

COPY

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

TERRY FARMER
AND WIFE BRENDA FARMER

FILED

APPELLANTS

VERSUS

MAR 27 2007

CAUSE NO. 2006-CA-01659

RICHARD RICHARDSON

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

APPELLEE

APPEAL FROM THE CHANCERY COURT OF
LAMAR COUNTY, MISSISSIPPI

BRIEF OF APPELLEE

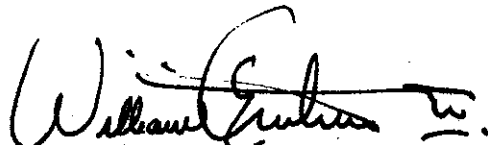
William E. Andrews, III (MSB [REDACTED])
WILLIAM E. ANDREWS, III, LAW OFFICE, PLLC
Attorney for Appellee, Richard Richardson
Post Office Box 130
Purvis, Mississippi 39475
p: 601-794-8053
f: 601-794-2480

CERTIFICATE OF INTERESTED PERSONS

The undersigned attorney of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that this Court may evaluate possible disqualification or recusal.

1. Terry and Brenda Farmer, Appellants
2. Honorable William L. Ducker, Attorney for Appellants
3. Richard Richardson, Appellee
4. Honorable William E. Andrews, III, Attorney for Appellee
5. Clyde Farmer, Father of Appellant Terry Farmer
6. Honorable James H.C. Thomas, Jr., Chancellor
7. Honorable William Anderson, Justice Court Judge

So certified this the 27th day of March, 2007.

A handwritten signature in black ink, appearing to read "William E. Andrews, III", written over a horizontal line.

William E. Andrews, III

TABLE OF CONTENTS

Title Page	1
Certificate of Interested Persons	2
Table of Contents	3
Table of Authorities	4
Statement of Issues	5
Statement of Case	6
Argument	8
Conclusion	14
Certificate of Service	16
Certificate of Filing	17

TABLE OF AUTHORITIES

Cases:

<i>Hogan v. Buckingham</i> , 730 So.2d 15 (Miss. 1998) citing <i>Dunaway v. Hopper & Associates</i> , 422 So.2d 749 (Miss. 1982).....	9
<i>Little v. V & G Welding Supply, Inc.</i> , 704 So.2d 1336, 1339 (Miss. 1997) (quoting <i>Russell v. SunAmerica Sec.</i> , 962 F.2d 1169, 1173 (5 th Cir. 1992))	10
<i>PACCAR Financial Corp. v. Howard</i> , 615 So.2d 583 (Miss. 1993)	14
<i>Royal Oil Company, Inc. v. Wells</i> , 500 So.2d 439 (Miss. 1986)	12
<i>Smith v. Malouf</i> , 826 So.2d 1256 (Miss. 2002)	10,11

Rules:

Mississippi Rules of Civil Procedure 8	14
--	----

STATEMENT OF ISSUES

1. The Chancellor correctly concluded that all matters between these parties had been previously decided on the merits in prior litigation, and therefore dismissed the Plaintiff's action based on the doctrines of *res judicata* and *collateral estoppel*.
 - a. The Farmers were parties to numerous Justice Court actions involving the same subject matter they now seek to re-litigate in Chancery Court.
 - b. The Farmers, being the son and daughter-in-law of Clyde Farmer, and being present and involved in the April 2nd fight with Richardson, stand in such privity with Clyde Farmer that they are precluded from re-litigating matters stemming from the same set of facts adjudicated in Richardson's favor in the Circuit Court action brought by Clyde Farmer.
2. The Farmer's malicious prosecution and intentional infliction of emotional distress allegations fail to state a claim upon which relief may be granted and were properly dismissed by the Chancellor.

STATEMENT OF THE CASE

The Farmers filed six separate Justice Court actions against Richardson beginning February 10, 1996, (see Justice Court Computer Printouts in Appellee's Record Excerpts pp. 1-6), prior to filing this Chancery matter in October 1996 (see Chancery Trial Court Docket in Appellee's Record Excerpts pp. 7-8). To the first charge of disturbing the family, Richardson pled guilty and paid a fine. To the remaining six charges, of trespass and simple assault, Richardson was found not guilty. (See Justice Court Computer Printouts in Appellee's Record Excerpts pp. 1-6).

In addition to the Justice Court charges filed by the Appellants Farmer, they and Clyde Farmer, Terry's father, also filed Circuit Court actions against Richardson. (See Circuit Complaints in Appellee's Record Excerpts pp. 9-16). Terry and Brenda's Circuit Court case was transferred and combined with this Chancery Court action. (See Motion and Agreed Order to Transfer in Appellee's Record Excerpts pp. 17-19). Clyde Farmer's Circuit Court case was submitted to binding arbitration, and in November of 1999, the Arbitrator returned a decision in Richardson's favor (see Decision of Arbitrator in Appellee's Record Excerpts p. 20), and in July 2000, the Circuit Judge dismissed the case (see Order of Dismissal in Appellee's Record Excerpts p. 21).

These actions were initiated around the same general time period and they all stem from the same series of facts. When the Farmers failed to prove their cases in Justice and Circuit Court, they resumed prosecution of this Chancery matter to continue their feud with Richardson.

From December 1992 through January 1996, the Farmers leased land from

Richardson with the option to purchase. They ultimately purchased adjoining land from someone else. When the Lease Purchase Agreement expired by its own terms in January 1996, Richardson asked the Farmers to vacate the property no later than February 15, 1996. The long and bitter boundary line dispute between the parties was then initiated by the Farmers when they filed three Justice Court charges in three days against Richardson for disturbance of the family and trespass. (See the Justice Court Computer Printouts in Appellee's Record Excerpts p. 1-6). Also incident to the boundary line dispute, were the malicious mischief and petit larceny charges filed in Justice Court. The dispute culminated in a physical fight between Richardson and Terry and Clyde Farmer.

The Justice Court cases were all concluded, and the boundary line issue was to be resolved with the execution and recording of an easement giving the Farmers the access they desired across Richardson's property. Finally, the personal injury issues arising from the fight were submitted to binding arbitration, and in November 1999 the arbitrator found that Richardson was not liable. (See Decision of Arbitrator in Appellee's Record Excerpts p. 20).

This Chancery matter, which had also been initiated by the Farmers during the flurry of litigation in 1996, and into which the Circuit matter had been transferred, sat dormant following entry of the Temporary Judgment with Injunction (See Appellee's Record Excerpts p. 22-23), and the statement of the court appointed surveyor. The case was in fact dismissed for lack of prosecution in December 1999, just after the binding arbitration decision. (See Chancery Trial Court Docket in Appellee's Record Excerpts at pp. 7-8). A reasonable inference to be drawn from this lack of prosecution is that the Farmers, like

Richardson, believed that all the issues either had been resolved by the Justice Court, by the recorded Easement, or were being resolved by the arbitration. However, upon receipt of the arbitrator's decision, the Farmers were dissatisfied and resumed prosecution of the same matters again in this action.

The Chancellor, after considering the various motions and arguments of counsel, dismissed the action on summary judgment. The Farmers then file a Motion to Clarify and Construe Summary Judgment on January 13, 2005 and served the same by Certificate of Service upon Richardson's attorney, who died on January 22, 2005. Richardson never received actual notice of the motion, and the Order Construing Summary Judgment was entered on May 19, 2005 leaving certain issues in the case open. Upon receiving the Order, Richardson filed his Motion to Set Aside the Order Construing Summary Judgment, upon which the case was ultimately dismissed. Feeling aggrieved by the Chancery proceedings, the Farmers have now appealed to this Honorable Court.

ARGUMENT AGAINST PROPOSITION I OF APPELLANT'S BRIEF

In Proposition I of their Brief, the Farmers argue that Terry Farmer should now get to sue Richardson again over the same fight which Clyde Farmer has already sued Richardson for and lost. The doctrines of *res judicata* and *collateral estoppel* preclude Terry Farmer from re-litigating the events of this fight because Terry and Brenda Farmer stand in such privity with Clyde Farmer as to satisfy the party identity requirement of *res judicata* and *collateral estoppel*.

There was one fight. Initially between Richardson and Clyde Farmer, but only minutes later joined by Terry Farmer. Clyde Farmer sued Richardson in Lamar County,

Mississippi Circuit Court Cause No. 97-0053, alleging in Paragraph II of his Complaint, that the cause of action “does stem from one singular incident that occurred on or about April 2, 1996, and involved the Plaintiff’s son, Terry Farmer...” (See Circuit Complaint by Clyde Farmer in Appellee’s Record Excerpts p. 13-16). This Complaint also eludes to the “companion case in Lamar County Chancery Court bearing cause number 96,0455-TH...” Both Clyde Farmer and Terry Farmer were represented by the same attorney in these actions, and Clyde Farmer’s case was dismissed on July 28, 2000, following binding arbitration which concluded in Richardson’s favor. (See Order of Dismissal in Appellee’s Record Excerpts p. 21).

Finality is a major force in civil procedure. The idea that litigation must come to an end is enforced by the doctrines of *res judicata* and *collateral estoppel*.

Collateral estoppel prevents parties from re-litigating issues that were actually litigated in a prior action. “Strict identity of parties is not necessary for either *res judicata* or *collateral estoppel* if it can be shown that a non-party stands in privity with the party in the prior action.” Hogan v. Buckingham, 730 So.2d 15, 18 (Miss. 1998), citing Dunaway v. Hopper & Associates, 422 So.2d 749 (Miss. 1982). Privity requires us to look at the surrounding circumstances to determine whether claim preclusion is justified. *Id.*

Four identities are required for *res judicata* to be applicable.

1. Identity of the subject matter.
2. Identity of the cause of action.
3. Identity of the parties.
4. Identity of the person against whom the claim is made.

Mississippi Circuit Court Cause No. 97-0053, alleging in Paragraph II of his Complaint, that the cause of action “does stem from one singular incident that occurred on or about April 2, 1996, and involved the Plaintiff’s son, Terry Farmer...” (See Circuit Complaint by Clyde Farmer in Appellee’s Record Excerpts p. 13-16). This Complaint also eludes to the “companion case in Lamar County Chancery Court bearing cause number 96,0455-TH...” Both Clyde Farmer and Terry Farmer were represented by the same attorney in these actions, and Clyde Farmer’s case was dismissed on July 28, 2000, following binding arbitration which concluded in Richardson’s favor. (See Order of Dismissal in Appellee’s Record Excerpts p. 21).

Finality is a major force in civil procedure. The idea that litigation must come to an end is enforced by the doctrines of *res judicata* and *collateral estoppel*.

Collateral estoppel prevents parties from re-litigating issues that were actually litigated in a prior action. “Strict identity of parties is not necessary for either *res judicata* or *collateral estoppel* if it can be shown that a non-party stands in privity with the party in the prior action.” Hogan v. Buckingham, 730 So.2d 15, 18 (Miss. 1998), citing Dunaway v. Hopper & Associates, 422 So.2d 749 (Miss. 1982). Privity requires us to look at the surrounding circumstances to determine whether claim preclusion is justified. *Id.*

Four identities are required for *res judicata* to be applicable.

1. Identity of the subject matter.
2. Identity of the cause of action.
3. Identity of the parties.
4. Identity of the person against whom the claim is made.

Id. "When these four identities are present, the parties will be prevented from re-litigating all issues tried in the prior lawsuit, as well as the matters which should have been litigated and decided in the prior suit." *Id.* at 17, *emphasis added.*

The subject matter of both Clyde Farmer's suit and Terry Farmer's claim now of personal injuries is the fight that occurred between Richardson, Clyde and Terry. Both causes of action are based upon the Farmer's allegation that Richardson was liable for injuries that resulted from said fight. The actual parties of the previously litigated matter were Clyde Farmer and Richardson. However, Mississippi law requires that you look at the surrounding circumstances of the case to determine whether privity exists between the parties and whether claim preclusion is justified. *Little v. V & G Welding Supply, Inc.*, 704 So.2d 1336, 1339 (Miss. 1997) (quoting *Russell v. SunAmerica Sec.*, 962 F.2d 1169, 1173 (5th Cir. 1992)). You will find in the case *sub justice*, that Terry and Brenda Farmer are parties in such privity with Clyde Farmer, and justice requires that they be bound by the arbitrator's ruling that Richardson is was not liable for the alleged injuries resulting from the fight. Clyde Farmer is father and father-in-law to Terry and Brenda Farmer. At the time of Clyde's suit against Richardson, all the Farmers were represented by the same attorney. Terry and Brenda abandoned their Chancery action, which resulted in its dismissal for lack of prosecution. (See Chancery Trial Court Docket in Appellee's Record Excerpts pp. 7-8). Terry and Brenda Farmer participated, although not as parties, in Clyde's suit against Richardson. Claim preclusion is warranted in this case.

This case is similar to *Smith v. Malouf* wherein the Plaintiff father attempted to sue the Defendant/Mother and her parents for violation of an injunction regarding the

adoption of plaintiff and defendant's child. That Court found the Defendant's parents to be in privity with the Defendant, and therefore applied the doctrine of *collateral estoppel* to preclude the father's subsequent claim against the parents. 826 So.2d 1256, 1260 (Miss. 2002). Likewise, Terry and Brenda Farmer should be estopped from re-litigating events of the fight, which was already litigated and concluded in the arbitration because of their privity with Clyde. Because the circumstances prove the four identities of *res judicata* this claim must be dismissed.

ARGUMENT AGAINST PROPOSITION II OF APPELLANT'S BRIEF

In Proposition II of the their Brief, the Farmers argue that they have three other causes of action which have not been litigated.

The first alleged cause of action is Terry Farmer's suit for malicious prosecution. Terry Farmer alleges that Richardson maliciously prosecuted the theft of certain personal property. (Appellant's Brief p. 10). They also allege that Farmer had receipts showing the materials in question belonged to him. What the Farmers fail to inform the Court is that paragraph 12 of Modification and Extension of the Lease Purchase Agreement contained a clause wherein any improvements placed on the property were to remain with the property in the event of default. When the Farmers defaulted on the lease, the same was cancelled, and a Quitclaim Deed was executed conveying any interest the Farmers had back to Richardson. After the default, the Farmers began removing tin from the barn built on Richardson's property and removed a gate in violation of the contract. Therefore the receipts Farmer had meant nothing because the contract required that improvements remain with the property in the event of default. This contract controlled ownership of

these materials despite who purchased and installed them.

Richardson had a valid reason to believe that Farmer intentionally removed these items from Richardson's property while knowing that they belonged to Richardson pursuant to the terms of the contract. Richardson therefore filed petit larceny charges against Farmer and Farmer was convicted in Justice Court, but said conviction was later overturned in Circuit Court.

With regard to malicious prosecution in cases where a lower court prosecution results in a conviction, whether reversed or not, the law states that absent fraud, perjury or corrupt practices, the conviction makes a prima facie case that probable cause is present for filing the charges. *Royal Oil Company, Inc. v. Wells*, 500 So.2d 439, 443 (Miss. 1986).

"Probable cause requires a concurrence of (1) an honest belief in the guilt of the person accused, and (2) reasonable grounds for such belief." *Id* at 443.

The Appellants allege that Richardson filed the charges as vengeance for the Farmers purchasing a smaller tract of land from an adjoining neighbor at a lesser price. This is clearly not the case. Because of the clause in the lease agreement, Richardson honestly believed that the materials removed by Farmer were part of improvements that remained with the real property upon the Farmers' default. Apparently, the Justice Court Judge agreed with Richardson and returned a verdict of guilty against Farmer.

These facts which can clearly be determined by a review of the pleadings, refutes Farmer's claim of malicious prosecution. No malice can be shown on Richardson's part, because of the valid underlying lease purchase agreement. The Farmers offered no evidence of fraud, perjury or corrupt practices to the Chancellor and again offer no such

these materials despite who purchased and installed them.

Richardson had a valid reason to believe that Farmer intentionally removed these items from Richardson's property while knowing that they belonged to Richardson pursuant to the terms of the contract. Richardson therefore filed petit larceny charges against Farmer and Farmer was convicted in Justice Court, but said conviction was later overturned in Circuit Court.

With regard to malicious prosecution in cases where a lower court prosecution results in a conviction, whether reversed or not, the law states that absent fraud, perjury or corrupt practices, the conviction makes a prima facie case that probable cause is present for filing the charges. *Royal Oil Company, Inc. v. Wells*, 500 So.2d 439, 443 (Miss. 1986).

"Probable cause requires a concurrence of (1) an honest belief in the guilt of the person accused, and (2) reasonable grounds for such belief." *Id* at 443.

The Appellants allege that Richardson filed the charges as vengeance for the Farmers purchasing a smaller tract of land from an adjoining neighbor at a lesser price. This is clearly not the case. Because of the clause in the lease agreement, Richardson honestly believed that the materials removed by Farmer were part of improvements that remained with the real property upon the Farmers' default. Apparently, the Justice Court Judge agreed with Richardson and returned a verdict of guilty against Farmer.

These facts which can clearly be determined by a review of the pleadings, refutes Farmer's claim of malicious prosecution. No malice can be shown on Richardson's part, because of the valid underlying lease purchase agreement. The Farmers offered no evidence of fraud, perjury or corrupt practices to the Chancellor and again offer no such

evidence in their brief to this Court. Richardson made his prima facie case and therefore the Farmer's allegation for malicious prosecution, which fails to meet all the elements of said tort, was correctly dismissed by the Chancellor. Because Farmer failed to prove the basic elements of a malicious prosecution claim, the Court need not address the damages he alleges in relation thereto.

The second alleged cause of action is for destruction of private property, which they enumerate as follows: a) digging up and cutting water lines; b) knocking down their fence; and 3) poisoning their dog.

The water lines that were installed on the property became Richardson's personal property upon the Farmers default under the terms of the lease purchase agreement. The Farmers had no easement at the time to install anything across Richardson's property. Therefore Richardson cannot be guilty of destruction of his own property.

As to the fence, a valid land line dispute arose between the Farmers and Richardson and both parties believed the fence was on their property. The Court appointed a surveyor to establish the boundary lines between the parties properties, and the parties eventually resolved both of these issues by execution of a mutual non-exclusive easement, which Richardson conveyed to the Farmers for ingress, egress and utility installation. The Chancellor recognized and approved the surveyor's statement and the easement as resolving the boundary line dispute issues, which encompass the current claims by the Farmers regarding the water lines and fence posts.

And finally, neither the Complaint nor the Amended Complaint filed by the Farmers makes mention of the alleged poisoning of the Farmers' dog. While Mississippi

has abandoned the technical pleading requirements, this does not eliminate the necessity of stating circumstances, occurrences and events that support a proffered claim. PACCAR Financial Corp. v. Howard, 615 So.2d 583 (Miss. 1993). The pleadings filed by the Farmers are insufficient to put Richardson on notice that he was being accused of and sued for poisoning the Farmers dog. In a letter to the undersigned counsel dated October 20, 2005, attempting to outline what the Farmers believed to be the remaining issues, nothing is included about the alleged poisoning of the dog. (See Ducker letter dated 10/20/2005 in Appellee's Record Excerpts pp. 24-25). The pleadings fail to meet the requirements of *Miss Rule of Civil Procedure 8*, and therefore with regard to the alleged poisoning incident, the Complaint and Amended Complaint fail to state a claim upon which relief may be granted. The third and final cause of action alleged by the Farmers, is Brenda Farmer's claim for intentional infliction of emotional distress. She claims that Richardson threatened and attempted to run over her with a tractor. This matter was adjudicated in Lamar County Justice Court on August 17, 1999, and Richardson was found not guilty of simple assault. (See Justice Court Computer Printouts in Appellee's Record Excerpts p. 26). Therefore, once again the Farmers are attempting to re-litigate a matter that was already brought to final judgment by another court. *Res judicata* prevents the Farmers from bringing this claim a second time.

CONCLUSION

The litigation between these parties has been going on for over ten years, and has involved fourteen different Justice Court actions, two Circuit Court actions, and finally this Chancery Court action. The litigation between these parties all stems from a boundary line

has abandoned the technical pleading requirements, this does not eliminate the necessity of stating circumstances, occurrences and events that support a proffered claim. PACCAR Financial Corp. v. Howard, 615 So.2d 583 (Miss. 1993). The pleadings filed by the Farmers are insufficient to put Richardson on notice that he was being accused of and sued for poisoning the Farmers dog. In a letter to the undersigned counsel dated October 20, 2005, attempting to outline what the Farmers believed to be the remaining issues, nothing is included about the alleged poisoning of the dog. (See Ducker letter dated 10/20/2005 in Appellee's Record Excerpts pp. 24-25). The pleadings fail to meet the requirements of *Miss Rule of Civil Procedure 8*, and therefore with regard to the alleged poisoning incident, the Complaint and Amended Complaint fail to state a claim upon which relief may be granted. The third and final cause of action alleged by the Farmers, is Brenda Farmer's claim for intentional infliction of emotional distress. She claims that Richardson threatened and attempted to run over her with a tractor. This matter was adjudicated in Lamar County Justice Court on August 17, 1999, and Richardson was found not guilty of simple assault. (See Justice Court Computer Printouts in Appellee's Record Excerpts p. 26). Therefore, once again the Farmers are attempting to re-litigate a matter that was already brought to final judgment by another court. *Res judicata* prevents the Farmers from bringing this claim a second time.

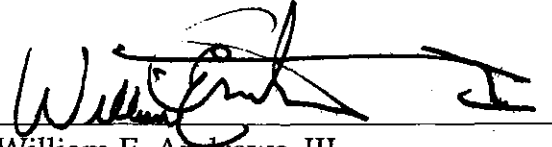
CONCLUSION

The litigation between these parties has been going on for over ten years, and has involved fourteen different Justice Court actions, two Circuit Court actions, and finally this Chancery Court action. The litigation between these parties all stems from a boundary line

dispute that was resolved by a Court ordered survey and the execution of a Mutual Non-Exclusive Easement. The various assault and trespass charges were litigated and adjudicated in Justice Court, and with the exception of the "disturbance of the family" charge to which Richardson pled guilty, he was found not guilty of all allegations by the Farmers. The binding arbitration found Richardson not liable for the alleged personal injuries that resulted from the fight between Clyde Farmer, Terry Farmer and Richardson. The Farmers claims of destruction of property have either been litigated in previous actions and were properly dismissed by the Chancery Court on the doctrines of *res judicata* or *collateral estoppel*; or they were not properly plead so as to put Richardson on notice and therefore cannot be addressed initially in this appeal. Finally, Brenda Farmer's intentional infliction of emotional distress claim is unfounded, insufficiently pled and was previously adjudicated in Richardson's favor in Justice Court.

This litigation has drug on entirely too long, and the Farmers have had their due process and numerous days in court. The Chancellor correctly dismissed the matter in his Final Judgment dated August 30, 2006, after reviewing the outlines provided by counsel of all the prior litigation and events. (See Andrews letter dated 10/31/2005 in Appellee's Record Excerpts pp. 27-31). That Judgment dismissing the case should be affirmed by this Court.

Respectfully submitted on this the 27th day of March, 2007.


William E. Andrews, III,
Attorney for the Appellee

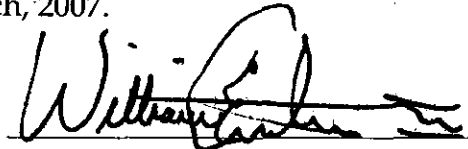
CERTIFICATE OF SERVICE

I, William E. Andrews, III, Attorney for the Appellee, Richard Richardson, do hereby certify that on the 27th day of March, 2007, I caused to be delivered, via United States Mail, postage pre-paid, a true and correct copy of the Appellee's Brief to the following persons:

Hon. James H.C. Thomas, Jr.
Chancellor
Post Office Box 807
Hattiesburg, MS 39403

Hon. William L. Ducker
Attorney for Appellants
Post Office Box 217
Purvis, MS 39475

So certified this the 27th day of March, 2007.

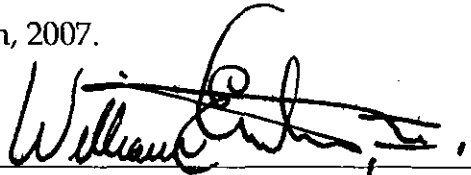
A handwritten signature in black ink, appearing to read "William E. Andrews, III", written over a horizontal line.

William E. Andrews, III
Attorney for the Appellee

CERTIFICATE OF FILING

I, William E. Andrews, III, Attorney for the Appellee, do hereby certify that I have this date caused to be delivered, to the Clerk of the Supreme Court, Betty W. Sephton at 450 High Street, Jackson, MS 39201, the original and three (3) copies of the above and foregoing Brief of Appellee.

So certified this the 27th day of March, 2007.

A handwritten signature in black ink, appearing to read "William E. Andrews, III", written over a horizontal line.

William E. Andrews, III
Attorney for Appellee