

**IN THE COURT OF APPEALS  
STATE OF MISSISSIPPI**

**IRVIN MORGAN, JR.**

**APPELLANT**

**V.**

**CAUSE NO. 2007-CA-00872**

**HARRY STEVENS, JR. and  
GAYLE J. STEVENS**

**APPELLEES**

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**BRIEF OF APPELLANT**

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**APPEAL FROM THE CIRCUIT COURT OF LOWNDES COUNTY, MISSISSIPPI**

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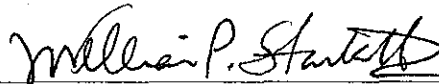
**APPELLEES**

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**CERTIFICATE OF INTERESTED PERSONS**

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1. William P. Starks, II, counsel for Appellant
2. Studdard Law Firm, counsel for Appellant
3. Irvin Morgan, Appellant
4. Ron Woodruff, Attorney for Appellee Gayle J. Stevens
5. Gayle J. Stevens, Appellee
6. Luanne Stark Thompson, Attorney for Appellee Harry Stevens, Jr.
7. Michael J. Malski, Attorney for Appellee Harry Stevens, Jr.
8. Harry Stevens, Jr., Appellee
9. Circuit Court Judge Lee J. Howard, 16<sup>th</sup> Circuit District

  
William P. Starks II, MSB No.100072

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5. Gayle J. Stevens, Appellee
6. Luanne Stark Thompson, Counsel for Appellee, Harry Stevens, Jr.
7. Michael J. Malski, Counsel for Appellee, Harry Stevens, Jr.
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**STATEMENT OF ISSUES**

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On Monday, April 2, 2007, the Circuit Court of Clay County held a hearing on the summary judgment motions filed by both Defendants herein. On April 10, 2007, the Circuit Court of Clay County entered an order granting Defendants' Motions for Summary Judgment. Appellants herein plead to this Court to reverse the trial court's ruling and remand the case back to the Circuit Court of Clay County for a jury trial on the merits. The following issues are in question:

1. WHETHER THE COURT ERRED IN GRANTING SUMMARY JUDGMENT
  - A.. WHAT STATUTE OF LIMITATIONS APPLIES?
  - B. WHEN DID THE CAUSES OF ACTION ACCRUE?
2. WHETHER THE COURT ABUSED ITS DISCRETION IN DENYING PLAINTIFF'S MOTION TO COMPEL

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**STATEMENT OF THE CASE**

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Irvin Morgan ("Morgan") Appellant, filed a Complaint on January 20, 2005 against Harry Stevens, Jr., and Gayle J. Stevens, Appellees. (R-9-24). The case stems from certain loans totaling \$141,000.00 in principal (\$227,921.04 in principal and interest as of January 1, 2005) which Morgan loaned to the Stevens under the presumption it was being used in their alter ego, Lincoln Furniture Company<sup>1</sup>, from November 1992 to January 1998. *Id.* In the Complaint, Morgan alleges breach of a written demand note, fraud, a misuse of the corporate form and breach of fiduciary duty. *Id.* On February 16, 2005, Morgan filed an Amended Complaint which contained the same causes of action. (R-35-41).

On or about February 25, 2005, Gayle Stevens filed her Answer and Defenses to the Complaint containing a general denial of most of Morgan's allegations as it related to her. (R-43). However, Gayle Stevens also filed a Cross-Claim against Defendant Harry Stevens, Jr., alleging that Defendant Harry Stevens, Jr., an experienced CPA and financial expert, directed her to have Morgan write the loan checks to her personally rather than him or the corporation. (R-

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<sup>1</sup> Lincoln Furniture Company is now defunct and was administratively dissolved by the Secretary of State in December 2001. R. 162.



50). Additionally, in the Cross-Claim, Gayle Stevens alleged that her liability was solely the result of “the intentional wrongdoing and fraud” by her then husband, Harry Stevens, Jr. (R-51).

Defendant Harry Stevens, Jr., never filed an answer to the Complaint. On or about March 1, 2005, Defendant Harry Stevens, Jr., filed a Motion for Summary Judgment and accompanying Memorandum in Support, arguing that Morgan’s claims were barred by the three (3) year statute of limitations, set forth in Mississippi Code Annotated Section 15-1-29. (R-59-60 and R-65). On or about March 17, 2005, Defendant Gayle Stevens filed a Motion for Summary Judgment alleging that the claim was barred by the statute of limitations, the statute of frauds, and incorporating the arguments of Defendants Harry Stevens, Jr.’s, Motion for Summary Judgment. (R-70).

On March 25, 2005, Morgan filed a Motion to Stay Decision on Defendants’ Motions for Summary Judgment and Alternatively, Partial Response to Defendants’ Motions for Summary Judgment, because no discovery had yet been conducted and setting forth the material facts in dispute at that time, including the disputed fact of whether a written note existed, and alleging that the six (6) year statute of limitations contained in Mississippi Code Annotated Section 75-3-118 was applicable. (R-79).

On May 17, 2005, Morgan propounded Interrogatories and Requests for Production of Documents unto Defendant Harry Stevens, Jr.. (R-93). On or about September 29, 2005, Defendant Gayle Stevens filed a Supplemental Motion for Summary Judgment arguing that she was not liable for the loans because 1) the loans were made to Lincoln Furniture Company, not Defendant Gayle Stevens, 2) a lack of clear and convincing evidence of fraud by Gayle Stevens, 3) Gayle Stevens had no ownership interest in Lincoln Furniture Company and 4) that she did not owe Morgan any fiduciary duty. (R-105).

On December 27, 2005, Morgan filed a Motion to Compel against Defendant Harry Stevens, Jr., for wholly failing to respond to the Interrogatories and Requests for Production of Documents propounded by Morgan and for failing to appear at his noticed deposition on August 15, 2005. (R-168). On April 13, 2006, Defendant Gayle Stevens filed a Corrected Supplemental Motion for Summary Judgment, which alleged the same defenses as before but corrected a scribe's error. (R-187). On July 20, 2006, the trial court heard Plaintiff Morgan's Motion to Compel and Motion for Continuance, the Court found that Defendant Harry Stevens, Jr., had failed to respond to the Plaintiff's Interrogatories and Requests for Production of Documents and failed to appear at the previously noticed deposition. However, the Court denied Plaintiff's Motion to Compel responses to the interrogatories and requests for production of documents propounded in favor of only allowing a deposition within thirty days of the hearing date. (RE-5, R-258). On October 3, 2006, Plaintiff filed its Consolidated Response and Memorandum to Defendants' Motions for Summary Judgment. (R-261). In April, 2007, Defendants' various summary judgment motions were heard in the Circuit Court of Clay County, Mississippi. The Circuit Court granted the Defendants' motions for summary judgment, stating that the causes of action all fall under the three year statute of limitations which would have passed before the filing of the Complaint. (RE-3, R-313).

Appellant herein pleads that this higher Court reverse the Circuit Court's ruling and remand this case back to Circuit Court for a jury trial.

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**STATEMENT OF THE FACTS**

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Plaintiff Irvin Morgan, for more than twenty years, used and relied upon Defendant Harry Stevens, a Certified Public Accountant, as his accountant. (R-36). Defendant Gayle Stevens was married to Plaintiff from 1965 until November 1984. (R- 36). Subsequent to their divorce, Gayle Stevens married Defendant Harry Stevens, Jr.. (R- 36). Gayle Stevens and Harry Stevens were officers of an administratively dissolved company known as Lincoln Furniture Company which operated a store and distributed furniture. (R- 36, R-281-83, 286).

Beginning on or about November 27, 1992, Plaintiff Irvin Morgan ("Morgan") made the first of several loan advances to the Stevens for use in the furniture company. (R- 36). The following chart shows the loan advance transactions:

November 27, 1992	@ 8 percent	\$46,000.00
September 29, 1994	@ 8 percent	\$15,000.00
September 27, 1995	@ 8 percent	\$10,000.00
January 23, 1998	@ 7 percent	\$30,000.00
<u>January 23, 1998</u>	<u>@ 7 percent</u>	<u>\$40,000.00</u>

**TOTAL AMOUNT OF PRINCIPAL LOANED = \$141,000.00**

(R- 37). Defendants only made payments of \$19,879.00 toward the debt. (R-37). With interest and accounting for the payments being made, a balance of **\$227,921.04** was still due and owing

as of January 1, 2005. (R-37 and 15). The last payment by Defendants on this loan was made in March, 2001, in the amount of \$300.00. (R- 86).

Upon making each loan, Morgan memorialized the loan into a written demand note by noting the amount of each loan, the amount of interest, the check number (if applicable) and having Gayle Stevens sign as an acknowledgment of the loans on a notepad. (R-18, R-20). No due date was noted on this note. *Id.* Furthermore, Morgan made up recap sheets of the loan amounts, payments and current balance which Gayle Stevens signed and initialed to acknowledge the debt and that his recap was correct. (R- 85, R- 86). Gayle Stevens testified that she signed the initial notepad and acknowledged signing or initialing other recaps to verify the accuracy of the amount of money. (R-273-280).

The first loan of \$46,000.00 was made with cash. (R- 296). The second loan of \$15,000 was made by a check made payable to Lincoln Furniture Co. (R-20). The third loan of \$10,000.00 was made payable to Gayle Morgan Stevens and deposited in Lincoln Furniture Company's bank account at The People's Bank & Trust Company in West Point, Mississippi. R- 21. The last two loans were \$30,000.00 and \$40,000 checks from Morgan to Gayle J. Stevens. R-22. These last two checks for \$30,000.00 and \$40,000.00 respectively were deposited in the joint checking account of Harry and Gayle Stevens. (R- 23, R- 24). Gayle Stevens represented that she advised Harry Stevens of each and every loan. (R- 220, R- 229, R- 236).

Morgan testified in his deposition that he was told how to make the checks out by Defendants and that the checks were made out to Gayle Stevens in order to protect Morgan in the event that Lincoln filed bankruptcy. (R- 228, R- 290). The daughter of Gayle Stevens and Irvin Morgan submitted an affidavit in opposition to the summary judgment motion that her mother, Gayle Stevens, told her that some monies loaned by Irvin Morgan were actually used to

pay for renovations to the home of Harry and Gayle Stevens. (R- 297). At all relevant times, Morgan believed that the loans were being made to and for the benefit of Lincoln Furniture Company. (R- 228). Gayle Stevens testified that Harry Stevens directed her to deposit the \$30,000.00 and \$40,000.00 checks into their personal account and believes that “there may have been an improper reason or the way these checks were handled.” (R- 296).

In July, 2002, Irvin Morgan prepared a current recap of the loans and requested that Harry Stevens, Jr., begin making payments. (R- 291). Harry Stevens advised Morgan that he would check into it, but never got back with Morgan. (R- 291). During the divorce of Harry Stevens and Gayle Stevens which was finalized on July 28, 2004, Gayle Stevens advised Morgan that he should not file suit to collect on this note while her divorce was pending because it would “mess everything up.” (R- 291, R- 56).

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**SUMMARY OF THE ARGUMENT**

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*Order  
Sever?*

In the instant action, Plaintiff Irvin Morgan filed his Complaint alleging breach of a written demand note and fraud on January 20, 2005. The primary issue in this appeals involves the trial court's granting of summary judgment to the Defendants based on the application of a three year statute of limitations, either 15-1-29 or 15-1-49 of the Mississippi Code. Plaintiff Morgan contends that the breach of the written demand note is governed by Mississippi Code Section 75-3-118(b), which provides for a six (6) year statute of limitations from the date of demand, which date of demand is alleged to be in July, 2002. Further, Morgan contends that the loan transactions which are the subject of this action were discovered to be fraudulently induced, and Morgan only discovered said fraud sometime after January 31, 2002. Thus, the statute of limitations should be tolled on the fraud claim to the date it was reasonably discovered, that being sometime after January 31, 2002.

The second issue to be considered is whether the trial court erred in compelling Defendant Harry Stevens, Jr., from responding to the written discovery which was timely propounded by Plaintiff Irvin Morgan. Defendant Harry Stevens, Jr., completely failed to respond to the written discovery propounded by Morgan, and the trial court denied Morgan's Motion to Compel even though it found that Defendant Harry Stevens, Jr., had indeed failed to respond at all to the written discovery propounded herein. Thus, Plaintiff Morgan requests this

Court reverse the trial court's decisions to grant summary judgment and to deny the motion to compel and remand this matter for a trial by jury.

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ARGUMENT AND AUTHORITIES

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I. STANDARD OF REVIEW

The Court's standard when reviewing the trial court's grant of summary judgment is well established.

The standard for reviewing the granting or denying of summary judgment is the same standard as is employed by the trial court under Rule 56(c). This Court conducts de novo review of orders granting or denying summary judgment and looks at all the evidentiary matters before it – admissions in pleadings, answers to interrogatories, depositions, affidavits, etc. The evidence must be viewed in the light most favorable to the party against whom the motion has been made. If, in this view, the moving party is entitled to judgment as a matter of law, summary judgment should forthwith be entered in his favor. Otherwise, the motion should be denied. **Issues of fact sufficient to require a denial of a motion for summary judgment obviously are present where one party swears to one version of the matter in issue and another says the opposite. In addition, the burden of demonstrating that no genuine issue of fact exists is on the moving party.** That is, the non-movant would be given the benefit of the doubt.

*Aetna Casualty & Surety Company v. Berry*, 669 So.2d 56, 70 (Miss. 1996) (citations omitted).

Applying this standard to the case at bar, the ruling of the Lowndes County Circuit Court must be reversed and this case remanded for jury trial on its merits.

II. WHETHER THE STATUTE OF LIMITATIONS BARRED PLAINTIFF'S CLAIMS

In the instant action, Plaintiff filed a complaint containing the following claims: breach of a written demand note, fraud, a piercing of a corporate veil and breach of fiduciary duty. The



Court ruled that all such causes of action were barred by the statute of limitations in granting the Defendants' Motions for Summary Judgment. Appellant Irvin Morgan submits that the statute of limitations employed by the trial court in this matter is inapplicable to the breach of the written demand note cause of action. Additionally, Morgan contends that there are genuine issues of material fact regarding the time the cause of action accrued and the statute of limitations began running.

**A. What Statute Of Limitations Applied To The Action To Enforce The Written Demand Note?**

The trial court's determination of the applicable statute of limitations presents a question of law; thus, it is reviewed *de novo*. *Jackpot Miss. Riverboat Inc. v. Smith*, 874 So.2d 959, 960(¶ 4) (Miss.2004). See also *Carter v. Citigroup, Inc.*, 938 So.2d 809, 817(¶ 36) (Miss.2006) (when considering issues of law such as statutes of limitations, this court employs a *de novo* standard of review).

Defendants Harry Stevens, Jr., and Gayle Stevens both contend that Morgan's cause of action on the demand note is barred by a three (3) year statute of limitations in Mississippi Code Section 15-1-29. While the three-year limitations period does apply to an action involving unwritten contracts or open accounts "not acknowledged in writing, signed by the debtor," Section 75-3-118(b), governs this action because there was a written demand note. Section 75-3-118(b) states, in pertinent part:

(b) Except as provided in subsection (d) or (e), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six (6) years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of ten (10) years..

In the instant matter, Morgan loaned the Stevens monies and kept written documentation signed off on by Gayle Stevens which indicated the monies received were a loan and that interest

would be payable. Although Defendants may claim that no written demand note exists, Mississippi law does not define a precise form, merely that it be a “written undertaking to pay money signed by the person undertaking to pay” and is presumed to be a demand note if no due date is present. *See* Miss. Code Ann. Section 75-3-103(a)(9) and Section 75-3-104(e)(West 2007)(defining “note” and “promise”). Morgan contends that the loan documents with Gayle Stevens’ signature, the amount of the loans, and the interest rate constitute a demand note. *See* Miss. Code Ann. Section 73-3-108(a) (“A promise or order is “payable on demand” if it . . . (ii) does not state any time of payment”). Gayle Stevens does not dispute that she signed the documentation of these loans nor that the monies received were loans.

## **B. When Did the Causes of Action Accrue?**

Irvin Morgan has alleged several causes of action, primarily breach of the written demand note and fraud. A cause of action accrues “when it comes into existence as an enforceable claim, that is, when the right to sue becomes vested.” *American Home Prods. Corp. v. Sumlin*, 942 So.2d 766(¶ 12) (Miss.2006) (citations omitted).

### **1. Breach of Written Demand Note**

Under Section 75-3-118(b), there are two possible accrual date, within six (6) years of the date of demand or within ten (10) years of the last payment if no demand has been made. There is no dispute that the last payment on the loans was made in March 2001, and the complaint was filed January 20, 2005. In an uncontradicted sworn affidavit, Morgan stated that he made demand on Harry Stevens, Jr., for payment in July, 2002. Thus, the statute of limitations would not have run for six more years, in July, 2008. If no demand was ever made for payment, then the statute would have been ten (10) years after the last payment in March 2001. Either way, the action was commenced within the statute of limitations and should be remanded for trial by jury.

## **2. Fraud Claim**

In *Parker v. Horace Mann Life Ins. Co.* 949 So.2d 57, \*59 (Miss.App.,2006), the Court of Appeals states the applicable law regarding the statute of limitations in fraud claims, as follows:

The Mississippi Code Annotated § 15-1-49 (Rev.2003) imposes a three year statute of limitations on claims for fraud. "A fraud claim accrues upon the completion of the sale induced by false representation or upon the consummation of the fraud." *Dunn v. Dent*, 169 Miss. 574, 153 So. 798 (Miss.1934). Therefore, the statute of limitations begins to run when a person, with reasonable diligence, first knew or should have known of the fraud. Miss.Code Ann. § 15-1-67 (Rev.2003).

In the Complaint, Morgan makes a claim of fraud due to misrepresentations by the Stevens as to the use of the proceeds. The Stevens have always represented that the loaned funds were used in the business known as Lincoln Furniture Company, but Morgan discovered from his daughter and his review of documents provided by his daughter that the funds he loaned were placed into the personal account of the Stevens and used for personal purposes, namely renovating their personal home. The question then becomes, when did Morgan know about the fraud? Morgan only discovered that the funds were deposited in the personal account of the Stevens on January 31, 2002 when his daughter provided him a copy of a deposit ticket which showed the transaction. Subsequent to being provided the deposit slip, Michelle Moore, Morgan's daughter, advised Morgan that Gayle Stevens had disclosed the true use of the funds to her. Thus, the Stevens' fraudulent conduct was first known when Morgan's daughter advise him about the improper use of the funds when Gayle Stevens disclosed said fraud to her. Therefore, this cause of action was timely commenced within the three years of Morgan's discovery of the fraud which was concealed by the Stevens and should not have been summarily dismissed.

### **III. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING PLAINTIFF'S MOTION TO COMPEL**

The second major issue is whether the circuit court erred in refusing to compel certain discovery propounded to Defendant Harry Stevens, Jr. Trial courts have considerable discretion in discovery matters and decisions will not be overturned unless there is an abuse of discretion. *Dawkins v. Redd Pest Control Co.*, 607 So.2d 1232, 1235 (Miss.1992). In determining whether a trial court abused its discretion in a discovery matter, the applicable standard is as follows:

[A] trial court's discretion in the discovery area is generally guided by the principles that (a) the court follow the general policy that discovery be encouraged, (b) limitations on discovery should be respected but not extended, (c) while the exercise of discretion depends on the parties' factual showings disputed facts should be construed in favor [of] discovery, and (d) while the importance of the information must be weighed against the hardships and cost of production and its availability through other means, it is preferable for the court to impose partial limitations on discovery rather than an outright denial. *Id.* at 1236.

Morgan filed his complaint on January 20, 2005. On May 16, 2005, Plaintiff Morgan propounded First Interrogatories and Requests for Production of Documents to Harry Stevens, Jr. No response to a single interrogatory or request for production of document was forthcoming. No objections were made and no protective order was sought by the Defendant Harry Stevens, Jr. Additionally, Defendant Harry Stevens, Jr., failed to appear for his noticed deposition on August 15, 2005. On December 27, 2005, Plaintiff Morgan filed a Motion to Compel requesting an Order of the trial court compelling Defendant Harry Stevens, Jr., to submit responses to said discovery. The trial court ruled that Defendant Harry Stevens, Jr., failed to respond to Plaintiff's First Interrogatories and Requests for Production of Documents and failed to appear at the previously noticed deposition, but denied Plaintiff Irvin Morgan's request to compel Defendant Harry Stevens to submit responses to the written discovery requests, only allowing a deposition to be scheduled by the Plaintiff within thirty (30) days of the hearing.

The trial court's denial clearly prejudiced the Plaintiff by depriving him of any opportunity to get sworn interrogatory responses and documents which may have allowed him to fully prepare for Defendant Harry Stevens' deposition or may have obviated the need for the deposition which is a more costly form of discovery. To double the economic prejudice, the trial court failed to award Morgan attorneys' fees as the prevailing party for the bringing of the motion to compel as required by Rule 37(a)(4). Therefore, Appellant Irvin Morgan requests this Court reverse the trial court's denial of his Motion to Compel and require Defendant Harry Stevens, Jr, to respond to the propounded discovery.


### **CONCLUSION**

Appellant Irvin Morgan respectfully request this Court reverse the decision of the trial court and vacate the summary judgment due to the trial court's failure to apply the correct statute of limitations as set forth in Miss. Code Ann. Section 75-3-118(b) and the discovery rule. Further, Appellant Irvin Morgan respectfully requests this Court reverse the trial court's decision to deny Appellant's Motion to Compel.

Respectfully submitted, this the 18th day of October, 2007

**IRVIN MORGAN**

BY:

  
\_\_\_\_\_  
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## **ADDENDUM**

### **Miss. Code Ann. § 15-1-29**

§ 15-1-29. Actions on an open account or account stated; unwritten contracts

Except as otherwise provided in the Uniform Commercial Code, actions on an open account or account stated not acknowledged in writing, signed by the debtor, and on any unwritten contract, express or implied, shall be commenced within three (3) years next after the cause of such action accrued, and not after, except that an action based on an unwritten contract of employment shall be commenced within one (1) year next after the cause of such action accrued, and not after.

### **Miss. Code Ann. § 15-1-49**

§ 15-1-49. Actions without prescribed period of limitation; actions involving latent injury or disease

(1) All actions for which no other period of limitation is prescribed shall be commenced within three (3) years next after the cause of such action accrued, and not after.

(2) In actions for which no other period of limitation is prescribed and which involve latent injury or disease, the cause of action does not accrue until the plaintiff has discovered, or by reasonable diligence should have discovered, the injury.

(3) The provisions of subsection (2) of this section shall apply to all pending and subsequently filed actions.

### **Miss. Code Ann. § 15-1-67**

§ 15-1-67. Fraudulent concealment of claim

If 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 known or discovered.

### **Miss. Code Ann. § 75-3-103 (a)(9)**

§ 75-3-103. Definitions

(a) In this chapter:

(9) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

### **Miss. Code Ann. § 75-3-104(e)**

§ 75-3-104. Negotiable Instrument

(e) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft," a person entitled to enforce the instrument may treat it as either.

**Miss. Code Ann. § 75-3-108(a)**

§ 75-3-108. Payable on Demand or at Definite Time

(a) A promise or order is "payable on demand" if it (i) states that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder, or (ii) does not state any time of payment.

**Miss. Code Ann. § 75-3-118(b)**

§ 75-3-118. Statute of Limitations

(b) Except as provided in subsection (d) or (e), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six (6) years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of ten (10) years.

## CERTIFICATE OF SERVICE AND FILING

I, the undersigned, William P. Starks II, Attorney for Appellants, do hereby certify that I have this day delivered via overnight delivery service the original and three (3) copies of the Brief of Appellants, along with an electronic diskette to the following:

Ms. Betty Sephton, Supreme Court Clerk  
Mississippi Supreme Court  
Carroll Gartin Justice Building  
450 High Street  
Jackson, Mississippi 39201  
*(Paper and Disk)*

and I further certify that I have on this day mailed, via United States First Class Mail, postage prepaid, a true and correct copy of the Brief of Appellants (paper only) to the following:

The Honorable Lee J. Howard  
District 16, Circuit Court Judge  
P.O. Box 1344  
Starkville, MS 39760

Luanne Stark Thompson  
Attorney at Law  
P.O. Box 729  
Aberdeen, MS 39730

Ron L. Woodruff, Esq.  
Waide & Associates  
Post Office Box 1357  
Tupelo, Mississippi 38802

SO CERTIFIED, this the 19<sup>th</sup> day of October, 2007.

  
WILLIAM P. STARKS, II