IN THE COURT OF APPEALS FOR THE STATE OF MISSISSIPPI

A. J. STOVALL **APPELLANT**

Vs. **Cause No: 2006-CA-02144**

W. L. HAYES and HOLLY SPRINGS TIRE **APPELLEES**

BRIEF of the APPELLEES, W.L. HAYES and HOLLY SPRINGS TIRE

ON APPEAL FROM THE CIRCUIT COURT OF MARSHALL COUNTY, MISSISSIPPI

(ORAL ARGUMENT IS NOT REQUESTED)

SUBMITTED BY:

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The undersigned counsel of record certifies that the following listed 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.

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   Oxford, MS 38655

2. W.L. Hayes, Appellee
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   Holly Springs, MS 38635

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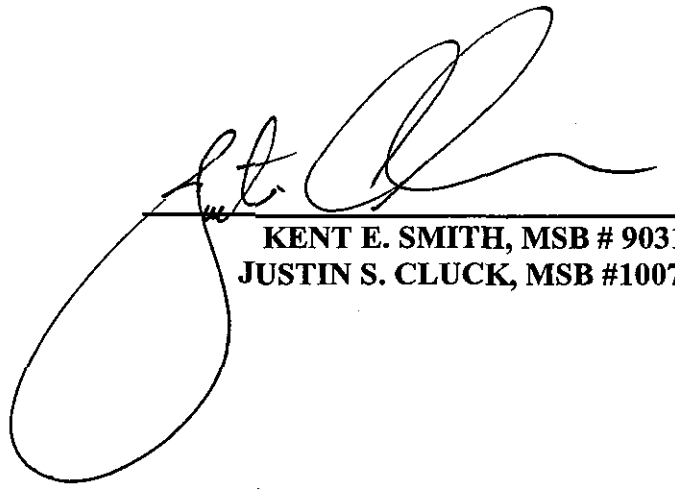

KENT E. SMITH, MSB # 9031
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STATEMENT REGARDING ORAL ARGUMENT

Oral argument would not be helpful in this case, as it would not aid in offering additional facts, law or argument in support of these issues. The issues before the Court are straightforward issues of law applied to the facts of this case. As such, oral argument would not be of benefit and is not requested.

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STATEMENT OF THE ISSUES

Whether the Circuit Court of Marshall County was correct in finding that the contract entered into by the parties was modified by the parties subsequent course of dealings and course of conduct.

STATEMENT OF THE CASE

The Appellant, Dr. A.J. Stovall, filed a Complaint on September 30, 2005 in the Justice Court of Marshall County against the Appellees, W. L. Hayes and Holly Springs Tire, in regard to a contract dispute between the aforementioned parties. The Marshall County Justice Court ordered Dr. Stovall to pay a sum of $400.00 to W. L. Hayes and Holly Springs Tire and further ordered W.L. Hayes and Holly Springs Tire to return the automobile to Dr. Stovall for the aforementioned compensation.

Dr. Stovall appealed the Justice Court decision to the Marshall County Circuit Court on November 22, 2005. The Marshall County Circuit Court entered judgment on December 4, 2006, finding that Dr. Stovall should pay $868.22 to W. L. Hayes and Holly Springs Tire.

STANDARD OF REVIEW

Circuit court judges sitting without a jury are accorded the same deference given to a chancellor when reviewing their findings of fact. *Mason v. State*, 799 So.2d 884, 885 (Miss.App.2001)(*citing City of Jackson v. Perry,* 764 So.2d 373, 376 (Miss.2000); *Puckett v. Stuckey*, 633 So.2d 978 (Miss.1993); *Sweet Home Water & Sewer Ass'n v. Lexington Estates, Ltd.,* 613 So.2d 864, 872 (Miss.1993); *Allied Steel Corp. v. Cooper,* 607 So.2d 113, 119 (Miss.1992)). If the Judge's factual findings are supported by substantial, credible, and reasonable evidence, then their holdings are safe on appeal. *Id.* At review, an appellate court must accept the evidence from the record which supports or reasonably tends to support the lower court's decision in determining a question of fact. *Jackson Public School Dist. v. Smith*, 875 So.2d 1100, 1102 (Miss.App.2004). The lower court's findings of fact will not be disturbed unless those findings are manifestly wrong, clearly erroneous, or an erroneous legal standard was applied. *Bell v. City of Bay St. Louis,* 467 So.2d 657, 661 (Miss.1985).

The existence of a contract is a question of fact that will be determined by a trier of fact. 75A Am.Jur.2d Trial § 791 (1991). Whether an agency relationship has been created is also a question of fact and may be established the same as any other fact. The Plaintiff bears the burden to prove that the relationship existed and if proven, such a relationship will exist regardless of the intentions of the parties and their designation of the relationship. *Butler v. Bunge Corporation*, 329 F.Supp. 47, 56 (N.D. Miss.1971)(*citing* 3 Am.Jur.2d § 21 at 430).

SUMMARY OF THE ARGUMENT

In April of 2005 Dr. Stovall experienced problems with the thermostat in his 1998 Plymouth Neon which caused the vehicle to overheat. After taking the vehicle to several auto repair shops, he eventually came to Holly Springs Tire where a mechanic, Greg Wilson, told him he could repair his vehicle. After initial repair work did not remedy the thermostat problem Dr. Stovall told Greg Wilson to "get it fixed." After several more failed attempts to diagnose the cause of the engine overheating Greg Wilson finally determined that a faulty head gasket was causing the car to overheat. After the repairs were completed, Dr. Stovall returned to collect his vehicle but, and was presented with an invoice for the labor costs totaling $868.22. Dr. Stovall disputed that he had agreed to pay those charges and instead of paying for the services rendered he filed a replevin action in the Justice Court of Marshall County.

The Justice Court awarded $400.00 to Holly Springs Tire for the services rendered and, after payment awarded Dr. Stovall possession of his vehicle. Dr. Stovall then instituted an appeal to the Circuit Court of Marshall County. At Circuit Court the Judge held that the parties had agreed to an original estimate for the work, but that the original agreement was modified by the subsequent dealings between the parties as the original estimate did not contemplate the future work necessary to repair the vehicle and would not be valid. The Court gave possession of the vehicle back to Dr. Stovall and ordered him to pay the necessary labor costs of $868.22. Dr. Stovall now appeals the decision of the Marshall County Circuit Court.

ARGUMENT AND AUTHORITIES

A. Statement of the Facts Relevant to the Issues Presented for Review.

In April of 2005 Dr. Stovall experienced problems with the thermostat in his 1998 Plymouth Neon which caused it to overheat. (R.E. 1). He first took the vehicle to Southside Auto where the cooling fan was diagnosed as the problem. (R.E. 1-2). Dr. Stovall then took the Plymouth Neon to the Plymouth Dealer in Southaven for repairs. (R.E. 2). After a week of inspection the Plymouth Dealership mechanics found no problems with the automobile.

After another week of driving Dr. Stovall noticed the car instruments showed the engine was overheating again. (R.E. 3). He then took the vehicle back for another inspection at the Plymouth Dealership in Southaven. Again the Plymouth Dealership found no problems with the car; however, the problem persisted. (R.E. 4). Upon recommendation, Dr. Stovall took the vehicle to Holly Springs Tire in mid-July.

Dr. Stovall discussed his mechanical problems a mechanic at Holly Springs Tire, Greg Wilson. Greg Wilson was neither the owner or manager of Holly Springs Tire. Greg Wilson told Dr. Stovall he could diagnose the cause of the problems and repair the vehicle. Dr. Stovall said, "if you can fix it, fix it." (R.E. 5). Greg Wilson never quoted a price for the repair to Dr. Stovall, as all estimates are handled by the owner, W.L. Hayes. (R.E. 21)

Dr. Stovall picked up his car on August 15, 2005. (R.E. 6). Greg Wilson directed Dr. Stovall paid for the repairs and took the Plymouth Neon on a test drive. (R.E. 7). During that test drive the thermostat showed the engine overheating again. (R.E. 8). Dr. Stovall had the vehicle towed back to Holly Springs Tire for further repair. After

replacing the water pump and timing belt on the vehicle, Dr. Stovall alleges that he and Greg Wilson entered into an oral agreement regarding the price for the repair. (R.E. 10-11). However, Greg Wilson never quoted any price to Dr. Stovall, as his only duties at Holly Springs Tire involved actual mechanical work. (R.E. 21)

Greg Wilson finally determined that a faulty head gasket was the cause of the overheating and had to be replaced. (R.E. – 12-13). After the head gasket was repaired Dr. Stovall returned to Holly Springs Tire to collect his vehicle. (R.E. 13). The invoice for the repairs was $868.22. Dr. Stovall protested the amount of the invoice and Holly Springs Tire gave Dr. Stovall a discounted rate of $668.22, which was the charge for labor. (R.E. 13). Dr. Stovall refused to pay the invoice and instituted legal action in an attempt to avoid paying anything at all for the repairs. (R.E. 15).

B. The Lower Court was Correct in its Factual Finding that the Parties Modified their Original Agreement

For a contract to be valid all essential terms of the contract must be understood. *Busching v. Griffin*, 465 So.2d 1037, 1040 (Miss.1985). The essential elements for a valid contract to exist are:(1) two or more contracting parties, (2) consideration, (3) an agreement that is sufficiently definite, (4) parties with legal capacity to make a contract, (5) mutual assent, and (6) no legal prohibition precluding contract formation. *Lanier v. State,* 635 So.2d 813, 826 (Miss.1994). Further, a contract is sufficiently definite if it contains matters which will enable the court under proper rules of construction to ascertain its terms. *Leach v. Tingle*, 586 So.2d 799, 802 (Miss.1991).

"Parties with a legal capacity to make a contract," is the most important issue used to determine whether a verbal agreement was reached in the case *sub judice.*

Lanier, 635 So.2d at 826. At trial facts were elicited from Dr. Stovall which allege that Greg Wilson quoted a price for repair of his vehicle. However, Greg Wilson disputed that he ever quoted a price to Dr. Stovall, because that duty is outside the scope of his employment with Holly Springs Tire. Rather, Mr. Wilson's position is that of a servant who is employed to perform work but not given the authority to act on his employer's behalf. Whether an agency relationship exists is a question of fact. *Butler,* 329 F.Supp. at 56 (N.D.Miss.1971)(*citing* 3 Am.Jur.2d § 21 at 430). The burden of proof rests with the plaintiff in this regard. *Id.*

There are three situations in which a person may seek to have someone else perform some service for him: (1) principal and agent, (2) master and servant, and (3) independent contractor. *Richardson v. APAC-Mississippi, Inc.*, 631 So.2d 143, 147 (Miss.1994). The agent-principal relationship is an outgrowth of the master-servant relationship and for this reason they are more closely related than a relationship that involves an independent contractor. *Id.*(*citing* 53 Am.Jur.2d *Master and Servant* §§ 3-4 (1970)). In general, there is no distinction separating the liability of the principal for his agent just as there is no distinction between that of master and servant. *Id.* But, an agent is not a servant and the distinction between the two rests on the authority of an agent to contract for his principal whereas a servant has no authority to represent his master in business, instead he performs merely mechanical services. *Id.* In short, a servant surrenders his physical activities and time to the master. Rest.2d *Agency* § 220.

Greg Wilson, who is a mechanic and not the owner or manager of Holly Springs Tire, is merely a servant of Holly Springs Tire. He was not given the authority to act as

an agent who could give estimates to the public for Holly Springs Tire, nor has he ever acted in that manner as is evidenced by the testimony presented at trial:

Q. Okay. So as a mechanic and in your 25 years experience, they tell you what the problem is, or they tell you that my car needs to be fixed, and then you tell them this is how much I can fix it for, right?
A. No, I don't do that.
Q. That's normally how it goes in the mechanic business, isn't it?
A. I send them in the office to discuss that.
Q. You sent him in the office?
A. He never went in the office.
Q. Because he always talked to you?
A. Yeah. I didn't really quote prices. That's what I'm hired for.
Q. You quoted him a price of $200, didn't you?
A. Unh-unh. I don't remember that.

(R.E. 16)

Q. Now, again you stated that you never quoted a price?
A. No I didn't.
Q. And you're saying that Dr. Stovall went to Mr. Hayes and got a price quoted; is that what you're saying?
A. He was supposed to.

(R.E. 20)

Q. You work on cars?
A. Well, Mr. Hayes do all paperwork. All I do is handle wrenches
Q. And you deal with customers primarily?
A. I tell them what's wrong with the vehicle. They get the price in the office. Okay? That's the way it goes.

(R.E 21)

Dr. Stovall contends that Mr. Wilson was acting with apparent authority as an agent on behalf of W. L. Hayes and Holly Springs Tire. This argument is based upon Mr. Wilson's alleged conduct exhibited to Dr. Stovall when he brought his vehicle in for repairs; however, Mississippi courts have held that no apparent authority exists where an agency relationship, either actual, expressed, or implied does not exist. *XYOQUIP, Inc. v. Mims,* 413 F.Supp. 962, 966 (N.D.Miss.1976).

Determining whether an agency relationship exists depends upon the facts and circumstances surrounding the situation. *XYOQUIP,* 413 F. Supp. at 965 (*quoting* 2A C.J.S. Agency § 36.) For an agency relationship to exist there must first be a factual showing of a manifestation by the principal that the agent shall act for him. *Id.* The agent must next understand the authority granted to him and the agent must accept this authority to act on the principal's behalf. *Id.* These occurrences move the relationship beyond the scope of a mere employer-employee relationship and create an agent-principal relationship. *Id.*

However, this Court need not address this agency argument because the lower Courts ruling addressed only the fact of this case. Dr. Stovall claims that he was quoted a fixed price of $200 to repair his car, regardless of how much labor was actually required to get the car back to a serviceable condition. W. L. Hayes and Holly Springs Tire presented evidence at trial that no fixed price was ever quoted, and that because the vehicle had a litany of problems, such as replacement of the water pump, thermostat and head gasket, they could not repair the vehicle for $200.00. The Court then made a purely factual determination that the parties had entered into an original agreement based to repair one set of problems, but during the course of their dealings, more problems arose thus causing the parties to modify their previous contract. Accordingly, Dr. Stovall is appealing this holding based upon the facts of the case, and not on any legal standard which was allegedly misapplied by the lower court. If the Court's factual findings are supported by substantial, credible, and reasonable evidence, then their holdings are safe on appeal. *Mason v. State*, 799 So.2d 884, 885 (Miss.App.2001)(*citing City of Jackson v. Perry,* 764 So.2d 373, 376 (Miss.2000);

Further, the Plaintiff presented no facts at trial showing that Greg Wilson had the authority to quote estimates to the general public. Instead Dr. Stovall just assumes that an agent-principal relationship existed. The existence of an agent-principal relationship is a question of fact which must be proven by the plaintiff. *Butler*, 329 F.Supp. at 56. Dr. Stovall's appeal of the lower court's factual findings should not be disturbed on appeal.

C. Overruling the Lower Court's Factual Finding Would Result in Unjust Enrichment

The theory of quasi or constructive contracts is founded on a principal of law which prevents a person from enriching himself at the expense of another. *Koval v. Koval*, 56 So.2d 134, 137 (Miss.1991)(*citing* 17 CJS *Contracts*, § 6). A quasi-contract is an obligation created by law where no agreement exists whereby the actions of one party places within the person of the other party a benefit that "in equity and good conscience he ought not to retain and which justice or fairness belongs to another." *Id.* (*citing Old Men's Home, Inc. v. Lee's Estate*, 669 So.2d 791 (Miss.1942)). The basis for such an action "lies in a promise that one will pay to the person entitled thereto which in equity and good conscience is his." *Id.* To determine if such a relationship exists can be inferred by the conduct of one party to another as observed by a reasonable man. *Id.*(*citing Cooke v. Adams,* 183 So.2d 925 (Miss.1966)).

After several attempts to repair Dr. Stovall's Plymouth Neon, the problem was identified and corrected. This effort cost W. L. Hayes, Holly Springs Tire, and Greg Wilson considerable time and effort; something which no other dealership or mechanic up to this point was capable to do. Now, Dr. Stovall is attempting to obtain these services for free, or at a discounted rate, which would be detrimental to W. L. Hayes, Holly

Springs Tire. There is no consideration for this position. Therefore this Court should act a equity requires and affirm the decision of the Circuit Court.

CONCLUSION

For the foregoing reasons, this Honorable Court should affirm the verdict of the Circuit Court of Marshall County, Mississippi.

RESPECTFULLY SUBMITTED, this the 10 day of September, 2007.

W. L. Hayes and Holly Spring Tires,
Appellee

By: _____

HON. KENT E. SMITH (MSB# [redacted]
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CERTIFICATE OF SERVICE

This will certify that the undersigned attorney for Smith Whaley, PLLC, that I have this date delivered a true and correct copy of the above and foregoing *Brief of Appellee, W. L. Hayes and Holly Springs Tire,* to all counsel of record by placing a true and correct copy thereof in the United States Mail, postage prepaid, addressed as follows:

Honorable Andrew K. Howorth
Circuit Court Judge
1 Courthouse Square, Suite 201
Oxford, MS 38655

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THIS, the 10 day of September, 2007

JUSTIN S. CLUCK