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DAVIDSON COUNTY CHANCERY CT.
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In the Chancery Court for Davidson County, Tennessee

20th Judicial District, Nashville, Tennessee

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APR 2 9 2009
Dav. Co. Chancery Court

JAMES E. BROWN,	
Plaintiff,	
vs.	**Civil Action Number: 09-345-III**
CHASE MORTGAGE COMPANY, ET AL.,	
Defendants.	

BILL GARRETT, Davidson County
Trans:T20090036899 ORDER
Recvd: 06/03/09 15:26 8 pgs
Fees:42.00 Taxes:0.00
20090603-0051400

ORDER GRANTING PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS

This is an action to quiet title to real property sold and purchased at a delinquent tax sale in Davidson County, Tennessee pursuant to Title 67, Chapter 5, of the Tennessee Code Annotated. Plaintiff initiated this matter on February 24, 2009 by filing a Verified Complaint (Petition to Quiet Tax Title) in the Court seeking to quiet title to real property located at 83 Maury Street, Nashville, Tennessee 37210 which he acquired as the successful bidder at a Davidson County Delinquent Tax Sale on July 16, 2003.

Defendants were served with the Summons and Complaint in this matter by Certified Mail, Return Receipt Requested, on February 27, 2009. Defendants acknowledge receipt of the Complaint and Summons on March 2, 2009, but failed to file an answer or otherwise move against the Complaint. Plaintiff moved for Judgment on the Pleadings pursuant to Tenn. R. Civ. P. 12.03 on April 9, 2009. A hearing on Plaintiff's motion was set for April 24, 2009. Defendants did not respond to Plaintiff's motion. The Court, having found that the pleadings, documents attached to the Complaint, and facts deemed to have been admitted, together with Plaintiff's verifying affidavit,

show that there is no genuine issue as to any material fact and that the Plaintiff is entitled to a judgment as a matter of law, the Court is of the opinion that Plaintiff's unopposed Motion for Judgment on the Pleadings should be **GRANTED.**

Findings of Fact and Conclusions of Law

Under Tenn. R. Civ. P. 12.03, after the pleadings are closed any party may move for judgment on the pleadings; the motion must be decided only on the factual assertions in the pleadings. If evidence beyond the pleadings is considered, the motion must be converted to a Rule 56 Motion for Summary Judgment. See also Tenn. R. Civ. P. 10.03. Here, however, the Plaintiff's motion alleges no evidence outside the formal pleadings.

All of the well pleaded factual allegations in the nonmovant's pleadings, if any, are taken to be true and inferences are evaluated in the light most favorable to the nonmovant. ***McClenahan v. Cooley,*** 806 S.W.2d 767, 789 (Tenn. 1991). The Motion for Judgment on the Pleadings will be granted only if there are no allegations of fact in the pleadings that, if proven, would allow recovery. ***Cherokee Country Club, Inc. v. City of Knoxville,*** 152 S.W.3d 466, 478 (Tenn. 2004).

Rule 10.03 of the Tennessee Rules of Civil Procedures states:

> Whenever a claim or defense is founded upon a written instrument other than a policy of insurance, a copy of such instrument or the pertinent parts thereof shall be attached to the pleading as an exhibit unless the instrument is (1) a matter of public record in the county in which the action is commenced and its location in the record is set forth in the pleading; (2) in the possession of the adverse party and this fact is stated in the pleading; (3) inaccessible to the pleader or is of such nature that attaching the instrument would be unnecessary or impracticable and this fact is stated in the pleading, together with the reason therefor. Every exhibit so attached or referred to under (1) and (2) shall be a part of the pleading for all purposes.

The documents attached to the Plaintiff's Complaint pursuant to Tenn. R. Civ P. 10.03 as exhibit's A, B, C and D, and referred to in the Complaint, are matters of public record; thus, a part of the Complaint and have not been excluded from consideration in this judgment. See ***Cherokee Country Club, Inc. v. City of Knoxville***, 152 S.W.3d 466, 478 (Tenn. 2004); ***Brewer v. Piggee***, No. W2006-01788-COA-R3-CV, 2007 WL 1946632 (Tenn. Ct. App. July. 3, 2007). No matter outside the pleadings has been considered in entering this judgment. Tenn. R. Civ. P. 12.03. Consequently, to evaluate the merits of plaintiff's motion, the Court must address only one issue of law, that is whether the uncontroverted material factual averments in the Complaint, when accepted as true, establish that the Plaintiff is entitled to judgment quieting the title to his property as a matter of law. All material allegations set forth in Plaintiff's Complaint are incorporated herein by reference and made a part hereof.

In his Complaint (Compl. ¶ 8), Plaintiff alleges as a fact that the Defendants received "actual notice" of the tax sale wherein he purchased the subject property on July 16, 2003, but took no action to repurchase the property within the one-year redemption period set forth in Tenn. Code Ann. § 67-5-2702, nor within the three-year limitations period set forth in Tenn. Code Ann. 67-5-2504(d). Plaintiff asserts that the inaction of Defendants within the limitations period raises an absolute bar to any and every objection or affirmative defense the Defendants might have to his prayer to this Court to quiet the title to his property; thereby entitling him to judgment as a matter of law.

Plaintiff further alleges as fact: (1) That defendants failed to pay their lawfully assessed ad valorem taxes on the subject real property (Compl. ¶ 6); (2) that the tax sale conferring title to the subject property upon him was conducted in compliance with Title 67, Chapter 5, of the Tennessee Code Annotated (Compl.¶¶ 9-12); (3) that on September 11, 2003, this Court entered a final decree confirming the sale of the subject property to him (Compl. ¶ 8); (4) that the

Defendants are under no disability (Compl. ¶ 18); and (5) that he has been in actual possession of, and has paid all taxes on, the subject property since its purchase in 2003 (Compl. ¶ 19). Because the Defendants did not answer the complaint, and have not filed responsive pleadings herein, the Court must accept these averments of fact as true and as a waiver of all possible defenses and objections to this action.[1] See ***Faulks v. Chowder***, 99 S.W.3d 116, 124 (Tenn. Ct. App. 2002).. Accordingly, the decree entered by the Court on September 11, 2003 divesting the Defendants of title to the subject property foreclosed all rights in and as to the property at 83 Maury Street, Nashville, Tennessee, Map and Parcel Number 093-16-0 116.00, and vested in Plaintiff a title in fee simple, free and clear of all encumbrances.

Conclusion

In addition to the foregoing, the Court finds that it has jurisdiction over the subject matter and the Court is the proper forum for litigation of this matter. Further, as more than three (3) years have passed since the Tax Sale on July 16, 2003, the procedural regularity of the tax sale is beyond challenge. Therefore, Defendants having failed to appear and plead any legally viable affirmative defense to the avoidance of any interest they may have in the property at 83 Maury Street, Nashville, Tennessee; and, the Court having already determined that the factual allegations in the Complaint are established by the Defendants failure to appear and deny them, the Court concludes that Plaintiff is

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[1] The Court takes notice of the fact that a tax sale is complete once it is confirmed by the Court, ***Marlow v. Kingdom Hall of Jehova's Witnesses,*** 541 S.W.2d 121, 125 (Tenn. 1976), and a tax deed of conveyance is an assurance of perfect title to the purchaser of such land if the taxes for which the property was sold were factually due and unpaid. Tenn. Code Ann. § 67-5-2504(b). However, the running of the three-year limitations period in Tenn. Code § 67-5-2504(d) raises an "absolute bar" to attack on the tax sale only where the previous owner has received actual or constitutionally adequate constructive notice of the proceedings, and has had a meaningful opportunity to be heard. ***West v. Jackson,***186 S.W.2d 915, 917-918 (Tenn. 1944); ***Mennonite Board of Missions v. Adams***, 462 U.S. 791, 798 (1983). The Defendants having effectively admitted that they received all the due process to which they were entitled, the issue of due process and the constitutionality of the tax sale is not before the Court.

entitled to judgment on the pleadings quieting title to his property against the world and will enter a separate Judgment in accordance with the above findings. Accordingly, it is

ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion for Judgment on the Pleadings be, and hereby is, **GRANTED**.

IT IS FURTHER ORDERED that costs be, and hereby are, taxed to the Plaintiff.

Ellen Hobbs Lyle

ELLEN HOBBS LYLE
Chancellor

I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF ORIGINAL INSTRUMENT FILED IN MY OFFICE
THIS 30th DAY OF DEC 2010
CAROL SCOTT, CLERK & MASTER
BY: DEPUTY

In the Chancery Court for Davidson County, Tennessee

20th Judicial District, Nashville, Tennessee

FILED
ON May 8, 2009
DAVIDSON CO. CHANCERY CT.

JAMES E. BROWN,

Plaintiff,

vs.

CHASE MORTGAGE COMPANY, ET AL.,

Defendants.

Civil Action Number: 09-345-III

JUDGMENT

This matter came before the Court on April 24, 2009, on Plaintiff's Motion for Judgment on the Pleadings quieting title to his property at 83 Maury Street, Nashville, Tennessee, with Plaintiff appearing *pro se*. The Defendants, Chase Mortgage Company, et al., did not appear or file responsive pleadings to the Complaint or Plaintiff's Motion for Judgment. The matter was submitted to the court for decision on the pleadings. And good cause appearing, and the court having made its Findings of Fact and Conclusions of Law, and for the reasons stated in the memorandum opinion and Order Granting Plaintiff's Motion for Judgment on the Pleadings issued contemporaneously herewith.

IT IS ORDERED, ADJUDGED, AND DECREED that Plaintiff, James E. Brown, was, on February 24, 2009, the date of the commencement of this action, and now is the exclusive owner in fee simple, and in actual and peaceable possession of the real property know as 83 Maury Street, Nashville, Tennessee, Map and Parcel Numer 093-16-0 116.00, more particularly described as follows:

> Land in Davidson County, Tennessee, being the Southerly 9 feet of Lot No. 117 and the northerly one-half of Lot No. 118 on the Plan of Maury & Clairborne's Addition to Nashville of record in Book 21, at Pages 84 and 85, Register's Office for said County. Said parts of Lots No. 117 and 118 front together 26-1/2 feet on the east side of Maury Street and run back between parallel lines 165 feet to an alley.

Being the same property conveyed to Secretary of Housing and Urban Development by Deed from Chase Mortgage Company FKA Chemical Mortgage Company, of record in Book 11056, Page 440, Register's Office for Davidson County, Tennessee.

This is improved property known as: 83 Maury Street, Nashville TN 37210 and being the same property conveyed to James E. Brown by Final Decree Confirming Sale of the Chancery Court of Davidson County, Tennessee entered on September 11, 2003 and of record in the Office of the Register of Deeds, Davidson County, Tennessee, as Instrument Number 20030926-0143009.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that no person other than plaintiff, James E. Brown, including defendants, Chase Mortgage Company, et al., their successors, assigns or any one or anything in the whole world claiming under them, irrespective of the nature of that interest, have in and to the said property, now has any estate, right, title, interest, or claim in or to the real property, or any part thereof, either legal or equitable, present or future, vested or contingent in the said real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that no person other than plaintiff, including defendants, now has any mortgage or other lien of any description on the real property or any part of the real property, either legal or equitable, present or future, vested or contingent in the said real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that plaintiff's title to the real property identified herein be, and hereby is, established and quieted against all the world.

Entered and effective on the date filed by the Clerk and Master of the Court.

Ellen Hobbs Lyle

ELLEN HOBBS LYLE
Chancellor

SUBMITTED FOR APPROVAL
AND ENTRY BY THE COURT:

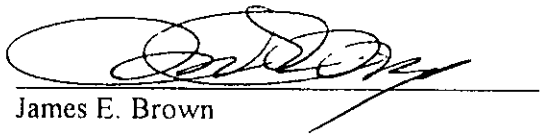


JAMES E. BROWN
1400 Pellican Point
Madison, TN 37115
Tel: (615) 868-6527
Plaintiff, *pro se*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 27, 2009, he caused true and exact copies of the foregoing Proposed Order and Judgment to be served by First Class Mail, Postage Prepaid, on the Defendants as follows:

Chase Mortgage Company
2315 Vision Drive
Columbus, OH 43219



James E. Brown

COPIES TO ATTORNEYS AND PRO SE LITIGANTS
AT THE ABOVE ADDRESSES
DATE 5/19/09 CLERK