

**BEFORE THE COURT APPEALS
STATE OF MISSISSIPPI**

CASE NO. 2007-CA-00693

**GREENE COUNTY, MISSISSIPPI, JOHN
MARSHALL EUBANKS, TOMMY ROBERT
and MARION PIERCE**

**APPELLANTS/
CROSS APPLLEES**

VS.

CORPORATE MANAGEMENT, INC.

**APPELLEE
CROSS APPELLANTS**

Appeal from the Chancery Court of Greene County, Mississippi
Cause No. No. 2005-134-PW

**REPLY BRIEF OF THE
APPELLANTS/CROSS APPELLEES**

Oral Argument Requested

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following list of persons have an interest in the outcome of this case. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

Appellant Parties

Greene County, Mississippi Board of Supervisors
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Marion Pierce
John Marshall Eubanks

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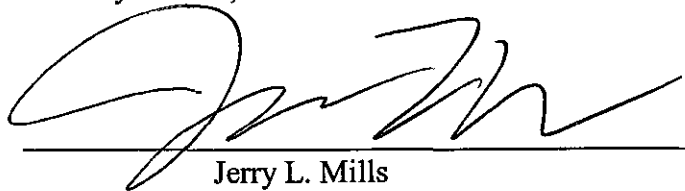
Appellee Parties:

Corporate Management, Inc.

Darren E. Gray
P. O. Box 115
Wiggins, Mississippi 39577

Larry Brown
Greene Rural Health Center
Rebecca Rylee
Safeco Surety
Town of Leakesville, MS
RLI Surety
I. D. Brown
Dorothy Woods

Respectfully submitted this the 9th day of June, 2008.



A handwritten signature in black ink, appearing to read 'Jerry L. Mills', is written over a horizontal line.

Jerry L. Mills

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BRIEF IN OPPOSITION TO THE CROSS APPEAL AND REPLY BRIEF

Comes now the Appellants and file this their responsive brief to the Brief in support of CMI's Cross Appeal and Reply Brief in this matter. The Appellants and Cross

Appellees would show as follows:

I. CROSS APPEAL

A. Statement of Issues

On cross appeal two issues are raised:

1. Did the Court err in not granting CMI the exclusive right to receive an offer to purchase or lease the facilities?
2. Did the trial court err in denying CMI lost profits for breach of contract.

B. Summary of Argument

During the trial of this matter CMI consistently argued that one of the things they had bargained for was "competitive advantage". They continue to seek such an advantage. They seek competitive advantage though the law is designed to assure that the citizens of Greene County are entitled to receive the full benefit of this public asset.

The trial court did not err in denying damages to CMI. The Court found alleged damages too speculative to award. Additionally, no damages were due because there was no breach of the contract. We urge this court to apply the provisions of 41-13-35. The contracts were terminable at the option of the Board of Trustees.

C. Argument

1. Did the Court err in not granting CMI the exclusive right to receive an offer to purchase or lease the facilities?

CMI's brief acknowledges that Section 41-13-15 of the Mississippi Code of 1972 controls how a sale or lease of a community hospital is to be made. They ignore the fact that this procedure was not followed prior to the execution of either the Nursing Home Agreement nor the Hospital Agreement. The trial court found that the procedure to sell or lease the "community hospital" was never completed. RE-40. Further, the trial court found that the language contained in the agreements was clear evidence that the County had not yet decided to sell or lease the Hospital and Nursing Home ("community hospital") (RE 45). The court went on to note that the procedure the agreements set out, to determine the sales or lease price under the agreements, is not permitted under Miss. Code Annotated Section 41-13-15. (RE- 45).

The special chancellor correctly determined that "to interpret the Hospital Agreement to require the sale or lease of the facility based on the procedure in Paragraph 25, the Court would circumvent the statute that authorizes the sale or lease of the facility. Specifically, any transaction for the sale or lease of a "community hospital" must be based on a disclosed price, a disclosed type of transaction (i.e sale, , lease, or lease with option to purchase), and allow an opportunity for the citizens of Greene County to require an election before the transaction is completed." (RE 46-47)

The position of CMI would use their alleged "competitive advantage" to deprive the citizens of the right to advertise for and receive proposals from qualified entities. It would deprive the citizens of Greene County from a "sale . . . to the respondent submitting

the highest and best proposal.”

Miss. Code Ann. § 41-13-15.¹

It is understandable that CMI would not want to have to offer a competitive proposal. It is understandable that the citizens would want competitive proposals.

2. Did the trial court err in denying CMI lost profits for breach of contract.

The Court found:

First, CMI alleges it is entitled to damages for the delay in opening the Hospital. CMI claims that it lost \$29,001 per month because of the delay. CMI claims that the 58 day delay between November 1, 2005 and December 29, 2005, cost CMI \$56,069.19 in lost profits. CMI calculates the “projected daily lost profits realized by CMI” to be \$996.71.

The Court finds that it would be too speculative to determine when CMI could have opened the Hospital but for GRHC’s breach of the agreement, the October 17th termination. Ted Cain testified that CMI planned to open the Hospital on November 1st. However, there was other evidence that licensing issues remained to be resolved as late as December. Accordingly, the Court finds that there was not sufficient evidence as to when the Hospital would have opened if the fifteen-day delay from October 17th through October 31st had not occurred. December 31, 2005 was the deadline. Therefore, the Court concludes that an award of damages for the fifteen-day delay in opening the hospital, due to the October 17th termination, is not appropriate or warranted.

¹ In the absence of a stay in this case, the lower Court's order has remained in full force and effect. The Greene County Board of Supervisors made the election to lease the property. Proper notices were given and the citizens exercised their right to request an election. The election was held on the lease proposed by Greene County. The lease of the hospital was approved by the voters to the entity submitting the highest and best proposal. That was not CMI. A copy of the most recent ruling of the trial court is attached hereto. Greene County requests that this Court take judicial notice of the facts set out in said opinion.

The brief of CMI discusses only the method used to calculate its alleged lost profit. It totally fails to address the finding of the Court that the date the hospital would have opened is speculative. CMI failed to prove any damages.

More importantly, if Section 41-13-35 is properly applied, the Board of Trustees had the right to terminate the contract. The board of trustees exercised the authority conferred by that statute to "to terminate said contracts when deemed in the best interests of the community hospital".

Miss. Code Ann. § 41-13-35. There can be no damages for the rightful termination of a contract.

3. Conclusions

The cross appeal of CMI is totally devoid of merit. It should be denied in toto.

II. REPLY BRIEF

A. Argument

1. Whether the Contracts May Be Terminated without Cause.

The governance of "community hospitals" is specifically provided for by statute. While general rules of contract may apply in the absence of statutory direction to the contrary, such is not the case here. The brief of the Appellee goes around the world to avoid the single controlling issue raised by this appeal on this point. That is does Section 41-13-35(g) permit the termination the management contracts at issue in this case. That section means just what it says. The Board of Trustees has the option to terminate such

contracts when it deems that it is in the best interest of the institution.² Whatever the rule may be with contracts in general, the legislature has adopted a very specific provision to govern hospital management contracts. Regardless of any provisions of a written agreement to the contrary, public policy as expressed by the statute is written into all such contracts. All parties entering into such a contract are on notice. They cannot legitimately be heard to cry foul if the law is applied against them. The parties are bound by the statute and cannot contract away the requirements thereof.

Faced with the plain language of the statute, CMI refuses to address the issue.

The issue of whether the termination of a management contract is solely within the discretion of the members of the board of trustees. It is not subject to second guessing by the Courts.

CMI asserts that no appeal was taken by the Board of Trustees. The reason is simple. The trial court reinstated Larry Brown. He cast the deciding vote.

2. Whether the Contracts were binding on the Board of Supervisors

The following argument of CMI highlights one of the major flaws in its position. CMI argues that the contracts give CMI an unambiguous right of first refusal to buy or lease the facilities if the Supervisors ever decide to sell or discontinue the management of the hospital. CMI ignores the plain requirements of the statute regulating just how the property may be leased or sold. The position of CMI would emasculated the requirements of Title 41 Chapter 13 of the Mississippi Code. The provisions for the

² CMI argues that the minutes of the trustees never make such a finding. It defies logic to conclude that a board of trustees would ever terminate such an agreement in the absence of an implicit determination that there actions were not in the best interest of the hospital.

protection of the public would be totally ignored. CMI seems to be suggesting there is no need to give the people the right to demand those messy elections.

Though CMI correctly sets out the rulings of this Court related to the necessity of approval of contracts in the minutes of the Board of Supervisors, it ignores the fact that this never occurred with the contracts in this case.

3. Breach of the Covenant of Fair Dealing

The brief of CMI totally fails to address the point raised by Greene County in its brief. The Chancery Court has no jurisdiction over this tort claim. No notice was given as required by law. To argue the general law and to ignore the law applicable to governmental bodies is inappropriate.

4. Restoring Larry Brown

CMI does not address any of the following points raised in Greene County's brief.

1. The pleadings do not allege an action for the removal from office of I. D. Brown.
2. An action in the nature of Quo warranto is the proper proceeding to test the right to office.
3. I. D. Brown was an indispensable party to an action to remove him from office.
4. I. D. Brown was improperly removed from office in a collateral attack on his right to office.
5. CMI lacked standing to challenge I. D. Brown's right to office.

6. The removal of I. D. Brown from office is outside the jurisdiction of the Chancery Court.
7. The trial of the right to office must be made in the name of the attorney general instead they argue that Larry Brown was reinstated to the Board. The argument is devoid of logic. The opinion of the Court was as follows: 'that Larry Brown be immediately reinstated to the GRHC Board and allowed to serve the remainder of his term. ***This will necessitate that I. D. Brown be removed from the Board.***' **RE-61.** The Second Amended Final Judgment states "The Court, therefore, orders GRHC to reinstate Larry Brown immediately to the GRHC Board and that he be allowed to serve the remainder of his term. Consistent therewith, the ***Court orders that the GRHC Board immediately remove I. D. Brown from the GRHC Board.***" **RE-84.** No spin or argument can convert this into anything other than the trial of the right to office. It was improper in this case.³

It is undisputed that at the time of trial that, I. D. Brown was in possession of the office of trustee. It is likewise undisputed that Larry Brown had resigned. The original brief of the Appellant fully and accurately sets forth the law in regard to how the issue of right to office is to be handled.

The concept that Larry Brown resigned under duress is not supported by his testimony nor the law. The undisputed testimony related to facts surrounding Larry

³ The often repeated assertion in CMI's brief is that GRHC did not appeal any of the actions of the Special Chancellor. The replacement of the independent I. D. Brown with Larry Brown made that a certain result. Though Larry Brown may have technically been employed by the hospital, CMI was responsible for giving him a job as soon as he testified in this manner. In its motion for new trial Greene County set out that it has learned after the trial that Larry Brown was hired by the plaintiff to fill a newly created and unneeded position. This fact was unknown to the Defendants but CMI was fully aware of this fact at the time it was seeking to have Larry Brown reinstated. RE-130



Brown's resignation does not support a finding of legal duress. His own testimony reveals the missing essential elements of duress.

B. CONCLUSIONS


This Court should reverse the decision below. I. D. Brown should be restored to the Board of Trustees. This Court should hold that the termination of the agreement on October 17 was a valid exercise of the powers granted to the Board of Trustees under 41-13-35 of the Miss. Code. Additionally, the Court should hold that the agreements were not binding on the Board of Supervisors, as the minutes do not properly reflect the approval of either.

Respectfully submitted this the 9th day of June, 2008.

**GREENE COUNTY, MISSISSIPPI, JOHN
MARSHALL EUBANKS, TOMMY ROBERTS
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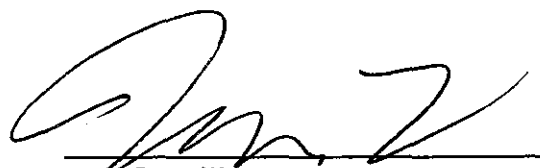
CERTIFICATE OF SERVICE

I, Jerry L. Mills, attorney for the Appellants, Greene County, Mississippi, et al.,
certify that I have this day served a copy of the foregoing by United States mail with
postage prepaid on the following:

Judge T. Kenneth Griffis, Jr.
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Dated this the 9th day of June, 2008.


Jerry L. Mills