CP

Case No. 2007-TS-00533

IN THE SUPREME COURT OF MISSISSIPPI

JULIA W. LANGE, DAVID L. LANGE,
JAMES S. WHITAKER, JR., and
JAMES S. WHITAKER, SR., BY AND THROUGH
THE EXECUTRIX OF THE ESTATE, JOYCE
WHITAKER — PLAINTIFFS/APPELLANTS

VS.

CITY OF BATESVILLE — DEFENDANT/APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record hereby certifies that the persons listed below are either parties to this appeal or have an interest in the outcome of this lawsuit. These representations are made in order that the Justices of this Court may evaluate possible recusal or disqualification.

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I hereby certify that to the best of my knowledge and belief, these are the only persons having an interest in the outcome of this appeal.

THIS the 24th day of July, 2007.

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I. STATEMENT REGARDING ORAL ARGUMENT

Plaintiffs/Appellants appeal the Panola County Circuit Court's grant of Summary Judgment to Defendant/Appellee City of Batesville. Because the state court proceedings and federal court proceedings both produced lengthy records, and because the issues of parol evidence, collateral estoppel, and breach of contract require a clear understanding of those records, the City of Batesville suggests that this Court would benefit from oral argument. See M.R.A.P. 34(a)(1).

II. STATEMENT OF ISSUES ON APPEAL

The Statement of Issues before this Court are as follows:

1. Whether Panola County Circuit Court properly held that affidavits filed by Appellants should not be considered by the court under the parol evidence rule.
2. Whether the Panola County Circuit Court properly held that collateral estoppel applies to bar Appellants' claims; and,
3. Whether the Panola County Circuit Court properly held that Appellants have failed to show any damages based on breach of contract.

III. STATEMENT OF THE CASE

On March 7, 2007, the Panola County Circuit Court granted summary judgment to the City of Batesville, finding that any argument regarding the building of House-Carlson Drive is precluded by the doctrine of collateral estoppel, that Appellants have not shown any damages for breach of contract and that the parol evidence rule applied to Appellants' purported affidavits.

A. Statement of the Relevant Facts

This action marks the seventh legal proceeding in a long history of litigation between the parties involving an Agreement for a Temporary Easement in which the Appellants agreed to grant Panola County a temporary easement to their property for the removal of dirt and also agreed to

transfer to the County a strip of land carved from the edge of their property in exchange for the County's "promise" to build a "public road" on the land. (R. 109-111). The County had plans to construct a Civic Center and the Appellants' property shared a common boundary with that Civic Center. The project was later transferred to the City of Batesville, and the City agreed to honor the Agreement For Temporary Easement between the County and Appellants. (R. 63). The facts are undisputed that (a) the subject road, referred to as "Whitaker Road" or "Civic Center Road", has been built, (b) the Civic Center has been built, and (c)Whitaker Road leading to the Civic Center was completed *before* the Civic Center was completed. Whitaker Road is a five-lane public road which intersects with Highway 6 and leads to the civic center using the plaintiffs' donated land. Meanwhile, the City of Batesville built another road. This road, referred to as "House-Carlson Drive," intersects Highway 6 at a traffic light and leads to commercial developments, including Wal-Mart and the hospital.

B. Procedural History

In October of 2000, Appellants filed a bill of exceptions with the Circuit Court of Panola County. (R. 163). Judge Andrew Baker ruled that the decision of the Batesville Board of Aldermen "changing the route and location of the primary road" (to be House-Carlson Drive) was not arbitrary and capricious and affirmed the decision of the City. (R. 202). Appellants appealed Judge Baker's decision to the Mississippi Supreme Court which then deflected to the Court of Appeals. The Court of Appeals affirmed Judge Baker's decision on September 3, 2002. *Lange v. City of Batesville*, 832 So. 2d 1236-1237, 1240 (Miss. Ct. App. 2002)("*Lange I*")(R. 265-270). The Court of Appeals found that "since the Agreement had no definite time requirement for the construction of Whitaker Road, the [Appellants] had not shown that there has yet been a breach. (R. 270). The Court of Appeals made it clear that the road must be built in a reasonable amount of time for there to be no breach of

contract. (R. 270).

In April 2001, Appellants filed an action in the Northern District of Mississippi. In April 2005, the District Court granted summary judgment to the City of Batesville holding that based on the doctrines of issue preclusion and *Rooker/Feldman*, the final judgment of the Court of Appeals in *Lange I, Lange v. City of Batesville*, 832 So. 2d 1236-1237, 1240 (Miss. Ct. App. 2002) precluded re-litigation of the dispositive question underlying all claims asserted by Appellants. (R. 323).

Appellants appealed the District Court decision to the Fifth Circuit Court of Appeals. On December 21, 2005, the Fifth Circuit affirmed the decision by the District Court based on issue preclusion (the House-Carlson Drive claim). (R. 327).

On January 19, 2006, Appellants filed a Complaint in the Panola County Circuit Court stating a claim for breach of contract. (R. 3). On March 7, 2007, Panola County Circuit Judge Lamar granted summary judgment to the City of Batesville finding (1) the court should not review Appellants' affidavits in determining whether there was a breach of agreement as the minute book order rule applied to this case (R 412-13); (2) any argument regarding the Civic Center Road as not being the "main" road is precluded by the doctrine of collateral estoppel, as this exact issue was addressed in the appeal filed by the same plaintiffs against the same defendants, in which the Mississippi Court of Appeals has already affirmed (R. 411); and (3) because the City of Batesville built Whitaker Road *before* the Civic Center was opened, there is evidence that the construction of the road was timely. (R. 413). Circuit Judge Lamar concluded there was no breach of contract. (R. 413).

This current proceeding makes the seventh time Appellants have initiated a proceeding or appealed from a judgment against them involving their claims against the City of Batesville.

IV. SUMMARY OF THE ARGUMENT

The Panola County Circuit Court has properly held that affidavits filed by Appellants should not be considered by the Court under the parol evidence rule. It is the duty of the person contracting with the board to know that the Board can only act through its official records and to make sure that all terms of agreement are placed on the Board's Minutes.[1] Under Mississippi law, Appellants had a duty to ensure (1) that the written contract executed by the Board of Supervisors contained *all* of the terms, conditions, and consideration which they believed were encompassed by the *Agreement for Temporary Easement*, and (2) that *all* the documents which constituted part of their contractual agreement with the County were placed upon the Minutes of the Board of Supervisors. Appellants did neither. Thus the County was never contractually bound by Appellants unwritten "terms," and neither is the City of Batesville.

The four elements of collateral estoppel are satisfied.[2] Appellants' factual and transactional relationship has not changed from their prior state and federal litigation. Appellants continue to base their claims on the same set of facts; they assert the same breach of contract; they proffer the same expert report; and they demand the same relief which they have been asserting for the past five years. The relation in time, space, origin of the facts, as well as the motivation of the parties, formed a convenient trial unit in both prior litigations. The summary of the facts which Appellants list in their original *Bill of Exceptions*, their federal *Complaint,* and their current *Complaint* are almost identical.

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[1] *Martin v. Newell*, 198 Miss. 809, 815, 23 So.2d 796, 797 (Miss. 1945).

[2] Four elements must be satisfied before collateral estoppel can operate as a bar to litigation of an issue:

(1) the plaintiff is seeking to relitigate a specific issue,
(2) the issue has already been litigated in a prior lawsuit,
(3) the issue was actually determined in the prior lawsuit, and
(4) the determination of the issue was essential to the judgment in the prior lawsuit.

Walker, 793 F. Supp. at 695.

The only new fact which Appellants add to their current *Complaint* is that they finally "received" a road on January 14th, 2004. Circuit Judge Lamar determined in her March 7, 2007, opinion that it was reasonable, and not a breach of contract for the City, to have completed Whitaker Road before the completion of the Civic Center.

To recover in an action for breach of contract, Appellants must prove (1) the existence of a binding contract, (2) breach of that contract, and (3) causally related monetary damages.[3] As a matter of law, Appellants have suffered neither damages nor breach of contract. Appellants do not actually attribute any of their "damages" to the issue of timeliness. Their "damages" result solely from a City decision–to build House-Carlson Drive–which did not breach their *Agreement for Temporary Easement*. Their unilateral expectations do not rise to the level of unwritten contract terms accepted by either Panola County or the City of Batesville.

V. ARGUMENT

For the following reasons, this Court should affirm the Panola County Circuit Court's Order Granting Summary Judgment:

A. The Panola County Circuit Court properly held that the affidavits filed by Appellants should not be considered by the Court under the parol evidence rule.

The Panola County Circuit Court was correct in stating that it should not review the affidavits in determining whether there was a breach of the Agreement. The Supreme Court in *Neider v. Franklin*, 844 So. 2d 433, 436 (Miss. 2003), cited by the Fifth Circuit in *Lange v. City of Batesville*, 160 Fed. Appx. 345 (5th Cir. 2005) (R. 327) set forth the law in a contract case regarding parol

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[3] *Warwick v. Matheney*, 603 So.2d 330, 336 (Miss. 1992)("In any suit for a breach of contract, the plaintiff has the burden of proving by a preponderance of the evidence:
1. the existence of a valid and binding contract; and
2. that the defendant has broken, or breached it; and
3. that he has been thereby damaged monetarily").

evidence:

> A question of law/question of fact dichotomy requires a two-step inquiry in contract law. First of all, it is a question of law for the court to determine whether a contract is ambiguous, and if not, enforce the contract as written. In the event of an ambiguity, a subsequent interpretation presents a question of fact for the jury which we review under the substantial evidence/manifest error standard.

Boards of Supervisors and Boards of Aldermen can only act as a body and their acts must be evidenced by an entry on the minutes.[4] The Court of Appeals has recently reiterated that it is an error to admit testimony of supervisors to tell what the Board did or did not do, and if their testimony constituted a determining factor in a judge's decision, there is reversible error.[5] Appellants were responsible to see that the contract was legal and properly recorded on the minutes of the Board.[6] Appellants cannot at this point in litigation attempt to come before this court and introduce "unwritten" terms from the Board of Supervisors meeting. Under Mississippi law, Appellants had a duty to insure: (1) that a written contract executed by the Board of Supervisors contained all of the terms, conditions and consideration which they believed were encompassed by the Agreement for Temporary Easement and (2) that all the documents which constituted part of their contractual agreement with the County were placed upon the minutes of the Board of Supervisors. Appellants did neither. Thus, the County was never contractually bound by the Whitakers' unwritten terms, and neither is the City of Batesville.

The City's minutes show that it only adopted the written terms of the Agreement for

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[4]*Martin v. Newell*, 23 So. 2d 796 (Miss. 1945), among other cases.

[5]*Burdsal v. Marshall County*, 937 So.2d 45 (Miss. App. 2006).

[6]*Rawls Springs Utility Dist. v. Novak*, 765 So.2d 1288, 1291 (Miss. 2000); *Thompson v. Jones County Community Hospital*, 352 So.2d 795, 797 (Miss. 1977).

Temporary Easement, to the exclusion of all other agreements and understandings. By its minutes, the City promised to:

> [a]bide by and honor the Agreement for Temporary Easement between the County and James S.Whitaker et al dated July 31, 1996, and recorded in Deed Book S-8 at Page 126 in the Batesville Office of the Chancery Clerk of Panola County, Mississippi, a copy of which is attached hereto.[7]

The minutes specified that, aside from what was actually written in the Agreement, the City did not "assume, and shall not be deemed by its execution and performance of this Agreement to have assumed, and shall not be liable or responsible for, any other obligations of the County (contractual, legal, equitable, or otherwise)."[8] The City never adopted Appellants unwritten "terms" and cannot be contractually bound by them. The fact that the terms of a written contract or conveyance cannot be varied or added to by parol evidence is not merely a rule of evidence, but is one of substantive law.[9] In measuring the rights of the parties to a written contract or conveyance, which, on its face, is unambiguous and expresses an agreement complete in all of its essential terms, the writing will control.[10]

Additionally, Appellants have put forth absolutely no proof for their assertion that the "*other good and valuable consideration*" for the donation of the land as used in the agreement was the building of a "public" road as the "main" road.

The Agreement for Temporary Easement provided:

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[7]Minutes of the City of Batesville, taken on 11-2-99 at Minute Book pages 51-52 (numbered therein as page 13, paragraph (a)(5) of the City-County Interlocal Agreement)(R. 39-40); Minute Book pages 60-64 reprint the entire Agreement for Temporary Easement originally entered between Panola County and the Whitakers (R. 48-52).

[8]*Id.* at pages 51-52, paragraph (B)(1)(R. 39-40).

[9]*Carroll v. Henry*, 798 So.2d 560, 562 (Miss. Ct. App. 2001).

[10]*Id.*

> If the Grantee commences Phase 2 of such project within two (2) years of the date hereof, then the grantors agree to dedicate to the county such part of the above described 5.47 acres as may be needed for a public road. If Phase 2 is not commenced within two (2) years but the County has evidenced good faith to commence same within a reasonable period of time, then the Grantors agree to extend the aforesaid two (2) year period for a reasonable time.

The proof before lower court in the easement agreement and the minutes of the Board was that Appellants would dedicate the land to the county for "a public road". There is no dispute that "a public road" has been built on the land. A five-lane road which intersects with Highway 6 was completed in January of 2004 on the property donated by Appellants. The deed was executed to the City of May 23, 2000. (R. 64). The Civic Center was completed in January of 2005. (R. 65). The original agreement for the easement was signed in July of 1996. (R. 62).

B. Collateral Estoppel Applies to Bar Appellants' Claims

Collateral estoppel focuses on something relatively narrow - an issue that was litigated and determined in the first case, and that is relevant in a second case. With collateral estoppel, the issue is deemed established in the second case without need to proffer evidence on it.[11] The Supreme Court in *Mayor and Bd. Of Aldermen v. Home Builders Ass'n of Miss., Inc.*, 932 So. 2d 44, 59 (Miss. 2006) recently discussed this principle:

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[11] Collateral estoppel protects litigants from the burden of relitigation. It must be applied cautiously on an *ad hoc* basis in order to preserve the critical component of due process, i.e., the requirement every party have an opportunity to fully and fairly litigate an issue. *Norman v. Buckley*, 684 So.2d 1246, 1253 (Miss. 1996). Collateral estoppel may be asserted only against someone who was a party (or in privity with a party) in the previous case where the issue was actually litigated and determined. The effect of collateral estoppel is to "establish conclusively questions of law or fact that have received a final judgment for the purposes of a later lawsuit." *McCoy v. Colonial Baking Co., Inc.*, 572 So.2d 850, 854 (Miss. 1990). When collateral estoppel does apply, "the parties will be precluded from relitigating a specific issue actually litigated, determined by, and essential to the judgment in a former action, even though a different cause of action is the subject of the subsequent action." *Channel v. Loyacono,* 954 So.2d 415, 425 (Miss. Apr 19, 2007); *Mayor and Bd. of Aldermen, City of Ocean Springs v. Homebuilders Ass'n of Mississippi, Inc.*, 932 So.2d 44, 59 (Miss. 2006).

> Under the doctrine of collateral estoppel, "an appellant is precluded from relitigating in the present suit specific questions actually litigated and determined by an essential to the judgment in the prior suit, even though a different cause of action is the subject of the present suit." *Lyle Cashion Co. v. McKendrick*, 227 Miss. 894, 87 So. 2d 289, 293 (Miss. 1956). Further, collateral estoppel, unlike the broader question of *res judicata*, applies only to questions actually litigated in a prior suit and not to questions which might have been litigated." *Dunaway v. W.H. Hopper & Assoc.*, 422 So. 2d 749, 751 (Miss. 1982) (quoting *Johnson v. Bagby*, 252 Miss. 125, 171 So. 2d 327 (Miss. 1965).

For collateral estoppel to operate as a bar to litigation of an issue, four elements must be satisfied: (1) the plaintiff is seeking to relitigate a specific issue, (2) the issue has already been litigated in a prior lawsuit, (3) the issue was actually determined in the prior lawsuit, and (4) the determination of the issue was essential to the judgment in the prior lawsuit.[12] The four elements of collateral estoppel are satisfied here. Appellants' factual and transactional relationship has not changed from their prior state and federal litigation. Appellants continue to base their claims on the same set of facts; they assert the same breach of contract; they proffer the same expert report; and they demand the same relief which they have been asserting for the past five years. The relation in time, space, origin of the facts, as well as the motivation of the parties, formed a convenient trial unit in both prior litigations.

The summary of the facts which Appellants list in their original *Bill of Exceptions*, their federal *Complaint* and their January 19, 2006 *Complaint* filed in Panola County Circuit Court are all strikingly similar, almost identical, as if they were cut and pasted from one document to the next. The only new fact which Appellants add to their current *Complaint* is that they finally "received" a road on January 14, 2004. (R. 7). To this fact they couple a new allegation-that they suffered a

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[12] *Walker v. Kerr-McGee Chemical Corporation*, 793 F. Supp. 688, 695 (N.D. Miss. 1992).

serious devaluation of their property for not receiving the road within a reasonable amount of time.[13] However, they cite no new facts which would support this allegation. Appellants merely disguise their prior claims under the new claim of "timeliness" and sue on the same body of facts, asserting the same causation of injury - the approval and construction of House-Carlson Drive.

To avoid collateral estoppel, Appellants "timeliness" claim must be "premised upon an alleged breach of the Agreement that is wholly separate and distinct from the breach alleged to underlie the House-Carlson Drive claim."[14] However, Appellants *have not* done so. Appellants still attribute all of their damages to the existence of House-Carlson Drive and to Wal-Mart's determination to locate off of House-Carlson Drive. Accordingly, collateral estoppel bars their "timeliness" claim just as it bars their traffic-light, "main" intersection, "main" access, and "connecting artery" claims.

Additionally, any argument regarding the building of House-Carlson Drive, that is the Whitaker Road is not the "main" road, is also precluded by the doctrine of collateral estoppel. This exact issue was addressed in the appeal filed by the same plaintiffs against the same defendant in which the Mississippi Court of Appeals affirmed the Panola County Circuit Court. (R. 411).

In their brief, Appellants make much of the idea that a breach of contract action does not address the same issues or seek the same relief as a bill of exceptions. What Appellants do not explain to this Court is that, five years ago, they included in their appeal a breach of contract action seeking money damages.[15] They have already claimed that the City's decision devalued their

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[13] *Id.* at 5 ¶22. (R. 7).

[14] *Lange v. City of Batesville*, 160 Fed Appx. 348, 354 (5th Cir. 2005) (R. 328).

[15] *Lange v. City of Batesville*, 832 So.2d 1236, 1240 (¶17) (Miss. Ct. App. 2002) ("The Whitakers want the City to be ordered to commence building a five-lane road to the Arena Project along the western boundary of their property consistent with the May 23, 2000 deed."). They alternatively seek damages.")(R. 269).

property and adversely impacted negotiations entered into with other parties about the sale or development of their property.[16] The Mississippi Court of Appeals found that a breach had not yet occurred, and that the building of House-Carlson Drive as the main road did not breach the Agreement.[17] The Panola County Circuit Court affirmed this decision in its Opinion dated March 7, 2007, specifically stating that any argument that the building of Whitaker Road not as the "main" road is precluded by collateral estoppel.[18] This exact issue was addressed in the appeal filed by the same Appellants against the City of Batesville and which the Mississippi Court of Appeals affirmed.[19] Specifically, in her Opinion, Circuit Judge Lamar found that Appellants' argument that collateral estoppel should not apply had no merit because Appellants included in their 2002 appeal a breach of contract action seeking money damages claiming that the City's decision devalued their property and adversely impacted negotiations entered into with other parties about the sale or development of their property.[20]

C. The Panola County Circuit Court Properly Held That Appellants Have Failed To Show Any Evidence of Damages Based on Breach of Contract

1. The Contract Was Performed Within a Reasonable Amount of Time

It is a basic rule of construction that an individual contract provision should be interpreted consistent with the contract's overall purpose.[21] The Court will not strain the bounds of the English

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[16] *Id.*

[17] *Lange v. City of Batesville*, 832 So.2d 1236, 1240 (¶22) (Miss. Ct. App. 2002).(R. 269).

[18] Opinion of Panola County Circuit Judge Lamar, (Mar. 7, 2007) at 6 (R. 411).

[19] *Id.*

[20] *Id.* See also *Bd. Of Trustees of State Insts. Of Higher Learning v. Brewer*, 732 So. 2d 934 (Miss. 1999).

[21] *Weeks v. Mississippi College*, 749 So. 2d 1082, 1089 (Miss. App. 1999)("The intent and purpose of the written instrument are not to be determined by considering one isolated sentence or provision thereof but by considering and construing the instrument in its entirety. In placing a

language by imparting meanings to common words beyond ordinary use.[22] The purpose of the Agreement for Temporary Easement was to facilitate the construction of the Civic Center. The purpose of "a public road" mentioned by the Agreement was to provide public access to the Civic Center. "Timeliness" is measured within this context. Because the road was completed more than one year before the Civic Center was completed (and therefore more than one year before the road was needed), this Court should affirm the Panola County Circuit Court in its finding that the contract was performed in a reasonable amount of time.[23] Such contract interpretation is a matter of law.[24]

Appellants cannot measure contractual "timeliness" in relation to House-Carlson Drive, since the Mississippi Court of Appeals found that House-Carlson Drive had nothing to do with the Agreement for Temporary Easement.[25] It is conclusively established that, through the Agreement, Appellants bargained for "a public road," not for "a 'public road' built as the *primary* road in the area."[26]

2. Appellants Have No Evidence of Contract Damages

There is no evidence before the court that if the road, as completed, was completed before January of 2004 and after September of 2002 (the date that the Court of Appeals ruling that at that

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construction on a written instrument, reasonable rather than unreasonable interpretations are favored by the law. Results which vitiate the purpose or reduce the terms of the contract to an absurdity should be avoided").

[22]*Clarendon Nat. Ins. Co. v. McAllister*, 837 So.2d 779, 780 (Miss. Ct. App. 2003).

[23]Opinion of Panola County Circuit Judge Lamar, (Mar. 7, 2007) at 8. (R. 413).

[24]*Fortune Furniture Manufacturers, Inc. v. Pate's Electronic Company*, 356 So.2d. 1178 (Miss. 1978).

[25]*Lange v. City of Batesville*, 160 Fed Appx. 348, 352 (5th Cir. 2005) ("the *Lange I* court's holding [is]: Despite the City's authorization of House-Carlson Drive, *'no breach of [the City's] obligations [under the Agreement] has occurred'*"). (R. 327).

[26]*Id.* at 350 ("In essence, the Whitakers' federal theory at this time was that the Agreement entitled them to a "public road" built as the *primary* road in the area"). (R. 325).

time there had not been a breach) and without regard to House-Carlson Drive, that Appellants were damaged. The only evidence is Appellants "claim" that the City of Batesville promised to use the land Appellants donated to the City to build the "main" road to the civic center in hopes that their land would be more valuable. The Court of Appeals has already determined that the City of Batesville did not breach any such agreement as long as a public road was build on the land.[27] The road has been built, and Circuit Judge Lamar confirmed that the contract was not breached.[28]

Also, Appellants have no proof that any delay in building Civic Center Road has damaged them. In the Appellants' expert report, the expert bases his damages on the fact that House-Carlson Drive was built and not on the delay in the building of Civic Center Road.[29] The Mississippi Court of Appeals ruling renders any testimony based on House-Carlson Drive clearly erroneous and thus inadmissible. Assuming Appellants' expert testimony is allowed, any testimony that if Civic Center Road would have been built before House-Carlson Drive, then Wal-Mart or other proprietors would have purchased Appellants' land is purely speculative.[30] The expert gives no testimony regarding land valuations, only lost sales, which is also extremely speculative.[31] Although Appellants assert that if House-Carlson would not have been built as the "main road," then Wal-Mart would not have built on the property on which they did build; there is still not one scintilla of proof that they would have in fact built on Appellants' property.[32]

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[27]*Lange v. City of Batesville*, 832 So.2d 1236, 1242 (¶24) (Miss. Ct. App. 2002). (R.270).

[28]Opinion of Panola County Circuit Judge Lamar, (Mar. 7, 2007) at 8. (R. 413).

[29]Expert Report of Dr. Bruce Lindeman, (May 5, 2004). (R. 291); Opinion of Panola County Circuit Judge Lamar, (Mar. 7, 2007) at 9. (R. 414).

[30]Opinion of Panola County Circuit Judge Lamar, (Mar. 7, 2007) at 9. (R. 414).

[31]*Id.*

[32]*Id.*

VI. CONCLUSION

Extending into its sixth year of litigation, the case *Lange v. City of Batesville* no longer contains any issues on which to base further litigation. The identities of collateral estoppel have clearly been met as set forth in this Brief. The parties are the same. The issues have not changed. The Minutes of the City of Batesville have not changed. The Agreement for Temporary Easement has not changed. The City of Batesville respectfully requests that this Court affirm the judgment of the Circuit Court of Panola County. Any further proceedings would amount to judicial waste.

RESPECTFULLY SUBMITTED this the 24th day of July, 2007.

CITY OF BATESVILLE, APPELLEE

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CERTIFICATE OF SERVICE

I, Michael S. Carr, one of the Attorneys for Appellee, City of Batesville, Mississippi, do certify that I have this day mailed by United States mail, postage prepaid, a true and correct copy of the above and foregoing document to the following:

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DATED this 24th day of July, 2007.

Michael S. Carr