**IN THE SUPREME COURT**

**STATE OF MISSISSIPPI**

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**2007-CA-00402**

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**GEORGE F. HENRY, JR.** *ET AL.* *APPELLANTS*

*VS.*

**JOHN STUART MOORE and KAREN J. MOORE** *APPELLEES*

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APPEAL FROM THE CHANCERY COURT OF
OKTIBBEHA COUNTY, MISSISSIPPI

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# BRIEF OF THE APPELLEES

## ORAL ARGUMENT NOT REQUESTED

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**IN THE SUPREME COURT**

**STATE OF MISSISSIPPI**

NO. 2007-CA-01402

**GEORGE F. HENRY, JR., *ET AL.*** *APPELLANT*

*vs.*

**JOHN STUART MOORE and KAREN J. MOORE** *APPELLEES*

## CERTIFICATE OF INTERESTED PERSONS

The undersigned, Dolton W. McAlpin, attorney of record for Appellee herein, certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

John Stuart Moore, Appellee
Karen J. Moore, Appellee
Dolton W. McAlpin, Appellee's attorney

Michael S. Henry, Appellant
James N. Henry, Appellant
William S. Henry, Appellant
Larry H. Henry, Appellant
David Henry, Appellant
T. Jackson Lyons, Appellants' Attorney
Ernest Lane, III, Appellants' trial counsel
Mark G. Williamson, Appellees' trial counsel

Hon. Michael Malski (trial judge)

Dolton W. McAlpin

DOLTON W. McALPIN, ATTORNEY
FOR APPELLEES

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## STATEMENT OF THE ISSUES

The issues presented in this appeal may be correctly framed thus:

1. Did the lower court correctly determine upon substantial evidence that the term "assuming the responsibility of" in the lease/option is ambiguous, and properly enforce performance of the option?

2. Are the Appellants precluded from raising in this Court the issue of the failure of consideration since they failed to raise it in the lower court?

3. Was the equitable remedy imposed by the lower court appropriate under the facts of this case?

## STATEMENT OF THE CASE

### A.

### NATURE OF THE CASE

John and Karen Moore (hereafter the Moores) filed this case seeking from the Oktibbeha County Chancery Court a decree of specific performance of a recorded lease/option in which George and Geraldine Henry (hereafter George and Geraldine) agreed to lease to the Moores for a term of years 77.5 acres in Oktibbeha County, and then to sell the property to the Moores at the end of the term for the sum of $15,000.00. The trial court ordered specific performance of the lease/option, requiring that the property be conveyed to the Moores in exchange for their payment of the $15,000.00 purchase price, from which Appellants appeal.

### B.

### COURSE OF PROCEEDINGS IN THE COURT BELOW AND DURING THE PENDENCY OF THIS APPEAL

In addition to their claim for specific performance of the lease/option the Moores sought to remove as a cloud on title a deed from George and Geraldine conveying the subject property to their nephews James N. Henry, William S. Henry, Larry H. Henry, David M. Henry, and Michael S. Henry (hereafter the Henry brothers), and they also asserted a claim against the Henry brothers for tortious interference with a contract. (Complaint, Vol. 1, pp. 3-23) The Henrys filed a counterclaim for damages. (Vol. 1, pp. 30-42) By the time of trial the parties stipulated a single question for resolution by the lower court: whether or not a provision of the lease/purchase agreement meant that the Moores had to maintain buildings located on the property and keep them in good repair during the lease term. (Stipulation, Vol. 1, p. 87)

In its Memorandum Opinion (Vol. 1, pp. 88-95; R. E. tab 3) the lower court found that the subject language in the lease/option was unclear as to the burden, if any, placed on the Moores as to the buildings located on the property and construed the provision more strongly against the drafter, George Henry, who was a lawyer. The Final Judgment of the trial court (Vol. 1, pp. 99-100; R. E. tab 2) required the Henry brothers to execute a quit-claim deed to the Moores, and mandated that the Moores pay the $15,000.00 purchase price to George and the Henry brothers.

## C.

## STATEMENT OF FACTS

The Appellees have no argument with the Appellants statement of facts. However, Appellees point out that they were informed of Geraldine's death at trial and had no knowledge of George's death until so advised in pleadings filed in this case subsequent to the Notice Of Appeal. [1]

## D.

## STANDARD OF REVIEW

The findings of a chancellor will not be disturbed when supported by substantial evidence unless there was manifest error or an improper legal standard was applied. *In re Estate of Temple,* 780 So.2d 639, 642 (Miss. 2001); *DeJean v. DeJean*, --- So.2d ----, 2007 WL 3151691, ¶4 (Miss. App. 2007). A de novo standard is used when reviewing questions of law. *Jackpot Mississippi Riverboat, Inc. v. Smith*, 874 So.2d 959, 960 (Miss. 2004).

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[1] By Order dated October 10, 2007, this Court dismissed deceased parties George and Geraldine Henry, leaving only the Henry brothers as Appellants.

## SUMMARY OF ARGUMENT

1. The lower court correctly determined upon substantial evidence that the term "assuming the responsibility of" in the lease/option is ambiguous, and properly enforced performance of the option.

A. The sole issue presented to the lower court for determination was whether or not a provision of the lease/option using the words "assuming responsibility of" three buildings meant that the Moores had to maintain these buildings and keep them in good repair during the lease term.

B. The language "assuming the responsibility of" was unclear and ambiguous as to what burden, if any, of maintenance and repair of the buildings was placed upon the Moores.

C. If George had intended the Moores to maintain the three buildings in a desirable physical condition during the lease term, it would have been a simple matter to have included clear language in the lease/option to obligate the Moores to do so.

D. The lower court correctly applied the Mississippi law by construing the ambiguous provision more strongly against the drafter, George, who was a trained lawyer.

2. The issue of failure of consideration issue was never presented to the lower court and this Court may not consider it.

The Henry Brothers waived appellate consideration of the issue of "failure of consideration" since they failed to raise it in the lower court. Therefore, this Court is procedurally barred from considering this issue.

3. The lower court's final judgment provides an equitable remedy which was requested by the Moores and which was reasonable in light of the unusual facts and circumstances.

A. The Moores requested specific performance in Count One of their complaint.

B. A grantee who obtains title to property with knowledge of an existing contract (or option) to sell the land to another must be a party in any suit to enforce the contract/option and may be compelled by our chancery courts to convey the property to the party who obtains specific performance.

C. The Henry brothers had constructive notice and actual notice of the existence of the Moores' option to at the time they took title to the subject property by deed from George and Geraldine. Therefore, they were indispensable parties to the suit seeking to enforce the option for the purchase of land to which they held record title.

D. The lower court fashioned a reasonable remedy by ordering the Henry brothers, as the holders of the record, to convey by deed the property to the Moores, thus enforcing the option, meanwhile ordering the Moores to pay the purchase price to George and the Henry brothers, giving them the responsibility of determining a division of the sale proceeds.

E. The lower court's final judgment provides an equitable remedy which was requested by the Moores, which was supported by substantial evidence, and which was reasonable in light of the unusual facts and circumstances of this case, giving each side what it was supposed to have.

## ARGUMENT

1. The lower court correctly determined upon substantial evidence that the term "assuming the responsibility of" in the lease/option is ambiguous, and properly enforced performance of the option.

The trial court found that the language "assuming the responsibility of" in relation to three buildings located on the property was unclear and ambiguous as to what, if any, burden of maintenance and repair of the buildings it placed upon the Moores. Consequently, the lower court correctly construed that language more strongly against the drafter (George and his successors) and properly enforced specific performance of the lease/option.

The nub of the Henry brothers' argument is that the words "assuming the responsibility of" three buildings as used in the lease/option are unambiguous and mean that the Moores were required by the terms of the lease/option to maintain and keep the buildings located on the property in good repair during the lease term. Because the Moores failed to do that, and because their failure to maintain the buildings amounted to a breach of contract, the Henry brothers say, George was justified in canceling the lease/option and the lower court erroneously enforced an agreement which the Moores had breached and which George had terminated.

The record reflects that George attempted to cancel the Moore's lease and option to purchase, ostensibly because he saw photographs which showed that his law office was in disrepair. (Vol. 1 p. 40)[2]. Appellant Michael Henry attempted to buy back the option or to trade some other land for the land at issue in this case. When Mr. Moore declined, Michael

[2] Appellant correctly points out that, for whatever reason, the documentary evidence introduced at trial is missing from the record on appeal. However, the documents necessary for this Court's decision are attached to pleadings in

told him that he could either sell the option or swap the land for other lined; otherwise, the Moores would get nothing. (Transcript, Vol. 4, p. 52). Thereafter, George and Geraldine executed a quitclaim deed to the Henry brothers which was recorded in Oktibbeha County. (Vol. 1, pp. 18-19). The Moores then commenced the current litigation including claims for specific performance, to remove cloud from title, and damages for tortious interference with a contract. The Appellants fired back an answer and a counterclaim for damages.

By the time of trial the parties had narrowed the issues – in fact, they narrowed the issues down to one. By written stipulation, signed by counsel for the parties and filed on the day of trial, all parties agreed that the sole and only issue to be decided by the Court was the meaning of the provision in the lease/purchase agreement which declared, "For and inconsideration of . . . and the Vendees assuming the responsibility of one (1) log cabin, one (1) law office, and one (1) barn . . . ." (Vol. 1 p. 87) The sole issue presented to the lower court for determination was whether or not this provision of the lease meant that the Moores had to maintain these buildings and keep them in good repair during the lease term.[3] Obviously, if the Moores were obligated to do so and did not, then they breached the lease/option and George and Geraldine (and their successors, the Henry brothers) would be relieved from going through with the sale of the property.

There is no dispute that the "law office building" was in bad shape at the time of trial. There was a factual dispute, however, as to when the deterioration occurred. In his testimony John Moore described the poor condition of the building at the time he and his wife leased the property. (Vol. 1, pp. 37-39) Moreover, Moore's expert witness, Dr. Terry Am-

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this case, and citation will be made to the volume and page where these documents are located. It is clear from the transcript that the documents referred to herein were admitted into evidence.

[3] Parties may agree to try a case upon a single issue and the parties are bound by that agreement. *Pate Lumber Company v. Weathers*, 167 Miss. 228, 146 So. 433 (1933); *Worsham v. McLeod*, 11 So. 107 (1892)

burgey[4], opined that the poor conditions of the "law office" had existed for a long period of time. (Vol. 1. pp. 13-14) Three of the Henry brothers, however, testified that they visited in the property in 1992-1993 and that the building was generally in good shape and that it deteriorated thereafter while under lease to the Moores. There was no disagreement that the condition of the buildings at the time of trial was poor.

The record reflects that George, who was a lawyer (Vol. 1, p. 34), drafted the lease/option and tendered it to the Moores for signature. (Transcript, Vol. 4, pp. 45-47) The Court followed the well-settled Mississippi rule of contract law which says that, in the case of ambiguity, provisions of a written instrument must be construed more strongly against the drafter.[5] The Court found that the subject language was unclear as to the burden, if any, placed on the Plaintiffs by that language, and correctly applied the Mississippi law by construing the provision more strongly against the drafter, George Henry.[6]

In its Memorandum Opinion the trial court set out the parties' conflicting interpretations of the contract language:

> The Moores contend that the quoted language means that George F. Henry, Jr., and Geraldine Henry did not want to be responsible for repairing and maintaining the three buildings. The Defendants contend that the quoted language required the Moores to maintain and repair the three buildings. (Vol. I, pp. 88-89; R. E. tab 2)

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[4] Dr. Amburgey is an expert in the area of wood deterioration. His credentials are set out in the Transcript, Vol. 1, pp. 5-8.

[5] *Clark v. Carter*, 351 So.2d 1333, 1336 (Miss. 1977); *D'Avignon v. D'Avignon*, 945 So.2d 401, 409 (Miss. App. 2006)

[6] Where the evidence is rationally subject to more than one interpretation, this Court will not reverse the chancellor's decision simply because we might have otherwise decided the issue. *Bower v. Bower*, 758 So. 2d 405 (¶¶31-33) (Miss. 2000).

Special Chancellor Malski found that the language "assuming the responsibility of" was unclear and ambiguous as to what, if any, burden of maintenance and repair of the buildings it placed upon the Moores. Construing the subject language more favorably to the Moores, Judge Malski determined that it was George's intent to relieve himself and Geraldine of any liability for repair and maintenance of the buildings while the property was under lease to Moore rather than to impose upon the Moores the affirmative obligation of maintenance of the structures. As Judge Malski pointed out:

> George F. Henry, Jr., was a lawyer and the drafter of the instant lease/option. In the Court's opinion, the language "assume the responsibility of" did not impose upon the Moores the obligation to maintain the three buildings in a desirable physical condition. *If Mr. Henry had intended the Moores to maintain the three buildings in a desirable physical condition, it would have been a simple matter to have included clear language to obligate the Moores to do so.* (Vol. 1, p. 92; R. E. tab 3) (Emphasis supplied)

In one of the cases cited by the Henry brothers in support of their contention that the subject words were not ambiguous the Supreme Court arrived at the same conclusion that Judge Malski reached in our case: "Had the parties agreed that appellee would be *responsible* for the promissory note in question, *it would have been very simple to provide so in the agreement.* However, since the parties did not do so and because their indebtedness were separated from the bills provided for in paragraph 8, we cannot say the chancellor was manifestly wrong in his finding."[7] (Emphasis supplied) In our case, George did not describe at all what "assuming the responsibility of" the buildings meant.

In addition to *Owen v. Gerrity, supra*, the Henry brothers rely on *Benchmark Health Care Center, Inc. v. Cain*, 912 So.2d 175 (Miss. App. 2003), another clearly distinguishable case. In that case the Court of Appeals agreed with the trial court's conclusion that the parties' inten-

[7] *Owen v. Gerrity*, 422 So. 2d 284, 288 (Miss. 1982)

tions were unambiguously specified in a contract which made Benchmark "responsible for billing for services, collecting payment from third party payors and/or patient[s]." (Emphasis supplied) The Court stated, "The clear terms of the contract state that Benchmark is responsible 'for all billing, collections, denials, and payments.'" 912 So.2d at 182. In our case, unlike *Benchmark, supra*, the lease/option contains no such clear statement of what things the Moores were "responsible for assuming" with respect to the buildings.

The lower Court found the subject provision of the lease/option ambiguous because it was susceptible of more than one interpretation. On the one hand the language might be understood to mean that George was imposing on the Moores the obligation to keep the buildings in good repair. On the other hand, as the trial court pointed out, it could be that "the drafter of this lease/option was trying to free himself and his wife of the responsibility of providing for the structures without placing any affirmative obligations on the Moores," it being the "drafter's intent . . . that the Moores would purchase the property." (Memorandum opinion, Vol. I, pp. 88-89; R. E. tab 2) The trial court, faced with this ambiguity, correctly applied the Mississippi law by construing the ambiguous provision more strongly against the drafter, George, who was a trained lawyer.

2. The issue of failure of consideration issue was never presented to the lower court and this Court may not consider it.

The Henry brothers' argument that the Moores' failure to maintain the buildings amounted to a failure of consideration justifying George's termination of the lease/purchase agreement is made for the first time in this Court.

The stipulation filed by the parties, *supra*, limited the scope of the trial to a determination of whether or not the words "assuming the responsibility of" required the Moores to maintain and keep the buildings on the property in good repair. The stipulation makes no reference to the sufficiency of or failure of the consideration, and that issue was not placed before the lower court.

It is basic law in Mississippi that before an issue may be assigned and argued in an appellate court it must first have been presented to the trial court. Where the issue was not presented below, it is deemed waived, procedurally barring its consideration by the appellate court.[8] Because the Appellees did not present the issue of whether a failure of consideration justified George in terminating the lease/option, it may not be considered by this Court on appeal.

3. The lower court's final judgment provides an equitable remedy which was requested by the Moores and which was reasonable in light of the unusual facts and circumstances.

The Henry brothers argue that the lower court granted relief which no one requested, i.e. it ordered the Henry brothers to execute a deed to the Moores for the subject property and further ordered the Moores to pay the $15,000.00 purchase price to George and the Henry brothers. The Moores quite clearly requested specific performance in Count One of their complaint (Vol. 1 pp. 4-6) and that is what the lower court ordered. The Henry brothers' argument is really a serpentine rendering of the defense that the proper parties are not before the Court. The Henry brothers' argument goes like this: The lower court's order effec-

[8] *Prestridge v. City Of Pearl*, 841 So.2d 1048, 1054 (Miss. 2003); *Read v. State*, 430 So.2d 832, 838 (Miss.1983)

tively voided the deed from George and Geraldine to the Henry brothers. Since specific performance cannot be enforced against anyone except George and Geraldine, who are dead, and since this is a "personal action" against George and Geraldine which survived their deaths, the case must be vacated/reversed/remanded to inquire into their heirship and join their estates.

The Henry brothers assert that "the option contract cannot be specifically enforced against anyone except George and Geraldine or their estates." (Brief of Appellants, p. 19). That is simply not the law of the State of Mississippi. The lower court's final judgment did not "void the deed" from George and Geraldine to the Henry brothers. Rather, the trial court evidently accepted the validity of the conveyance because it ordered the Henry brothers to convey the property to the Moores by quitclaim deed. At the time of trial they held record title to the disputed property and were thus indispensable parties to a determination of whether to specifically enforce the option agreement.

That a grantee who is not a signatory to an option may be compelled to convey land to the one who had a contract to purchase the land under the option has long been enshrined in Mississippi law. Though the facts of *Stone v. Buckner*, 20 Miss. 73, 12 Smedes & M. 73, 1849 WL 2233 (Miss. Err. & App. 1849) are rather convoluted and are not useful in analyzing today's case, the holding of the Court is unambiguously on point about who must be a party to a suit for specific performance in a case where the original contracting seller has conveyed the property to others:

> When one agrees by written contract to sell land, and afterwards conveys to a different person who has knowledge of the previous contract, this other holds the legal title as trustee for the first purchaser, and a court of equity will compel him to convey. [Citations omitted] The second purchaser is therefore a necessary party to a bill for specific performance. (12 Smedes & M. at 90)

Research reveals no case where this holding has been overruled. Plainly, if someone is a grantee who obtains title to property with knowledge of an existing contract (or option) to sell the land to another, that grantee must be a party in any suit to enforce the contract/option and may be compelled by our chancery courts to convey the property to the party who obtains specific performance. This is a sensible rule. Any other rule would allow parties with knowledge of an existing purchase agreement to "cut in" and acquire the land with no consequences to themselves, leaving the would-be purchaser with no remedy other than to make some kind of damage claim at law against the owners, or, in our case, against their estates. "Equity aims at rendering more complete and exact justice than that which is obtainable at law by rendering to a party the specific thing owed in its specific original form."[9] In order for the Moores to obtain "more complete and exact justice" the parties who obtained legal title to the land and who had constructive and actual notice of the option must be in court and amenable to a specific performance decree.

Mississippi is not alone in following this rule. This is a sampling of cases from other jurisdictions with similar holdings:

- In *Maron v Howard*, 258 Cal App 2d 473, 66 Cal Rptr 70 (1968, 2d Dist), a lease provided a lessee with an option to purchase two lots which were later sold to a third party who had knowledge of the lessee's option to purchase. The court held that both the lessor/owner and the third party purchaser were both aware of the lessee's option and awarded specific performance against the purchaser.
- In *Blum v. William Goldman Theatres*, 164 F.2d 192 (3rd Cir. 1947), a purchaser accepted conveyance of property with full knowledge of an agreement by the owner to

[9] *Floyd v. Segars*, 572 F.2d 1018, 1023 (5th Cir. 1978)

sell the property to another. The court granted specific performance against the purchaser, stating, "Since Goldman, a vendee with knowledge, stands in no better position than the trustees, and since Blum had the right of specific performance against the trustees, it follows that conveyance of the property by Goldman may be ordered." (164 F.2d at 197).

- In *Caras v. Parker*, 149 Cal. App. 2d 621, 309 P.2d 104 (2d Dist. 1957), owner and purchaser entered into an escrow agreement for purchase of real property, and other parties, with full knowledge of the existence of agreement, induced owner to breach his contract and convey land to them instead. The court approved specific against the parties inducing the breach of contract.
- In *Cummings v. Johnson*, 218 Ga. 559, 129 S.E.2d 762 (1963), the Georgia court held that a third person who "cuts in" and buys property, having notice that another has made contract to buy the land, stands in place of the seller, and a court of equity will decree specific performance against the third person if it would have decreed specific performance against the seller. A similar holding was made in *Finney v. Blalock*, 206 Ga. 655, 58 S.E.2d 429 (1950).
- In *Swanson v. Priest*, 95 N.H. 64, 58 A.2d 207 (1948), a third party who purchased land with actual and constructive knowledge of the original agreement to sell to someone else, was compelled to convey directly to the original purchaser.
- In *Dillard v. Ceaser*, 1952 OK 92, 206 Okla. 304, 243 P.2d 356 (1952), where a seller conveyed property to a third party after the seller had entered into an agreement to sell to a purchaser, the court held that specific performance should have been awarded against both vendor and third party

- In *Antwine v. Reed*, 145 Tex. 521, 199 S.W.2d 482 (1947), the court held that one who buys property with actual or constructive knowledge of the existence of a contract to sell the land to another may be compelled, at the suit of purchaser under the contract, to perform the contract by conveying the legal title if such relief could have been granted against the owner if he had not transferred the legal title.
- In *Demetres v. Schulman*, 3 A.D.2d 673, 158 N.Y.S.2d 584(2d Dep't. 1957) where a lease gave lessee a right to purchase leased property, but owner conveyed realty to third party without giving the lessee's assignee notice, specific performance was a proper remedy for the a assignee of the lease.

In our case Moores recorded their option in the Oktibbeha County land records (Transcript, Vol. 4, p. 47); thereafter George and Geraldine executed a quitclaim deed to the Henry brothers, which was recorded in Oktibbeha County. (Vol. 1, pp. 18-19). The Henry brothers had constructive notice – and, as we shall see, actual notice - of the existence of the option at the time they took title. It is beyond peradventure, then, that James N. Henry, William S. Henry, Larry H. Henry, David M. Henry, and Michael S. Henry are indispensable parties to any suit seeking to enforce an option for the purchase of land to which they held record title.

The Henry brothers were hardly "innocent purchasers for value without notice." In addition to the constructive notice of the Moores' option, the record reveals that John Moore talked to Michael Henry, who tried to buy back the option or to trade some other land for the land at issue in this case (Transcript, Vol. 4, p. 52), a conversation which David Henry says heard. (Transcript, Vol. 4, pp. 95-96) This conversation gives the Henry brothers actual knowledge of the existence of the option. Absent the conveyance by George and

Geraldine to the Henry brothers the Special Chancellor could have decreed specific performance against George. The Henry brothers had actual and constructive knowledge that the Moores held an option to purchase, and under these circumstances the Special Chancellor was eminently correct in ordering the Henry brothers to execute a deed to the Moores.

The Court had before it all of the players necessary to fashion an equitable remedy. And that remedy was to order the holders of the record title (James N. Henry, William S. Henry, Larry H. Henry, David M. Henry, and Michael S. Henry) to convey the property to the Moores, thus enforcing the option, meanwhile ordering the Moores to pony up the purchase price to all the parties defendant, giving them the responsibility of determining a division of the sale proceeds. This equitable solution is reasonable on the facts of this case, with George was still living and the Henry brothers holders of the record.

It was not the responsibility of the Moores or the lower court to divine the relationship between George and his nephews. The consideration stated for the conveyance from George and Geraldine to the Henry brothers was "the love and affection shown by the grantees toward us" (Vol. 1 p. 18) and no money was paid to George by the Henry brothers for the conveyance. (Transcript, Vol. 4 p. 124) The lower court wisely did not make this matter even more complicated by placing the additional burden on the Moores of having to determine the proper division (if any) of the $15,000.00. After all, any confusion was caused by George and Geraldine and the Henry brothers through the execution and recordation of the quitclaim deed to the Henry brothers at a time when the Moores held a valid, recorded option to purchase the property of which they all had knowledge.

Specific performance is an equitable remedy, to be considered by a chancellor sitting as a court of equity.[10] In the case at bar an equitable remedy was required and the chancellor fashioned a splendid one which cut with a judicial sword the Gordian knot fashioned by the actions of the defendants. Two of the great maxims of equity seem to have guided the lower court: "Equity regards substance rather than form," and "Equity will not suffer a wrong to be without a remedy." Judge Malski's remedy enforced the option by ordering the holders of record title to convey the property to the Moores and by mandating the Moores to uphold their end of the bargain by paying the $15,000, leaving the defendants to determine among themselves who was entitled to the money. Thus the Moores received the specific thing to which they were entitled under the lease/option (the land) and the Defendants received that to which they were entitled (the $15,000.00)

In sum, the lower court's final judgment provides an equitable remedy which was requested by the Moores, which was supported by substantial evidence, and which was reasonable in light of the unusual facts and circumstances, giving each side what it was supposed to have.

## CONCLUSION

The Moores signed and recorded a lease/option agreement, drafted by George, a lawyer, which contained language which proved to be ambiguous. The Chancellor correctly construed that language more strongly against the drafter and found that "assume responsibility of" with respect to the three buildings located on the property, determining that it was George's intent to relieve himself and Geraldine of any liability for repair and maintenance of the buildings while the property was under lease to Moore rather than to impose upon the Moores the affirmative obligation of maintenance of the structures. Since George and

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[10] *City of Starkville v. 4-County Elec. Power Ass'n.*, 909 So.2d 1094, 1102 (Miss. 2005)

Geraldine later conveyed the property to the Henry brothers, thereby muddying the legal waters, the Henry brothers were indispensable parties in an action to enforce specific performance of the lease/option. The final judgment provides a reasonable equitable remedy which gave the Moore's the property they had bargained to purchase and the George and the Henrys the $15,000.00 purchase price.

The Chancellor's decision was supported by substantial evidence, contained no manifest error nor applied an improper legal standard. Therefore the lower court's decision should be affirmed.

Respectfully submitted,

JOHN S. MOORE and KAREN J. MOORE,
Appellees

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## CERTIFICATE OF SERVICE

I, DOLTON W. McALPIN, undersigned attorney of record for Appellees herein, hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing BRIEF OF THE APPELLEE to the following attorneys, judges and parties of record:

The Honorable Michael Malski
P. O. Box 543
Amory, MS 38821

T. Jackson Lyons, Esq.
120 North Congress Street, Suite 620
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**SO CERTIFIED** this the 27th day of November, 2007.

DOLTON W. McALPIN