

**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**

**v.**

**MEGAN A. CIOTA**

**APPELLEE**

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**Motion for Rehearing**

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

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**ORAL ARGUMENT NOT REQUESTED**

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## SUMMARY OF THE MOTION FOR REHEARING

This Court entered its opinion affirming the trial court’s judgment voiding the tax sale and setting aside the chancery clerk’s conveyance to Christiana Trust. *Christiana Tr. v. Ciota*, NO. 2018-CA-00906-COA, at \*2 (Miss. Ct. App. Nov. 5, 2019). Ciota agrees with this part of this Court’s decision. This Court also remanded the case on “the issue of damages and [instructed] the chancellor to (1) calculate the amount of statutory damages and (2) order Ciota to pay that amount to Christiana Trust.” Id. at \*13. Finally, this Court instructed the trial court to use Miss. Code Ann. §2 7-45-3 as the basis of its “damage” calculation relying on its prior decision “[i]n *Lawrence v. Rankin*, 870 So. 2d 673, 676-77 (¶¶19-22) (Miss. Ct. App. 2004).” Id. Ciota suggests the Court’s decision to remand the matter to determine statutory damages pursuant to Miss. Code Ann. § 27-45-3 is not authorized by the applicable statute, i.e. Miss. Code Ann. § 27-45-27 and seeks reconsideration on those two issues.

Ciota respectfully contends that Christiana Trust’s only interest in the subject property is a statutory lien that it can only enforce by separate bill in chancery pursuant to Miss. Code Ann. §27-45-27. Ciota suggests that remanding the case to determine damages is not supported by the applicable statute. Ciota also respectfully contends that the statute to use in calculating a tax purchaser’s “damages” to prevent execution of its lien is Miss. Code Ann. § 27-45-27 not Miss. Code Ann. § 27-45-3.

## STANDARD OF REVIEW

A “motion for rehearing is not intended to afford an opportunity for a mere repetition of the argument already considered by the court.” Miss. R. App. P. 40(a). Rather, “[t]he motion for rehearing should be used to call attention to specific errors of law or fact which the opinion is thought to contain[.]” *Id.* A party seeking rehearing under Rule 40 “shall state with particularity

the points of law or fact which, in the opinion of the movant, the court has overlooked or misapprehended...” Id.

### SPECIFIC ERRORS OF LAW OR FACT

I. **Christiana Trust has a statutory lien on the property that must be enforced by separate action as prescribed in Miss. Code § 27-45-27 seeking the amounts outlined therein**

Ciota submits direction on the issues presented is provided by our Supreme Court in the case of *SASS Muni-V, LLC v. Desoto County*, 170 So. 3d 441(Miss. 2015) wherein the Court stated that

[a] tax-sale purchaser undeniably holds an interest in the property, both prior to and after expiration of the redemption period, regardless of the validity of the sale. Upon the expiration of the redemption period, assuming all prerequisites for a valid tax sale were met, perfect legal title vests in the purchaser by operation of the tax sale, and the owner is divested of any interest in the property. *Equity Servs. Co. v. Miss. State Highway Comm'n*, 192 So.2d 431 (Miss.1966). However, “[t]he term ‘redemption’ implies that there is something to be redeemed, something lost to be gotten back, and hence where a sale for taxes is void and passes no title, there can be no redemption.” *Seward v. Dogan*, 198 Miss. 419, 434, 21 So.2d 292 (Miss.1945). If, as SASS alleges, the tax sale in question is void for lack of notice to the property owner, title to the property did not pass to SASS at the expiration of the redemption period, and SASS cannot confirm its title. However, SASS still holds an interest in the property as a statutory lienholder. Miss.Code Ann. § 27–45–27(1) (Rev.2010) (recognizing that a tax-sale purchaser retains a lien on the property in the event that the sale is declared “illegal on some other ground”). Thus, SASS obtained an actionable interest in the property at the expiration of the redemption period, even though it was not entitled to notice under the statutes in question.

*SASS Muni-V, LLC v. Desoto County*, 170 So. 3d 441, 449 (Miss. 2015).

Ciota contends that Christiana Trust, like Sass in the above-cited Mississippi Supreme Court case, held an interest in the subject property both before and after the end of the redemption period. The interest held by Christiana Trust prior to the expiration of the redemption period if Ciota had redeemed the property entitled it to “damages” as prescribed in Miss. Code Ann. § 27–45–3.

The owner, or any persons for him with his consent . . . at any time within two (2) years after the day of sale, [may redeem the property] 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 § 27-45-3 (emphasis provided)). However, that is not what happened here nor did the trial court make a finding that the redemption period was reopened in order for Ciota to redeem her property.

The interest Christiana Trust held after the expiration of the redemption period entitled it to “damages” pursuant to Miss. Code § 27-45-27. In the case of *Rebuild America, Inc. v. Norris* our Supreme Court did not address the amount of “damages” to prevent execution of a tax purchaser’s statutory lien pursuant to Miss. Code Ann. § 27-24-27 because the Court determined that “[t]his issue is not properly before us.” *Rebuild America, Inc. v. Norris*, 64 So. 3d 480, 482 (Miss. 2011). But, *Rebuild America, Inc. v. Norris* was important because our Supreme Court acknowledgement that a tax purchaser’s statutory lien “must be decided by a separate claim made pursuant to Section 27-45-27(1).” *Id.*

The purchaser and the holder of the legal title under him by descent or purchase, may enforce the lien by bill in chancery, and may obtain a decree for the sale of the land in default of payment of the amount within some short time to be fixed by the decree.

Miss. Code § 27-45-27. Ciota submits that Christiana Trust, as a statutory lienholder and having failed to plead in the alternative to execute its statutory lien in its Compliant, must initiate a “bill in chancery” to enforcement its lien and this Court’s remand to determine damages is not authorized by the applicable statute. *Id.*

Finally, Ciota suggests that the “damages” available to Christian Trust upon initiation of a bill in chancery are prescribed in Miss. Code §27-45-27.

The amount paid by the purchaser of land at any tax sale thereof for taxes, either state and county, levee or municipal, and interest on the amount paid by the purchaser at the rate of one and one-half percent (1-1/2%) per month, or any fractional part thereof, and all expenses of the sale and registration.

Miss. Code § 27-45-27. Ciota respectfully suggests Miss. Code § 27-45-27, not Miss. Code § 27-45-3 is applicable to the instant case. Miss. Code § 27-45-27 does not authorize remand to enforce a statutory lien and, if a statutory lien is properly obtained, prescribes the amount to be paid to prevent execution of the lien.

Ciota prays this Court will reconsider its decision and find that Christiana Trust must initiate a separate bill in chancery to create and seek execution of its statutory lien and, if that is done, the trial court should use amounts consistent with those prescribed in Miss. Code § 27-45-27 to prevent execution of the lien.

### **CONCLUSION**

In the instant case, the redemption period came and went without redemption. Christiana Trust’s Complaint sought only confirmation of its tax title. It 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. Consequently, Ciota submits that remanding the case to determine damages is not allowed and Christian Trust must follow the proper statutory procedure by filing a bill in Chancery seeking to enforce its statutory lien. And, if that is done, Ciota submits that Christiana Trust’s proper

amount of “damages” are prescribed in Miss. Code § 27-45-27 not Miss. Code § 27-45-3.

Respectfully submitted, this the 19<sup>th</sup> day of November 2019.

MEGAN CIOTA, Appellee

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day I electronically filed the foregoing pleading or other paper with the Clerk of the Court using the Mississippi Electronic Court filing system which sent notification of such filing to all counsel of record in this case registered with the MEC system as indicated below:

Michelle Luber, Esq.  
William Alex Brady, Esq.  
Attorneys for Appellant

Honorable Jennifer Schloegel  
Chancellor, Harrison County Chancery Court

Ann Rodgers, CCR  
Chancery Court Reporter

So certified, this the 19<sup>th</sup> of November 2019.

BY: /s/ Lewie G. “Skip” Negrotto IV