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

**NO. 2007-CA-01189**

**GUY "PHILP" RUFF, JR.** **APPELLANT**

**v.**

**THE ESTATE OF GUY P. RUFF, SR., MYRA EASON RUFF, IN HER CAPACITY AS EXECUTRIX OF THE ESTATE OF GUY P. RUFF, SR., MARGARET ANNE RUFF CARGO, IN HER CAPACITY AS EXECUTRIX OF THE ESTATE OF GUY P. RUFF, SR., and DAVID CLIFTON RUFF, IN HIS CAPACITY AS EXECUTOR OF THE ESTATE OF GUY P. RUFF, SR.** **APPELLEES**

**ON APPEAL FROM THE CHANCERY COURT OF BENTON COUNTY, MISSISSIPPI**

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# REPLY BRIEF OF APPELLANT

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**(ORAL ARGUMENT NOT REQUESTED)**

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## ARGUMENT

### I. The arguments outlined in Issues II and III of the Brief of Appellant are properly before this Court for review.

Plaintiff/Appellant, Guy "Philp" Ruff, Jr. ("Plaintiff/Appellant"), filed his Motion for Preliminary and Mandatory Injunction, Temporary Restraining Order and for Permanent and Mandatory Injunction on January 19, 2007 (R. 1:1), seeking injunctive relief from the actions of Estate of Guy P. Ruff, Sr. et al. (the "Estate") that violate the terms of two consent orders previously entered in regard to a debt that Plaintiff/Appellant owes to the Estate.

Plaintiff/Appellant's motion stated, "[Plaintiff/Appellant] reasonably ascertained that the disbursement(s) had been applied toward his indebtedness." (R 1:3). At the trial held in this matter, Plaintiff/Appellant presented evidence and argued each element of *Rotenberry v. Hooker*, 864 So. 2d 266, 271 (¶17) (Miss. 2003), in order to receive an injunction that rescinded the filing of the Deed in Lieu of Foreclosure and prevent the Estate from interfering with Plaintiff/Appellant's livestock management (R. 2:37).

Issue II pertains to the withholding of disbursements due Plaintiff/Appellant from a closely held family limited liability company, Big Oaks Farm, LLC ("Big Oaks"), for assignment to the Estate pursuant to the Consent Order entered by the Bankruptcy Court on August 26, 2004 ("Consent Order entered August 26, 2004") (Exhibit Volume 7-11). Issue III pertains to the Estate's failure to acknowledge and utilize the withheld disbursements/assignment from Plaintiff/Appellant according to the repayment schedule outlined for Plaintiff/Appellant in the Consent Order entered by the Chancery Court of Benton County on February 1, 2006 ("Consent Order entered February 1, 2006") (Exhibit Volume 2-4).

Pertinent portions of the Consent Order entered August 26, 2004, were provided at pages 7-8 of Plaintiff/Appellant's Brief of Appellant. The Brief of Appellee also discussed the Consent Order entered August 26, 2004 at pages 7-8. References to said Consent Order, Plaintiff/Appellant's assignment of his disbursements to the Estate, and the disbursements from Big Oaks are found in the trial transcript at the following pages: 6, 10-17, 26-27, 42, 46-48, and 59.

Pertinent portions of the Consent Order entered February 1, 2006, were provided at pages 8-9 of Plaintiff/Appellant's Brief of Appellant. The Brief of Appellee also discussed the Consent Order entered February 1, 2006, at pages 8-9. References to said Consent Order are found in the trial transcript at the following pages: 6, 15, and 27.

Issues II and III were clearly before the trial court and considered by the Chancellor at the conclusion of the trial held in this matter. No written opinion with specific findings of fact regarding Issues II and III should be required for this Court to consider each issue within the context of Issue I and the Chancellor's implied reasoning for the denial of an injunction. The Chancellor's ruling to deny the injunction may have been based, in part, upon ancillary matters raised at the trial held in this matter, but no logical interpretation of the ruling could contradict that the ruling was implicitly predicated upon the Chancellor's finding that the interception of disbursements due Plaintiff/Appellant (Issue II) and the Estate's refusal to give credit for such scheduled payments (Issue III) was lawful, correct, and/or not an "intolerable injustice." *See Rotenberry v. Hooker*, 864 So. 2d 266, 271 (¶17) (Miss. 2003).

Issues II and III were substantially supported by legal authorities in the Brief of Appellant whereas the authorities presented in the argument pertaining to Issue I were incorporated as support for the respective argument contained in Issues II and III.

Rotenberry is what mistake?

**II. The Chancellor abused his discretion in denying injunctive relief to Plaintiff/Appellant, Guy "Philp" Ruff, Jr., against the Estate of Guy P. Ruff, Sr. et al.**

At the heart of Plaintiff/Appellant's motion in the trial court, and what this Court must decide on appeal, is whether or not Plaintiff/Appellant was in default with the Estate in the month of December 2006 according to the terms of the Consent Order entered August 26, 2004, and the Consent Order entered February 1, 2006. The Court must consider the elements of unilateral mistake set forth in *Rotenberry v. Hooker*, 864 So. 2d 266, 271 (¶17) (Miss. 2003) to determine whether Plaintiff/Appellant's alleged default was actionable under the terms of the consent orders.

Based on the briefing of the parties on appeal herein, the following statements are undisputed:

1) The disbursements owed to Plaintiff/Appellant by Big Oaks were being withheld from Plaintiff/Appellant because of the Consent Order entered August 26, 2004, and subsequent actions take by the Estate in accordance with said Consent Order to block the disbursements (*see* Br. of Appellee 7);
2) Plaintiff/Appellant and counsel for the Estate were aware that the Consent Order entered February 1, 2006, required Plaintiff/Appellant to pay $2,000 a month to counsel for the Estate (*see* Br. of Appellee 8);
3) Plaintiff/Appellant knew that Big Oaks made a disbursement in November 2006 because his children also received disbursements from Big Oaks at his address (*see* Br. of Appellee 8);

Big Oaks made a disbursement in June 2005 and another in November 2006 (R. 2:14). At the trial held in this matter, David Ruff, testifying for the Estate, stated that he and

Plaintiff/Appellant each get 1.3% of each disbursement made by Big Oaks and the total amount of the disbursement in November 2006 was $200,000 (R. 2:14). Had Plaintiff/Appellant's disbursement not been withheld in November 2006, he would have received $2,600 from Big Oaks.

Plaintiff/Appellant stated that he believed the Estate received the November 2006 disbursement from Big Oaks (R. 2:26). Plaintiff/Appellant has had no communication with his brother or sisters (David Ruff, Margaret Anne Ruff, and Myra Eason Ruff) since August 2001, other than through the process of litigation (R. 2:26).

David Ruff is one of two executors of the Estate (R. 1:3), and he is also one of five managers of Big Oaks (R. 1:3, 2:13, and 2:44). David Ruff, Margaret Anne Ruff, Myra Eason Ruff, and Plaintiff/Appellant are all heirs of the Estate (R. 2:26). Dorothy Ruff Nicolau, President of the Board of Managers for Big Oaks executed an affidavit on February 1, 2007 (R. 1:78-79), that was later entered into evidence at the trial held in this matter. Said affidavit stated that the representatives of the board of Big Oaks spoke with counsel for the Estate regarding the withholding of Plaintiff/Appellant's disbursements and the assignment of the interest of Plaintiff/Appellant. Knowledge regarding the business of the Estate and Big Oaks should be imputed to David Ruff by virtue of his position in both entities.

All four of the prongs set forth in *Rotenberry* are met and supported by the evidence recounted above. Obviously, Plaintiff/Appellant's belief that his withheld November 2006 disbursement from Big Oaks was being applied to the repayment schedule provided in the Consent Order entered February 1, 2006, is fundamental in its character. Plaintiff/Appellant's monthly payments to the Estate in the amount of $2,000 were fundamental to his repayment of his debt to the Estate.

The Consent Order entered February 1, 2006, did not address how withheld disbursements from Big Oaks and the assignment of the interest of Plaintiff/Appellant would apply with regard to the repayment schedule set forth therein. However, the Consent Order entered August 26, 2004, specifically stated that Plaintiff/Appellant's disbursements from Big Oaks would be assigned to the Estate and received by the Estate as payment made on behalf of Plaintiff/Appellant (Exhibit Volume 9-10, ¶ 6). The minds of the parties never met regarding the withheld disbursements from Big Oaks and the Estate held an unconscionable advantage over Plaintiff/Appellant because David Ruff is one of two executors of the Estate, and he is also one of five managers of Big Oaks.

Plaintiff/Appellant committed no gross negligence in his mistaken belief that the withheld funds would be applied with regard to the repayment schedule set forth in the Consent Order entered February 1, 2006. No intervening rights have accrued regarding the status of Plaintiff/Appellant's debt owed the Estate or the Estate's right to receive monies from Plaintiff/Appellant. The parties may still be placed in *status quo* whereas the Quitclaim Deed in Lieu of Foreclosure can be set aside, Plaintiff/Appellant can continue to repay the Estate, and the Estate will refrain from filing another Quitclaim Deed in Lieu of Foreclosure except under the express terms of the Consent Order entered on February 1, 2006.

There is an "intolerable injustice" in allowing the Estate to knowingly withhold

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Plaintiff/Appellant's disbursements from Big Oaks, and then simultaneously refuse to exercise its right to request and receive the disbursement as a scheduled payment made on the behalf of Plaintiff/Appellant.

Furthermore, the fact that Issues II and III were so integral to Plaintiff/Appellant's sole argument for relief and yet ignored by the trial court in its written order denying Plaintiff/Appellant's application for injunction (R. 1:80) should show the Court that the trial court's ruling was manifestly wrong and clearly erroneous. Obviously, the trial court based its decision on ancillary matters that were not germane to Plaintiff/Appellant's application for an injunction and the elements of *Rotenberry*.

contradicts earlier argument that it. considered

The trial court's denial of Plaintiff/Appellant's application for injunction was manifestly wrong and clearly erroneous.

**Respectfully submitted, this the 10th day of March 2008.**

Edwin H. Priest
Counsel of Record for Appellant

**CERTIFICATE OF FILING AND SERVICE**

I, Edwin H. Priest, attorney for Appellant, Guy "Philp" Ruff, Jr., certify that I have this day filed this Reply Brief of Appellant with the Court of Appeals of Mississippi, and have served a copy of the same by U.S. Mail, postage prepaid, to the following:

Honorable V. Glenn Alderson
Benton County Chancery Court Judge
P.O. Drawer 70
Oxford, Mississippi 38655-0070
*Trial Court Judge*

Stephan Land McDavid, Esq.
R. Neville Webb, Esq.
Harris Shelton Hanover & Walsh, PLLC
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This the 10th day of March 2008.

Edwin H. Priest