

IN THE SUPREME COURT OF MISSISSIPPI

DISMISS HOLDING, INC.

APPELLANT

VERSUS

NO. 2007-TS-00042

E. HAROLD KNIGHT

APPELLEE

**APPEAL FROM THE CHANCERY COURT OF JACKSON COUNTY, MISSISSIPPI
JACKSON COUNTY CHANCERY COURT CAUSE NO. 2004-1838**

RESPONSE TO APPELLEE'S BRIEF

LAW OFFICES OF W. HARVEY BARTON

**W. HARVEY BARTON, MSB [REDACTED]
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ATTORNEYS FOR APPELLANT

ORAL ARGUMENT IS NOT REQUESTED

CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of records certifies that the following listed persons have an interest in the outcome of this case. These presentations are made in order that the Judges of this Court may evaluate possible disqualifications or recusal.

1. Representative agent for Disposal, Inc., Pam McNair.
2. W. Harvey Barton, Attorney for Appellant.
3. Brandon C. Jones, Attorney for Appellant.
4. Matthew G. Mestayer, Attorney for Appellee.
5. William L. Mims, Jr., Esquire, In House Counsel for Disposal, Inc.
6. Honorable Neil Harris, Chancery Court Judge, Jackson County, Mississippi.
7. Honorable Pat Watts, Chancery Court Judge, Jackson County, Mississippi.
8. E. Harold Knight, Appellee.
9. Benny R. Knight.

SO CERTIFIED this the 20th day of December, 2007.


W. HARVEY BARTON, MSB 

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APPELLANT'S REPLY BRIEF

The Appellant's owned the property under color of title from August 17, 2004, until the Court Order was entered on August 25, 2004. The issue, in terms of title of the property, was finally resolved September 9, 2004, some three (3) weeks after taking possession. The Appellees make great issue of the facts in this case, which are set forth in page 4, of their Brief and are responded to as follows:

The fact that Dismiss Holdings tried to buy the same piece of property of \$365,000.00 is insignificant and irrelevant. The fact that Dismiss Holdings did not have the title examined before the sale is not a legal requirement at law. The fact that Dismiss Holdings did not contact a lawyer before the sale is not a legal requirement. The fact that Dismiss Holdings did not contact its own in house lawyer before the sale is not a legal requirement. The fact that Dismiss Holdings did not voluntarily relinquish possession of this property is neither a breach of any legal duty and is certainly no indication of willfulness or intentional wrong doing. There are several facts however, that are important to this case that have been glossed over by the Appellees.

- The Appellants were relying on the Sheriff's execution sale for their right to possess the property.
- The vast majority of the attorneys fees incurred in this action were as a result of the Appellees trying to seek damages after they had regained possession of the property.
- As stated in paragraph 1 of page 2, of the Appellee's Brief, "However, the attorneys for the creditor, Red-D-Arc, Inc., mistakenly believing that the subject real property was owned by Knights' Piping, Inc., requested that the Jackson County Sheriff issue execution and sell it."

The real culprits in this case are not the Appellants or for that matter the Sheriff's Office, but rather the attorneys for Red-D-Arc, Inc., who also mistakenly caused execution to be issued on this property. Even though the Appellees had ample opportunity to sue them and seek redress for their damages from the attorneys for Red-D-Arc, Inc., they failed to do so.

CERTIFICATE OF SERVICE

I, W. HARVEY BARTON, do hereby certify that I have this day served, via Facsimile and/or United States Mail, postage prepaid, a true and correct copy of the above and foregoing to:



Matthew Mestayer, Esquire
Byrd & Wiser
P. O. Box 1939
Biloxi, MS 39533

Honorable Neil Harris
Jackson County Chancery Court
P.O. Box 998
Pascagoula, MS 39568-0998

SO CERTIFIED this the 20th day of December, 2007.


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