

IN THE SUPREME COURT OF MISSISSIPPI

DAVID MICHAEL ANDREWS

APPELLANT

V.

NO. 2007-CA-00497

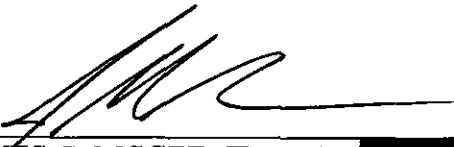
TINA FORD, ADMINISTRATRIX OF THE  
ESTATE OF ROBERT LEE FORD, III, DECEASED

APPELLEE

ON APPEAL FROM THE CIRCUIT COURT  
OF RANKIN COUNTY, MISSISSIPPI

REPLY BRIEF FOR THE APPELLANT

ORAL ARGUMENT REQUESTED

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JAMES G. MCGEE, JR. (MSB [REDACTED])  
5 RIVER BEND PLACE, SUITE A  
FLOWOOD, MISSISSIPPI  
TELEPHONE (601) 981-6336  
FACSIMILE (601) 981-7075

ATTORNEY FOR APPELLANT

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## **TABLE OF AUTHORITIES**

No authorities cited herein.

## ARGUMENTS

Appellant objects to certain statements made by the Appellee on the grounds that they are spurious, ill-conceived and possibly libelous. Such statements made in said brief appear to be nothing more than personal attacks on Appellant and fail to accurately represent the facts in the case. This case is simply a contract dispute involving a valuation figure to be determined relative to a deceased partner's interest under a Buy/Sell Agreement. Appellant has acted in good faith, with integrity, and within the bounds of his legal rights in all matters involving this lawsuit. This Honorable Court is not the forum for name calling, distorting a party's personal character; or for making rhetorical tropes. The Appellant should not be subjected to such abuse because he has, in good faith, asserted his legal rights under the law. The statements specifically objected to are as follows.

1. *"Even if Andrews succeeds in this clever sleight of hand, it should avail him nothing."*

Appellant objects to this statement made by Appellee as such statement indicates that Appellant has committed a manipulative or deceitful act; or, cheated Appellee in an attempt to deceive her or through the use of a "confidence trick" (a/k/a a "con", "scam", "swindle", or "flim flam"). No proof of such alleged conduct by Appellant exists. This case is simply a valuation dispute. If the Appellee believes that a "bad act" has been committed, then a suit should be filed in the proper forum. Appellant requests that Appellee's statement be stricken from the record and disregarded by the Court as an unfounded personal attack against Appellant.

2. *"Those constraints consist of the raw unfairness of the position Andrews has attempted to push upon this Court."*

Appellant objects as Appellant has only asked for legal remedies as set forth under the

law. The term “raw unfairness” suggests that Appellant has committed some act against Appellee through which Appellant has gained a superior position and then exploited Appellee’s minority position. If Appellee believes this, as stated earlier, she should file a lawsuit in the proper forum. Furthermore, Appellant requests that Appellee’s statement be stricken from the record and disregarded by the Court as an unfounded personal attack against Appellant.

Appellant has not attempted to push anything upon this Court. Such statement insinuates that he has acted beyond the scope of his legal rights and infers that Appellant has committed an act of duress or coercion upon the Court; or, that he has taken such actions as to gain an unfair influence upon the Court. Again, Appellant requests that Appellee’s statement be stricken from the record and disregarded by the Court as an unfounded personal attack against Appellant.

3. *“Not satisfied with that litany of abuse, Andrews has now gone beyond callous disregard for his partner’s widow to actual creation of a new business entity, “Sleep World Mattress Centers, LLC”, located in the same building as the old Sleep World and capitalized and doing business, no doubt, with the assets of Sleep World, half of which belong to the Estate.” “Not satisfied to stonewall his partner’s widow into accepting a low-ball buy-out deal, Andrews has now gone so far as to signal a willingness to divest Sleep World of its assets by transferring them to another company controlled exclusively by him.”*

Appellant objects to this statement because of the improper characterizations contained in it. Use of the terms “litany of abuse,” “callous disregard,” and “stonewall...low-ball buy-out deal” are gross mischaracterizations of Appellant and/or his actions within the scope of the lawsuit. These terms are simply spurious personal attacks against Appellant. The purpose of such attacks is unknown, except for the possibility that through such distortions, Appellee may gain some favor or consideration with this Court, considering the weakness of her case and the overwhelming weight of evidence in favor of Appellant’s position.

The Court should note that Appellant began remitting monthly payments to Appellee

immediately upon Mr. Ford's death. Only when he was advised by Appellee's attorney that he would not receive credit for such payments, under the Buy/Sell Agreement, did he discontinue making such payments. Furthermore, Appellant has offered Appellee \$350,000 under a Rule 68 Offer for Judgment, but she has refused. Such statement grossly misstates the facts and suggests that some misappropriation of assets has occurred, an allegation that has no merit and is not alleged in this suit. Appellant requests that Appellee's statement be stricken from the record and disregarded by the Court as an unfounded personal attack against Appellant.

4. *"Now, having ignored the inconvenient portions of the Operating Agreement – the portions that would require that the widow of Andrews' partner be treated with some dignity and equity – Andrews asks that this Court to cherry pick a provision that he wishes to utilize for his perceived benefit and to avoid standing in front of a jury of his peers. But by his own conduct over the past two years, he has demonstrated that there exists no dispute "among the Members" of Sleep World, such as would be necessary to trigger the arbitration provisions of the Operating Agreement."*

Appellant objects to this statement because the facts simply do not reflect any actions by Appellant which could be interpreted as treating Appellee without "dignity and respect." Furthermore, Appellant has not ignored any provisions of the agreement. The case before the Court is simply a dispute over the proper values which are set forth under a formula within the agreement. Because two parties disagree over an interpretation or value does not give Appellee the right to accuse Appellant of "ignoring" the agreement. Appellant attempted to work with Appellee as indicated by his immediate remittance of periodic payments after Mr. Ford's death; however, she chose to pursue the path of litigation. No actions for improper conduct by Appellant are before the Court. This statement is simply another personal attack on Appellant. Appellant requests that Appellee's statement be stricken from the record and disregarded by the Court as an unfounded personal attack against Appellant.

5. *"Occasionally, the law genuinely serves as the last hope for a disadvantaged person where common decency has failed. To that end, it was our founders' conviction that the best ultimate arbiter of the facts of a dispute is a jury of one's peers; so firm was that conviction that it is protected by constitutional mandate."*

Appellant objects because this statement suggests that Appellant has failed to act in good faith and also infers that he has committed acts against Appellee which would be deemed as outside the acceptable standards of social norms. The facts do not reflect such. If Appellee believes that such acts have occurred, for which she is entitled to a legal remedy, then she should file a lawsuit in the proper forum. Appellant requests that Appellee's statement be stricken from the record and disregarded by the Court as an unfounded personal attack against Appellant.

6. *"Tina Ford's husband is gone; his surviving partner is not doing what he agreed contractually to do in the event of Bob Ford's death. In response to Mrs. Ford's efforts to seek redress in the courts, Andrews' response was first to try to sweat her out with a low settlement offer, then force her to arbitration of her claim for justice by a convoluted legal argument that one contract should be substituted for another."*

Appellant, in good faith, had begun making payments to Tina Ford, in acknowledgment of the amount to be determined under the Buy/Sell Agreement. However, Appellant stopped making payments due to the fact that Appellee had indicated that she was unwilling to give Appellant credit for those payments. Therefore, such payments made by Appellant to Appellee were not applied toward his purchase under the Buy/Sell Agreement. Furthermore, Appellant and Appellee, upon mutual agreement, had an independent business valuation conducted on November 14, 2007. Such valuation determined the value of the business as of Mr. Ford's date of death (November 7, 2005) as being \$186,877. When this amount, plus the partner's compensation factor, is plugged into the formula in the Buy/Sell Agreement, the Appellant's offer to Appellee in the amount of \$350,000 is very accurate. Furthermore, Appellant has even continued providing Appellee with a telephone.

Such allegations that he is not doing what he contractually agreed to do is a mischaracterization of the facts and suggests that some illegal or bad act has been committed. Appellant has a legal right to assert his interpretation of the contract and to enter into such litigation in defense of his interpretation. Appellant has relied on the opinions of experts in interpreting the value to be remitted to Appellee. Because Appellee disagrees with the value calculated by 1) Sleep World's CPA; 2) a neutral independent business valuation appraiser mutually agreed to by both parties; and, 3) Appellant's attorneys, who specialize in business/tax matters, it does not entitle her to characterize Appellant, or his legal strategy, in such negative light before this Honorable Court without any factual evidence. Appellant requests that Appellee's statement be stricken from the record and disregarded by the Court as an unfounded personal attack against Appellant.

7. *"Lady Justice might, indeed, be blind. But she is not deaf. And, like this Court, she can no doubt tell when a siren's song is masquerading as a legal argument."*

Appellant objects because this statement does not properly set forth a valid legal argument. Furthermore, such statement implies that Appellant has acted beyond the scope of his legal rights and has somehow influenced the lower Court (presumably "Lady Justice") to turn a blind eye to the facts and law surrounding this case, in favor of Appellant.

Appellant further objects to this statement on the basis that this is Appellee's metaphorical attempt to cast a negative light on Appellant through the use of mythological creatures and unfounded clichés. Appellant finds such language personally offensive; offensive to the lower Court, as well as this Honorable Court; and, grossly improper in the context of a legal argument.




## CONCLUSION

Appellant has, at all times, acted in good faith in attempting to litigate this matter. This is a legal dispute in which both sides have certain legal rights and duties. Appellant believes that the references made about him in the Appellee's brief are simply inappropriate in this forum. If Appellee believes that such misconduct has occurred, then it is her right to file a lawsuit against Appellant alleging damages for such conduct. However, the proof will show that no such misconduct or bad acts have occurred.

Appellant regrets that Appellee is unwilling to accept the overwhelming evidence supporting the valuation amount and subsequent offers based on that amount. Appellant has attempted to settle this matter but he is unwilling to agree to the unrealistic and unfounded figures to which Appellee has claimed. As such, a valid dispute exists, which the parties have felt compelled to litigate. Because Appellant does not agree with Appellee is simply not a reason to resort to personal attacks, name calling, and other potentially libelous statements. Appellant requests that the comments be stricken from the record and that this Court disregard such spurious attacks. Appellant simply asks this Court to make a decision based on the fact, law, and evidence before the Court.

Respectfully submitted this, the 28<sup>th</sup> day of December, 2007.



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JAMES G. MCGEE, JR. (MSB [REDACTED])  
5 River Bend Place, Suite A  
Flowood, Mississippi  
Telephone (601) 981-6336  
Facsimile (601) 981-7075  
Attorney for Appellant,  
David Michael Andrews

CERTIFICATE OF SERVICE

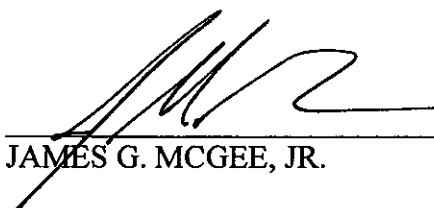
I, James G. McGee, Jr. of the firm of BARNES, BROOM, and MCLEOD, P.A., Attorneys at Law, do hereby certify that I have this day served an original and three (3) true and correct copies of the above and foregoing Rebuttal Brief for the Appellant, by first class mail, postage prepaid to the Clerk of the Mississippi Supreme Court and a true and correct copy of the above and foregoing Brief for the Appellant to the following counsel at the address below:

Hon. Samac S. Richardson  
P.O. Box 1599  
Brandon, Mississippi 39043

R. Andrew Taggart, Jr. (MSB 7422)  
Andy Taggart, Legal & Strategic Counsel, PLLC  
100 Webster Circle, Suite 1A,  
Madison, Mississippi 39110.

Robert W. Long (MSB 1410)  
Herring, Long & Crews, P.C.  
129 East Peace Street  
P.O. Box 344  
Canton, Mississippi 39046

DATED, this the 20<sup>th</sup> day of December, 2007.

  
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JAMES G. MCGEE, JR.