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CASE NO. 2006-TS-00218

IN THE
SUPREME COURT
For The State of Mississippi

TUPELO REDEVELOPMENT AGENCY
Appellant

vs.

THE GRAY CORPORATION, INC.
Appellee

vs.

RONALD J. RAGLAND, SR.
Appellee/Cross-Appellant

REPLY BRIEF OF APPELLEE/CROSS-APPELLANT-RONALD J. RAGLAND, SR.

On Appeal from the Circuit Court of Lee County, Mississippi

ORAL ARGUMENT REQUESTED

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March 01, 2007

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for Appellee/Cross-Appellant, Ronald J. Ragland, Sr., certifies that the following persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. Honorable Thomas J. Gardner, III, Lee County Circuit Court Judge
2. Ronald J. Ragland, Sr.
3. Tupelo Redevelopment Authority
4. The Gray Corporation, Inc.
5. William D. Prestage, William G. Armistead, Sr. & Guy W. Mitchell, III of the firm of Mitchell, McNutt & Sams of Tupelo, Mississippi, Counsel for TRA
6. B. Sean Akins of the firm of Fortier & Akins, Counsel for Gray

7. Thomas W. Prewitt & Kenneth M. Heard, III, Counsel for Ragland;

8. Samuel C. Kelly & Ron A. Yarbrough, former Attorneys for Gray and Hartford

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INTRODUCTION

Mr. Ragland's initial Brief raised 4 issues, each of which deals with the fundamental question of whether Mr. Ragland, who acquired Gray's Judgment against TRA, an unsatisfied Judgment which had not been appealed, was prejudiced when the lower Court had the Judgment marked satisfied and canceled and removed from the judgment roll, and then later refused to pay the money which had been paid into court to satisfy the Judgment, and, instead, converted the paid in money to a supersedeas bond (Ragland Brief, Statement of the Issues, p.1). TRA argues that Mr. Ragland wasn't prejudiced because he ended up with a supersedeas bond but refuses to consider Mr. Ragland's loss of his judgment lien, and the fact that he is financing the appeal, since the supersedeas is mostly comprised of cash which was used to satisfy the Judgment but was not then paid to him.

We address the obvious error in TRA's approach to these issues.

A. Mr. Ragland is entitled to both a judgment lien and a supersedeas bond

TRA's argument demonstrates a misunderstanding of the position enjoyed by an unpaid judgment creditor and who, at the same time, is an Appellee who supposedly enjoys the benefits of a supersedeas bond. The question is whether one can be entitled to a judgment lien and, at the same time, a supersedeas bond. TRA says Mr. Ragland doesn't "need" both; however, a judgment creditor is "entitled" to both if the judgment debtor appeals with supersedeas. One position of security does not exclude the other. Mr. Ragland is entitled to both *or rather, since the judgment was paid, and he owned it, the money by which it was paid*!

The moment before the Order was entered canceling the Judgment and removing it from the judgment roll, as the owner of an unsatisfied Judgment, Mr. Ragland possessed a judgment lien on all of TRA's property and could exercise that lien and collect 100% of his money. In fact, 100% of his money was in the Clerk's account. With the entry of that Order, he forever lost that position (Vol. 12, R. 1572-73). He was no longer a judgment creditor by statute, and the supersedeas bond couldn't and didn't make him one by contract. The supersedeas bond doesn't create a lien on anything and protects Mr. Ragland *only* to the extent of the penal sum of the bond. The giving of the bond does not and can not provide Mr. Ragland with a lien on TRA's assets, and Mr. Ragland now bears the risk of collecting the bond amount.

What the statute gave him as a judgment creditor was taken away in a flash without a hearing and, with the scratch of a pen, he forever lost his priority to TRA's other assets, purchasers and later creditors. All of that would have been fine if at the time the Judgment was paid, the money used to pay that Judgment had in turn been paid to Mr. Ragland, the only claimant to it.

1. The judgment lien

A Judgment Lien is:

> [a]n encumbrance that arises by law when a judgment for the recovery of money is docketed (*and is*) [a] lien binding the real estate of a judgment debtor, in favor of the holder of the judgment, and giving the latter a right to levy on the property for the satisfaction of his judgment *to the exclusion of other adverse interests subsequent to the judgment.*

Black's Law Dictionary 845 (6th ed. 1990) (emphasis added).

Mississippi's legislative plan and case law agree. An enrolled judgment "shall be a lien upon and bind all the property of the defendant within the county where so enrolled,

from the rendition thereof. . . ." Miss. Code Ann. § 11-7-191 (Rev. 2004). *See also TXG Intrastate Pipeline Co. v. Dean,* 716 So. 2d 991, 1020 (Miss. 1997)("A judgment, when enrolled in Mississippi, becomes a lien upon the property of the defendant within the county where the judgment is enrolled from the date of enrollment and priority is established from that day forward.")(quoting *Simmons v. Thomas*, 827 F.Supp. 397, 401 (S.D. Miss. 1993)(citing *Herrington v. Heidelberg*, 244 Miss. 364, 141 So. 2d 717 (Miss. 1962)); *Williams & Freeman v. Bosworth*, 102 Miss. 160, 163, 59 So. 6, 7 (Miss. 1912) ("[w]henever a judgment is enrolled it becomes a lien upon and binds all property of the defendant in the county where so enrolled. . . .").

Yet, as far as the records of Lee County are concerned, TRA is neither a judgment debtor to Mr. Ragland nor is Mr. Ragland a judgment creditor of TRA and, in addition, Mr. Ragland hasn't received one nickel of the debt TRA owes him. This is wrong!

2. <u>The supersedeas bond</u>

Supersedeas is "[a]n auxiliary process designed to supersede enforcement of trial court's judgment brought up for review, and its application *is limited to the judgment from which an appeal is taken" Black's Law Dictionary* 1437 (6th ed. 1990) (emphasis added). The bond is required of one who petitions to set aside a judgment or execution and from which the other party may be made whole if the action is unsuccessful *(Black's Law Dictionary* 1438 (6th ed. 1990)).

Thus, the only issue a supersedeas bond addresses is the judgment being appealed and then to the extent of the penal amount of the bond. It did not create a lien on the rest of TRA's property and, therefore, the TRA supersedeas bond (using the money which had

been used to satisfy and pay the Judgment) did not replace the judgment lien which TRA had canceled!

B. How it happened

A more than adequate statement of the operative events is contained in Mr. Ragland's initial Brief on pages 2 through 7. This statement will, therefore, be brief.

On December 12, 2005, TRA paid $260,437.78 into the registry of the Court to satisfy the Judgment Gray secured against TRA on November 2, 2005, and the accrued post-Judgment interest ("the Fund")(Vol. 11, R.1362-64). The *next* day, December 13, by *ore tenus* motion, TRA sought and secured, without notice, an Order which satisfied and canceled the Gray Judgment (Vol.12, R. 1502) which Mr. Ragland bought 2 days later without knowledge that the judgment lien had been canceled.

Thus, on December 15, 2005, Mr. Ragland and Hartford settled Mr. Ragland's claims against Hartford, and as a part of that settlement, Hartford assigned all of its (and Gray's) rights in the Judgment to Mr. Ragland. The documents completing this transaction were exchanged on Friday, December 23rd (Vol.12, R. 1529-39). Christmas Eve and Christmas intervened, but on Wednesday, December 28th, 2005, Mr. Ragland served his December 29, 2005 Motion to require the Clerk to pay him the Fund (Vol. 12, R. 1504-42). On January 6, 2006, TRA filed its Motion opposing Mr. Ragland's attempt to collect the Fund and requested the Court to convert the Fund from its original purpose of being the payment made to satisfy the Judgment to the new purpose of having it serve as the bulk of a supersedeas bond.

January 6, 2006, over 3 weeks after paying the Fund, was the first time that TRA revealed its intention to appeal the Judgment! It had made no previous effort to advise

anyone of its intention to appeal, much less appeal with supersedeas using the same money it was using to satisfy the Judgment. A week later, on January 12, 2006, the Court (1) denied Mr. Ragland's Motion to require the Clerk to pay him the Fund; and, (2) allowed TRA to convert the Fund to a supersedeas bond. (We can't emphasize enough that TRA was permitted to use the same money to pay the Judgment and then turn around and convert that money from an absolute payment to a conditional one, i.e., to provide part of a supersedeas bond).

Thus, in January, 2006, TRA, the loser at the trial, became the winner and it came out free of a judgment lien and with its hands still on the money!

Finally, on February 1, 2006, TRA filed its Notice of Appeal (Vol.13, R.1590).

C. Ragland's position has been materially changed for the worst

The protection that the legislature provided to a judgment creditor, the creation of a judgment lien, was lost forever when the lower Court, upon TRA's *ore tenus* Motion, required the Clerk to cancel the Judgment. Mr. Ragland suddenly morphed from an unpaid judgment creditor with a lien to an unpaid creditor without a lien, a judgment and without the money!

The supersedeas bond does not and did not create a lien on anything.

A lot can happen in the time that it takes to have an appeal resolved, and the bond doesn't even attempt to address those negative possibiliites.

Who knows if TRA is still solvent and will have plenty of assets to satisfy whatever amount of judgment is affirmed (Gray is appealing its Judgment against TRA, seeking hundreds of thousands more), or who knows if there is a giant creditor lurking in background who, because Mr. Ragland has lost his priority, now laughs from the front of

the line? When Mr. Ragland lost his judgment lien, he lost his place in line concerning TRA's assets vis-á-vis all of TRA's other junior judgment creditors.

Enrolling the Judgment creates the lien and establishes the priority between creditors as of that date. The earlier Judgment has the first lien (Miss. Code Ann. § 11-7-191 (Rev. 2004)).

Subsequent bankruptcy trustees will (may) prime Mr. Ragland, and why(?); because TRA paid the Judgment off and then got control of the money again!

What is the effect if TRA goes into bankruptcy? The Trustee takes the position of a judgment creditor and its claims would prime Mr. Ragland's claim because he is no longer a judgment creditor. His Judgment has been canceled! Did the cancellation and satisfaction of the Judgment leave Mr. Ragland with anything? Is Mr. Ragland anything more than an unsecured creditor?

What if the bank into which the funds were deposited was closed by the FDIC or some calamity? The supersedeas bond suddenly means nothing or little. For instance, if the Clerk deposited the Fund in an FDIC insured account, the most the account would generate is the $100,000.00 limit provided for each federally insured account. Television tells us about this insurance and its limits regularly!

Thus, the possible prejudice which TRA claims does not exist, does exist.

These are real possibilities and genuine concerns.

If someone else sues TRA and secures a gigantic judgment, and coupled with that, the bank fails Mr. Ragland, whose position as a secured creditor at the front of the line has been lost could take nothing when he ought to be first in line! He is entitled to be first in

line secure and as well protected as being first in line can be. The only way to protect Mr. Ragland is to order the Clerk to immediately pay him the Fund!

By the way, what about another TRA judgment creditor filing a garnishment against the Clerk's account? Hopefully, Mr. Ragland would prevail in such case since the Fund has been dedicated to him, but at what cost? He shouldn't be required to spend the money to defend the money which was used to pay his Judgment.

If the Bank can't provide the "Fund" when the time comes for the supersedeas to respond, Mr. Ragland could easily end up with nothing. The supersedeas simply does not protect Mr. Ragland, and the only "status quo" which the lower Court maintained here is that TRA gets to keep control of the Fund after being able to sell its real estate without the burden of the judgment lien! The lower Court didn't intend this unfair result, but that is the natural spooling out of the Order and the effect of that Order.

Similar scenarios were recently discussed by the Court of Appeals and are not far fetched:

> [w]hat if for some reason the Bank of Holly Springs decides not to or declines to fulfill their duty? What if the Bank of Holly Springs files for bankruptcy? While these are extreme examples, if they were to occur, the status quo would not be protected since [judgment creditor] would be in a worse position than he was in at the time of enrollment of the judgment and upon the sale of the assets [judgment creditor] has no recourse.

Fitch v. Valentine, 2006-CA-00239-SCT (Miss. 2006).

Mr. Ragland should not be required to litigate these several issues when he was the only claimant to the Fund by which the Judgment was satisfied and canceled and by which TRA bought its freedom from the judgment lien.

D. A little math

Thirteen (13) additional months of post-Judgment interest has accrued since TRA paid the principal and the accrued interest on the 12th of December, 2005. Mr. Ragland will be entitled to that interest when the Judgment is affirmed. In addition, since Gray's case commenced on June 3, 2002 (Vol. 1, R. 10) Gray (and, therefore, Mr. Ragland) is also entitled to the 15% penalty contemplated by Miss. Code Ann. § 11-3-23.

Thus, if the Judgment were affirmed today, TRA is responsible for 128% of the principal amount because Mr. Ragland has lost his judgment lien and now has only a 125% supersedeas bond; he can not be assured that his claim for the balance will prime anyone with an additional claim. There may not be much of a spread between 125% and 128%, but there shouldn't be any.

Mr. Ragland should have been paid the Fund thirteen (13) months ago. It would not have affected TRA's right to appeal.[1]

CONCLUSION

Not only did Mr. Ragland lose his priority among judgment creditors, Mr. Ragland became the owner of a impotent judgment and was himself rendered impotent since he has been instructed to do nothing to attempt to collect the Fund. That result, impotency, was not the lower Court's intention; however, that is the result of the Court's Orders.

Thus, contrary to TRA's assertions, it is clear that Mr. Ragland has been severely prejudiced by the loss of his status as a judgment creditor and the judgment lien that goes with that position.

1

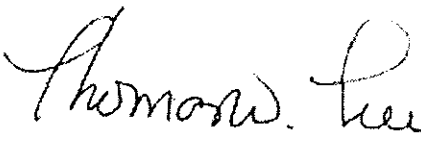
It's interesting that TRA cites a case in which the money paid into the Court to satisfy the judgment actually went to the judgment creditor, and the debtor was still able to appeal the judgment (*Currie v. Bennett*, 111 Miss. 228, 71 So. 324 (Miss. 1916)).

Mr. Ragland is entitled to the Fund immediately and to the additional interest earned by the Fund while it was serving as the supersedeas bond. Mr. Ragland's appeal from the Court's Order denying his motion to direct the Clerk to pay him should be reversed, and the Clerk should be directed by this Court to immediately pay Mr. Ragland the Fund, the accrued interest and costs.

THIS, the 1st day of March, 2007.

Respectfully submitted,

RONALD J. RAGLAND, SR.



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CERTIFICATE OF SERVICE

I, KENNETH M. HEARD, III, do hereby certify that I have mailed, via United States Mail, postage fully prepaid thereon, a true and correct copy of the above and foregoing ***Reply Brief of Appellee/Cross-Appellant Ronald J. Ragland, Sr.*** to:

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