BILLY MACK SULLIVAN, TERESA SULLIVAN RANKIN, BILLY H. SULLIVAN, ALICE M LOWTHER, JAMES H. LOWTHER, JR., JULIAN BARRY LOWTHER, PAUL EDWARD LOWTHER, AND SHERRI LYNN LACY — APPELLANTS

VS.

EUGENE C. TULLOS AND JOHN RAYMOND TULLOS, individually and d/b/a TULLOS & TULLOS; CRYMES G. PITTMAN; BILLY MEANS; and JOHN DOES 1-10 — APPELLEES

In Re: Appeal from Order Granting Summary Judgment
of the Circuit Court, Honorable Bobby B. Delaughter, Circuit Judge,
In *Billy Mack Sullivan, et al vs. Eugene C. Tullos, et al,*
Cause No. 251-06-496 CIV; Circuit Court of Hinds County, Mississippi,
First Judicial District

# BRIEF FOR THE APPELLANTS

**ORAL ARGUMENT REQUESTED**

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## CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for Appellants certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. Juliette Sullivan, Appellant/Plaintiff;
2. Alice M. Lowther, Appellant/Plaintiff;
3. James H. Lowther, Appellant/Plaintiff;
4. Julian Barry Lowther, Appellant/Plaintiff;
5. Paul Edward Lowther, Appellant/Plaintiff;
6. Sherri Lynn Lacy, Appellant/Plaintiff;
7. W. Terrell Stubbs, Attorney for Appellants/Plaintiffs;
8. Eugene C. Tullos, Appellee/Defendant;
9. John Raymond Tullos, Appellee/Defendant;
10. Tullos & Tullos, Appellee/Defendant;
11. Crymes G. Pittman, Appellee/Defendant;
12. Billy Means, Appellee/Defendant;
13. Robert G. Germany, Attorney for Appellee, Crymes G. Pittman;
14. S. Wayne Easterling, Attorney for Appellees, Eugene C. Tullos and John Raymond Tullos and Tullos & Tullos; and Billy Means
15. G. David Garner, Attorney for Appellees, Eugene C. Tullos and John Raymond Tullos and Tullos & Tullos; and Billy Means;
16. Cynthia A. Stewart, Attorney for Appellee, Crymes G. Pittman;

This the 26th day of October, 2007.

W. TERRELL STUBBS

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Rule 56 motions for summary judgment without giving Plaintiffs the requisite ten (10) days notice as well as not allowing adequate time for Plaintiffs to conduct discovery prior to granting summary judgment? Furthermore, was the trial court incorrect in finding the Plaintiffs' cause of action accrued on August 21, 2000 and that the statute of limitations was not tolled? Lastly, did the trial court commit error by granting summary judgment in favor of Defendants on the substantive claims alleged by Plaintiffs?

## STATEMENT OF THE CASE

### I. Statement of the Facts

This case begins with the death of Jeff Wooley (hereinafter referred to as "Wooley"), who died intestate on March 9, 1998. At the time of Wooley's death, he had certain personal property and approximately 423 acres as well as a dwelling house located in Smith County, Mississippi. (R.E. 11). Wooley had no children during his lifetime and his wife had predeceased him. The Plaintiffs/Appellants are heirs of Wooley.

On June 16, 1998, Annie Boone, sister of Wooley, was appointed administratrix of the estate of Wooley. The Defendant, Eugene C. Tullos (hereinafter referred to as "Tullos") was the attorney for the administratrix.

During the administration of the estate of Wooley, it has been alleged that some, if not all of the Plaintiffs had contacted Tullos about the status of the estate and when it would be closed out. Tullos represented to those Plaintiffs that an appraisal was being conducted on the land and that bids for the land were being accepted, and once this was

Courthouse in Raleigh, Mississippi on August 21, 2000 to get approval of the sale of the land involved herein and to close out the estate. On Monday, August 21, 2000, the first day of the Chancery Court term, it has been alleged that Tullos requested the Plaintiffs meet in the petit jury room of the Smith County Courthouse in Raleigh, Mississippi for the purpose of getting approval from the Court to sale the land and close out the estate. While the Plaintiffs waited in the petit jury room, Tullos presented the matter to the Chancellor. (R.E. 48). It has further been alleged that Tullos returned to the petit jury room and represented to the Plaintiffs herein that bids had in fact been invited and accepted on 420 acres of land and that the Defendant, Crymes G. Pittman (hereinafter referred to as "Pittman"), had made the highest and best bid of $710.00 per acre and that the Court had approved said bid.[1] Unbeknownst to the Plaintiffs, however, there had been no bids made nor any bids accepted on the land, and based upon the representations of Tullos, the Plaintiffs executed a Warranty Deed prepared by Tullos to Pittman. (R.E. 23-27). Also, on that same date, the Chancery Court of Smith County entered a *Judgment Approving Final Accounting, Closing Estate, and Discharging Administratrix.* (R.E. 11).

Each of the heirs received a check dated August 21, 2000 drawn on the account of Eugene C. Tullos (Regular Account) for their portion of the sale. On each check the memo represents each of the heirs interest in the "Jeff Wooley Estate land to Crymes G. Pittman." (R.E. 28-29).

Thereafter, it was discovered that Tullos had in fact obtained the 420 acres by virtue

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[1]The Complaint erroneously states $750.00 per acre.

31).

The Plaintiffs assert and allege that Pittman acted as a "straw man" to purchase the 420 acres on behalf of Tullos at a price substantially lower than would have been received if bids and/or a private sale had actually been solicited on said property as Tullos had represented had been done. It has been alleged that Tullos and Pittman engaged in a self-dealing scheme in an effort to hide the actual purchase of the property by Tullos at a substantially lower price than what would have been received if the land had actually been placed on the market and/or bids accepted.

Plaintiffs also asserted and alleged that they have discovered that certain individuals knew by word of mouth that the Estate of Jeff Levi Wooley would sale the 420 acres, and wished to submit bids on said property, with the bids being higher than the $710.00 per acre price actually paid. However, Tullos refused to allow submission of or to accept these bids, and in fact, dissuaded all individuals interested in submitting bids on subject property. Tullos' actions effectively "chilled" the interest in bidding on the property by other parties.

Based upon the representations made by Tullos, Plaintiffs agreed to, and in fact did, execute a Warranty Deed in favor of Pittman conveying their interest in said land and real property. (R.E. 23-27).

Plaintiffs further alleged that had they known the true nature of the details relative to the purchase of the land and real property by Pittman, specifically, that no bids had been invited or received; that any potential bidders had their bids refused; that Tullos was the true purchasers of the property; that land in Smith County, Mississippi was, and is in high

approval; then the Plaintiffs would not have sold their interest in said land and real property to Pittman for the amount paid.

It has been alleged and asserted Tullos was in a fiduciary relationship with the Plaintiffs based on an attorney/client relationship of trust and confidence when Tullos undertook a duty to sale the land on behalf of the Plaintiffs.

Plaintiffs further alleged and asserted that Tullos engaged in a self-dealing scheme in order to fraudulently obtain the Plaintiffs' interest in the real property involved herein, and further, that Tullos and Pittman committed said acts with the intent to deceive the Plaintiffs and cover up their fraudulent activity.

Plaintiffs assert that they did not, nor could they have discovered the facts concerning the fraud committed by the Defendants until April 11, 2002, being the date the Warranty Deed executed by Pittman to Tullos was placed on record.

Once Plaintiffs discovered the scheme as set out above and prior to filing suit, Plaintiffs requested a copy of any proof that Pittman was the actual purchaser of the property, however, neither Tullos nor Pittman provided any proof whatsoever. (R.E. 32-33).

As a proximate consequence of said misrepresentations and omissions, and as a result of the Defendants wrongful conduct as described above as well as in the Complaint, the Plaintiffs have been damaged and suit was filed on April 8, 2005.

## II. Course of the Proceedings

On April 8, 2005, Plaintiffs filed their Complaint along with their notice of service of discovery in the Circuit Court of Simpson County, Mississippi. From April 27, 2005 through

and thereafter, on May 18, 2005, this Court entered its Order Appointing Honorable Lillie Sanders as a special judge to hear this matter.

From May 23, 2005 through June 10, 2005, the various Defendants filed motions to stay discovery pending a ruling on their Rule 12(b) motions. Plaintiffs filed their response to the Rule 12(b) motions on May 23, 2005. On May 25, 2005, Plaintiffs filed their Motion for Status Conference and Notice of Hearing. From May 26, 2005 through August 25, 2005, various pleadings were filed, including Plaintiffs' response and brief to Defendants' Rule 12(b) motions and motions to transfer.

Due to Hurricane Katrina, the trial court reset the status conference on two separate occasions, and thereafter, a hearing was conducted February 6, 2006 on Defendants' motions to transfer venue. The trial court transferred the cause to the First Judicial District of Hinds County, Mississippi.

On July 24, 2006 Plaintiffs filed their second motion to enter scheduling order and notice of hearing. In addition, Plaintiffs filed their motion to compel and motion strike Defendants' Rule 12(b) motions. On November 3, 2006 the trial court finally conducted a hearing on Defendants' Rule 12(b) motions. At that time, the trial court converted Defendants' Rule 12(b) motions to Rule 56 motions for summary judgment. The trial court entered its memorandum opinion on November 30, 2006 and an Order Granting Summary Judgment on February 9, 2007. This appeal followed.

## SUMMARY OF THE ARGUMENT

The trial court was incorrect in converting Defendants' Rule 12(b) motions to Rule 56

Plaintiffs from preparing to meet their burden of proof when it shifted from Appellees under Rule 12 to the Plaintiffs under Rule 56, and furthermore, Plaintiffs were prevented from presenting materials in opposition to a Rule 56 motion.

The trial court was also incorrect in converting Defendants' Rule 12(b) motions to Rule 56 motions without allowing the parties an adequate opportunity to conduct discovery. Plaintiffs had propounded discovery to the Defendants, however, Defendants had requested a stay of discovery pending a ruling on their Rule 12(b) motions. It is clear from the trial court's memorandum opinion that a lack of evidence controlled the trial court's decision to grant summary judgment.

The trial court further erred by finding the 3 year statute of limitations began to run on August 21, 2000. Due to the fact that Tullos undertook a duty to sale the land for the Plaintiffs herein, Tullos owed a fiduciary duty to the Plaintiffs, and as a result, Plaintiffs' cause of action did not accrue until April 11, 2002, the date title to the land was placed in Tullos' name.

Plaintiffs also contend that the trial court erred by not applying the "layman standard" of the discovery rule as outlined *in Smith v. Sneed*, 638 So.2d 1252 (Miss. 1994). Under the "layman standard" of the discovery rule, a genuine issue of material fact exist as to whether the Plaintiffs perceived the wrong as it was being committed against them by Tullos, which would preclude summary judgment.

Even assuming the Court finds that Plaintiffs' cause of action did accrue on August 21, 2000, Plaintiffs' claims are not time-barred because the statute of limitations was tolled

the sale of the land. Tullos' failure to disclose the information concerning the true details of the purchase of the land constitutes constructive fraudulent concealment. Under the doctrine of constructive fraudulent concealment, a person sustaining a fiduciary relationship with another is under a duty to disclose, and failure to disclose amounts to fraudulent concealment. As a result, the requirement of an affirmative act of fraudulent concealment was satisfied by Tullos' silence when his duty to disclose arose. Therefore, the statute of limitations was tolled and/or did not begin to run until April 11, 2002.

Lastly, the trial court erred in granting summary judgment on the substantive claims asserted by the Plaintiffs. If Tullos owed a fiduciary duty to the Plaintiffs and used Pittman as a strawman to circumvent Rule 1.8(2) of the Rules of Professional Conduct, then the manner in which Tullos obtained ownership, as alleged, constitutes an illegal objective. Therefore, summary judgment should not have been granted on the substantive claims asserted by the Plaintiffs.

## ISSUES INVOLVED

**I. The Trial Court Erred in Converting Defendants' Rule 12(b)(6) Motion to Dismiss to a Rule 56 Motion for Summary Judgment.**

**A. The trial court failed to give the parties the requisite ten (10) days notice prior to the hearing.**

**B. The trial court erred by failing to allow any discovery prior to granting the Rule 56 motion for summary judgment.**

**II. The Trial Erred in Holding the Statute of Limitations Began to Run at the Time Plaintiffs Executed the Deed on August 21, 2000.**

**A. Attorney-client relationship and/or fiduciary duty.**

i. **Accrual of action.**
ii. **Discovery Rule.**
iii. **Fraudulent concealment.**
iv. **Constructive fraudulent concealment.**

III. **The Trial Court Erred in Granting Summary Judgment on the Substantive Claims Asserted by Plaintiffs.**

## ARGUMENT

I. **The Trial Court Erred *in* Converting Defendants' Rule 12(b)(6) Motion to Dismiss to a Rule 56 Motion for Summary Judgment.**

This Court has previously held that a trial judge can convert a Rule 12(b)(6) motion to motion for summary judgment "[i]f matters outside the pleadings are presented and accepted by the court during consideration of a Rule 12(b)(6) motion." *See Brewer v. Bundette*, 768 So.2d 920 (Miss. 2000). The standard of review employed by this Court ". . . is the same for 12(c) as Rule 56 in that the 'non-moving party is favored in the review of the facts.'" *Hartford Cas. Ins. Co. v. Halliburton Co.*, 826 So.2d 1206, 1209 (Miss. 2001). The standard of review employed by this Court ". . . for both a Rule 12(c) motion for judgment on the pleadings and a Rule 56 motion for summary judgment is de novo." *Id.*

Plaintiffs assert and contend that the trial court erred *in* converting Defendants Rule 12(b)(6) motion to a Rule 56 *m*otion by failing to give the requisite ten days notice prior to the hearing, and further, by not allowing the Plaintiffs an opportunity to conduct any discovery prior to the trial court's ruling. As a result, this Court should reverse the trial court's granting of summary judgment and remand this case for further proceedings.

A. **The trial court failed to give the parties the requisite ten (10) days notice prior to the summary judgment hearing.**

all or any part thereof." M.R.C.P. 56(a). In addition, Rule 56(c) provides that the motion . . . shall be served at least ten days before the time fixed for the hearing." M.R.C.P. 56(c).

The record in the present case indicates that at the hearing conducted on November 3, 2006 on Defendants' Rule 12(b)(6) motions, the trial court stated that it ". . . [would] treat this as a motion for summary judgment as opposed to a Rule 12(b) motion under the rules." (R.E. 43). Thereafter, following argument of counsel, the trial court stated that ". . . I am going to take the matter under advisement. I will have a ruling issued as expeditiously as possible, hopefully within a few days, but I do want to reread these cases that have been submitted and study the exhibits that have been offered today." (R.E. 44).

In *Palmer v. Biloxi Regional Medical Center, Inc.*, 649 So.2d 179 (Miss. 1994), this Court, citing the Eleventh Circuit's bright-line rule, held that "[i]f a trial court fails to comply with the ten-day notice requirement, the case will be reversed and remanded so that the trial court may provide the non-moving party with adequate notice." *Id.* at 183, citing *Jones v. Automobile Ins. Co. of Hartford, Conn.*, 917 F.2d 1528, 1532 (11th Cir. 1990).

The trial court made clear at the hearing conducted on November 3, 2006 that it was only considering the cases submitted, argument of counsel and the exhibits which had been introduced at the hearing in making its ruling. Furthermore, the trial court stated that it would issue a ruling as expeditiously as it could, hopefully within a few days of the hearing. (R.E. 44).

The Plaintiffs, having propounded discovery to the Defendants and awaiting a ruling on their motions to compel, were not afforded any time in which to obtain any evidence in

a Rule 12(b)(6) motion to a Rule 56 motion for summary judgment, and give the parties opportunity to submit materials in opposition to the motion." *Id.* at 184. As the Court held in *Palmer*, the underlying considerations for ". . . the ten-day notice requirement of Rule 56 make it clear why this notice requirement is enforced so strictly. A successful summary judgment motion results in a final adjudication of the merits of a case." *Id.* at 183-84, citing *Donald v. Reeves Transport Co.*, 538 So.2d 1191, 1196, (Miss. 1989), quoting *Jones*, 917 F.2d at 1533.

"The requirement of Rule 56(c), far from being a mere extension of our liberal procedures exalting substance over form, represent a procedural safeguard to prevent the unjust deprivation of a litigant's constitutional right to a jury trial." *Palmer*, 649 So.2d at 184. See also Miss. Const., Art. 3, § 31 (1890), and *Pope v. Schroeder*, 512 So.2d 905, 908 (Miss. 1987).

The Plaintiffs in this case insist and urge this Court to reverse the trial court's granting of summary judgment due to the failure to give the requisite ten-day notice ***prior to the hearing*** on summary judgment.

**B. The trial court erred by granting summary judgment without allowing the parties an opportunity to conduct any discovery.**

The Plaintiffs herein were prejudiced by the trial court's failure to allow any discovery prior to, or after, converting Defendants' Rule 12(b) motions to Rule 56 motions. The record is clear that the Plaintiffs timely propounded discovery to the Defendants. On April 8, 2005, the date the complaint was filed, the Plaintiffs propounded interrogatories and

of November 3, 2006, the date of the hearing on Defendants' Rule 12(b) motions, the Defendants had failed and refused to respond to any discovery pending a ruling on their Rule 12(b) motions.

It is clear from the trial court's memorandum opinion dated November 30, 2006 that a lack of evidence was the only factor in the trial court's decision to grant summary judgment. The trial court stated the following: "[P]laintiffs have not, however, come forward with any evidence of a subsequent act by any defendant. . ." (R.E. 55); "[t]his lack of evidence is sufficient in itself to defeat plaintiff's argument that their claims are not time-barred. . ." (R.E. 55); ". . . and they have failed to bring forth any evidence that they could not, with reasonable diligence, have discovered facts sufficient to 'excite inquiry'. . ." (R.E. 55); "[t]hus, if plaintiffs bring forth evidence that establishes a conspiracy. . ." (R.E. 58); "[t]hus, the Court must next ascertain whether there are sufficient allegations and evidence. . ." (R.E. 60); "[v]iewing what evidence has been brought forward. . ." (R.E. 60); "[t]here is no evidence presented to this Court (before, during or since the hearing). . ." (R.E. 60); "[t]here is no evidence whatever. . ." (R.E. 61); and "[w]e are not confronted here with any evidence. . . ." (R.E. 61).

This Court has consistently held that Rule 56 summary judgment is mandated only ***"after adequate time for discovery."*** *Galloway v. Travelers Ins. Co.*, 515 So.2d 678, 683 (Miss. 1987) (emphasis added), citing *Celotex Corp. v. Catrett*, 44 U.S. 317, 321-24 (1986). Furthermore, in *Brown v. Credit Ctr., Inc.*, 444 So.2d 358 (Miss.1983), just as in the case *sub judice*, "[i]t appears . . . that the trial judge granted summary judgment, not out of an

. . The completion of discovery is, in this case, desirable." *Brown*, 444 So.2d at 362.

In *Smith v. Braden*, 765 So.2d 546 (Miss. 2000), this Court addressed the procedure for the allowance of adequate discovery prior to the ruling on a motion for summary judgment. In reversing the grant of summary judgment, this Court held ". . . that the motion should not have been granted prior to the trial court granting the plaintiff an ***adequate opportunity to conduct*** discovery. . . ." *Id.* at 554-55 (emphasis added).

It was completely unfair, impracticable, and prejudicial for the trial court to require Plaintiffs in this case to bring forth additional proof to oppose a summary judgment motion without first requiring the Defendants to answer and respond to discovery previously propounded. Additionally, the Plaintiffs should have been afforded a reasonable opportunity to conduct discovery, especially given the fact that Plaintiffs timely filed discovery request and Defendants had requested a stay of discovery.

## II. The Trial Erred in Holding the Statute of Limitations Began to Run at the Time Plaintiffs Executed the Deed on August 21, 2000.

Before the trial court could even address the issue of whether the statute of limitations had expired at the time Plaintiffs filed their complaint, it was necessary to determine what the relationship was between the Plaintiffs and Tullos so the proper standard could be applied. The trial court applied the wrong standard in ruling that the statute of limitations had run, and thus, summary judgment was improper.

### A. Attorney-client relationship and/or fiduciary duty.

The Plaintiffs in the present case have alleged a fiduciary relationship existed

relationship of trust and confidence." (R.E. 13). Additionally and alternatively, Plaintiffs have alleged that a fiduciary relationship came into existence by "[m]isleading the Plaintiffs into believing that the Defendants were disinterested parties to the estate and that they were acting in their best interest; . . .[t]he Defendants knew or reasonably should have known that the Plaintiffs misunderstood the Defendants role in the estate matter, and failing to make reasonable efforts to correct said misunderstanding; . . . [and] [f]ailure to obtain bids on subject property after undertaking the duty to do so." (R.E. 17-18).

Plaintiffs are not asking this Court for a blanket finding that an attorney for an estate owes a fiduciary duty to heirs of an estate. Generally, ". . . an attorney cannot be held liable to third parties for his actions made in furtherance of his role as counselor." *LaBarre v. Gold*, 520 So.2d 1327, 1331 (Miss. 1987), citing *Newburger, Loeb & Co., v. Gross*, 563 F.2d 1057, 1080 (2nd Cir. 1977). See also *Giuliani v. Chuck*, 620 P.2d 733, 736-37 (Hawaii Ct.App. 1980). This also holds true in the estate setting. However, Plaintiffs do contend a fiduciary duty can arise when the attorney for the estate undertakes to sale property on behalf of beneficiaries, heirs and/or third parties.

In *Brumfield v. MS State Bar Ass'n*, 497 So.2d 800 (Miss. 1986), an attorney deliberately cheated and defrauded his aunts of their undivided shares of jointly held property. The attorney in *Brumfield* argued that no fiduciary duty existed due to a lack of an attorney-client relationship. This Court held that the attorney acted on behalf of his aunts and that he undertook to act for everyone's common benefit. *Id.* at 807. This Court further held that the duty owed was no different than an attorney to his client and likened it

> character, demands of the agent the utmost loyalty and good faith to his principal. Any breach of this good faith whereby the principal suffers any disadvantage and the agent reaps any benefit is a fraud for which the agent will be held accountable, either in damages or by judgment precluding the agent from taking or retaining the benefits so obtained.

*Id.* at 807, citing *Van Zandt v. Van Zandt,* 86 So.2d 466, 470 (Miss. 1956).

The Court found that a fiduciary relationship can exist even in the absence of an attorney-client relationship. *Id.*

Likewise, in *Sodikoff vs. State Bar*, 535 P.2d 331 (Cal. 1975) the court held that an attorney may voluntarily assume a position of trust and confidence vis-a-vis estate beneficiaries, heirs or claimants, and thereby owe fiduciary duties to those individuals. In *Sodikoff,* an attorney who represented an administrator of a decedent's estate attempted to purchase real property from a beneficiary of the estate without disclosing that the buyer was the attorney's corporate alter ego. *Sodikoff,* 535 P.2d at 332-33. The *Sodikoff* court held that ". . . even if no formal attorney-client relationship existed, [the attorney] voluntarily assumed a position of trust and confidence . . . with respect to the property in issue." *Id.* at 335.

In the present case, just as in *Brumfield* and *Sodikoff,* it has been alleged that Tullos undertook a duty to sale the land involved herein. Despite what the trial court states, it makes no difference if the land was a non-probate asset or that ". . . a deceased's real property vests immediately at death in his heirs and devisees." (R.E. 60). It was by reason of Wooley's death that ownership was devolved upon the Plaintiffs herein. As the court in *Sodikoff* stated, it is an irrelevant distinction and makes no difference. *Id.* at 334. The

been alleged, and never disputed or denied that Tullos told the Plaintiffs that bids had been accepted on the land; alleged and never disputed or denied, that Tullos told the Plaintiffs that Pittman was the highest and best bidder; that Tullos had the Plaintiffs execute the Warranty Deed prepared by Tullos to Pittman on the same date the estate was closed; and issued checks to the heirs by Tullos for their ". . . undivided interest of Jeff Wooley Estate land to Crymes G. Pittman." (R.E. 28-29).

In *Gold v. LaBarre,* 455 So.2d 739 (Miss. 1984), ". . . a record owner's action against "real owner" and "real owner's" attorney for conversion of record owner's property, evidence that attorney drew conveyance to record owner and receipt for $37,966.53, prepared record owner's certificate of title and participated in distribution of funds, and later drew deed conveying record owner's interest and prepared certificate of title for lender, . . ." did create a question of fact as to whether an attorney-client relationship existed between the land owner and attorney which would preclude summary judgment, ". . . in view of attorney's responsibility to disclose that he represented only one participant in transactions, . . ." *Gold*, 455 So.2d at 739.

It should be brought to this Court's attention that the trial court has misstated a pertinent fact in it's memorandum opinion. The trial court states ". . . most of these plaintiffs, in fact, retained other counsel to look after their interests in what began as a contentious estate matter, . . ." (R.E. 56-57). Julion Lowther had previously hired Lynn Sorey as his attorney, however, Julion Lowther passed away prior to the Jeff Wooley estate being closed. None of the other heirs obtained separate counsel believing Tullos was

question of fact." *Smith v. Franklin Custodian Funds, Inc.*, 726 So.2d 144 (Miss. 1998), quoting *Peoples Bank & Trust Co. v. Cermack*, 658 So.2d 1352, 1358 (Miss.1995). For this reason, the trial court erred in granting summary judgment.

**B. Duty to third-parties.**

Assuming the Court finds that no attorney-client relationship existed, nor any fiduciary duty was owed to the Plaintiffs, an attorney can still be held liable ". . . for his actions made in furtherance of his role as counselor, he has a duty to refrain from committing tortious acts against third parties." *LaBarre v. Gold*, 520 So.2d 1327, 1331 (Miss. 1987), citing *Newburger, Loeb & Co., v. Gross*, 563 F.2d 1057, 1080 (2nd Cir. 1977). See also *Giuliani v. Chuck*, 620 P.2d 733, 736-37 (Hawaii Ct.App. 1980). The Court further stated that "... [a]dmission to the bar does not create a license to act maliciously, fraudulently or knowingly to tread upon the legal rights of others." *Id.*

Generally, most states follow the rule that an attorney may be held liable to third parties if he or she has been guilty of fraud or collusion or of a malicious or tortious act. See *Jackson v. Rogers & Wells*, 210 Cal.App.3d 336 (1989); *Shafer v. Berger, Kahn, Shafton, Moss, Figler, Simon & Gladstone*, 131 Cal.Rptr 777 (2nd Dist. 2003); *Re Dieringer*, 132 BR 34 (1991); *Lentini v. Northwest Louisiana Legal Services, Inc.*, 841 So.2d 1017 (La.Ct.App. 2nd Cir. 2003).

Therefore, regardless of whether an attorney-client relationship existed or fiduciary duty was owed, a genuine issue of material fact exists as to the duty owed to the Plaintiffs herein which would preclude summary judgment.

**C. Statute of limitations.**

claim did not accrue until April 11, 2002, and therefore, the statute of limitations did not run until April 11, 2005. Furthermore, under the discovery rule, the statute of limitations would not have started running until April 11, 2002. Even assuming the Court finds that Plaintiffs' cause of action did accrue when the deed to Pittman was executed on August 21, 2000 and the statute of limitations began running on that date, Plaintiffs' claims are not time-barred because the statute of limitations was tolled by Tullos' and Pittman's fraudulent concealment. Lastly, when Tullos failed to disclose pertinent information to the Plaintiffs regarding the sale, his actions constituted constructive fraudulent concealment and the statute of limitations did not begin to run until April 11, 2002.

**i. Accrual of action.**

Once again, the Plaintiffs have alleged that Tullos and Pittman engaged in a self-dealing scheme whereby Tullos would fraudulently obtain the land involved herein. This fraudulent scheme was not completed until April 11, 2002, at which time title was put in the name of Tullos and Tullos' breach of his fiduciary duties became known to Plaintiffs, and the true nature of the fraudulent scheme materialized.

This Court has held that "[a] cause of action accrues only when it comes into existence as an enforceable claim; that is, when the right to sue becomes vested." *Owens-Illinois, Inc. v. Edwards*, 573 So.2d 704, 706 (Miss. 1990). Additionally, "[t]he cause of action accrues and the limitation period begins to run when the plaintiff can reasonably be held to have knowledge of the injury. . . ." *Id.* at 709. Furthermore, the injury must occur before a tort is complete for accrual purposes. *Id.* at 707.

involved herein unless Tullos abided by Rule 1.8 of the Rules of Professional Conduct. Rule 1.8(a) states that:

> (a) A lawyer shall not . . . knowingly acquire an ownership interest adverse to the client unless:
> (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;
> (2) the client is given a reasonable opportunity to seek the advise of independent counsel in the transaction; and
> (3) the client consents in writing thereto.

Rule 1.8(a) Rules of Professional Conduct.

Giving all inferences in favor of the Plaintiffs from the facts, it is quiet apparent that Tullos was attempting to circumvent Rule 1.8(a) by having the land placed in the name of Pittman to act as a strawman. The earliest the Plaintiffs could have discovered that Tullos had breached his fiduciary duty outlined above in Rule 1.8(a) was April 11, 2002, when Tullos' ownership interest was placed on record. At that point in time, the tort was completed for accrual purposes. Therefore, summary judgment was improper.

**ii. Discovery rule.**

Plaintiffs also contend the trial court erred in failing to apply the "layman standard" of the discovery rule outlined in *Smith v. Sneed*, 638 So.2d 1252 (Miss. 1994). In *Sneed*, the Court outlined two standards under the discovery rule. The first standard is to be applied when ". . . the plaintiff will be precluded from discovering harm or injury because of the secretive or inherently undiscoverable nature of the wrongdoing in question." *Sneed*, 638 So.2d at 1257, quoting *McCain v. Memphios Hardwood Flooring Co.*, 725 So.2d 788, 794

opportunity to conduct any discovery, Plaintiffs are unable to address this standard.

The second standard under the discovery rule, and which Plaintiffs contend is applicable in the present case, is referred to as the "layman standard." See *Sneed*, 638 So.2d at 1257. The "layman standard," is applicable ". . . when it is unrealistic to expect a layman to perceive the injury at the time of the wrongful act." *Sneed*, 638 So.2d at 1257, citing *Staheli v. Smith*, 548 So.2d 1299, 1303 (Miss. 1989), see also *McCain v. Memphis Hardwood Flooring Co.*, 725 So.2d 788, 794 (Miss. 1998). This standard is clearly applicable to the present case, assuming as the trial court did, there was a fiduciary duty owed by Tullos to the Plaintiffs.

In *Smith v. Sneed*, Smith was charged with aggravated assault for the shooting of Lamons on November 26, 1978. Thereafter, Lamons died at the VA Hospital on January 14, 1979. The charges against Smith were changed to murder. Smith hired Sneed, an attorney, to represent him on the charge of murder. Sneed requested a copy of the autopsy report on Lamons prior to Smith entering a guilty plea, however, Sneed informed Smith that there was no autopsy report ". . . and that the district attorney's office did not know anything about an autopsy report." *Sneed*, 638 So.2d at 1253. Smith then entered a plea of guilty to the charge of manslaughter and was sentenced to twenty years in the custody of the Department of Corrections. *Id.* Smith remained incarcerated at the Pontotoc County jail from 1978 until 1982 awaiting transfer to Parchman. While incarcerated at the Pontotoc County jail, on August 1, 1980, a Constable informed Smith that the victim, Lamons, had died of natural causes and that this information was contained in the autopsy report. *Id.* On January 12,

filed suit against Sneed on June 1, 1988, approximately eight years after being told about the results of the autopsy, for negligent failure in advising him in his plea arrangement. The trial court dismissed the action stating that the statute of limitations began to run when Smith pled guilty in 1979. Smith then appealed the trial court's decision to this Court.

This Court held that "[f]acts which might ordinarily require investigation likely may not ***excite suspicion*** where a fiduciary relationship is involved." *Sneed,* 638 So.2d at 1257 (emphasis added), citing *Robinson v. Weaver,* 550 S.W.2d 18, 23 (Tex. 1977). In addition, the Court held that ". . . breach of the duty to disclose is tantamount to concealment." *Id.* Furthermore, the Court stated that "[p]ostponement of accrual of the cause of action until the client discovers, or should discover, the material facts in issue vindicates the fiduciary duty of full disclosure; it prevents the fiduciary from obtaining immunity for an initial breach of duty by a subsequent breach of the obligation of disclosure." *Id.*, citing *Need v. Magana, Olney, Levy, Cathcart & Gelfand,* 491 P.2d 421, 428 (Cal. 1971).

In *Sneed,* the plaintiff argued that ". . . he did not know through the use of reasonable diligence of the contents of the autopsy report until his new counsel obtained a copy. . . ." *Sneed,* 638 So.2d at 1258. This Court questioned Smith's argument of reasonable diligence based upon the statement by Smith that the constable had told him as early as 1980 that the victim had died of natural causes. *Id.* However, the Court found that the question of notice was a fact question for jury determination, and therefore, the grant of summary judgment was premature. *Id.*

In the present case, the trial court, citing *Rankin v. Mark,* 120 So.2d 435, 438 (Miss.

Tullos. Easy means of verification of Tullos' alleged representations were readily available to the plaintiff, . . ." (R.E. 56). That is not the proper standard and the trial court erred in applying that standard. There was nothing in the "public records", nor was there something that should have been there that wasn't, which would have put the Plaintiffs on constructive notice that Tullos breached his fiduciary duty or that Pittman was the strawman to accomplish this fraudulent scheme, until such time as Tullos recorded his deed on April 11, 2002. Just as in *Sneed,* the question is not whether or not the Plaintiffs were on notice a wrong had been committed, but rather, whether or not it was unrealistic for the Plaintiffs, as laymen, to perceive the wrong as it was being committed, which is a genuine issue of material fact for jury determination.

Plaintiffs in the present case claim that Tullos had them meet in the petit jury room at the Smith County Courthouse in Raleigh on the morning of the hearing the Jeff Wooley estate was closed. (R.E. 48). None of the Plaintiffs herein, nor the administratrix, was present when Tullos presented the matter to the Chancellor, as supported by the affidavit of Donald Boone. (R.E. 48). Thereafter, it has been alleged by Plaintiffs that Tullos advised them that the Court had approved the sale of the land. These issues have never been denied by Tullos or Pittman. It is not unreasonable, under the above facts, that the Plaintiffs, as laymen, would realize or comprehend that any rulings by the Chancellor would be either written or oral, considering the fact that the hearing took place while the Plaintiffs were in the petit jury room where Tullos had placed them.

Tullos then came into the petit jury room from the courtroom and presented the

interest in the "Estate land to Crymes G. Pittman."

Thus, applying the "layman standard" under the discovery rule, a genuine issue of material fact exists as to whether the Plaintiffs, as laymen, perceived the wrong as it was being committed, and summary judgment was improper.

**iii. Fraudulent concealment.**

Even assuming the Court finds that Plaintiffs' cause of action did accrue when the deed to Pittman was executed on August 21, 2000, Plaintiffs' claims are not time-barred because the statute of limitations was tolled by Tullos and Pittman's fraudulent concealment.

Mississippi Code Ann. §15-1-67 reads in part that "[i]f a person liable to any personal action shall fraudulently conceal the cause of action from the knowledge of the person entitled thereto, the cause of action shall be deemed to have first accrued at, and not before, the time at which such fraud shall be, or with reasonable diligence might have been, first learned or discovered." §15-1-67 M.C.A. In order to establish fraudulent concealment, ". . . there must be some act or conduct of an affirmative nature designed to prevent, and which does prevent, discovery of the claim." *Reich v. Jesco, Inc.*, 526 So.2d 550, 552 (Miss. 1988).

Not only did Tullos induce the Plaintiffs to execute the warranty deed to Pittman based upon false and misleading information, both Tullos and Pittman worked diligently to conceal their fraud. Tullos had the Plaintiffs and administratrix meet in the petit jury room during the hearing before the Chancellor to close out the Wooley estate. (R.E. 48). This fact is corroborated by the grandson of the administratrix, who was placed in a witness room

away from the courtroom. Furthermore, Tullos issued checks to the Plaintiffs stating that it was Pittman who was the purchaser, even though it has been admitted that Tullos was the true purchaser. (R.E. 36). It can only be concluded that the sole purpose of placing the land in the name of Pittman was to hide and conceal the fact that Tullos was the actual purchaser. If, as the trial court stated, ". . . there is nothing illegal in Tullos being the real purchaser," (R.E. 59), then why place Pittman's name on the deed to begin with. Again, it was designed to conceal the fraud, misrepresentations and breach of fiduciary duties by Tullos.

Because Tullos and Pittman engaged in an intentional scheme of fraudulent concealment to prevent the Plaintiffs, or anyone else for that matter, from discovering their wrongful conduct, the statute of limitations on Plaintiffs' claims did not begin to run until they had, in fact, discovered Tullos' wrongful scheme, conduct and breach. As has been stated previously, the Plaintiffs' discovery did not and could not take place until after the deed had been recorded on April 11, 2002, making the filing of their claim within the statutorily-imposed period.

**iv. Constructive fraudulent concealment.**

In addition to Tullos and Pittman's scheme of actual fraudulent concealment, Tullos' failure to disclose the information regarding the actual purchaser constitutes constructive fraudulent concealment. This Court has held that ". . . the requirement of an affirmative act of fraudulent concealment is satisfied by the mere silence of a fiduciary in the fact of his duty to disclose relevant information." *Turnley v. Turnley*, 726 So.2d 1258, 1262 (Miss. App.

the person occupying the relation of fiduciary of confidence is under a duty to reveal the facts to the plaintiff, and that his silence when ought to speak, or his failure to disclose what he ought to disclose, is as much a fraud at law as an actual affirmative false representation or act; and that mere silence on his part as to a cause of action, the facts giving rise to which it was his duty to disclose, amounts to fraudulent concealment within the rule under consideration." *Id.*

Again, assuming, as the trial court did, that Tullos owed the Plaintiffs a fiduciary and/or confidential duty, his failure to disclose those details surrounding the purchase of the land and the fact that he was the actual purchaser without accepting bids, is considered a fraud at law and the Plaintiffs are not required, despite what the trial court states, to ". . . come forward with any evidence of a subsequent act by any defendant that was designed to prevent discovery of the fraud. . . ." (R.E. 55). In addition, instead of applying the laymen standard of the discovery rule, the trial court applied the "continued representation" exception to the facts of the present case. This Court stated in *Channel v. Loyacono,* 954 So.2d 415 (Miss. 2007), "[a] review of the cases reveals that Mississippi does not follow the 'continuous representation rule.'" *Channel,* 954 So.2d at 421.

The Plaintiffs were not required to come forward with any additional evidence of an affirmative act of fraudulent concealment, assuming a fiduciary relationship existed with Tullos, which in and of itself is a question of fact for the jury. The facts as presented show that Tullos was under a legal obligation to disclose relevant information to the Plaintiffs. Tullos' scheme was information that was not only relevant, but it was required. Tullos'

concealment under Mississippi law and, thus, tolled the running of the statute of limitations on the Plaintiffs' claims until April 11, 2002, when the deed from Pittman to Tullos was placed on record. Thus, even if the Court holds the Appellant's cause of action did accrue when the deed was executed to Pittman on August 20, 2000, their claims are nevertheless not time-barred because they were tolled due to the constructive fraudulent concealment of Tullos.

## III. The Trial Court Erred in Granting Summary Judgment on the Substantive Claims Asserted by Plaintiffs.

The trial court erred in granting summary judgment in favor of Defendants on the substantive claims asserted by Plaintiffs. The complaint filed in this cause contains the following claims: (1) Reckless and Intentional Misrepresentations; (2) Innocent Misrepresentation; (3) Willful and Wanton Misrepresentation; (4) Deceit; (5) Suppression; (6) Negligence and Wantonness; (7) Breach of Fiduciary Duty; (8) Breach of Duty of Good Faith and Fair Dealing; (9) Fraudulent Concealment; (10) Conspiracy; and (11) Joint Venture, Vicarious Liability and Unjust Enrichment. The trial court only focused on the conspiracy claim asserted by Plaintiffs against Tullos and Pittman. (R.E. 58-61). In addition, on ruling on the conspiracy claims, the trial court relied on several factual inaccuracies in reaching it's conclusion. Furthermore, the trial court did not address the remaining claims asserted against the Defendants which clearly raised genuine issues of material fact.

The trial court first addressed the conspiracy claim asserted against Tullos and

attempt to accomplish a legal objective by the use of illegal means." (R.E. 58-59). The trial court then determined that the Plaintiffs did not ". . . come forward with any supporting evidence that Pittman agreed to accomplish an illegal objective" (R.E. 59) and found that summary judgment was appropriate.

Taking into consideration that Plaintiffs were not allowed a reasonable opportunity to conduct any discovery, the record contains sufficient evidence to raise genuine issues of material fact as to the accomplishment of an illegal objective or an attempt to accomplish a legal objective by the use of illegal means. First, the Affidavit of Donald Boone dated January 24, 2006 states that "[m]y grandmother had told me that there was an offer to purchase the property for $710.00 per acre." (R.E. 48). It can be inferred that Pittman was the individual who made this offer since he was the individual whose name was on the deed dated August 21, 2000, and his name is on the checks to the heirs as the purchaser. The question arises as to how Pittman, an attorney from Hinds County who has had a long history with Tullos, discovered that the Wooley land was for sale and when did he find out it was for sale. The Plaintiffs herein did not tell Pittman the land was for sale, because they did not even know who Pittman was. (R.E. 38). The stronger inference is that Tullos and Pittman had reached an agreement to have the land placed in Pittman's name for the benefit of Tullos to hide or conceal the fraud that had been perpetrated on the Plaintiffs by Tullos and his breach of fiduciary duty.

Secondly, if Pittman were not a part of the scheme as alleged by Plaintiffs, then Pittman or Tullos should be able to produce a check where Pittman paid for the property.

cancelled check to prove that Pittman had purchased the real property from the heirs of the Jeff Wooley estate. (R.E. 32-33). Plaintiffs' counsel never received a copy of any check and was told by Pittman that Pittman and Tullos ". . . had exchanged some property and traded some property and [Pittman wasn't] sure [he] could find it or that [he] had it." (R.E. 32). Regardless of whether Pittman and Tullos exchanged or traded some property, Pittman should still have proof of payment for the initial purchase of the land. Pittman then asked "[d]o they want their land back." (R.E. 32). It can be inferred that the only reason Pittman would have in making this statement is that Pittman realized that the fraudulent scheme that he and Tullos had perpetrated on the Plaintiffs had been uncovered.

Thirdly, Tullos' sworn testimony is completely at odds with the transaction that took place on August 21, 2000, the date the estate was closed. As previously stated, the Plaintiffs executed a warranty deed to Pittman. (R.E. 23-27). Thereafter, they each received checks for their undivided interest in the "Estate land to Crymes G. Pittman." (R.E. 28-29). However, on February 6, 2006, Tullos testified as follows:

> Q. There are allegations in the Complaint about this transaction where you purchased the property. How did you pay for the property when you purchased it from the people who owned it at that time?
>
> A. By a check.
>
> Q. And what bank was your check drawn on?
>
> A. Community Bank there in Raleigh in Smith County.
>
> (R.E. 36)

If Tullos were the actual purchaser on August 21, 2000, then what was the purpose of

land he never paid for. It can be inferred that Tullos and Pittman had an arrangement prior to the estate being closed whereby Pittman would keep the land in his name until the "sands of time" eroded any evidence of their fraudulent scheme as well to give the appearance that Pittman was the actual purchaser instead of Tullos to circumvent Rule 1.8(a) of the Rules of Professional Conduct.

Assuming, as the trial court did, that a fiduciary or principal/agent relationship existed between Tullos and the Plaintiffs at the time of the sale, then Tullos would have breached his fiduciary duty to the Plaintiffs through his misrepresentations and failure to disclose. Furthermore, based upon the record as abovementioned, there remains a genuine issue of material fact as to whether Pittman and Tullos conspired to accomplish this breach of duty.

The trial court then considered ". . . reasonable inferences from the evidence in that light most favorable to the plaintiffs" and that there was only an allegation that Pittman agreed to purchase, for $750.00 per acre, 420 acres of land ". . . and that he conveyed the land to Tullos approximately 20 months later." (R.E. 59). The trial court then assumes, *arguendo*, that Pittman was an intended "straw man" to hide the fact that Tullos was the real purchaser. (R.E. 59). The trial court found that there is nothing illegal in Tullos being the real purchaser.

While the trial court is correct that "Jeff Wooley' s heirs and devisees could have sold the subject acreage to whomever they pleased . . . even Tullos" (R.E. 60), the trial court is incorrect in stating that Tullos did not have a duty to get the highest price possible under

highest price possible for the land. If Tullos was the highest bidder and fully disclosed that information to Plaintiffs pursuant Rule 1.8(a) of the Rules of Professional Conduct, Tullos could have purchased the land on his own. It makes no difference, as previously stated, that the land was a non-probate asset or whether or not court approval was required. It was the manner in which Tullos obtained ownership and the amount paid which is in question. When Tullos undertook that duty and then breached his duty and obtained a benefit, then ". . . [he should] be held accountable, either in damages or by judgment precluding [him] from taking or retaining the benefits so obtained." *Brumfield v. MS State Bar Ass'n,* 497 So.2d 800, 807 (Miss. 1986).

The Plaintiffs further take issue with the trial court's labeling the appraisal as being prepared by an "independent appraiser". (R.E. 59). The record is clear that Plaintiffs have brought forth enough evidence to challenge the "independence" of the appraisal. At the February 6, 2006 hearing conducted on Defendants' motions to transfer venue, Tullos was cross-examined about the appraisal. (R.E. 37). When asked about the comparables that were used in appraising the Wooley land, Tullos was asked whether one of the comparables belonged to his brother, John Raymond Tullos, one of the Appellees. (R.E. 37). While the appraiser was not sued, and Plaintiffs contend they are not required to file suit against the appraiser, ". . . in order to determine if there were allegations of collusion or conspiracy on his part" (R.E. 59, see Footnote 31). The Plaintiffs have certainly raised genuine issues of material fact concerning the appraisal. Furthermore, Plaintiffs are not required to file suit against the appraiser in order to challenge the independence of the appraisal. It also raises

(R.E. 60), then why did Tullos have an appraisal done of the land approximately two (2) years after the estate was opened and three (3) months prior to the closing of the estate. If the land had already vested to the Plaintiffs, there was no need for an appraisal. Plaintiffs assert that Tullos had the misleading and inaccurate appraisal done so that Plaintiffs would not question the true value of the property. It raises genuine issues of material fact as to the legitimacy and accuracy of the appraisal; the manner in which the appraisal was conducted; the information provided to the appraiser by Tullos; and the purpose of the appraisal.

This Court has consistently held that "[a]ll reasonable inferences favor the non-movant in accordance with our summary judgment standard of review." *Miss. Ins. Guar. Ass'n v. Harkins & Co.*, 652 So.2d 732, 735 (Miss. 1995). See also *Harris v. Shields*, 568 So.2d 269, 275 (Miss. 1990). The relationship between Tullos and Plaintiffs was fiduciary in nature. Tullos was under a legal obligation to disclose relevant information to he Plaintiffs. Tullos' failure to disclose this vital information and by misleading the Plaintiffs in order to acquire Plaintiffs' ownership interest in the land herein constitutes fraud. Tullos' ownership of the property, by virtue of the manner in which he obtained ownership, in and of itself, as a matter of law, constitutes an illegal objective. Therefore, any agreement to accomplish this objective, i.e. Pittman acting as a strawman for Tullos as a matter of law, constitutes a conspiracy.

Therefore, the trial court was incorrect in finding that Tullos' ownership, in and of itself, could not constitute an illegal objective. If Tullos used a strawman to circumvent Rule 1.8(a) of the Rules of Professional Conduct and breached his fiduciary duties to the

## CONCLUSION

This case if a very serious case which test the adequacy and fairness of our judicial system when it has been alleged that certain prominent attorneys have committed a wrong against innocent individuals. As previously stated, "... [a]dmission to the bar does not create a license to act maliciously, fraudulently or knowingly to tread upon the legal rights of others." That is exactly the conduct which was committed by Tullos and Pittman against the Plaintiffs. Since the date this suit was filed, Tullos nor Pittman have been required to admit or deny the allegations contained in the Complaint filed by the Plaintiffs. Tullos nor Pittman have been required to answer any discovery, despite the fact that discovery had been outstanding for over 1 ½ years prior to the trial court granting summary judgment. It appears the trial court was attempting to quickly dispose of this case without first giving the Plaintiffs an opportunity to obtain any additional evidence to prove what has been alleged or to at least adequately prepare an opposition to summary judgment. However, looking at the evidence which has been presented, Plaintiffs have met their burden of showing that genuine issues of material fact do exists which would preclude summary judgment.

For the above stated reasons, summary judgment was improper in the present case and this Court should reverse the trial court's granting of summary judgment and remand this cause back to the Circuit Court of the First Judicial District of Hinds County, Mississippi.

W. TERRELL STUBBS
ATTORNEY FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

I, W. Terrell Stubbs, attorney for the Appellants, do hereby certify that I have this date filed the original and three (3) copies of the above and foregoing **APPELLANTS' BRIEF** with the Clerk of the Supreme Court; and have mailed, by U. S. Mail, postage prepaid, and true and correct copy of same to the following:

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