

**COPY**

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI  
COURT OF APPEALS**

**DAISEY M. GANDY AND/OR  
UNKNOWN JOHN DOES OR JANE DOES**

**FILED**

**APPELLANTS**

**V.**

**SEP 10 2007**

**CAUSE NO. 2007-CA-306**

**CITICORP TRUST BANK, FSB**

**OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS**

**APPELLEE**

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**REPLY BRIEF OF APPELLANTS**

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## **TABLE OF CONTENTS**

TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES.....	iii
STATEMENT OF THE ISSUES.....	1
ARGUMENT.....	1-3
CONCLUSION.....	3
CERTIFICATE OF SERVICE.....	4

## **TABLE OF AUTHORIES**

### **CASES**

<u>Barnes v. McLeod</u> , 140 So. 740 (Miss. 1932).....	1
<u>Tillotson v. Anders</u> , 551 So. 2d 212 (Miss. 1989).....	1

### **STATUTES**

Miss. Code Ann. § 9-5-83 (2007).....	1
Miss. Code Ann. § 91-7-261 (2007).....	2

## **STATEMENT OF THE ISSUES**

- I. THE CIRCUIT COURT ABUSED ITS DISCRETION IN EXERCISING JURISDICTION TO HEAR THIS CASE.
- II. THE CIRCUIT COURT ERRED IN FINDING THAT THE FILING OF AN ESTATE BY THE HEIRS AT LAW OF A DECEDENT DOES NOT PREVENT A FORECLOSURE ON REAL PROPERTY WHICH IS SUBJECT TO A LIEN.
- III. THE GUBERNATORIAL PROCLAMATION OF OCTOBER 2005 BARS APPELLEE FROM INEQUITABLE FORCLOSURE OF SAID PROPERTY.

## **ARGUMENT**

- A. THE CIRCUIT COURT ABUSED ITS DISCRETION IN EXERCISING JURISDICTION TO HEAR THIS CASE.

Appellee argues that this case hinges on the ownership of real property and one wrongfully withholding the same. However, Appellants argue that this is an equitable matter that should never have come before the Wayne County Circuit Court.

The Supreme Court established in *Barnes* that chancery courts have only such jurisdiction as was conferred by the Constitution, all other jurisdiction both civil and criminal not vested by the Constitution in some other court is vested in the circuit courts. *Barnes v. McLeod*, 140 So. 740, 744 (Miss. 1932). The Circuit Court shall have original jurisdiction in all actions ... and all other actions and causes, matters and things arising under the Constitution and laws of this state which are not exclusively cognizable in some other court, and such appellate jurisdiction as prescribed by law. Miss. Code Ann. § 9-5-83 (2007). The Supreme Court also established in *Tillotson* that the substance of the action should be controlling and not its form or label. *Tillotson v. Anders*, 551 So. 2d 212, 214 (Miss. 1989).

The Wayne County Chancery Court opened the estate matter in this case on or about April 5, 2005, almost ten (10) days prior to the foreclosure sale on said real property and long

before this case came before the justice court and circuit court. The justice court was made aware of the pending estate matter in chancery court and agreed with Appellant that Appellee should present its case in chancery court. The circuit court was well aware of the pending estate matter in the Wayne County Chancery Court; however it presided over this case nonetheless.

In presiding over this case, the circuit court abused its constitutional authority.

Therefore, the ruling of the Wayne County Circuit Court should be held void due to lack of subject matter jurisdiction

**B. THE CIRCUIT COURT ERRED IN FINDING THAT THE FILING OF AN ESTATE BY THE HEIRS AT LAW OF THE DECEDENT DOES NOT PREVENT A FORECLOSURE ON REAL PROPERTY WHICH IS SUBJECT TO A LIEN.**

The executor or administrator shall take proper steps speedily to ascertain whether the estate be solvent or insolvent. If both the real and personal estate be insufficient to pay the debts of the deceased, he shall exhibit to the court a true account of all the personal estate, assets of every description, the land of the deceased, and all the debts due from the deceased; and if it appears to the court that the estate is insolvent, it shall make an order for the sale of all the property. The proceeds of such sale and all other assets shall be equally distributed among all the creditors whose claims shall be duly filed and established, in proportion to the sums due and owing to them respectively, the expenses of the last sickness, the funeral, and the administration, including commissions, being first paid. Before any decree for sale is made, the devisees or heirs shall be made parties to the proceeding. Miss. Code Ann. § 91-7-261 (2007).

The Wayne County Chancery Court issued a Judgment Opening Estate for Probate, Appointing of Administrator and Granting other Relief on April 5, 2005, and was filed on April 22, 2005. Appellees; however, executed the foreclosure sale and subsequently filed a Complaint in Unlawful Entry and Detainer in the *Wayne County Justice Court*, contrary to the spirit of § 91-7-261.

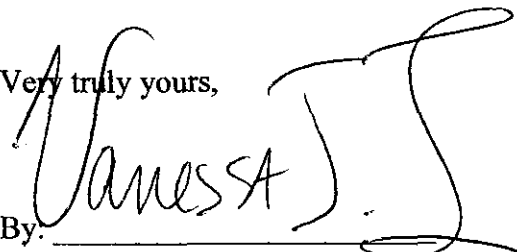
The circuit court erroneously found that the § 91-7-261 does not bind the Appellee to the authority of the chancery court. Additionally, the circuit court erroneously found that the

Appellee (creditor) did not have to subject its claim to the Decedent's estate, clearly in violation of § 91-7-261.

Therefore, the circuit court's ruling should be overturned and the case transferred to the Wayne County Chancery Court for adjudication.

### **CONCLUSION**

This case should have been adjudicated in the Wayne County Chancery Court. All issues in regards to this case are clearly grounded in equity. The circuit court erred in its discretion in exercising jurisdiction in this case. The circuit court also erred in its finding that the filing of an estate by the heirs at law of a decedent does not bar a foreclosure on real property that is subject to a lien. Lastly, the gubernatorial proclamation of October 2005 bars the Appellee from inequitable foreclosure of said property.

Very truly yours,  
  
By. \_\_\_\_\_  
Vanessa J. Jones

VJJ:wjj

Enc.

cc: Hon. Bradley P. Jones (w/enc.)  
Hon. Meredith Drummond  
Hon. Hugh B. Henderson  
Hon. Lester F. Williamson, Jr., Circuit Court Judge, Wayne County, Mississippi

**CERTIFICATE OF SERVICE**

I, Vanessa J. Jones, attorney for Appellants, Daisy Gandy and/or unknown John Does or Jane Does, do hereby certify that I have this day served a true and correct copy of the above and foregoing via United States Mail, postage prepaid, to the following:

Bradley P. Jones and Meredith Drummond  
Adams & Edens, P.A.  
P.O. Box 400  
Brandon, MS 39043

**COUNSELS FOR APPELLEE, CITICORP**

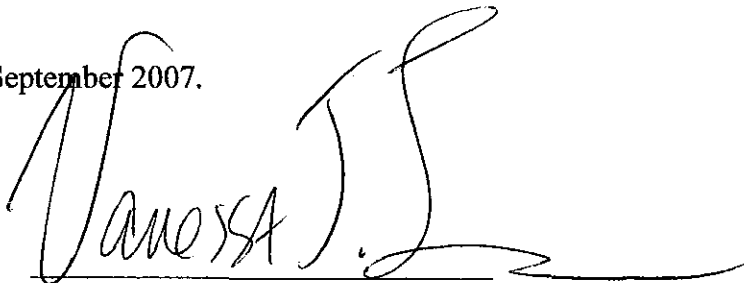
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**FORMER COUNSEL FOR APPELLEE, CITICORP**

Hon. Lester F. Williamson, Jr.,  
Wayne County Circuit Court Judge  
P.O. Box 86  
Meridian, MS 39304

**WAYNE COUNTY CIRCUIT COURT JUDGE**

SO CERTIFIED, this the 10th day of September 2007.

A handwritten signature in black ink, appearing to read 'Vanessa J. Jones', with a long horizontal flourish extending to the right.

Vanessa J. Jones  
Attorney for Appellants