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DESOTO COUNTY, MS SS  
W.E. DAVIS, CH CLERK

IN THE CHANCERY COURT OF DESOTO COUNTY, MISSISSIPPI

MICHAEL ACCOLA

PLAINTIFFS

V.

CAUSE NO. 07-10-2006

DEION L. ROSA, ET AL

DEFENDANTS

ORDER

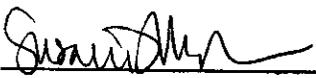
This matter came before the Court upon the Motion of Defendants Mortgage Electronic Registration Systems, Inc. and Cendant Mortgage Corporation for Summary Judgment. Having fully considered the Motion and the Memorandum Brief of Defendants, as well as the oral argument, the Court is of the opinion that the motion is well taken and should be granted.

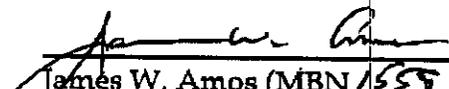
IT IS THEREFORE ORDERED that Defendants Mortgage Electronic Registration Systems, Inc. and Cendant Mortgage Corporation's Motion for Summary Judgment is hereby granted. This Order will serve as a final Judgment in this action.

This the 27<sup>th</sup> day of June, 2011.

  
\_\_\_\_\_  
CHANCELLOR

AGREED AND APPROVED:

  
\_\_\_\_\_  
Susan D. McNamara (MBN 99572)  
Attorney for Defendants Mortgage  
Electronic Registration Systems, Inc.  
and Cendant Mortgage Corporation

  
\_\_\_\_\_  
James W. Amos (MBN 1557)  
Attorney for Defendants Deion L. Rosa  
and Samantha Rosa

**FILED**  
JUL 07 2011  
W E DAVIS, CLERK

**PRESENTED BY:**

Susan D. McNamara (MBN 99572)

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**INDEXING INSTRUCTIONS:** Lot 33, Fox Hollow Phase II, Sections 34 & 35,  
Township 3 South, Range 6 West, DeSoto County, Mississippi.

IN THE CHANCERY COURT OF DESOTO COUNTY, MISSISSIPPI

MICHAEL ACCOLA

PLAINTIFFS

VS.

CAUSE NO. 07-10-2006

DEION L. ROSA, ET AL.

DEFENDANTS

DEFENDANTS MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.  
AND CENDANT MORTGAGE CORPORATION'S  
MOTION FOR SUMMARY JUDGMENT

COME NOW Defendants Mortgage Electronic Registration Systems, Inc. and Cendant Mortgage Corporation, pursuant to Rule 56 of the *Mississippi Rules of Civil Procedure*, and file this Motion for Summary Judgment, as follows:

I. ITEMIZATION OF UNDISPUTED FACTS

1. In 2004, the subject property was owned by James C. Thomas and Patricia E.

Thomas. That property is described as follows:

Lot 33, Fox Hollow Phase II, in Sections 34 & 35, Township 3 South, Range 6 West, as per plat thereof of record in Plat Book 47, at Pages 34-38 in the Office of the Chancery Clerk of DeSoto County, Mississippi.

2. This property has a physical address of 5169 Fox Lake Drive, Hernando, Mississippi.

3. The Thomases failed to pay the 2003 property taxes as due, and on August 30, 2004, the subject property was sold at Tax Sale to Michael J. Accola. A copy of the Chancery Clerk's Conveyance is attached as Exhibit "A."

4. On November 1, 2004, James C. Thomas and Patricia E. Thomas conveyed the subject property by Warranty Deed to Deion L. Rosa. A copy of the Warranty Deed is attached as Exhibit "B."

**FILED**

**AUG 14 2009**

W E DAVIS, CLERK

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5. To finance the purchase, Deion L. Rosa and Samantha Taylor-Rosa borrowed money from Cendant Mortgage Corporation. As security for that loan, on November 1, 2004, the Rosas executed a Deed of Trust in favor of Cendant Mortgage Corporation, granting a security interest in the subject property. A copy of the Deed of Trust is attached as Exhibit "C."
6. Mortgage Electronic Registration Systems (MERS) is the beneficiary of that Deed of Trust. *See* Exhibit "C."
7. In 2006, when the 2004 tax sale was set to mature, the Chancery Clerk began the statutory process of giving notice to the owners (the Rosas) and the holder of the Deed of Trust (MERS). The Clerk mailed notices to Deion Rosa and MERS by certified mail. A copy of the Notices is attached as Exhibit "D."
8. The notice to Deion Rosa was sent on May 5, 2006 to 51 Holiday Drive, Byhalia, Mississippi, and was returned marked "unclaimed." *See* Exhibit "D."
9. The Clerk also published notice of the expiration of the redemption period in the newspaper; however, the notice was published in the name of "James C. Thomas et ux Patricia E. Thomas." A copy of the Publication is attached as Exhibit "E."
10. Finally, although there appears to be a form Affidavit prepared by the Clerk's office, it is not signed or dated, nor does it state what efforts the Clerk made to locate the Rosas. A copy of the Affidavit is attached as Exhibit "F."
11. Plaintiff originally filed suit to confirm his tax title and obtained a Default

Judgment against the Rosas, but failed to name these Defendants as parties in his suit. On April 25, 2008, this Court entered an Order setting aside the Default Judgment granted in favor of Plaintiff.

12. On May 15, 2008, Plaintiff filed his First Amended Complaint to Quiet and Confirm Tax Title.

13. On June 26, 2008, these Defendants filed an Answer, and also a Counterclaim to set aside the tax sale.

14. On or about July 31, 2008, the Rosas filed their Answer to the Complaint. Included in this Answer was a Cross-Claim against these Defendants, which alleges the following: "Plaintiffs would show that it was the responsibility of the Defendants to pay the real estate taxes on the above mentioned property. Plaintiffs would show that Defendants owed them a duty to pay such taxes but they failed to do so allowing the property to be sold at a tax sale on August 30, 2004."

#### ARGUMENT

15. Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Miss. R. Civ. P.* 56.

16. Miss. Code Ann. §27-43-1 requires the Clerk, between sixty (60) and one-hundred eighty (180) days prior to the expiration of the time of redemption, to give notice to the "record owner of the land." Miss. Code Ann. §27-43-3 requires that the Clerk

provide the landowner with notice by three (3) separate methods: 1) the Sheriff must serve personal notice; 2) the Clerk must mail a copy of the notice to the owner by certified mail; and 3) the Clerk is to publish notice in the name of the owner in a public newspaper in the county in which the land is located. The statute further requires the Clerk to execute an Affidavit detailing its efforts to locate the landowner.

17. The Clerk sent Deion Rosa's notice to an old address. After the mail was returned, it made no effort to locate an additional address. The Clerk's office published the notice of the expiration of the redemption period in the name of the prior owner, which does not comply with the mandates of the statute. It further failed to execute the required Affidavit. Mississippi law is clear that failure to comply with the statute renders the tax sale void. Defendants are therefore entitled to summary judgment in their favor.

18. Defendants are further entitled to summary judgment on the Rosas' cross-claim. The Rosas allege that the Defendants were somehow negligent in failing to pay their taxes. However, the taxes were due for 2003, and the tax sale was on August 30, 2004. The Rosas did not purchase the property until November 2004; therefore these Defendants had no duty to pay their taxes. For this reason, Defendants are also entitled to summary judgment in their favor on the Rosas' cross-claim.

**WHEREFORE, PREMISES CONSIDERED** Defendants Mortgage Electronic Registration Systems, Inc. and Cendant Mortgage Corporation respectfully request that this

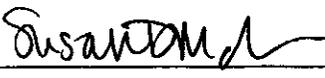
Court enter summary judgment in their favor.

DATED: This the 12<sup>th</sup> day of August, 2009.

Respectfully submitted,

**MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC. AND CENDANT MORTGAGE  
CORPORATION**

By and Through Counsel:  
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