

NO. 2014-CA-00209

**SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**HIGH SIERRA TAX SALE PROPERTIES, LLC AND
GJ TAX SALE PROPERTIES, LLC**

APPELLANTS

VS.

ROBIN DUCKETT, ET. AL.

APPELLEES

**BRIEF OF APPELLANTS HIGH SIERRA TAX SALE PROPERTIES, LLC AND
GJ TAX SALE PROPERTIES, LLC**

Jon J. Mims (MSB No. 100341)
Rawlings & MacInnis, P.A.
P.O. Box 1789
Madison, Mississippi 39130-1789
(601) 898-1180
Attorney for Appellants

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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 this Court may evaluate possible disqualifications or recusal.

1. High Sierra Tax Sale Properties, LLC, Appellant
2. GJ Tax Sale Properties, LLC, Appellant
3. Robert M. Daley, Appellee
4. Jeremia R. Daley, Appellee
5. Jon J. Mims, Attorney for Appellant
6. Rawlings & MacInnis, P.A., Attorneys for Appellant
7. Lewie G. “Skip” Negrotto, Esq., Attorney for Appellees
8. Fowler Rodriguez, Counselors at Law, Attorneys for Appellees

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STATEMENT OF THE ISSUES

I. WHETHER THE CHANCERY COURT ERRED IN DENYING APPELLANTS' MOTION FOR SUMMARY JUDGMENT AND GRANTING APPELLEES' CROSS-MOTION FOR SUMMARY JUDGMENT, INCLUDING THE PRIMARY ISSUE OF WHETHER THE CHANCERY COURT ERRED IN FINDING ROBERT M. DALEY AND JEREMIA R. DALEY HAVE STANDING TO CONTEST THE TAX SALES AT ISSUE.

II. WHETHER THE CHANCERY COURT ERRED IN ALLOWING ROBERT M. DALEY AND JEREMIA R. DALEY TO BE SUBSTITUED AS PARTIES AND TO HAVE THE ENTRY OF DEFAULT SET ASIDE.

III. SHOULD ON APPEAL THE COURT FIND ROBERT M. DALEY AND JEREMIA R. DALEY HAVE STANDING TO CONTEST THE TAX SALES AT ISSUE, APPELLANTS ARE ENTITLED TO A REFUND OF THE TAXES PAID, INTEREST, AND DAMAGES PURSUANT TO MISS. CODE ANN. 27-45-3.

STATEMENT OF THE CASE

This is an appeal of an *Order* entered on January 8, 2014 declaring two *ad volorem* tax sales and Chancery Clerk's Conveyances void. (R. 155).

STATEMENT OF THE FACTS

High Sierra Tax Sale Properties, LLC and GJ Tax Sale Properties, LLC ("GJ and High Sierra") purchased their respective parcels PPIN 12696 and PPIN 12623 ("Parcels or Properties") at tax sales on August 31, 2009. ("tax sales") (R. 49, 60). Robin Duckett was a record owner of the Properties at the time of the sale and throughout the entire two-year redemption period until the Properties matured to GJ and High Sierra on August 31, 2011. (R. 60). GJ and High Sierra were issued their respective Chancery Clerk's Conveyances ("tax deeds") in December of 2011. (R. 5, 148, 156).

Robert M. Daley and Jeremiah R. Daley (the "Daleys") are sophisticated tax sale purchasers in the business of buying properties at tax sales. (T. 4, R. 49).

On or about February 27, 2012, Robert M. Daley, on behalf of himself and his partner Jeremiah R. Daley, communicated by letter to GJ and High Sierra that they were interested in

purchasing the tax deeds from GJ and High Sierra. A copy of the Letter was attached to GJ and High Sierra's motion for summary judgment and was submitted into evidence at the hearing. (R.E. 3, R. 49-50, 59, T. 17, 18).

On May 22, 2012, GJ and High Sierra filed their respective suits to confirm the tax sales of the subject properties. (R. 50, R.E. 1).

On June 11, 2012, after suits were filed and well after the tax sales matured and tax deeds were issued, the Daleys obtained a "Quit Claim Deed" ("quitclaim deed") from Robin Duckett and now claim to hold a one-half interest in the Property. (R. 90).

On June 15, 2012, the Daleys filed their Answers along with separate motions to substitute parties alleging "Robin Duckett was not given due process as required by law in the tax sale maturity process." (R. 10, 15). At the hearing on December 13, 2013, the Chancellor ruled that the Daleys were substituted for Robin Duckett. (T. 16).

On February 11, 2013, GJ & High Sierra obtained a Docket Entry of Default against Defendants Robin Duckett a/k/a Robin Williams, Roger Baugh, and "All Other Persons ..." claiming any interest in the Properties. (R. 32). The entry of default has not been set aside as to any parties except to the extent the Court intended the default as to Robin Duckett be set aside in light of the Court's substitution of the Daleys for Robin Duckett and in light of the Court's final Order. (T. 17, R.E. 2, R. 13).

SUMMARY OF ARGUMENT

This case is about two sophisticated tax sale purchasers, the Appellees Robert M. Daley and Jeremia R. Daley (the "Daleys"), who had prior knowledge that the subject tax sales had matured to GJ and High Sierra and had prior knowledge that tax deeds had been issued to High Sierra and GJ before they obtained a quitclaim deed from record owner Robin Duckett. Following the Daleys' unsuccessful attempt to purchase the subject parcels from GJ and High

Sierra, the Daleys obtained their quitclaim deed and asserted below that the after-acquired quitclaim deed transferred to the Daleys the record landowner's statutory right of redemption providing them with standing to attack the validity of the tax sales. The Daleys were not owners of the subject parcels during the two-year redemption period. The Daleys suffered absolutely no injury as a result of the subject tax sales. On the contrary, the Daleys are attempting to use their specialized knowledge to take advantage of the tax sales. The Daleys are not in the class of people the tax sale redemption statutes were intended to protect. Because they have failed to demonstrate any injury or grievance suffered as a result of the tax sales, the Daleys have failed to meet a fundamental requirement for standing.

Further, the tax sales had already matured and the tax deeds had been issued conveying title; therefore, Duckett had no interest in the subject real property that she could have conveyed to the Daleys. Duckett had only a statutory redemption right based on an alleged injury to Duckett. Miss. Code Ann. §§ 27-43-1, et. seq. through 27-45-1, et. seq. ("tax sale statutes") only contemplate that record owners and interested persons **during** the redemption period have the right to redeem. Miss. Code Ann. §§ 27-45-3. There is no reading of the tax sale statutes and interpretive case law suggesting that the legislative intent was that a right of redemption vested in record owners is assignable to third parties **after maturity** and with prior knowledge of the tax sale maturities. The strict requirements of the statute were only intended to protect record property owners or persons with an interest during the redemption period that suffered an injury.

ARGUMENT

Standard of Review

This Court reviews *de novo* a trial court's grant of a motion for summary judgment. *Arceo v. Tolliver*, 949 So.2d 691, 694 (Miss. 2006).

I. WHETHER THE CHANCERY COURT ERRED IN DENYING APPELLANTS' MOTION FOR SUMMARY JUDGMENT AND GRANTING APPELLEES' CROSS-MOTION FOR SUMMARY JUDGMENT, INCLUDING THE PRIMARY ISSUE OF WHETHER THE CHANCERY COURT ERRED IN FINDING ROBERT M. DALEY AND JEREMIA R. DALEY HAVE STANDING TO CONTEST THE TAX SALES AT ISSUE.

In *Moore v. Marathon Asset Management, LLC*, 973 So.2d 1017, 1022 (Miss. Ct. App. 2008) an innocent purchaser at foreclosure suffered an adverse effect and was held to have standing, having gained his interest in good faith, without knowledge of the tax sale and “prior to the expiration of the redemption period.” (emphasis supplied). This Court limited standing in the context of a tax sale to owners of record who obtained their interest in property prior to the maturity of the tax sale and without knowledge of the tax sale. Moore suffered an injury as a result of the sale and obtained his interest prior to the expiration of the redemption period. The facts of this appeal present a perfect example of an attempted overextension of our law regarding standing in the context of a tax sale.

The question is whether this Court will extend standing to the Daleys who are not record owners prior to the redemption period, who did not suffer any injury in fact or grievance as a result of the tax sale, who were not prejudiced in any way by the sale, and who have acted **not in good faith** but with sophisticated knowledge of the maturity of the tax sales and tax deeds when they obtained their alleged interest from Robin Duckett. The Daleys are manipulating the tax sale statutes to their benefit contrary to the tax sale statutes and our case law public policy which are intended to benefit record landowners or interested parties who suffered a loss of property at the time of the sale and during the redemption period. Robin Duckett held a right of redemption afforded by the tax sale statutes. She held no title in the subject properties to convey to the Daleys until she exercised that right. Robin Duckett never exercised the right and that right was not assigned or assignable to the Daleys under the circumstances.

To the extent the quitclaim deed could be considered an assignment of the right to seek redemption, the Daleys, as purported assignees of those redemption rights, are not in the class of

interested persons that the statutory tax sale notice requirements intended to benefit. The legislature defined the persons who may redeem in Miss. Code Ann. § 27-45-3 and clearly did not intend that the redemption right could be assigned to a non-injured party outside the two-year redemption period.

Otherwise, all matured tax sales are open to attack by remote persons who seek out the record owner simply to obtain an assignment or quitclaim for the purpose of attacking the validity of the sale, while benefiting from the very tax sale and undermining the purpose and intent of the tax sale statutes. In order to protect tax deeds from remote claims, to protect the integrity of the tax sale statutes and the confidence the public has in tax deeds issued by the chancery clerk, GJ and High Sierra respectfully request that this Court find that the Daleys have no standing to raise the issues that may only be raised by record landowners and persons who obtain their interest in the property in good faith prior to maturity. The right to redeem is statutory and should not be transferrable post-maturity to someone the tax sale statutes were not intended to benefit.

Duckett only held a right of redemption that the tax sale statutes afforded to record landowners and persons holding an interest in the land prior to maturity. See, Johnson v. Anderson, 89 So.3d 604 (Miss.App. 2011) citing, *In Re Isom*, 342 B.R. 743, 744 (Bankr. N.D. Miss. 2006) (bankruptcy courts have acknowledged a lack of jurisdiction over property lost at tax sale and that only “the right to redeem property” becomes an asset of the estate, not the property itself). Because the tax sale had already matured, only those holding a right to redeem with an interest acquired in good faith could seek to void the sale pursuant to the tax sale statutes. By operation of law, Robin Duckett lost title to the property upon maturity. She had no title to pass in the quitclaim deed. She only held a right to redeem as an interested party during the redemption period. The quitclaim deed does not state that the Daleys were assigned a right to seek redemption and attack the validity of the tax sales. Even if it did, it is clear the legislature

did not intend that the statutory right afforded only to record landowners and interested persons during the maturity period could be assigned to a non-injured party after maturity.

The Daleys are acting in bad faith by attempting to benefit from tax sales at which they failed to bid and from which they attempted to purchase after maturity from the tax sale purchasers. Had GJ and High Sierra sold their tax deeds to the Daleys, the Daleys might well be seeking confirmation of the tax deeds as opposed to GJ and High Sierra.

The Daleys are not record owners who suffered any “injury in fact” or an actual or imminent invasion of a legally protected interest “trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court” which is required to show standing. *Clark Sand Company, Inc. v. Kelly*, 60 So.3d 149, 154-155 (Miss. 2011), citing, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 2136, 119 L.Ed. 2d 351, 357 (1992).

The Daleys are not owners, have failed to show an “injury in fact” and may not show any injury whatsoever as they were not record owners with standing to challenge the tax sale. The Supreme Court of Wyoming, relying on the *Lujan* case, had the opportunity to address standing as it relates to an alleged interest acquired following the maturity of a tax sale as follows:

We have established similar standing requirements for a party challenging the validity of a tax deed. With regard to injury in fact, **“the burden is cast upon the party seeking to invalidate the tax deed to show that he was prejudiced or injured by non-compliance with statute before the tax deed will be declared void.”** ... With regard to whether the injury will be redressed, we have said that “[t]he validity of a tax title or of a tax sale can be assailed only by one who can show that he or those under whom he claim had some title to or interest in the property at the time of the sale.” *Hudson v. Erickson*, 67 Wyo. 167, 185-86, 216 P.2d 379, 385 (1950), quoting 51 Am. Jur. 979.

White vs. Woods, 208 P.3d 597, 603 (Wyo. 2009). Wyoming has a similar tax sale scheme and has also “[o]ver the years ... required strict compliance ... declar[ing] tax deeds invalid for relatively minor deviations from the requirements.”

The Commonwealth of Pennsylvania found that an after-acquired interest by deed obtained does not afford that person standing to attack the validity of a tax sale. *Crouthamel vs. Grace Building Co., Inc.*, 412 A.2d 645 (Pa. Cmwlth. 1980) (finding that the required notice is “not for the benefit of the public generally” and “one who is who is neither an “owner” nor a lienholder cannot complain of noncompliance with the notice provisions ... the notice provisions of the Act are for the purpose of preventing owners from being deprived of their property without due process of law, *Huhn v. Chester County*, 16 Pa.Cmwlth. 18, 328 A.2d 906 (1974)”). See also, *Harper v. Smith*, 753 S.E.2d 612, (W. Va. 2012).

The Supreme Court of Indiana found that a purchaser at a foreclosure sale who obtained its interest prior the expiration of a two-year redemption statute lacked standing because there was no indication that the alleged injury resulted from the operation of Indiana’s tax sale statutes. *Calhoun v. Jennings*, 512 N.E. 2d 178, 182 (Ind. 1987). See also, *Gossett v. Auburn Nat’l Bank*, 514 N.E. 2d 309, 313 (Ind. Ct. App. 1987), cert. denied, 488 U.S. 927 (1988). While the outcome in *Moore v. Marathon Asset*, supra. is not consistent with the Indiana Court’s decision, the same principal involved in both cases is dramatically more compelling in the instant appeal because there was no possible loss to the Daleys caused by the tax sales. The Daleys’ alleged interest obtained after maturity never arises but for the tax sales. Even if the Daleys paid anything more than the \$10.00 consideration set out in the quitclaim deed, that was not a loss suffered as a result of the tax sales because the Daleys purchased with full knowledge after the sales matured.

There is a strong public policy in Mississippi aimed at protecting a **record owner’s rights** to redeem and recover his property. These protections stem from a due-process

concern that an owner should not be **deprived** of property. The Mississippi Supreme Court has stated that the “most important safeguard involving any person who stands to suffer from some official action is prior notice.” *Brown v. Riley*, 580 So. 2d 1234, 1237 (Miss. 1991); See also *Rush v. Wallace Rentals, LLC*, 837 So. 2d 191, 200 (Miss. 2003). The Daleys are not record owners who owned the property during the redemption period, were never deprived of property as a result of the tax sales, and cannot receive the benefit of a public policy aimed at protecting deprived record land owners. Neither can the Daleys seek to create the injury. The injury has to be traceable and not the result of actions of a third party, non-injured, sophisticated tax sale purchaser attempting to intervene and benefit from the tax sale statutes. See, Lujan, 504 U.S. 560-61. The Daleys lack any good faith redemption interest in the land prior to the expiration of the two-year redemption period and do not fall in the class of protected, interested owners as contemplated by the Mississippi tax sale statutes. Had the Daleys received any cognizable good faith interest **prior** to the two-year redemption, they might meet the requirements of standing for redemption set forth in the tax sale statutes. However, any interest the Daleys obtained was not in good faith and was not deeded or assigned prior to the expiration of the redemption period in any event.

II. WHETHER THE CHANCERY COURT ERRED IN ALLOWING ROBERT M. DALEY AND JEREMIA R. DALEY TO BE SUBSTITUED AS PARTIES AND TO HAVE THE ENTRY OF DEFAULT SET ASIDE

For the same reasons set forth above, the Daleys, as alleged substituted parties, have no standing under the Mississippi tax sale statutes to attack the validity of the tax sales. Because the Daleys lacked standing, the Chancery Court was without jurisdiction to consider the Daleys request to set aside the tax sales. The statutory scheme was clearly intended to protect record landowners or persons with an interest at the time of the tax sale and prior to the two-year

redemption period. The Daleys were not purchasers in good faith without knowledge of the maturity of the tax sale. They are no more than interlopers, not real parties in interest with a vested, temporal connection to any interested parties. Seeking out record owners after maturity for the purposes contrived by the Daleys does not make them persons entitled to redeem as intended by the tax sale statutes. For those reasons, the substitution of parties should have been denied and the clerk's entry of default, to the extent it was set aside as to Robin Duckett, should be restored.

III. SHOULD ON APPEAL THE COURT FIND ROBERT M. DALEY AND JEREMIA R. DALEY HAVE STANDING TO CONTEST THE TAX SALES AT ISSUE, APPELLANTS ARE ENTITLED TO A REFUND OF THE TAXES PAID, INTEREST, AND DAMAGES PURSUANT TO MISS. CODE ANN. 27-45-3

Should this Court find the Daleys have standing and the Chancellor's Order is affirmed, GJ and High Sierra are entitled to all amounts owing pursuant to Miss. Code Ann. § 27-45-3. See, Lawrence v. Rankin, 870 So.2d 673 (Miss. App. 2004). To the extent the tax deeds and sales are set aside, the interest of GJ and High Sierra continues to be a lien on the subject property until all redemption amounts are paid to GJ and High Sierra. Since GJ and High Sierra acquired the properties, they have continued to pay subsequent taxes on the properties thereby preventing any subsequent tax sale maturities.

CONCLUSION

For the foregoing reasons, Appellants respectfully requests that this Court reverse and render a decision finding that Appellees Robert M. Daley and Jeremia R. Daley lack standing to attack the validity of the subject tax sales and granting such other relief as appropriate under the

circumstances.

This the 23rd day of October, 2014.

**HIGH SIERRA TAX SALE PROPERTIES, LLC
AND GJ TAX SALE PROPERTIES, LLC**

By: /s/ Jon J. Mims
 Their Attorney

Jon J. Mims, MSB # 100341
Rawlings & MacInnis, P.A.
P.O. Box 1789
Madison, MS 39130-1789
601-898-1180

CERTIFICATE OF SERVICE

I, Jon J. Mims, do hereby certify that I have on this day, October 23, 2014, filed the foregoing Appellant's Brief with the Clerk of the Court using the MEC system which sent notification of such filing to the following and otherwise I certify service was effectuated via first class mail, postage pre-paid:.

Lewie G. "Skip" Negrotto
2505 14th Street, Ste. 500
Gulfport, MS 39501
snegotto@frfirm.com
mbroussard@frfirm.com

Gary S. Evans, Special Counsel
Office of the Board Attorney
P.O. Box 998
Pascagoula, MS 39568-0998
gevans@jcboadatty.com

Nancy Morse Parkes, Special Assistant
Attorney General
Office of the Attorney General
P.O. Box 220
Jackson, MS 39205-0220
nancy.parkes@sos.ms.gov

Kathy Gillis
Clerk of the Supreme Court
P.O. Box 249
Jackson, MS 39205-0249

Chancellor D. Neil Harris
P.O. Box 998
Pascagoula, MS 39568-0998

/s/ Jon J. Mims
Jon J. Mims

Rawlings & MacInnis, P.A.
1296 Highway 51 North
Post Office Box 1789
Madison, Mississippi 39130-1789
Telephone No. (601) 898-1180
Telecopier No. (601) 969-1041