the record owner of the property when the timber was cut.

ARGUMENT

Standard of review:

On appeal, the standard for summary judgment is governed by Rule 56 of the Mississippi Rules of Civil Procedure. Miss R. Civ. P. 56. Under Rule 56(c), “judgment shall rendered. . . if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Id.* In reviewing a trial court’s grant of summary judgment, the standard of review is well settled in Mississippi. This Court employs a de novo standard in reviewing a trial court’s grant of summary judgment. *O’Neal Street, Inc. v. Millette*, 797 So.2d 869, 872 (Miss. 2001). In conducting the de novo review, this court looks at all evidentiary matters, including admissions in pleadings, answers to interrogatories, depositions, and affidavits. *Lee v. Golden Triangle Planning & Dev. Dist. Inc.*, 797 So. 2d 845, 847 (Miss. 2001). This evidence must be viewed in the light most favorable to the party against whom the motion for summary judgment has been made. *See Hartford Cas. Ins. Co. v. Halliburton Co.*, 826 So.2d 1206, 1209 (Miss. 2001); *Leslie v. City of Biloxi*, 758 So.2d 430, 431 (Miss. 2000); *Brown v. Credit Ctr., Inc.*, 444 So.2d 358, 362-65 (Miss. 1983).

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.

Mississippi Code Section 27-43-1 requires the chancery clerk, within one hundred eighty (180) days and not less than sixty (60) days prior to expiration of redemption, to issue notice to the landowner that the land will be sold unless redeemed by the expiration date. Miss. Code Ann. Sec. 27-43-1. This section also sets forth the form of notice. *Id.* Mississippi Code Section 27-43-3 provides the method of notice. Miss. Code Ann. Sec. 27-43-3. This statute also

provides that failure of the owner to receive the notice does not render the sale void, provided the clerk and the sheriff have complied with the duties prescribed therein. *Id.*

The Mississippi Attorney General's Office has issued several opinions as to whom such notice should be sent. A May 20, 1980, opinion opines that ". . . within the contemplation of section 27-43-1 . . . the 'record owner of the land' means the owner as shown by the land deed records on file in the office of the chancery clerk as of 180 days prior to the expiration of the time of redemption" and that one to which a tax sale has matured ". . . becomes the 'owner of record' when the tax deed is filed for record in the office of the chancery clerk." *Cameron, Mack*, 1980-1390 *Op. Atty. Gen.* (May 20, 1980).

In the instant appeal, as of February 28, 1995, roughly 180 days prior to said expiration, the deed records of Lawrence County indicated that the Appellant was the record owner of the land in question due to his previously recorded tax deed at Book A101 at Page 617. This ownership of record is affirmed in Attorney General's Opinion No. 96-0629. Said opinion states "when the redemption period has ended, the tax purchaser . . . is the owner of the property for all purposes." *Shelson, Sandra*, 1996-0629 *Op. Atty. Gen.* (September 27, 1996). An examination of the Lawrence County 1994 Tax Rolls indicates that the land in question (parcel no. G03-00-00010.00) was assessed to the Appellant. (DE 186). In fact, the Ad Valorem Taxes for the years: 1992, 1993, 1994, 1995, 1996, 1997, 1998, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008 and 2009 all of which, plus 1989 and 1990, were paid by Appellant. It is the Appellant's assertion that the Appellee has no standing to raise lack of notice since, under all applicable Mississippi law, she was not required to be notified. More specifically, Appellee was not the record owner of the property. Allowing Appellee the right to do so now opens the door for anyone whatsoever the right to object to any tax sale in which a tax deed was issued.

Appellant is aware that “statutes dealing with land forfeitures for delinquent taxes should be strictly construed in favor of the landowners.” *Roach v. Goebel*, 865 So.2d 711, 716 (Miss. Ct. App. 2003)(quoting *Brown v. Riley*, 580 So.2d 1234, 1237 (Miss. 1991)). In addition, “any deviation from the statutorily mandated procedure renders the sale void. *Id.* (citing *Hart v. Catoe*, 390 So.2d 1001, 1003 (Miss. 1980)). However, Appellant asserts that he was the owner of record of the property at issue when the notice should have been sent.

Next, pursuant to Mississippi Code Section 27-45-3, owners have the right to redeem property sold at a delinquent Ad Valorem tax sale at any time within two years from date of sale. Miss. Code Ann. 27-45-3. If there is no redemption, Miss. Code Ann. Sec. 27-45-23 authorizes the chancery clerk to convey a tax deed to the tax sale purchaser. Miss. Code Sec. 27-45-23. Assuming, for argument’s sake that Appellee was the record owner of the land at issue in 1995 and was entitled to notice, she filed the instant law suit in November 1993. At that point, she made a legal appearance in a case involving the same land and the same party opponent. However, the record reveals that at no time since the filing of the suit did Appellee even make an attempt to pay the 1992 Ad Valorem taxes which were sold to Appellant on August 30, 1993. Appellant would assert that Appellee, as initiator of the suit, made a legal appearance in the case asserting a notice deficiency with regard to the first tax deed, yet willfully continued to neglect to redeem the taxes. As such, Appellant acquired a second tax deed on the property on July 22, 1998. (DE 90; RE 14). Appellant understands the importance of notice and the concept of allowing any person who stands to suffer the right to prepare himself and be heard. However, Appellee apparently retained counsel, filed a civil suit in 1993, made a legal appearance with said counsel, yet continued to fail to redeem the taxes. The Mississippi Supreme Court has held,

“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.” *Rains v. Teague*, 377 So. 2d 924, 927 (Miss. 1979).

Although not pled by Appellee, Appellant anticipates that she may try to rely on the fact that there was a *Lis Pendens* Notice filed on October 22, 1993, in Book 3 at Page 67 and that, because of same, the Appellee was a lienor who was due notice under Miss. Code Ann. Sec. 27-43-5. Miss. Code Ann. Sec. 27-43-5. (DE 10; RE 15). However, this fact should not alter the result as “Mississippi case law clearly illustrates that a lien is not obtained by the mere filing of a *Lis Pendens* Notice.” *Aldridge v. Aldridge*, 527 So.2d 96, 99 (Miss. 1988). Moreover, a *Lis Pendens* Notice itself does not constitute an independent basis for imposition of a lien. *Id.*

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

In the Court’s Final Judgment, (DE 177-178; RE 7-8), Judge Buffington ruled:

1. That the Court had previously entered its order finding that the statutory requirements dealing with tax sales had not been complied with and that the sale is set aside and declared null and void;
2. The Court further finds that the tax deed issued as a result of that void tax sale is likewise set aside; and
3. 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 and one thousand dollars (\$1,000.00) in attorney’s fees for the failure of the county to comply with the statutes as set forth.

As this court is aware, a final judgment should be complete and do full justice, protecting

the interest of all the parties to the action, and a neglect to do so is erroneous. *Van Eaton v. Hamlin*, 16 So. 594 (Miss. 1895). Appellant avers that the Final Judgment is incomplete as it does not address the money being held in the registry of the Lawrence County Chancery Clerk's Office from the harvesting of the timber on said property. Additionally, the Order Granting Partial Summary Judgment specifically continued, "other matters and issues as raised by the Complaint and all amendments thereto, including, funds held in escrow by the Court." Nevertheless, the issue was not considered in the Final Judgment. (DE 177-178; RE 7-8). As such, Appellant avers the Final Judgment is erroneous.

Appellant would further assert that the Final Judgment is vague as to which tax deed is set aside. More specifically, the Final Judgment states, "the tax deed issued as a result of that void tax sale is likewise set aside." (DE 177-178; RE 7-8). Presumably, the former quotation refers to the 1993 tax deed. However, the 1998 tax deed was not acquired through that void tax sale. As stated herein, the 1998 Tax Deed was acquired from the purchase of the 1992 Ad Valorem Taxes on August 30, 1993, which later matured to Appellant. Conversely, the 1993 Tax Deed was acquired from the purchase of the 1989 Ad Valorem Taxes which later matured to Appellant. Appellant would state that each tax deed is separate and distinct.

Lastly, Appellant would aver that the Court's finding that he 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" is unreasonable, uncertain, and indefinite. When a judgment is rendered for the recuperation of money, the same must be for a sum certain. The amount cannot be arrived at by, nor left to, mere conjecture nor by recourse to anything extrinsic. *Aldridge v. Parr*, 396 So.2d 1027 (Miss. 1981). As such, Appellant avers the Final Judgment is erroneous.

C. SHOULD APPELLEE BE HELD TO BE THE OWNER OF THE PROPERTY AT ISSUE, APPELLANT SHOULD BE ENTITLED TO THE VALUE OF THE TIMBER HARVESTED FROM THE LAND DURING HIS OWNERSHIP

Appellant received his tax deed on the property at issue on October 7, 1993. Thereafter, while the owner of record, Appellant entered into a legal timber cutting contract with Jayess Wood, Inc.(DE 98). Pursuant to said contract, Appellant granted the buyer the right to cut and remove the timber in consideration for the price as set out in contract. The proceeds from the harvesting are currently held in the registry of the Lawrence County Chancery Clerk in the amount of \$15,683.59. (DE 167). Appellant would aver that for all intents and purposes he was the owner of the property when said timber was harvested. As owner of the property, he was owner of the trees associated therewith.

CONCLUSION

Appellant James Alexander contends, based upon the argument presented within his brief, that the Chancellor's decision in granting summary judgment was improper. Appellee has exhibited a unexplainable willful neglect in paying the property's taxes; this neglect started prior to the filing of the civil suit and continued throughout the duration of the same. Further, Appellant would allege that under applicable law, Appellee was not entitled to notice of redemption for the delinquent taxes regarding the second tax deed as she was not the owner of record. In the alternative, if Appellee was entitled to notice, she had made a legal appearance with counsel in the case by filing the lawsuit. Nevertheless, Appellee continued to not pay the taxes.

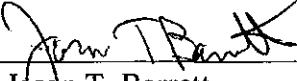
Appellant would also assert that the Final Judgment issued by the chancery court is incomplete, vague and lacks specific findings of fact to sustain the same. Significantly, the judgment fails to render a ruling with regard to the proceeds being held in the registry of the Lawrence County Chancery Clerk from the harvesting of the timber. In addition, the language

regarding the tax deed is vague as to what deed is set aside and why the deed was cancelled. Finally, Appellant would state that the monetary judgment granted to him was not rendered with judicial certainty.

The decision of the Chancellor to grant summary judgment was improper and Appellant prays the same is reversed; however, if the ruling is affirmed, Appellant would aver that he is entitled to the proceeds from the harvesting of the timber, as he was the owner of record when the timber was cut.

Respectfully submitted,

James Alexander

BY: 

Jason T. Barrett
Attorney for Appellant

CERTIFICATE OF SERVICE

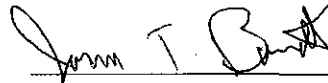
I, Jason T. Barrett, attorney for Appellant James Alexander, certify that I have this day served a copy of the Brief of Appellant via United States Postal Service, postage prepaid, to the following:

Kathy Gillis, Supreme Court Clerk
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Honorable Larry Buffington
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This the 23rd day of November 2010.



Jason T. Barrett
Attorney for Appellant