

MISSISSIPPI DELINQUENT TAXES

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New Reported Decisions

Rebuild America v. Norris, 64 So.3d 499 (Miss. App. 2010)
[out of Hinds County]

- Record owner (Norris) received notice by certified mail and signed a return receipt. Publication was timely. Personal service was not made correctly; rather, notice was posted on the door of the house. Clerk did file an affidavit of further search and inquiry. It is unclear whether two affidavits were filed.
- Delta Foundation, Inc. had a lien on the property. Clerk did not mail lienor's notice to it.
- Court of Appeals upheld Chancellor's denial of Rebuild America's petition to confirm title and set aside the tax deed.
- Norris sought attorneys fees from Rebuild America because it claimed appeal was frivolous. Court of Appeals said it "declines to do so."
- On April 21, 2011, the Mississippi Supreme Court granted a Petition for Writ of Certiorari filed by Rebuild America, so the high court will address the issues in the case.

Rebuild America v. Norris, 64 So.3d 480 (Miss. 2011)
[out of Hinds County]

- On certiorari, the Mississippi Supreme Court limited the holding of the Court of Appeals decision to the facts of that case and stated that the sheriff and the clerk may well comply with their duties and a tax deed confirmed "even though the owner never received actual notice of the tax sale."

SKL Investments, Inc. v. American General Finance, 22 So.3d 1247 (Miss. App. 2009)
[out of Prentiss County]

- Notice to Lienors directed to American General Finance did not contain the name of the property owner, a description of the land, or the book and page number of the deed of trust. Notice to the Record Owner was apparently sufficient.
- Court of Appeals held that the tax sale was void as to the lienholder American General Finance **only**. Thus, SKL had an election of remedies – it may take its

tax title subject to the American General deed of trust, or it may file a claim for a refund with the county.

- SKL was not entitled to damages and interest from date of sale, either from the county or from American General.

Wachovia Bank v. Rebuild America, Inc., 2009-CA-01703 (Miss. App. February 15, 2009)
[out of Jones County]

- Lienor's notice did not contain a reference to the Book and Page of the deed of trust held by the lienor. Thus, the notice to lienor was deficient.
- Tax purchaser (Rebuild America) may elect its remedies. It may either take title to the property subject to the lien, or he may "relinquish his rights to the property and file a claim [with the county] for a refund."
- If the purchaser files a claim for a refund, he does not get to recover statutory damages as set forth in Miss. Code Ann. § 27-45-27(1) and does not get to recover interest from date of sale. Nor can he get damages and interest from the inadequately noticed lienor. He only gets what he paid at the sale.

Green Tree Servicing, LLC v. Dukes, 25 So.3d 399 (Miss. App. 2009)
[out of Adams County]

- Green Tree was a successor in interest to Conseco Bank and Conseco Finance Servicing Company (although there was apparently no assignment or assumption instrument on record evidencing this fact.) Conseco held a deed of trust on property originally owned by Frances Sullivan. Sullivan did not pay her 2000 taxes and the property was sold in August 2001 to Mississippi Land Co. Mississippi Land Co. and Sullivan executed quitclaim deeds to Linda Dukes.
- The Clerk sent a notice to Green Tree's predecessor Conseco and an individual named Lana Aker signed the return receipt. However, the notice to the lienholder did not follow the statutory form, was merely a duplicate of the notice sent to the property owner, did not state it was in fact intended for the lienholder, and was directed to the record owner and not the lienholder. Further, the notice did not identify any interest purportedly held by the lienholder in the property that was the subject of the notice. The notice did not indicate that Green Tree, or any other entity might hold or be the beneficiary of a deed of trust on the subject property. Nor did the notice identify the source of any interest purportedly held by the lienholder in the subject property. The notice did not state the date of any

document creating an interest in the lienholder, nor did it state the book and page number where any document was recorded.

- The Court of Appeals therefore set aside the tax sale as it pertained to the interest of Green Tree.

Johnson v. Ferguson, 2010-CA-00220 (Miss. App. March 29, 2011)
[out of DeSoto County]

- Johnson owned 15.5 acres. Ferguson purchased it at 2005 tax sale. Johnson never redeemed. Notice to Johnson was posted on property, and several efforts were apparently made to serve him personally, but he never was.
- Clerk filed something called a “tax search form” which was an unsworn statement signed by a deputy clerk and which reflected the office’s attempts to serve notice by personal service on the record owner. This form was “neither dated nor notarized.”
- Court of Appeals held that this document was insufficient as the affidavit required by Miss. Code Ann. § 27-43-3 and held that the “tax sale was void for failure to comply with the statute.” Chancellor’s decision upholding the tax deed was reversed and rendered in favor of Johnson.

City of Jackson v. Rebuild America, Inc., No. 2008-CA-02121 (Miss. App. April 5, 2011)
[out of Hinds County]

- Greater Mount Calvary Community Development Corporation (GMCCDC) was record owner. Title was acquired in 2003 from City of Jackson. Deed from Jackson to GMCCDC contained a possibility of reverter. This magic language provided that GMCCDC must begin construction by a certain date and complete construction by a certain date and must thereafter be used as low income housing. If this wasn’t done, “the interest conveyed by this deed shall revert to the Grantor without the Grantor taking any further action in law or in equity to reenter the property.” Apparently, this wasn’t done – that is, the conditions were not met.
- The Court of Appeals noted that the notice to owner to GMCCDC was insufficient because no personal service was affected. Notice was posted on the property.
- The Court of Appeals also determined that the City of Jackson was entitled to receive a Notice to Owners given the possibility of reverter language in the deed

from the City to GMCCDC, even though the City was not the record owner at the time of the fixing of the 2004 taxes, at the time of the 2005 tax sale, nor during the redemption period.

- Mississippi is in a minority of jurisdictions that hold that a possibility of reverter is property and is an estate in land, albeit a future interest. Thus, holders of future interests such as reverters, remainder interests, fee tails, right of reentry for condition broken, right of entry for condition subsequent, and others are entitled to receive a Notice to Owners. How far back does this go?

Tofino Holdings, LLC v. Donnell & Sons, LLC, No. 2011-CA-01408-COA (Miss. App. November 27, 2012) [out of Marion County]

- Bank made an effort to redeem taxes on 3 parcels which had been combined for tax purposes for subsequent years taxes. They were separate for 2004 taxes which went delinquent.

“The Bank contacted the tax collector’s office and obtained the amount of taxes due for 2004, 2005 and 2006. However, the tax collector’s office neglected to inform the Bank of the outstanding taxes for 2004 due on [one of the three lots]”

- Donnell got title from the Bank but did not do a title examination. The Bank got the property when the original owner Phillips took bankruptcy.
- Clerk got personal service on Phillips who had lost the property in bankruptcy but this personal service did not occur until several weeks after the 180 day period. That is, the notice was served too late...within the 60 day period before maturity. Notice must be served prior to sixty days before maturity.
- For these two reasons - late notice on Phillips and the tax collector’s failure to give the Bank the amount owed on the third parcel - the tax sale was set aside.

Debra Davis v. Estate of Tiblier, No. 2011-CP-01753-COA (January 29, 2013) [out of Jackson County]

- Tiblier did not pay 2006 taxes, so they sold to Davis at the 2007 sale. Tiblier died on June 22, 2009 just prior to maturity.
- Clerk timely mailed certified notices to Tiblier at her regular address in California, but the notice was returned “unclaimed.”

- Clerk filed no affidavits of further search & inquiry so Chancellor correctly ruled that the sale was void.