

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

**GREATER CANTON FORD MERCURY, INC.**

**APPELLANT**

**VS.**

**NO. 2007-CA-00952**

**PEARL LEE LANE**

**APPELLEE**

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

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**BRIEF OF THE APPELLEE, PEARL LEE LANE**

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**ORAL ARGUMENT REQUESTED**

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## CERTIFICATE OF INTERESTED PARTIES

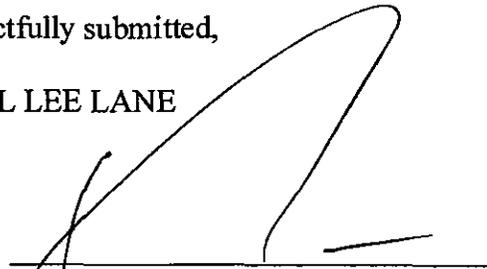
The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court may evaluate disqualification or recusal.

1. Greater Canton Ford Mercury, Inc., Defendant/Appellant;
2. Pearl Lee Lane, Plaintiff/Appellee;
3. Thomas A. Wicker, Esq., Holland Ray Upchurch & Hillen, P.A., counsel for Defendant;
4. J. Peyton Randolph II, counsel for Plaintiff;
5. Benjamin R. Henley, Esq., counsel for Plaintiff;
6. Honorable William E. Chapman III, District Twenty Circuit Court Judge / Madison County, Mississippi.

Respectfully submitted,

PEARL LEE LANE

BY:

  
\_\_\_\_\_  
J/PEYTON RANDOLPH, II

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## **STATEMENT OF THE ISSUES**

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1. Whether the Court below correctly denied the Defendant's Motion to Set Aside Default Judgment for Defendant's failure to file said motion within the six month time constraint in accordance with Rule 60(b), and if not, whether the Court below correctly decided that the Defendant did not overcome the balancing test designated by this Court to set aside a Default Judgment in this matter.

2. Whether the compensatory and punitive damages awarded by the court below are accurately supported by the facts of this case.

3. Whether the existence of punitive damages or the amount awarded is so preposterous as to render those damages in violation of the United States and Mississippi Constitutions and Amendments thereto.

## **STATEMENT OF THE CASE**

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### **I. Nature of the Case**

Pearl Lee Lane requests affirmation of the Default Judgment entered by the Circuit Court of Madison County, Mississippi in her favor on September 12, 2005, in the total amount of \$160,120.00, consisting of \$15,000.00 as actual damages, \$10,000.00 as economic damages, \$135,000.00 as punitive damages, and \$120.00 for costs. Said damages resulted from Greater Canton Ford Mercury Inc.'s (hereinafter "Greater Canton") bad faith in honoring the extended warranty sold to Ms. Lane when she purchased a vehicle from Greater Canton.

Greater Canton argues that their internal failures and the malfeasance of their employed should be excused at the expense of Ms. Lane. Greater Canton further attempts to indirectly argue that they should be given procedural immunity at every level of this matter from answering the complaint, to filing the Motion to Set Aside Default in a timely manner. They argue that had

they not failed to respond, they would have defended this case at the Circuit Court level, even though they were in liquidation. Furthermore, Greater Canton argues that their defense may have been colorful and as a result, their interest should outweigh not only Ms. Lane's, but also that of justice in enforcing civil procedure.

Defendant's arguments are without merit. Assuming *arguendo* the substantive assertions of Defendant to be true, the proper forum to hear these issues was at the lower court and the proper procedural time to debate these issues has passed. Greater Canton has ignored the procedural requirements instituted by this Court in an attempt to delay the judicial process further and prevent Ms. Lane from recovering any funds before they completely liquidate. They attempt to cloak their consistent disregard for procedural requirements by fabricating what they call a colorful defense more than four years after the original suit was filed. Each of the factual scenarios presented by Greater Canton was presented to the Lower Court and the Court appropriately refused to set aside the Judgment. The Circuit Court properly determined the factual matters presented, and this Court should uphold its decision and affirm the Default Judgment against Defendant for \$160,120.00.

## **II. Course of proceedings and disposition of the court below**

Plaintiff filed her Complaint in this matter on the 23<sup>rd</sup> day of July, 2003. Thereafter, Defendant was duly and properly served with process by personal service on or about the 25<sup>th</sup> day of July, 2003, when the same was hand delivered to Defendant's registered agent for service of process, C. T. Corporation Systems, in Rankin County, Mississippi, as so admitted in Defendant's Motion to Set Aside Default Judgment.

After more than thirty days had elapsed from the date on which said Defendant was served with the issued Summons and filed Complaint and Defendant failed to answer, or otherwise defend as to Plaintiff's claims, and/or serve a copy of any answer or other defenses which Defendant might

have had upon Plaintiff's counsel, application for entry of default with made with the Clerk of the Court. Said Clerk made entry of default on the docket on the 12<sup>th</sup> day of September, 2003.

Following a hearing on this matter, including the submission of evidence and testimony, damages were set by the Court in a Default Judgment entered against Defendant on September 12, 2005, in the total amount due and owing of \$160,120.00.

Defendant filed its Motion to Set Aside Default Judgment on or about June 23, 2006, well in excess of the six month time restriction procedurally required by Mississippi Rule of Civil Procedure 60(b). In its Motion, Defendant rectifies its internal procedural failures in this matter as sufficient diligence on its part and such actions as excusable neglect. These actions were all but diligent and certainly not excusable. Defendant filed a Supplemental Motion to Set Aside Default Judgment on or about March 26, 2007, almost two years after the entry of the Default Judgment and almost four years after originally being served with process. In its motion, Defendant attempts to answer the Complaint filed by Plaintiff on July 23, 2003. Defendant also attached an affidavit of an apparent former employee to the March 26, 2007 supplemental motion.

### **III. Statement of the facts**

On or about the 26<sup>th</sup> day of March, 2002, Plaintiff entered into a contract with Defendant, whereby Defendant agreed to sell Plaintiff a 1997 Mercury Sable, Vehicle Identification Number (VIN) MELM50UVA609462, and Plaintiff agreed to pay Defendant in installments therefore. Concurrent with this agreement and as part and parcel thereof, Defendant agreed to provide an extended warranty on said automobile for "24 mos." or "24,000 miles." Defendant added \$1,060.00 to the purchase amount as alleged consideration for the purported warranty. Despite the repeated requests of Plaintiff, Defendant consistently and obstinately refused to honor the extended warranty and at all times material hereto, refused to perform any maintenance work on the vehicle under said warranty.

## STANDARD OF REVIEW

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Decisions regarding whether to set aside a default judgment are governed by the abuse of discretion standard. *Leach v. Shelter Insurance Co.*, 909 So.2d 1283, 1285 (Miss. Ct. App. 2005). “When applying abuse of discretion standard, reviewing court will affirm trial court’s decision unless there is definite and firm conviction that court below committed clear error of judgment in conclusion it reached upon weighing of relevant factors.” *Pierce v. Heritage Properties, Inc.*, 688 So.2d 1385, 1388 (Miss. 1997) (citing *Cooper v. State Farm Fire and Cas. Co.*, 568 So.2d 687, 692 (Miss. 1990)).

The decisions pertaining to damages, both compensatory and punitive, were based on factual matters determined by the Circuit Court of Madison County, Mississippi. As such, the holdings regarding all of the aforementioned issues should not be disturbed unless clearly erroneous. *U.S. v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (U.S. 1948). A finding can be determined to be clearly erroneous only when, “although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” *Id.*

## SUMMARY OF THE ARGUMENT

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Mississippi Rule of Civil Procedure 60(b) presents certain procedural limitations for attacking Judgments. One of these limitations is a time constraint which requires an attack upon a judgment under the grounds identified by Greater Canton to be brought within 6 month of the time the Judgment is entered. Greater Canton failed to file their Motion to Set Aside Default Judgment within the required six month time limitation.

However, assuming they had met that procedural hurdle, this Court has promulgated a three part test in *Chassaniol v. Bank of Kilmichael* to determine whether Default Judgment was

proper under Mississippi Rule of Civil Procedure 60(b). This test, which contains three elements, was further interpreted in *Leach v. Shelter Insurance Co.*

The first element of this test is, “the nature and legitimacy of a defendant’s reasons for default (i.e. whether a defendant has a good cause for default).” *Leach v. Shelter Ins. Co.*, 909 So.2d 1283, 1286 (Miss. Ct. App. 2005) citing (*Chassaniol v. Bank of Kilmichael Co.*, 626 So.2d 127, 135 (Miss. 1993)). The second element of this test is, “whether the defendant has a colorable defense to the merits of the claim.” *Id.* The third element of this test is, “the nature and extent of prejudice that a plaintiff would suffer if default were set aside.” *Id.*

The three prong balancing test promulgated by this Court, taking each element separately or presented together, overwhelmingly supports the affirmation of the imposition of a Default Judgment in this matter. Defendant does not have good cause for failing to answer the claims raised by Plaintiff, does not present sufficient evidence to support a colorable defense to the Default Judgment, and, lastly, Plaintiff would clearly suffer severe prejudice if the Judgment is set aside. Accordingly, considering that all three elements weigh heavily in Plaintiff’s favor, the Default Judgment of the lower court should be affirmed.

The application of these elements provides the justification for the affirmation of the imposition of Default Judgment. Furthermore, the monetary amount of the award provided by the Judgment was adequately supported by the assertions contained in Plaintiff’s Complaint. These assertions include: breach of contract, fraud, bad faith, intentional infliction of emotional distress, negligent infliction of emotional distress and breach of duty of good faith and fair dealing.

The monetary amount of the award provided by the Default Judgment also contained a portion allocated as punitive damages. This portion was adequate to punish Defendant and deter them, as well as any similarly situated entities, in their future endeavors. Thus, in light of all of

the aforementioned issues, this Court should affirm the Default Judgment entered by the Circuit Court of Madison County, Mississippi.

## ARGUMENT

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**I. The Default Judgment should be upheld in this matter because Greater Canton failed to file their Motion to Set Aside Default within the required mandatory six month time limitation under Mississippi Rule of Civil Procedure 60(b).**

Mississippi Rule of Civil Procedure 60(b) clearly requires Motions filed for relief from judgment for fraud, misrepresentation, or other misconduct of an adverse party, accident or mistake, and/or newly discovered evidence, which by due diligence could not have been discovered in time, to be filed within not more than six months after the judgment, order, or proceeding was entered or taken. The Comment to Rule 60 clearly states that such motions **must** be filed within six months. This Court recently reassessed this issue in *R. N. Turnbow Oil Investments vs. Maurice T. McIntosh, et al.*, 873 So.2d 960 (Miss. 2004.) and confirmed that action filed beyond the six month period is time barred. In *Turnbow*, the Court identified the procedural time bar as being dispositive of all the issues raised and declined to continue further analysis. *Id.* at 965.

**II. If the procedural time bar is not dispositive of further issues, this Court should apply the three part test promulgated in *Chassaniol v. Bank of Kilmichael* in determining that the Default Judgment was proper under Mississippi Rule of Civil Procedure 60(b).**

Relief from a default judgment is addressed to the sound discretion of the trial court and seldom is such granted as a right to the party seeking relief from default. *Guaranty Nat'l Ins. Co. v. Pittman*, 501 So.2d 377, 388 (Miss. 1987) (citing *Bryant, Inc. v. Walters*, 493 So.2d 933, 936-937 (Miss. 1986)). However, this Court promulgated a three part test in *Chassaniol v. Bank of Kilmichael* to determine whether Default Judgment is proper under Mississippi Rule of Civil Procedure 60(b).

**A. Application of the first element of the test, “the nature and legitimacy of a defendant’s reasons for default (i.e. whether a defendant has good cause for default).”**

The first element requires Defendant to show “good cause,” and, in its Motions, such is attributed to its own internal failures and confusions. Defendant admits proper service of process and that the failure to answer and/or respond was the fruit of its own confusion. The Mississippi Supreme Court finds unacceptable any excuse that attributes a failure to answer to “great confusion” or “mass confusion.” *Guaranty Nat’l*, at 388. And although the Court does not want to establish a policy of allowing the entry of irrevocable default judgments on the thirty first day that an answer is due, it is equally emphatic that people take the duty to answer seriously. *Id.* at 389.

Defendant’s failure to respond is far from excused for good cause since the Complaint in this matter had been properly served on or about the 25<sup>th</sup> day of July, 2003, upon the entity Defendant chose as its authorized registered agent for service of process, C. T. Corporation. Upon receipt, its registered agent forwarded the process to Alegnani & Company, P.C., in Dallas, Texas, and then to the insurance company for Defendant, Universal Underwriters. Further, Plaintiff did not make her Entry of Default until September 12, 2003, and did not file her Motion for Default Judgment and to Set Damages until August 26, 2005, creating a great expanse of time for Defendant to attempt to set aside the default herein, before now. It appears that every individual requiring knowledge of service of the Complaint herein was made aware of such and chose not to answer: the registered agent for service of process, the certified public accountant’s office of Alegnani & Company and Defendant’s own insurance company. Additionally, consideration should be given for each of these individual’s appreciation and understanding of the importance of a timely answer or, much less, an answer at all. As such, the first element supports denial of Defendant’s Motion to Set Aside Default Judgment.

**B. Application of the second element of the test, “whether a defendant has a colorable defense to the merits of the claim.”**

The second element to the analysis requires a determination of whether Defendant had a colorable defense to the merits of this claim. “Whether a defendant is likely to prevail is not the measure of a meritorious defense.” *Leach*, at 1287, (citing *Bieganek v. Taylor*, 801 F.2d 879, 882 (7<sup>th</sup> Cir. 1986)). “To show a credible defense . . . a party must show facts, not conclusions, and must do so by affidavit or other sworn form of evidence . . . unsubstantiated allegations that a meritorious defense exists is insufficient as a matter of law to sustain the burden of Rule 60(b).” *Leach* at 1287, (citing *American Cable Corp. v. Trilogy Communication, Inc.*, 754 So.2d 545, 554 (Miss. Ct. App. 2000)). Further, just as a default is not treated as a general admission or an absolute confession, a general denial is insufficient to set aside a default judgment. *Leach* at 1288. “Conclusions [of law] and unsubstantiated allegations will not suffice.” *Id.* As such, Defendant’s Motions fails to include any necessary elements to satisfy this element as a matter of law.

**C. Application of the third element of the test, “the nature and extent of prejudice that a plaintiff would suffer if default were set aside.”**

The third element requires examination and consideration of any prejudice Plaintiff would suffer if the Default Judgment entered in this matter was set aside, which would occur for a multitude of reasons. First, the diminishing memories of the available witnesses would prejudice Plaintiff, because of an inability to recall details such as amounts, numbers, names, what happened and/or did not happen, and many other uncertainties. The Mississippi Supreme Court indicated in *Guaranty Nat’l* that a “witness’s diminishing memories regarding specific events would cause . . . prejudice.” *Leach* at 1288, (citing *Guaranty Nat’l*, at 388.))

Second, Plaintiff would be prejudiced by the unavailability of witnesses. Many of the individuals Plaintiff had originally intended to call as witnesses have relocated to places unknown by Plaintiff and some have even moved out of the state. As such, Plaintiff would be greatly

prejudiced if the Judgment is set aside, since she would not be able to present witnesses which she could previously locate.

Third, Plaintiff would be prejudiced due to the deterioration of much of the physical evidence in this matter, along with the complete destruction and loss of other evidence. The Mississippi Supreme Court has consistently held, in both criminal and civil actions, that loss of evidence can prejudice parties in an action. *Arrington v. Masonite Corp.*, 58 So.2d 10, 12 (Miss. 1952), *Sharp v. State*, 786 So.2d 372, 381 (Miss. 2001). The original Defendant has since withdrawn from the State of Mississippi as a corporation and no longer exists within the state. As such, if the Default Judgment in this matter is set aside, Plaintiff will be placed under extreme prejudice by the unavailability and/or deterioration of evidence.

**III. The damages awarded to Ms. Lane were supported by evidence presented to the lower Court and are not contradictory to standards set by this Court.**

“[A] Defendant, upon default, is held to admit to Plaintiff’s well pleaded allegations of facts and that Defendant is barred from contesting such facts on appeal.” *Leach* citing *Nishimatsu Construction Co., Ltd. v. Houston Nat’l Bank*, 515 F.2d 1200, 1206 (5<sup>th</sup> Cir. 1975). Contrary to the mistaken assertions of Defendant that there is no evidentiary support for the amount of damages awarded to Plaintiff, Plaintiff put forth claims and well pleaded allegations of facts which entitle her to the relief awarded by the Circuit Court of Madison County, Mississippi.

**A. Plaintiff alleged claims and pleaded facts which entitle her to the relief awarded by the court below.**

Plaintiff asserted extensive claims in her Complaint arising out of the damages which were inflicted upon her by Defendant. These damages included: damage to her credit reputation, loss of transportation, severe emotional distress, breach of contract damages, breach of warranty

damages and loss of income. The conduct by Defendant which caused the damages is set forth individually below.

**1. Breach of Contract.**

Plaintiff entered into a valid and binding contract with Defendant whereby Defendant, for good and valuable consideration, agreed to provide an extended warranty on Plaintiff's new vehicle, and Plaintiff agreed to pay for said vehicle and warranty. Defendant breached this agreement by failing and refusing to perform any warranty services on Plaintiff's vehicle, for which Defendant is liable. This supports the amount of monetary damages awarded to Plaintiff by the Circuit Court of Madison County, Mississippi.

**2. Fraud.**

Defendant represented to Plaintiff that there was a warranty in force which would cover Plaintiff's automobile for services required on said automobile during the warranty period. The representations were false. Defendant did not intend to honor the provisions of the warranty, or conspired to wrongfully and/or retroactively refuse to honor the warranty, in violation of the laws of the State of Mississippi. Defendant had actual and/or constructive knowledge that these representations were false, as it is apparent from Defendant's actions that it had no intention either of honoring the warranty provisions of the subject agreement or of complying with the laws of the State of Mississippi regarding the same.

Additionally, these representations were material, as a reasonably prudent purchaser would make decisions as to whether to purchase a particular automobile and/or insurance, based upon said representations, and specifically, Plaintiff made a decision to purchase the subject vehicle and extended warranty agreement based upon these representations.

Defendant clearly made these representations with the intent that Plaintiff would rely on them, and Plaintiff did actually rely on them by purchasing the automobile and extended

warranty through Defendant. By definition, the above stated actions amount to an intentional fraud upon Plaintiff by Defendant, for which Defendant is liable for actual and punitive damages. This supports the amount of monetary damages awarded to Plaintiff by the Circuit Court of Madison County, Mississippi.

**3. Bad Faith.**

Defendant failed to provide legal services due to Plaintiff under the warranty agreement without offering any legitimate reason for failing to provide said services. Defendant was grossly negligent in refusing to provide these services, and/or has intentionally and in bad faith refused to provide these services, for which Defendant is liable to Plaintiff for actual and punitive damages. This supports the amount of monetary damages awarded to Plaintiff by the Circuit Court of Madison County, Mississippi.

**4. Intentional Infliction of Emotional Distress.**

Defendant willfully and intentionally inflicted severe mental anguish and emotional distress upon Plaintiff without regard to the rights of Plaintiff, for which Defendant is liable. This supports the amount of monetary damages awarded to Plaintiff by the Circuit Court of Madison County, Mississippi.

**5. Negligent Infliction of Emotional Distress.**

Defendant negligently inflicted severe mental anguish and emotional distress upon Plaintiff, for which Defendant is liable for actual and punitive damages. This supports the amount of monetary damages awarded to Plaintiff by the Circuit Court of Madison County, Mississippi.

**6. Breach of Duty of Good Faith and Fair Dealing.**

Defendant owed a duty of good faith and fair dealing to Plaintiff pursuant to the warranty agreement which is the subject of this action. Defendant breached this duty by refusing to honor

the extended warranty, for which Defendant is liable. This supports the amount of monetary damages awarded to Plaintiff by the Circuit Court of Madison County, Mississippi.

**B. Defendant introduced no evidence, nor pleaded any set of facts, which would not entitle Plaintiff to relief in the amount awarded.**

Defendant asserts that there is no evidentiary support for the economic and non-economic damages awarded to Plaintiff by the Circuit Court of Madison County, Mississippi; however, as has been noted, Plaintiff asserted claims and statements of fact which entitle her to the damage award. In refuting the claims of Plaintiff, Defendant asserts that Plaintiff requested that the warranty agreement be cancelled. They claim that they refused to acknowledge the warranty plan because it did not exist when Plaintiff requested services. This claim is put forth in an affidavit of Wanda Patrick. That affidavit was sworn to on March 26, 2007, approximately **five years** from the date that Plaintiff entered into the warranty contract.

Upon close examination, it becomes clear that the affidavit of Wanda Patrick does nothing to refute the claims of Plaintiff. Plaintiff asserts that Defendant refused to acknowledge the warranty plan in existence at the time services on the part of Defendant were requested. There is no information in the affidavit that provides contemporaneous verification that the warranty plan was cancelled, by Plaintiff or otherwise, prior to the requesting of services by Plaintiff. Plaintiff does not assert that the warranty contract is still in existence, which is essentially all that the affidavit of Wanda Patrick works to prove.

**IV. In light of the actions of Defendant, punitive damages were proper in the amount awarded.**

Defendant argues that the awarded damages in this case are in extreme excess of the actual economic damages experienced by Plaintiff. Defendant further argues that this discrepancy violated their substantive due process rights. As determined by the Circuit Court of Madison County, Mississippi, Plaintiff was awarded \$15,000.00 as actual damages, \$10,000.00

as economic damages and \$135,000.00 as punitive damages. This led to a total damage amount of \$160,120.00, with \$120.00 being awarded for the costs incurred. Contrary to the contentions of Defendant, there are additional factors to consider, rather then the mere ratio of economic damages to non-economic damages.

The factors for determining the constitutionality of punitive damages include: the reprehensibility of the conduct of Defendant, the disparity between the harm or potential harm caused and the amount of punitive damages, and the difference between the remedy provided and the civil penalties authorized or imposed in comparable cases. *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 575 (U.S. Ala. 1996). Perhaps the most important of these factors in determining reasonableness in this matter is the first, the degree of reprehensibility of Defendant's conduct. *Id.* It has been said that, "[t]he flagrancy of the misconduct is thought to be the primary consideration in determining the amount of punitive damages." *Id.* at 576 citing David G. Owen, *Punitive Damages Overview: Functions, Problems and Reform*, 39 Vill. L. Rev. 363, 387 (1994). In gauging the flagrancy of the misconduct, it is important to note that bad faith, fraud, trickery and deceit are important. *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 462 (U.S. W.Va. 1993). All of these factors are present in the case at hand and are evidenced by Defendant's refusal to acknowledge the existence of the warranty that Plaintiff purchased with her automobile, the failure of Defendant to respond timely to proceedings, and the resulting liquidation of said company in an attempt to avoid future liability. The punitive damages assigned to Defendant, therefore, were proper in the amount awarded.

## CONCLUSION

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This is a case in which Defendant has continually, fraudulently and maliciously refused to acknowledge the existence of a warranty contract purchased by Plaintiff as part and parcel of an automobile she purchased from Defendant and has refused to follow the procedural

requirements paramount to the proper function of the legal system. The warranty contract was in existence when the services were initially requested from Defendant, and the Defendant cancelled the warranty and credited Plaintiff's account for the cost thereof, when Defendant no longer wished to be a party to the warranty contract. The callous conduct on the part of Defendant is not limited to the initial transaction with Plaintiff. Defendant consistently disregarded Plaintiff's legal claim and her rights by carelessly handling the properly issued and served Summons and Complaint, failing to answer the same, and lastly, waiting beyond the procedural time limitations to call the Default Judgment into issue. As such, Defendant's Motion to Set Aside Default Judgment is time barred and should be dismissed.

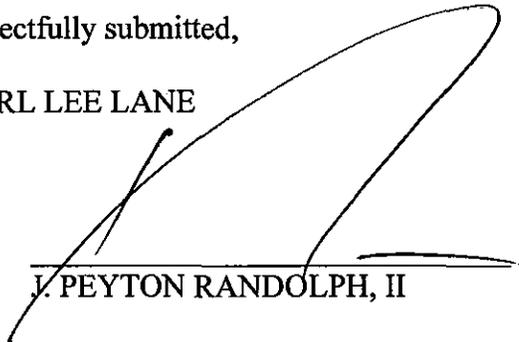
Even if the Defendant's Motion to Set Aside Default Judgment was not time barred, their arguments still fail in every aspect. The issues presented pose several public policy concerns. Put simply, this is a case involving a business entity which entered into a contract with one of its patrons. When that contract no longer became preferable to the business, the business refused to acknowledge the contract and credited back to the patron the amount paid in consideration thereof. Clearly there are extensive elements of, among others, fraud and bad faith. In light of the aforementioned issues and the implementation of the three part test promulgated in *Chassaniol v. Bank of Kilmichael*, this Court should affirm the judgment of the Circuit Court of Madison County, Mississippi, denying the Defendant's Motion to Set Aside Default Judgment. Additionally, and for many of the same reasons, this Court should affirm the award of damages in the amount thereof and assess all costs of this appeal against Defendant, accordingly.

WHEREFORE, PREMISES CONSIDERED, Plaintiff/Appellee respectfully requests that this Honorable Court affirm the ruling of the Circuit Court of Madison County, Mississippi, in this matter and assess all costs of this appeal against Defendant/Appellant.

Respectfully submitted,

PEARL LEE LANE

BY:

  
J. PEYTON RANDOLPH, II

**CERTIFICATE OF SERVICE**

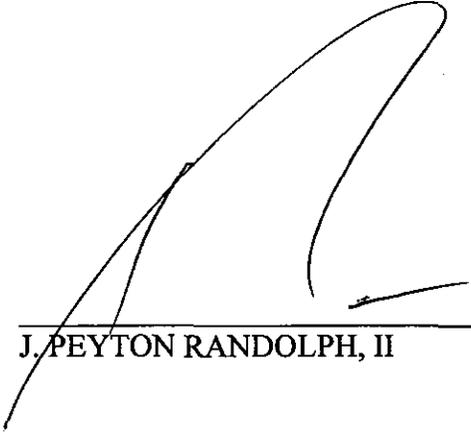
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I, the undersigned counsel of record for Appellee, do hereby certify that I have this day delivered a true and correct copy of the above and foregoing Brief of Appellee to the following by mailing a true and correct copy thereof via United States Mail, postage prepaid, addressed as follows:

Thomas A. Wicker, Esq.  
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Honorable William E. Chapman, III  
District Twenty Circuit Court Judge  
Post Office Box 1626  
Canton, Mississippi 39046

This the 3<sup>rd</sup> day of January, 2008.



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J. PEYTON RANDOLPH, II

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