IN THE SUPREME COURT OF MISSISSIPPI

MARILYN GOOLSBY, RECEIVER, and
LEND LEASE ASSET MANAGEMENT, LP,
AUTHORIZED SERVICER FOR LASALLE
BANK NATIONAL ASSOCIATION AS TRUSTEE
FOR CHASE COMMERCIAL MORTGAGE — APPELLANTS

v. — CAUSE 2007-CA-00707

COBRA SECURITY, INC.; WAYNE MILLS;
LYNCH OIL COMPANY; PANOLA PAPER COMPANY;
WHITE DOVE JANITORIAL; ARAMARK UNIFORM
SERVICES, INC.; 1-DAY SIGNS; AND DAMOR, INC. — APPELLEES

CONSOLIDATED WITH 2004-CA-1485-SCT

REPLY BRIEF OF THE APPELLANTS

ORAL ARGUMENT NOT REQUESTED

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TABLE OF CONTENTS

TABLE OF CASES AND OTHER AUTHORITIES

STATUTES

CASES

OTHER AUTHORITY

REPLY ARGUMENT

A. The Deposits Did Not Belong To Aegis Oxford

The first sentence in Cobra's Argument states that "Cobra collected the $20,076.63 judgment from Aegis and not the Receiver." Brief of Appellee at page 4. Cobra then alleges that the Receiver has cited no authority or evidence to show that the judgment was executed upon her and that the Receiver is intentionally attempting to mislead the Court. *Id.* at pages 4-5. These contentions and allegations are untrue and unfounded.

On July 23, 2004, Aegis Oxford executed an assignment of all its right, title and interest to moneys held as security deposits by People Lease and the City of Oxford Electric Department to the Receiver for the benefit of Aegis Oxford's creditors. Appellant's Record Excerpts at page 8. Cobra did not execute upon its judgment until February 24, 2005. Appellant's Record Excerpts at page 5 (Order dated February 24, 2005). Thus, on February 24, 2005, Aegis Oxford had no right, title or interest to the deposits. *McPhillips Constr. Co. v. Carter-Murphy Constr. Co.*, 227 So.2d 302 (Miss.1969) (money is not subject to an enrolled judgment lien absent a seizure of the money); *Henry v. Alexander*, 131 Miss. 588, 94 So. 846 (Miss.1923) (lien on money begins from seizure and not from date of judgment); *Cahn v. Person*, 56 Miss. 360 (1879) (same).

It is therefore quite obvious that the when "Cobra received $13,922.26 in funds from Aegis that consisted of utility deposits Aegis had with the City of Oxford Electric Department and People Lease"[1] it was in actuality executing upon assets of the Receiver.[2] Such is even more manifest when

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[1] Brief of Appellee at page 5.

[2] Cobra omits that the majority of this figure comes from attorney's fees to which it was not entitled. *Lend Lease*, 2004-CA-01485-SCT at ¶28.

it is noted that the trial court required the **Receiver** to post a bond equal to 125% of the judgment to prevent execution upon the deposits. There is no genuine issue that the deposits belonged to the Receiver, for the benefit of the creditors, at the time the deposits were executed upon.

B. This Appeal is Timely

Under the heading "CHASE HAS NO CLAIM TO THE DEPOSITS" Cobra next alleges that the present appeal is "improper" because the issues about priority were not raised in the original appeal. Brief of Appellee at page 5. Cobra does not address this Court's previous determination on several occasions that Chase was a secured creditor with a secured (priority) interest in almost all of Aegis Oxford's assets. *Lend Lease*, 2004-CA-01485-SCT at ¶¶2,5, 21 and fn. 5.

As was explained in the Receiver's principal brief at footnote 4, the issue of priority was absolutely raised in the first appeal. See Receiver's Brief in *Lend Lease*, 2004-CA-01485-SCT at pages 11-17 (section I entitled "The Chancery Court Ignored the Law and the Security Agreements the Debtor Aegis Oxford Entered to Give Cobra Security a Judgment"). The issue was not lost on this Court. *Lend Lease*, 2004-CA-01485-SCT at ¶¶2,5, 21 and fn. 5. More importantly, the issue of priority has been decided. Chase had priority, as the Court has noted; Cobra and the other unsecured creditors did and do not. Therefore allowing Cobra to keep the deposits wrongfully collected from the Receiver is even more erroneous when Cobra would not be entitled to them anyway even if they had been collected from a proper entity. The subsequent judgment liens of Cobra and other unsecured creditors did not change the order of priority in favor of Chase. *Cf.* MISS. CODE ANN. § 11-7-191.

It is also noted once again that sixty-three percent (63%) of Cobra's judgment consisted of attorneys fees which this Court disallowed. *Lend Lease*, 2004-CA-01485-SCT at ¶28.

C. This Appeal is Not Frivolous

As demonstrated, Cobra collected the deposits from the Receiver, a party against whom Cobra was not entitled to a judgment. This Court ruled the Receiver was not liable to Cobra. Notwithstanding this Court's reversal of the judgment, Cobra retained the receiver's assets which Cobra had attached. The practical affect of Cobra retaining the receiver's funds after this court reversed the judgment against the receiver, is to ignore Mississippi Supreme Court's reversal. The appellants have had to come again to this court to give affect to the court's reversal of the judgment against the receiver, and mandate the funds Cobra attached to enforce that judgment pending the first appeal. Cobra is not entitled to costs, attorney's fees and expenses from the Receiver. To the contrary, it is the Receiver who is entitled to fees, costs and expenses, including the fees due from the first appeal which Cobra lost. See pending "Motion To Assess Costs Against The Appellee And Amend Mandate" in *Lend Lease*, 2004-CA-01485-SCT.

CONCLUSION

Cobra executed upon a judgment which has been reversed. Nevertheless, Cobra has not returned the funds and the trial court has sanctioned this on numerous inaccurate factual and legal grounds as more fully addressed in the Receiver's principal brief. Moreover, Cobra has retained funds (the attorney's fees) which this Court ruled it was not entitled to. This is plain error and thus this Court should reverse the Chancery Court and order the deposits to be repaid by the unsecured creditors, with statutory interest. The Receiver and Chase further pray that this Court award them costs of this appeal as well as the costs incurred in the matter of *Lend Lease*, 2004-CA-01485-SCT.

WHEREFORE, PREMISES CONSIDERED,

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CERTIFICATE OF SERVICE

I, the undersigned attorney of record for Defendant Lift, Inc., do hereby certify that I have this day mailed via United States Mail, postage prepaid, a true and correct copy of the above and foregoing ***Reply of Brief of Appellant*** to:

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This the 5TH day of November, 2007.

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