2016 SELECTED

STATUTES & CASES

PRESENTED BY:
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SB 2111 - UNREDEEMED MATURED TAX SALES

1. Amends Section 27-45-21, Mississippi Code of 1972 to provide for the Chancery Clerk to certify lands struck off to the State for unpaid taxes by electronic record under electronic signature and such submission shall vest good title in the State of Mississippi.

2. Section 29-1-37 is amended to provide for the sale of such properties by online auction. This section shall stand repealed on July 1, 2019.

3. Section 29-1-75 is amended to remove the repeal date on the provision restricting purchase of such lands by Corporations and nonresident aliens.

4. Section 29-1-81 is amended to modify the procedure for conveyance of land by the state in fee.

SB 2211 - AMENDS THE UNIFORM TRUST CODE

Makes technical correction to the Mississippi Uniform Trust Code and the Mississippi Qualified Disposition in Trust Act. Most importantly it clarifies that "a transfer in the name of the trust is legally sufficient" and that "substantial compliance with the requirements for a memorandum of trust is sufficient to constitute constructive notice.

SB 2240 - AMENDMENT TO SECTION 27-41-59

Provides for the tax collector to enter in agreements with online providers to conduct sales of land for unpaid taxes using an online bidding and sale procedure and sets forth the terms of said agreement.

SB 2240 - MANAGING SIXTEENTH SECTION FORESTED LANDS

Amends Section 29-3-27, Miss. Code to provide that the term"industrial development" shall also include the consolidation of multiple parcels, each less than 160 acres and not to exceed 320 acres of forested sixteenth section lieu land for utilization to facilitate significant timber industry research.

This shall stand repealed December 31, 2016.

SB 2725 - AMENDS THE REAL ESTATE BROKERS LICENSE ACT

Amends Section 73-35-7, 73-35-8 and 73-35-21 to provide for background investigations prior to licensure and that an applicant shall have successfully been cleared by the Commission's background investigation when he meets the requirements of said sections and for denial of licensure or renewal upon failing to successfully pass said background investigation.

SELECTED CASES

BURIAL SITE - MCGRIGGS, SR. V. MCGRIGGS, et al, 2014-CP-01400-COA

Alfred McGriggs passed away on January 22, 2014, and three days later, his body was buried on his family's land in Claiborne County.

One of Alfred's twelve siblings objected and took his dispute to Chancery Court to exhume Alfred''s body, naming two of his siblings as defendants.

The Petition alleged Alfred's burial was in violation of cemetery laws of the State of Mississippi. The Chancellor found Alfred's burial did not violate state law and denied the petition and the plaintiff appealed.

The court of appeals held that the interment of a body on private property does not require the permission of the board of supervisors and that Alfred's burial on private property did not violate state law.

Miss. Code Ann. § 41-43-1 (2) "The board of supervisors of any county is authorized and empowered, upon petition and request to do so, to establish or designate the location of any private cemetery to be located in the county".

CONTRACT - KILPATRICK V. WHITE HALL ON MS RIVER, LLC., 2014-CA-01485-SCT

NOT RELEASED AS OF MAY 12, 2016.

Five men, one of whom was Dennis Kilpatrick, created a gentlemen's agreement that each would contribute $500,000. to purchase land from International Paper Company to be used as a hunting camp named White Hall on MS River, LLC.

Kilpatrick and Moran failed to pay their full share. Kilpatrick paid $100,000. and Moran paid $400,000. And as a result, the land had to be mortgaged.

The sale closed in Dec., 2007, but only three men, not including Kilpatrick, executed the LLC Agreement in 2008. The agreement stated the requirement for membership was a cash contribution of $500,000. for two shares. It had no procedure for including a person that failed to make the initial $500,000. contribution. Kilpatrick only made an initial payment of $100,000. plus interest until 2009, at which time White Hall told Kilpatrick that he could no longer use the land until he paid the full $500.000. Kilpatrick then removed his belongings from the camp.

Unable to raise the cash to payoff the deed of trust, White Hall was forced to sell 1,269 acres of the hunting camp. White Hall offered to pay Kilpatrick the amount of his quarterly payments that had gone toward principal, which he refused.

In Dec. 2010, Kilpatrick demanded to review White Hall's records and White Hall refused, at which time Kilpatrick filed suit alleging that he was a member, that White Hall was obligated to let him see the records, that the Agreement was not valid because all members did not sign it and that White Hall had been unjustly enriched by retaining Kilpatrick's capital contributions.

The Chancellor found that Kilpatrick was not a member, that he had come before the court with unclean hands, and that he had no right to the return of his capital contribution. Kilpatrick appeals.

The Supreme Court held that because the operating agreement unambiguously stated that a $500,000. contribution was required for membership, the agreement was valid and Kilpatrick was not a member and was not entitled to a return of his capital contribution.

Therefore the judgment of the Harrison County Chancery Court was affirmed with a dissent by Chief Justice Waller who opined that Kilpatrick was a member entitled to "the fair share of his interest as of the date of disassociation based on his right to share in distributions from the limited liability company."

COVENANTS - ROBERTSON V. CATALANOTTO, 2014-CA-00332-COA

South Pointe Investment Company owned 283.5 acres in Forrest County, which was sold in individual tracts of undeveloped land. South Point attached restrictive covenants to all of the deeds which provided in part that said covenants shall run with the title to said property, or any part thereof, up to January 1, 1990. The Covenants stated in part:

1. Property shall be used for residential purposes only and Cutting of trees shall be limited to clearing the foundation site and improving the topography; any cutting of trees shall be done only under good forest management practices.

2. Only single family dwelling or cottage, with garage and a single utility building. Any house to have 1,000 square feet.

4. No temporary structure such as a trailer—shall be used as a residence.

14. These restrictive covenants run with the land, but after January 1, 1990, may be changed by unanimous consent in writing of the owners.

When the Robertson's purchased their first tract they were told that the covenants had expired. The tract contained a lot of damaged timber from Hurricane Katrina, so they hired a registered forester to advise them about removing the damaged trees and replanting the property, at which time they started logging the property. The Catalanottos obtained a

temporary restraining order and the Robertsons answered, arguing that the covenants had expired on January 1, 1990. The Chancellor found that the restrictive covenants ran with the land, and given the "four corners test" it was clear and unambiguous that they had not expired and that it was immaterial that the restrictive covenants may not have been included in the conveyance to the Robertsons. A trial was held and the Chancellor denied the Catalanottos request for damages, finding no violation of the covenants by the Robertsons logging operation. However, the Chancellor found that the Robertsons mobile home was not in compliance with the square footage requirement and that they needed to remove the mobile home or add some square footage.

Robertsons appealed the judgment denying their request for declaratory relief.

Catalanottos cross-appealed on the issue of denial of damages, tortuous interference with contract, intentional infliction of emotional distress, failure to find contempt and damage for removal and tampering with the gate, failure to award punitive damages, and failure to award attorneys fees, and failure to award pre-judgment interest among other items.

Court of Appeals held that THE JUDGMENT OF THE FORREST COUNTY CHANCERY COURT IS AFFIRMED ON DIRECT APPEAL AND CROSS APPEAL. ALL COST OF THE APPEAL ARE ASSESSED EQUALLY BETWEEN THE PARTIES.

EASEMENTS - HIGH V. KUHN, 2015-IA-00072-SCT.

Cheryl High purchased a thirty-five foot strip of land between her property and Swan Road inside the city limits of Gulfport, Miss. because her property was landlocked. The Plitts subdivided their property causing the Southern parcel to become landlocked, so the Plitts bought a ten-percent interest in High's thirty-five foot strip to gain access to Swan Road, but this ten-percent interest did not cover the entire strip, so that the Plitts interest provided only fifteen foot access point to the strip and the road,

When the Plitts sold to Kuhn, the Plitts agreed to pay the Kuhns $3,750.00 to accept the property "as is." After purchase, the Kuhns immediately built a three car garage in the path where a driveway would have to reach the fifteen foot access point.

Three months later High built a fence which restricted access to the fifteen-foot access point which now lay behind the Kuhn's garage.
The Kuhn's offered High $1,500.00 for an easement, but High refused and Kuhn brought suit under Section 65-7-201. The special court of eminent domain granted Kuhn's petition for an easement across High's property.

High Appealed and the Supreme Court held that Article 4, Section 110 of the State Constitution was clear that "such rights of way shall not be provided in incorporated cities and towns." Judgment of the Special Court of Eminent Domain was reversed.

EMINENT DOMAIN - DAVIDSON V. COLLINS, 2014-CA-00962-COA

Davidson leased approximately 2.3 acres on the Escatawpa River for Approximately twenty-five years before purchasing it in 2002. The property is surrounded by water on three sides, and by property owned by Collins on the remaining East side.

Davidson used the property which had a sandbar and dock mostly on weekends during the summer. . Davidson used the old Highway 614 right-of-way to access the property which required them to cross over the Collins property to get to his property.

Collins permitted the Davidsons to access the property until 2011, when the amount of traffic became an annoyance, so they told the Davidsons they could no longer access the property via the highway right-of-way, so their only access would be boat from a ramp 200 Yds away.

On May 31,2013, the Davidsons filed a complaint in the County Court of Jackson County, sitting as a special court of eminent domain seeking a right-of-way easement across the Collins property. Although the court determined the property was indeed landlocked, it denied the Davidsons' request for a private easement, concluding that the easement was "not a real necessity, but a mere convenience." Davidson was denied a motion to reconsider and filed an appeal. The Court of Appeals upheld the lower court, finding that no reasonable necessity existed to grant the right-of-way easement across the Collins property.

ENCROACHMENT - ELCHOS V. HAAS - 178 So. 3rd 1183

Perry and Lori Elchos purchased 1.1 acre from Kevin and Lisa Haas contingent on Haas providing them with a survey, which Haas delivered to Elchos before the closing. Haas did not know the exact boundaries of the lot until a 2008 survey revealed that the Elchos es' structure had been build across the property line. King testified that he laid out the foundation for Elchoses' structure where he was instructed by Elchos. He also testified that Elchos said he wanted the structure as near the water as possible, but failed to furnish him a survey.

The Chancellor found that the Elchoses received a survey prior to the closing; that the survey was attached to the deed; that the Elchoses knew or should have known that they were building partially on Haases property; the Haases met their burden of proof; and the evidence sustained a finding of gross negligence. The Chancellor ordered the Elchoses to move the house off of the Haases' property within 120 days and pay $15,928.75 to cover the costs of Haases' attorney fees. The Elchoses appealed.

The Supreme Court upheld the Chancellor on all counts and affirmed the judgment of the Hancock county Chancery Court.

FORECLOSURE - HINTON V. ROLISON, 175 So.3rd 1281 - SCT.

In 2004, Clayton Hinton purchased a tract of real property and gave Wells Fargo a deed of trust which stated that "in the event of foreclosure, any surplus was to be paid to the Grantor or his assigns."

Subsequently, the following conveyances took place; Hinton to CZ, Inc. to CZ Florida to Hinton's children, Nathan and Seneca, all subject to the aforementioned deed of trust.

In May 2012 the loan matured and became due and payable.

In May, 2013 Clayton Hinton and Nate Rolison executed an agreement wherein Rolison agreed to pay off the past-due note and obtain clear title by judicial foreclosure.

On June 7, 2013, CZ Florida and Hinton's two children gave Rolison a quitclaim deed.

Wells Fargo foreclosed and Rolison was the highest bidder, bidding $147,000.00 in excess of the amount owed. Both Hinton and Rolison demanded the surplus and Wells Fargo interpleaded the surplus in the Lamar County Chancery Court which ruled in favor of Rolison. Hinton appealed and the Supreme Court ruled that the quitclaim deed and prior conveyances divested Hinton of his rights and interest in the property, assigning and transferring those rights and interest to Rolison and that the Chancery Court was correct in denying Hinton's motion to amend because the proposed amendments would not have affected the disposition.

FORECLOSURE - HALL V. GREEN TREE SERVICING, 2013-CA-01107 - COA

Hall and Thomas executed a deed of trust to Jim Walter which was assigned multiple times and ultimately foreclosed on September 10, 2012, with Green Tree Servicing LLC, successor by merger to Walter Mortgage Company (referred to as Green Tree), buying the property.

Hall and Thomas remained on the property and filed a complaint in Sunflower County Chancery Court to set aside the foreclosure on the grounds that the description was incorrect, one of the calls reading "West along the *center* of the east-west ditch," omitting the word *line* from said call; that W. Stewart Robison was not the current trustee and did not have the authority to sell the property; and failure to include the address of the court house where the foreclosure was to take place..

In separate answers, Green Tree and Robison denied the allegations and argued that the Complaint should be dismissed and a default judgment was entered against Hall and Thomas. Green Tree then filed suit to recover the property. Hall and Thomas failed to respond and the Circuit Court ordered the sheriff to remove them and their possessions.

Shortly thereafter Hall and Thomas filed the present suit in chancery court and filed a motion for a temporary restraining order, which the chancery court denied and Hall filed her timely notice of appeal.

The Court of Appeals ruled that the error in the description was harmless and had no effect on the validity of the foreclosure, as the

description still accurately describes the property. The question being whether a "layman of average intelligence and business prudence" would be deterred from bidding on the property, as the bid would be considered unsafe.

Concerning Robisons' authority as trustee, the record is void of any substitution of trustee, therefore Robison was still the trustee and had full authority to conduct the foreclosure sale.

FORECLOSURE - HOBSON V. CHASE HOME FINANCE -2014-CA-00405 - SCT

On April 1, 1996, Deborah Quimby executed a note and deed of trust to Magnolia which was subsequently assigned to Chase Mortgage Company. Priority Services of Mississippi, LLC was substituted as trustee and Hobson cast the highest bid at a foreclosure sale on February 19, 2008, and received a receipt which contained the following disclaimer: "The sale will not be considered final until all requirements have been met and may be withdrawn based on a timely re-instatement...."

On March 31, 2008, Hobson's cashier's check was returned to him because the trustee had not been made aware that Ms. Quimby had made timely re-instatement. Hobson sued Chase and Priority for breach of contract arguing that he was entitled to receive the difference in the amount he had bid for the property and the appraised value of the property which amounted to $$95,051.18.

At the trial Palmer, whose office maintained the records of the sale, stated in his affidavit that Quimby was provided with reinstatement requirements and she complied with those requirements prior to the foreclosure sale March 20, 2008. He further stated that he tried to cancel the sale but that he had been unsuccessful in so doing.

County Court granted summary judgment to Hobson and awarded him a judgment for $95,051.18 plus interest, attorney's fees and expenses in the sum of $$10,868.00.

Chase and Priority appealed to Circuit Court which affirmed summary judgment Hobson.

Chase and Priority then sought interlocutory appeal, which the Supreme Court granted, reversed the Circuit Court's affirming of the summary judgment and remanded the case to county court.

On remand, the parties entered a joint stipulation of facts that Ms. Quimby timely paid the amount to reinstate her loan, but that she never paid the $912.76 foreclosure fee because Chase reversed and did not charge Ms. Quimby that fee.

On the basis of the joint stipulation and a facsimile copy of Regions check from Quimby to Priority in the amount to bring the account current, Chase and Priority filed a motion for summary judgment, which the court granted.

Hobson appealed and the Supreme court addressed three issues raised by the parties and ruled 1. That Hobson had standing to challenge Quimby's alleged failure to cure the default by not paying the foreclosure fee. 2. That Quimby properly reinstated the loan because Chase cancelled the foreclosure fee. and 3. That under Mississippi law, *caveat emptor* still reigns at foreclosure sales.

GUARANTIES - Kirby v. BancorpSouth Bank, 2014 - CA - 01268 - COA

Kirby and Heimer were members of an LLC, along with Knight, who was the manager. Kirby and Heimer each invested $100,000. cash in the LLC development project to be developed in two phases. BancorpSouth provided the financing for the project in the amount of $738,187. and Kirby and Heimer each executed separate unconditional and continuing guaranties ensuring the repayment of the debt.

When the note matured the LLC could not pay the amount due and a foreclosure was held September 12, 2008 and BancorpSouth purchased the property for $400,000. At the time the payoff balance was $789,829.94, which resulted in a deficiency of $390,931.94 plus interest.

When the note was not paid, BancorpSouth filed its lawsuit against Kirby and Heimer on September 19, 2008, seeking repayment. On August 24, 2012, BancorpSouth filed its motion for summary judgment, which was granted by the circuit court. The circuit court entered a judgment against Kirby and Heimer in the amount of $464,445.74 plus attorney's fees in the amount of $54,197.27, from which Kirby and Heimer appealed.

The court of appeals held that:

1. The lender did not have to present any evidence as to the value of the property to obtain judgment for the difference between the total amount of the debt and the price paid at foreclosure;

2. Guarantors waived defenses of valuation and unenforceability of

guaranty under express terms of guaranty;

3. Trial courts denial of guarantors' motion to strike draft appraisal of property was not reversible error; and

4. Lender's delay of nearly six years in prosecuting claim to recover deficiency judgment did not justify dismissal for failure to prosecute.

Therefore, the judgment of the Madison County Circuit Court was affirmed and all costs of the appeal were assessed to the appellants.

PROPERTY SETTLEMENT AGREEMENT - COLEMAN V. COLEMAN - 2014-CA-01813-COA

When Robert and Beverly Coleman divorced in 2002, Beverly was granted exclusive use and possession of the family residence until the child reached the age of majority. The court gave no instructions as to what would occur when the child reached the age of majority.

In 2013 when their child reached the age of twenty-one, Beverly filed a petition asking for exclusive possession, title and ownership of the home.

Robert filed an answer and a counterclaim to partition the land and subsequently filed a motion for summary judgment requesting the court to go forward on the partition rather than a modification of the divorce decree.

After a hearing on the partition, the chancellor granted title to Beverly and instructed her to pay Robert $34,103.70 which was half of the equity at the time of the divorce adjusted for the increased value of the home

Robert appealed, claiming the trial court improperly modified the divorce decree and inequitably partitioned the home, after which the court of appeals affirmed the judgment of the Lowndes County Chancery Court.

TAX SALES - SASS MUNI-V,LLC V. DeSOTO COUNTY -2013-CA-01490-SCT

The property was foreclosed in December, 2001 and a substituted trustee's deed was executed to MIC-Rocky, LLC.

DeSoto County and the City of Horn Lake levied $520,508. in ad-valorem taxes for the tax year ending December 31, 2007. These taxes were never paid and became delinquent on February 1, 2008. The property was sold at a tax sale on August 25, 2008, and Sass was the successful bidder for the sum of $530,508.

The property was not redeemed and within the two year statutory redemption period. On Aughts 30, 2011, approximately a year after the expiration of the redemption period, SASS filed a complaint in DeSoto County Chancery Court to void the sale and get a refund of the purchase price because the Chancery Clerk had failed to provide notice of the expiration of the redemption period to the purported owner of the property and the purported lienholders as required by law.

The Corporate defendants filed a motion to dismiss claiming they had no legal or equitable interest in the property after the expiration of the redemption period and that the complaint did not set forth any cause of action against them and did not request any relief from them.

The City and County filed answers to the complaint and subsequently filed a motion to dismiss, claiming that a tax sale purchaser did not have standing to file an action to set aside the sale.

At the conclusion of the hearing the Chancery Court granted the defendants motions and dismissed all parties based on SASS' lack of standing and the doctrine of caveat emptor. SASS appeals.

Stating that SASS did have standing to bring the suit since a void tax sale would be a cloud on its title and that the doctrine of caveat emptor does not apply. The Supreme Court reversed the order of the Chancery Court dismissing SASS's complaint and remand the case to the Chancery Court for further proceeding.

If you have any questions, please don't hesitate to call me either on our watts line 1-800-647-2124 or on my direct line 1-601-961-4815 or you can send me an email to at mmatrick@mvt.com or a fax at 601-961-4884.