IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

BANCORPSOUTH BANK	**APPELLANT**
v.	**NO. 2006-CA-01738**
ALBERT JERMAINE DUCKETT and WALTER WILLIAMS JR.	**APPELLEES**

APPELLEES' REPLY TO AMICUS CURIAE BRIEF OF THE MISSISSIPPI BANKERS ASSOCIATION

ON APPEAL FROM THE CHANCERY COURT OF TISHOMINGO COUNTY, MISSISSIPPI

ORAL ARGUMENT REQUESTED

Respectfully submitted,

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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

BANCORPSOUTH BANK APPELLANT

v. NO. 2006-CA-01738

ALBERT JERMAINE DUCKETT and WALTER WILLIAMS JR. APPELLEES

REPLY BRIEF OF APPELLEES TO *AMICUS CURIAE* BRIEF OF THE MISSISSIPPI BANKERS ASSOCIATION

I. INTRODUCTION

The Mississippi Bankers Association ("MBA"), as an industry trade and lobbying organization, considers itself more at liberty to make free with the "parade of horribles" than if it were simply one litigant. Simply said, the MBA is at liberty to say things that the Appellant, BancorpSouth, cannot. This case is simply one dispute between these private parties, having little consequence to the larger world of banking institutions. The MBA frets about the ostensible risk to which its members' profits have been put by the incautious, even callous acts of one of their member institutions (in this case BancorpSouth). The short answer to the plea of allegedly disastrous consequences to members of MBA that are said to result from this Court's affirming the judgment here is simply that those consequences are of no concern to this Court. The Court is obliged to apply the law as it finds it, and if the MBA is intolerably aggrieved by that law, then MBA's recourse is to petition the legislature for succor. The MBA, no doubt, is only too familiar with the great halls and more intimate byways of the Mississippi legislature as they have lobbied long and hard for legislation removing them from any liability for any act no matter how egregious.

The illogic of MBA's plea is made even more manifest by its implying that its members have no choice but to accept fiduciary deposits under court order. If a bank believes that it has so little control over the actions of its employees that it simply cannot accept the consequences of the employees' failing to do what their managers instruct them to do, then that bank can refuse to accept fiduciary deposits. No law, so far as is known, requires or even obliges a bank to accept any deposit from anyone that it would otherwise decline to accept. Banks exist, in large part, to manage deposits for their customers and to provide a "service". This seems to be forgotten in today's society by the big banks who seem to now believe that instead of service their first priority is to make money. They are handsomely rewarded for taking our money and using it to their profit.

Inevitably their control procedures sometimes break down, and they must suffer the consequences on those rare occasions when that happens. But that is simply a cost of doing business that they can accept or reject. The Appellees had no such choice. Their funds were entrusted to BancorpSouth without their consent by their guardian. The funds they lost are all they had. Both of the wards in this situation were left penniless by the actions of the bank and the concern expressed by MBA was over the potential loss of profit that banks would suffer in the future. To the wards the loss is not just a cost of doing business, but was their whole life. So before the MBA soaks its crying towel with more crocodile tears, one must keep in mind which party is at risk in this case. Despite all the verbal hand wringing, the members of the MBA will survive this Court's affirming the chancellor's order in this case.

A. THE COURT BELOW CORRECTLY FOUND THAT THE APPELLANT BREACHED THE DUTY IT OWED TO THE APPELLEES.

The MBA argues that the chancellor "in effect" found a fiduciary duty to be owed by BancorpSouth to the Appellees. The chancellor found no such duty, but he could have done so under the facts of this case. The MBA and BancorpSouth concede, as they must, that BancorpSouth received a copy of the court order issued pursuant to Miss. Code Ann. § 93-13-17. That order and the statute made it unmistakably clear to BancorpSouth that it was accepting the deposits from the guardian for a special purpose and for the benefit of others. Not content to argue that the chancellor simply erred, the MBA must take the additional rhetorical step of claiming that the court "grossly erred" in concluding that the deposit was different than any other general deposit not made for a special purpose. That, of course, is *not correct.* But by no stretch of the imagination did the court find that BancorpSouth was to serve as a "'surety' for the full amount of the deposit." (Amicus Curiae Brief at 4.)

Instead, the court followed well-settled legal principles that have been and continue to be widely recognized and applied. Courts consistently draw a distinction between general deposits and special deposits for purposes of determining the duty of care owed by a bank in handling those deposits. If the deposit in this case were simply a general deposit, even one made by a fiduciary, the MBA would be entirely correct in arguing that the relationship of the depositing guardian to the bank was simply one of debtor-creditor. But that is not what the deposit of funds was in this case. By virtue of the statutory restriction on the bank's authorized release of those funds to the guardian without approval of the court issuing the order, the funds in question were in the nature of a special deposit.

> Generally, where funds are on deposit at a bank, a presumption of a debtor-creditor relationship arises. . . . "As a general rule, in the absence of an agreement to the contrary, a deposit, not made specifically applicable to some other purpose, may be applied by the bank in payment of the indebtedness of the depositor." *United States v. Butterworth-Judson Corp.*, 267 U.S. 387, 394-95, 45 S.Ct. 338, 340, 69 L.Ed. 672, 677 (1925) (citing authority).
>
> Nonetheless, this presumption is rebutted and mutuality negated when the funds on deposit with the bank are held in a special account or impressed with a trust.

In re Multiponics, Inc., 622 F.2d 725, 728 (5th Cir. 1980) (citation omitted). Mississippi law is entirely in accordance with this view. *See Deer Island Fish & Oyster Co. v. First Nat'l Bank*, 166 Miss. 162, 146 So. 116, 117 (1933) ("Generally, when a person deposits money, or its equivalent, in a bank, such as the defendant in this case, the relation of debtor and creditor is set up unless it is a special deposit of a particular thing"); *First Invs. Corp. v. Rayner*, 95-CA-00614-SCT (¶ 31), 738 So. 2d 228, 235 (Miss. 1999) ("It is well settled that funds deposited to a *general account* belong to the bank, with the bank becoming the debtor to the owner of the account for the amount of the deposit" (emphasis added) (quoting *Deposit Guar. Nat'l Bank v. B.N. Simrall & Son,* 524 So. 2d 295, 299 (Miss.1987)); *Deposit Guar. Nat'l Bank v. B.N. Simrall & Son*, 524 So. 2d at 299 ("There are two things definite that I have determined from the evidence and that is that we don't have a trust fund nor a special deposit").

There can be little doubt, therefore, that the statute, M.C.A. § 93-13-17, transformed what might have been in another context a general deposit into what was in this context a special deposit. As a consequence, BancorpSouth indeed became a fiduciary, owing strict duties of faithfulness and loyalty to the beneficiaries of the guardianship.

> "A deposit for a specific purpose creates a fiduciary relationship and the purpose must be fulfilled and executed according to the terms of the agreement of deposit."

Teeling v. Ind. Nat'l Bank, 436 N.E.2d 855, 857 (Ind. Ct. App. 1982) (quoting *Sindlinger v. Dep't of Fin. Inst.*, 210 Ind. 73, 199 N.E. 715, 723 (1936); *accord Sterling Sav. Bank v. Air Wis. Airlines Corp.*, 492 F. Supp. 2d 1256, 1260 (E.D. Wash. 2007) (applying Washington law) ("Title to a general deposit passes to the bank and the bank becomes a debtor of the depositor. . . . A special deposit is a different matter. Unlike a general deposit, title to a special deposit does not pass to the bank. . . . Instead, 'the bank becomes a trustee and holds the money in a fiduciary capacity'") (citations omitted)); *Engleman v. Bank of Am. Nat'l Trust & Sav. Ass'n*, 98 Cal. App. 2d 327, 219 P.2d 868, 870-71 (1950) ("Deposits of funds for a special purpose . . . have all the attributes of special deposits and are generally termed and construed as such. In addition, the bank has the fiduciary duty of an agent to apply the deposit to the particular purpose for which it was delivered to the bank, and in case of the misapplication of the deposit, it may be followed on the trust fund theory").

So the whole underlying premises of MBA's argument—namely, that it owed no fiduciary duty to the beneficiaries of the guardianship—simply is not correct. In the first place, that heightened duty of care was imposed by the court order, with which it had been served when it accepted the funds for deposit. Second, the enhanced duty of care arose by virtue of the character of the funds on deposit as being a special deposit. Thus, the MBA's position is unfounded both by virtue of the statute and by virtue of the common law of Mississippi. It simply could not allow the funds to be withdrawn by the fiduciary without court approval and then wash its hands of the matter. BancorpSouth was obliged to assure that the funds were managed strictly in accordance with the mandate of the court and in accordance with the highest standard of fiduciary duty imposed on the bank by the common law. In neglecting or failing properly to perform that duty, BancorpSouth exposed itself to the consequences of its conduct. *See Green v. Frazier*, 242 Miss. 315, 135 So. 2d 399, 401 (1961) ("'[A fiduciary relation] is one in which, if a wrong arises, the same remedy exists against the wrongdoer on behalf of thc principal as would exist against a trustee on behalf of the cestui que trust'" (quoting *Cresswell v. Cresswell*, 164 Miss. 871, 144 So. 41, 43 (1932))). If BancorpSouth was not prepared to accept those consequences, then it was obliged to refuse to accept the proffered funds for deposit.

The MBA's citation to M.C.A. § 81-5-34 is fine as far as it goes, but it misses the point. In this case, BancorpSouth released the funds to the guardian despite, and even in defiance of the court order restricting the bank's discretion in doing so. The court's order would be of little value if it could be ignored with impunity by the depository institution. The guardian is, or course, liable to the beneficiaries for his breach of duty, irrespective of any liability assumed by the bank in releasing the funds. M.C.A. § 81-5-34 does no more than limit the bank's liability so long as it acts in accordance with the directions that it has been given. The court's order enlarges the scope of the duties owed by the bank, which accepts the funds acknowledging the expanded scope of its duties. Had the bank simply complied with the terms of the order, no loss would have been suffered, and we would not be before the Court. Unfortunately, BancorpSouth for reasons known best to itself chose to ignore the terms of the order and release the funds under circumstances where the risk of loss resulting from the bank's failure to control the conduct of its own employee is sought to be shifted from the bank to the beneficiaries of the guardianship. The court issuing the order in this case sought to avoid precisely that outcome.

MBA cites a number of Mississippi authorities standing for the proposition that banks generally do not stand in a fiduciary relationship with their depositors and customers. Appellees have no quarrel at all with those cases, and they are soundly reasoned. They do not support the MBA's position here, of course, because none of them involved a deposit for a special purpose or a special deposit. The cases involving special deposits, many of which have been cited here, stand squarely for the proposition that where the bank accepts deposits into a special account, it assumes a fiduciary relationship with respect to the handling of those funds to the beneficiaries. That proposition of law is neither unconventional nor unknown to the common law. Mississippi law recognizes that a bank may be called upon to assume responsibilities broader than those it chooses to impose on itself. In this case, for example, reasonable commercial standards in the banking industry would require that where a bank accepts guardianship funds pursuant to a court order, it would abide strictly by the terms of that order and decline to release those funds in the special deposit except as the court authorizes it to do so. *See, e.g., Delta Chem. & Petrol. v. Citizens Bank of Byhalia, Miss.*, 1998-CA-010135-COA (¶ 41), 790 So. 2d 862, 875 (Miss. Ct. App. 2001) ("We note that in addressing whether the bank acted in a reasonable commercial manner, it is not enough to weigh the bank's actions against its own commercial standards. The bank's actions must be weighed against good faith dealings and reasonable commercial standards as apply to the banking industry").

Given that the premise of the MBA's argument is incorrect, the argument should not persuade the Court. Moreover, the MBA far, far overstates the case when it argues that adopting the position of Appellees by affirming the trial court "would ignore centuries of American jurisprudence, and would impose for the first time on the banks of Mississippi a new and alien set of legal duties." (Amicus Curiae Brief at 6.) To the contrary, the judgment in this case should be affirmed since BancorpSouth clearly did owe a duty of care to the Appellees, which duty was breached when the funds were released to the guardian without court approval, proximately resulting in loss to the beneficiaries (the Appellees herein).

The MBA relegates to the footnotes two obscure points having little to do with the merits of this appeal. Amicus Curiae Brief at 7 n.4 bemoans the failure of the guardian to obtain a bond in the full amount of the deposit. If he had done so, then this case would not have arisen, but that is beside the point. BancorpSouth is liable to the beneficiaries irrespective of the guardian's liability (which is obvious), but BancorpSouth is entitled to an offset in the amount of any third-party recovery available to the Appellees. BancorpSouth did receive the benefit of that offset. Amicus Curiae Brief at 8 n.8 makes reference to the availability of FDIC insurance. That has nothing to do with this case, since it would be available only in the event of the bank's insolvency. The court issuing the order quite properly wanted to assure that the beneficiaries of the guardianship would at least have the benefit of deposit insurance if the depository institution failed. How that has anything to do with this case is a complete mystery.

B. PUNITIVE DAMAGES WERE PROPERLY AWARDED IN THIS CASE.

The MBA correctly argues that the general standards for awarding punitive damages are set out in M.C.A. § 11-1-65. While the general standards are statutory, whether punitive damages should be awarded in a particular case is intimately bound up with the facts of that case. This is a case where BancorpSouth's conduct richly merited an award of punitive damages. It is useful to compare this case, which does merit the award of punitive damages, with another similar case, which did not merit the award of punitive damages. The conduct of the two institutions could not be more different. In the reported case, a bank teller, a skillful forger, was able to misappropriate a customer's funds by forging the customer's signature to a withdrawal document. Despite a thorough investigation, the bank was unable to unmask the forger. Only a document expert was able to determine that the signature was a forgery. When proof of the forgery was presented to the bank, it restored the funds that were the subject of the defalcation to the customer. This Court's reasoning for not approving the award of punitive damages in that case is instructive.

> It is . . . clear that the forgery was so good that neither [the plaintiff's] attorney nor bank officials could determine the withdrawal document was a forgery. In fact, it ultimately took a handwriting expert to make that determination. Rather than advise the bank immediately that the document was indeed a forgery, Wise's attorney waited some two months and then filed suit. This was the bank's first knowledge that the withdrawal slip was in fact a forgery. The sole obligation of the bank, absent bad faith in its handling of the matter, was to make restitution. Miss. Code Ann. § 75-4-103 (Rev.2002). Restitution was immediately made by the bank upon learning of the forgery. The bank did all that it could do to ascertain what actually occurred concerning this incident. There was no bad faith by the bank. Thus, this is not a punitive damages case.

Wise v. Valley Bank, 2000-CT-00443-SCT (¶ 14), 861 So. 2d 1029, 1034 (Miss. 2003).

In this case, by way of contrast, the attitude of BancorpSouth, unlike that of Valley Bank, has been defiant throughout. Even though it knew that its employee, without authority of the court or of the bank, volunteered to release the funds to the guardian, BancorpSouth has steadfastly refused and continues to refuse to reimburse the Appellees for the amount that they lost (net of the amount of the guardian's bond). Had an offer of reimbursement been made by BancorpSouth early on in the course of this dispute, the Appellees almost certainly would have accepted it. A voluntary resolution would have called for the payment of interest only at the contract rate. But that is not what happened. Instead, BancorpSouth (and the MBA) remain defiant even when confronted with the facts. It has taken extensive litigation and aggressive advocacy by the Appellees' attorneys ultimately for the Appellees to prevail and obtain a judgment against BancorpSouth. Even in this Court BancorpSouth continues to insist that it owes no obligation to the Appellees, even though it was due to BancorpSouth's failure properly to supervise its employee that the loss was suffered by the Appellees. A more conciliatory attitude by BancorpSouth would have been reciprocated.

The award of punitive damages, of course, is the exception, rather than the rule. *See Hopewell Enters. v. Trustmark Nat'l Bank*, 680 So. 2d 812, 820 (Miss. 1996) ("Punitive damages are generally awarded for heightened torts which are the product of gross, callous, or wanton conduct, often accompanied by fraud and deceit"). The courts of this state have long held that the awarding of punitive damages is a matter of discretion with the trier of fact, and that award will not be disturbed in the absence of a showing of abuse of that discretion. *See Mickalowski v. Am. Flooring, Inc.*, 2005-CA-01864-COA (¶ 24), 2007 WL 1532564, at *7 (Miss. Ct. App. 2007) ("The award of punitive damages and the amount is within the discretion of the trier of fact"); *S. Cent. Bell v. Epps*, 509 So. 2d 886, 893 (Miss. 1987) ("[The] decision [to award punitive damages] cannot come from precise formula, but rather must come from the trial judge's life experience").

The MBA argues, Amicus Curiae Brief at 10, that "clerical error or honest mistake does not give rise to punitive damages." *Sessoms v. Allstate Ins. Co.*, 634 So. 2d 516, 519 (Miss. 1993). Certainly a bank, like everyone else, is entitled to make a mistake, and punishment for making a simple mistake should not be meted out by way of an award of punitive damages. This Court has recognized that where funds are withheld or paid out under some cognizable claim of right, even if mistaken, that alone will not warrant an award of punitive damages.

> There was some rational justification for the policy of Merrill Lynch to place some kind of freeze on a joint account when it received notice that the owners had become hostile to each other. . . On the other hand, the release of the funds on Mrs. Luckett's check was unintentional, a mistake, and did not constitute conduct or that degree of negligence which justifies the imposition of punitive damages.

Finkelberg v. Luckett, 608 So. 2d 1214, 1220 (Miss. 1992).

The award of punitive damages comes about not simply by reason of the mistake, but rather by way of the circumstances surrounding the mistake. If BancorpSouth had simply acknowledged that its employee mistakenly, but wrongfully, authorized the withdrawal of the specially deposited funds by the guardian, then an accommodation could have been reached. But BancorpSouth has persistently refused to acknowledge that it is responsible for the mistake and to accept the consequences. It simply has not acted in good faith. There is little doubt that if the bank in *Wise* had known that the loss was occasioned by the act of its employee, but it still had refused to reimburse its customer, this Court would have taken a far different view of the propriety of awarding punitive damages.

Again, the context in which the loss is suffered makes all the difference. The chancellor below was justifiably skeptical of the merits of BancorpSouth's position, particularly where thousands, not millions, of dollars were at risk. Yet the MBA argues that the electronic systems of BancorpSouth "worked exactly as they were supposed to [work] with the sole exception of one, isolated account." That is cold comfort to these Appellees. It is gratifying in the abstract that BancorpSouth has seen fit to implement systems to avoid what happened in this case, but now it knows that its electronic systems are not failsafe. Avoiding the loss that was suffered by the Appellees was a simple matter of requiring approval of funds in a restricted account to be approved by a managerial or executive level employee. Tellers should be given very little discretion, and certainly not the discretion to authorize the withdrawal of funds subject to a court order. That proposition seems so elementary that one wonders how it could have been ignored in this case.

Again, it is not BancorpSouth's control procedures that are at issue in this litigation. What is at issue is BancorpSouth's response to the undeniable fact that those procedures failed in this case. Its position in this regard is peculiar. At once the MBA argues that BancorpSouth's control procedures were aimed at preventing just this kind of wrongful authorization of a withdrawal, yet at the same time it argues that the control procedures would not have avoided the loss. It is effectively renouncing responsibility for the actions of its agents.

> There is no evidence that any BancorpSouth teller who dealt with Appellees' guardian ever willfully or deliberately allowed funds to be paid out in violation of the order; indeed, the failure to transfer the account restriction to the new system meant that such tellers could not possibly have known that the account withdrawals were in fact in violation of a court order. A bank teller cannot form a willful or deliberate intent to violate a court order they do not know exists.

(Amicus Curiae Brief at 13.)

The MBA's argument proves too much. It admits that the funds were paid out in violation of the court order, and it admits that the teller who did so probably acted in ignorance of the order. What is at issue is not what the teller knew or did not know. The Appellees, after all, have no control over BancorpSouth's employees. What is at issue is that the teller was in a position to pay out the funds without proper authorization in the first place. That BancorpSouth's control procedures failed is understandable; the MBA, to its credit, recognizes as much; and the Appellees accept that explanation. But once it knew and understood that the funds had been paid out in violation of the order, then why did BancorpSouth not offer to reimburse the Appellees for the loss that resulted from a mistake that MBA now admits BancorpSouth knew about all along? If BancorpSouth had done that, as did Valley Bank under comparable circumstances, then there would have been no reason for Appellees to ask for punitive damages, and no justification for the chancellor to have awarded them.

This is not a case calling for a contempt citation. The purportedly contemptuous conduct has already occurred. There is no need to coerce the defendant into doing anything. *See Moulds v. Bradley*, 1999-CA-00994-SCT (¶ 6), 791 So. 2d 220, 224 (Miss. 2001) ("This Court has explained that civil contempt is to coerce action while criminal contempt is to punish for violation of an order of court"). Appellees never sought a civil contempt citation, and they could not have obtained one, even had they asked for it. *See Riley v. Wiggins*, 2004-CA-00426-COA (¶ 5), 908 So. 2d 893, 896 (Miss. Ct. App. 2005) ("Where the primary purpose of the contempt action is to enforce the rights of private litigants, or if the penalty is to enforce compliance with a court order, then the contempt is civil. . . . . In civil contempt cases the punishment is conditional in nature, often to coerce future obedience"). Here, there is no future obedience issue.

In any event, the court's order establishes the scope and extent of the duty owed by BancorpSouth to the Appellees. It has no significance beyond that context. Any further discussion of enforcement of court orders by way of a citation for contempt is beside the point. The court's inherent contempt power has nothing to do with making a litigant whole by way of a recovery of damages.

C. INTEREST WAS PROPERLY AWARDED AT THE JUDGMENT RATE.

The MBA's argument proceeds from its assumption that the Appellees' right to recover arises by reason of the deposit contract between the guardian and BancorpSouth. Of course, it does not. The claim of the Appellees is that BancorpSouth wrongfully authorized payment in violation of the court order, not in violation of the deposit contract. The MBA further fogs the issue by referring casually to the "contract between the parties," without noting that the Appellees were not parties to the deposit contract. The Appellees' action could have proceeded to judgment without regard to the deposit contract, so long as they established (which the MBA has conceded) that the withdrawal of funds by the guardian was without court approval. If this were simply a suit on a promissory note, the MBA undoubtedly would be correct. *See Tower Loan of Miss. v. Jones*, 1998-CA-01334-COA (¶ 10), 749 So. 2d 189, 191 (Miss. Ct. App. 1999). But it is not.

It has been argued previously that BancorpSouth breached the fiduciary duty it owed to Appellees, who were parties to no contract with the bank. The straightforward answer to MBA's argument is that it has been held under Mississippi law that a judgment for breach of fiduciary duty bears interest at the judgment rate. *Estate of Van Ryan v. McMurtray*, 505 So. 2d 1015, 1019 (Miss. 1987). The substance of Appellees' claim sounds in tort, not in breach of contract. Again, the position of Appellees throughout this case has been that BancorpSouth, far from breaching any contract with the Appellees (and, as nonparties, they would have had difficulty enforcing the deposit contract), instead breached a legal duty of care that it owed to the Appellees. The MBA concedes as much, since in Part III of their Amicus Brief, they argue that this a case of "simple negligence."

> [Clerical errors are the result of unintentional human error and oversight, *i.e.*, simple negligence. They are not the product of such reckless or willful conduct as required under Mississippi law to support an award of punitive damages.

(Amicus Curiae Brief at 10.) If this were a claim for breach of contract, as the MBA argues for the first time in Part IV of the Amicus Brief, then BancorpSouth's liability could not be excused on the basis of the theories that the MBA urges to the Court in Part II of the Amicus Brief.

The MBA cannot with any consistency take the position that the substance of this case is a claim for negligence, while at the same time arguing that the Appellees, having proven their claim of negligence, are limited to the rate of interest set out in a contract to which they are not parties and which they do not claim has been breached. In fact, the only time a breach of contract is even mentioned is in part IV of the Amicus Brief, where it is wholly self-serving. The MBA knows full well that this case sounds primarily in tort, not breach of contract. Accordingly, the MBA's argument that the Appellees will be in a "better position" if they prevail here than if the funds had remained on deposit wholly misses the point. If the funds had remained on deposit, there would be no claim at all.

The MBA's argument puts the shoe on the wrong foot. If the MBA's argument prevailed and the Appellees were limited to recovery of the contract rate of interest, the judgment they were awarded in this case would have no deterrent effect at all. BancorpSouth will have suffered no adverse consequence as a result of its wrongful release of the funds entrusted to it under the court's order. BancorpSouth, of course, could have achieved that result without doubt if it had simply agreed to reimburse the amount owed when the wrongful withdrawal was pointed out to it. Yet BancorpSouth refused and still refuses to do that. To put it simplistically, BancorpSouth would be rewarded for doing the wrong thing as though it had done the right thing. The problem with that outcome is that it has taken the Appellees many months of tough litigation and this appeal to achieve that result. Yet the MBA would have this Court treat those many months of contentious litigation as if they had never happened. There simply is no plausible reason why the chancellor should have been limited to the contract rate in awarding interest on the judgment in this case.

CONCLUSION

Thus, and for all the foregoing reasons, the judgment of the Chancery Court of Tishomingo County should, in all respects, be affirmed.

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