

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2018-CA-00906-COA

**CHRISTIANA TRUST AS CUSTODIAN
GSRAN-Z LLC DEPOSIT ACCOUNT**

APPELLANT

VERSUS

MEGAN A. CIOTA

APPELLEE

**ON APPEAL FROM THE CHANCERY COURT OF HARRISON COUNTY,
MISSISSIPPI, FIRST JUDICIAL DISTRICT**

CAUSE NO.: 24CH1:16-cv-2643(2)

APPELLANT'S RESPONSE TO MOTION FOR REHEARING

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ATTORNEY FOR APPELLANT

COMES NOW Appellant, Christiana Trust as Custodian GSRAN-Z LLC Deposit Account, by and through its counsel of record, Michelle Luber Elliott and Brady Law Firm, PLLC, and files this, its Response to Motion for Rehearing, and in support thereof would show unto the Court the following:

INTRODUCTION

Christiana Trust as Custodian GSRAN-Z LLC Deposit Account (“Christiana Trust”) appealed several Orders of the Chancery Court of Harrison County, Mississippi, First Judicial District, as well as the Judgment granted therein that voided Christiana Trust’s tax-sale purchase of Megan A. Ciota’s (“Ciota”) real property and set aside the Chancery Clerk’s Conveyance. This Court entered its opinion on November 5, 2019 wherein it affirmed the Chancery Court’s Judgment in part and remanded in part with an instruction that the Chancellor calculate statutory damages owed to Christiana Trust and order Ciota to pay that amount. On November 19, 2019, Ciota filed her Motion for Rehearing.

RESPONSE

In her Motion for Rehearing, Ciota asserts that this Court committed a specific error of law or fact in remanding this case to the Chancery Court for a calculation of damages and an order to pay. Specifically, Ciota argues that Miss. Code Ann. §27-45-27 is the applicable statute to determine the amount of Christiana Trust’s monetary interest and that Christiana Trust’s monetary interest cannot be enforced on remand and must be brought by separate action. The applicable statutes and relevant caselaw do not support Ciota’s position. The Court’s ruling was not an error of law or fact, and Ciota’s Motion for Rehearing should be denied.

I. CALCULATION OF DAMAGES

Christiana Trust is entitled to damages stemming from expenses it incurred relating to the subject tax sale, as provided for in Mississippi Code Annotated §§27-45-3 and -27. *Rebuild America, Inc. v. Wright*, 27 So.3d 1203, 1205 (Miss. Ct. App. 2010); *Rebuild America, Inc. v. McGee*, 49 So.3d 157, 160 (Miss. Ct. App. 2010). As stated in *Rebuild America, Inc. v. McGee*, “By his June 23, 2009, order [setting aside both tax sales], the chancellor reinstated the McGees’ statutory right to redeem their property.” *Id.* at 160. As such, Miss. Code Ann. §27-45-3 prescribes the statutory damages that must be paid to redeem.

The owner, . . . , may redeem the same, . . . , by paying to the chancery clerk, regardless of the amount of the purchaser’s bid at the tax sale, the amount of all taxes for which the land was sold, with all costs incident to the sale, and five percent (5%) damages on the amount of taxes for which the land was sold, and interest on all such taxes and costs at the rate of one and one-half percent (1-1/2%) per month, or any fractional part thereof, from the date of such sale, and all costs that have accrued on the land since the sale, with interest thereon from the date such costs shall have accrued, at the rate of one and one-half percent (1-1/2%) per month, or any fractional part thereof; . . . Miss. Code Ann. §27-45-3. *See also* Miss. Code Ann. §27-45-27 (creating statutory lien in favor of tax-sale purchasers).

Id. Section 27-45-3 contains the damages that should be considered on remand; Section 27-45-27 simply creates a statutory lien in favor of tax sale purchasers for those damages. *Id.*; see also *Orcutt v. Chambliss*, 243 So.3d 757, 765 (Miss. Ct. App. 2018) (“Section 27-45-27(1) recognizes that a tax-sale purchaser retains a lien on the property in the event the tax sale is declared illegal on some other ground.”).

The Court cites to *Lawrence v. Rankin*, 870 So.2d 673, 676-677 (Miss. Ct. App. 2004). In that case, the Chancery Court ordered the owner to refund the tax-purchaser the taxes paid plus interest at the rate of eight percent (8%) per annum. *Id.* at 676. In its review of that issue, the

Court found that the Chancellor erred in not ordering the owner to pay the interest due the tax-purchaser as provided by Miss. Code Ann. §27-45-3. *Id.* at. 677 (Emphasis Added).

Ciota cites to the case of *Sass Muni-V, LLC v. Desoto Cnty.*, 170 So.3d 441 (Miss. 2015) for the purported proposition that Christiana Trust holds only the interest of a “statutory lienholder” for the damages prescribed in §27-45-27. In *Sass Muni-V*, the issue presented was “[w]hether a tax-sale purchaser has standing to initiate litigation to set aside a tax sale on the ground that the chancery clerk failed to notify other parties of the expiration of the redemption period, as required by statute.” *Id.* at 445. While the issue under consideration in that case is not the same issue presented in this appeal, dicta in that case does provide guidance and authority that supports this Court’s ruling for remand: “While both Section 27-43-3 and Section 27-43-11 clearly provide that a refund is the proper remedy for a tax-sale purchaser in the event that the sale is determined to be void for lack of notice...” *Id.* at 446 (Emphasis Added).

The Chancery Clerk’s Judgment set aside the tax sale in this case, and same was affirmed on appeal. In doing so, the Chancellor reinstated Ciota’s statutory right to redeem the property. Section 27-45-3 provides the instructions for Ciota to redeem the property, which requires payment of certain taxes, interest and damages. Section 27-45-27 then creates a statutory lien in favor of Christiana Trust for those damages. There is no error of fact or law, and Ciota’s Motion for Rehearing on this issue should be denied.

II. ENFORCEMENT OF DAMAGES

Each of the cases cited above support this Court’s decision to remand this case to the Chancery Court to 1) determine damages and 2) order Ciota to pay those damages to Christiana Trust. *Rebuild America, Inc. v. Wright*, 27 So.3d at 1205 (“Accordingly, the chancellor’s judgment is reversed to the extent that it denies Rebuild America damages under Sections 27-45-3 and -27,

and the case is remanded for the chancellor to determine what damages are owing to Rebuild America under the aforementioned statutes.”); *Rebuild America, Inc. v. McGee*, 49 So.3d at 160 (“Because the relief requested by Rebuild America is consistent with section 27-45-3 and our holding in *Lawrence*, we similarly remand the issue of damages and instruct the chancellor to (1) calculate the amount of statutory damages and (2) order the McGees to pay Rebuild America that amount.”); *Lawrence v. Rankin*, 870 So.2d at 677 (“We find that the chancellor erred in not ordering that Rankin pay to Lawrence the interest due him by the statute at one and one half percent per month, together with damages thereon at a rate of 5% per annum on such amount due as provided by statute. We are reversing this matter so that the chancellor can calculate the amount of taxes due and owing, plus said interest and damages, said amount to be ordered paid by Rankin to Lawrence.”); *Sass Muni-V, LLC v. Desoto Cnty.*, 170 So.3d at 449 (“Rather, Sass seeks a refund of its purchase price, a remedy specifically provided for in Sections 27-45-3 and 27-45-11.”).

There is no error in this Court’s decision to remand this case for an order directing Ciota to pay Christiana Trust its statutorily owed damages. Section 27-45-27 does not somehow prohibit the Chancery Court from ordering Ciota to pay the statutory damages to Christiana Trust; it simply creates a statutory lien in favor of Christiana Trust for the damages it is owed, in the event they are not paid. Miss. Code Ann. §27-45-27; see also *Orcutt v. Chambliss*, 243 So.3d 757, 765 (Miss. Ct. App. 2018). Ciota’s Motion for Rehearing on this issue is not well-taken and should be denied.

CONCLUSION

In her Conclusion, Ciota submits that Christiana Trust “did not plead in the alternative to enforce a statutory lien should the tax sale be voided, and it did not pray for statutory damages.” See Motion for Rehearing, P.4. Ciota is correct that Christiana Trust filed its Complaint seeking to confirm and quiet its title to the property; however, Ciota counterclaimed to set aside the tax

sale which, upon being granted, as stated above, reinstated Ciota's right to redeem the property upon her payment of the statutory damages and, should she fail to do so, results in a statutory lien against the property for those damages. The court's decision to remand this case for a calculation of damages and an order for Ciota to pay Christiana Trust those damages is supported by the law and by the applicable statutes. Ciota has not established any error of fact or law that would warrant rehearing, and her Motion for Rehearing should be denied.

WHEREFORE, PREMISES CONSIDERED, Appellant Christiana Trust as Custodian GSRAN-Z LLC Deposit Account respectfully requests that its Response to Motion for Rehearing be received and filed and, upon due consideration thereof, that the Court will deny said Motion. Appellant requests such other and further relief as the Court deems just and equitable.

RESPECTFULLY SUBMITTED, this the 10th day of December, 2019.

**CHRISTIANA TRUST AS CUSTODIAN
GSRAN-Z LLC DEPOSIT ACCOUNT**

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CERTIFICATE OF SERVICE

I, Michelle Luber Elliott, hereby certify that I have this day electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Lewie G. "Skip" Negrotto, IV
Negrotto & Associates, PLLC
133 Davis Avenue, Suite L
Pass Christian, Mississippi 39571

I further certify that I have this day mailed, via U.S. Mail, postage prepaid, a true and correct copy of same to the following:

Honorable Jennifer T. Schloegel
Chancellor, Harrison County Chancery Court
1801 23rd Avenue
Gulfport, Mississippi 39501

So certified, this the 10th day of December, 2019.

/s/ Michelle Luber Elliott _____
Michelle Luber Elliott