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COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2007-TS-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

BRIEF OF THE APPELLANT

(ORAL ARGUMENT NOT REQUESTED)

EDWIN H. PRIEST (MSB [redacted]
PRIEST & WISE, PLLC
ATTORNEYS AT LAW
301 WEST MAIN STREET
POST OFFICE BOX 46
TUPELO, MS 38802
TELEPHONE: (662) 842-4656
FACSIMILE: (662) 842-4855

Attorney of Record for Appellant, Guy "Philp" Ruff, Jr.

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CERTIFICATE OF INTERESTED PERSONS

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 Court of Appeals may evaluate possible disqualification or recusal.

1. Guy "Phil" Ruff, Jr., Appellant;
2. Edwin H. Priest, Attorney of Record for Appellant;
3. Myra Eason Ruff, Executrix of the Estate of George P. Ruff, Sr., Appellee;
4. Margaret Anne Ruff Cargo, Executrix of the Estate of George P. Ruff, Sr., Appellee;
5. David Clifton Ruff, Executor of the Estate of George P. Ruff, Sr., Appellee, and Co-manager of Big Oaks, LLC;
6. Stephan Land McDavid, Attorney of Record for Appellees.

SO CERTIFIED, this the 8th day of January 2008.

EDWIN H. PRIEST
Counsel of Record for Appellant

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STATEMENT OF THE ISSUES

1. Did the Chancellor abuse his discretion in denying injunctive relief to Plaintiff/Appellant, Guy "Philp" Ruff, Jr. ("Plaintiff/Appellant"), against the Estate of Guy P. Ruff, Sr. et al. (the "Estate)?

2. Did the Chancellor abuse his discretion wherein he found that the Estate had the right as a matter of law to intercept disbursements due Plaintiff/Appellant from a closely held family limited liability company pursuant to a Consent Order entered on February 1, 2006, wherein said monies would have been utilized to make scheduled payments by Plaintiff/Appellant to the Estate?

3. Did the Chancellor err as a matter of law wherein he found that payments due Plaintiff/Appellant from a closely held family limited liability company and intercepted by the Estate could not be considered as payments timely received as contemplated by a previously entered Consent Order entered on February 1, 2006?

STATEMENT OF THE CASE

NATURE OF THE CASE: Plaintiff/Appellant seeks injunctive relief from the actions of the Estate that violate the terms of two consent orders previously entered in regard to debt Plaintiff/Appellant owes to the Estate.

COURSE OF THE PROCEEDINGS: Plaintiff/Appellant filed his Motion for Preliminary and Mandatory Injunction, Temporary Restraining Order and for Permanent and Mandatory Injunction on January 19, 2007, in the Chancery Court of Benton County, Mississippi (R. 1:1). The lower court filed Plaintiff/Appellant's motion as cause number 07-0009. A trial was held on June 18, 2007, and a transcript was made thereof (R. 2:1).

DISPOSITION IN TRIAL COURT: On June 18, 2007, the lower court entered a written order denying Plaintiff/Appellant's Motion for Preliminary and Mandatory Injunction, Temporary Restraining Order and for Permanent and Mandatory Injunction and set the supercedes bond in the amount of $285,000 (R. 1:80). The lower court did not issue a memorandum to accompany its written order.

STATEMENT OF THE FACTS

Plaintiff/Appellant borrowed certain money from his father, Guy P. Ruff, Sr., during his lifetime and promised to repay the same pursuant to a letter/loan agreement dated June 30, 2000 (Exhibit Volume 18-19).

Guy P. Ruff, Sr., filed a Complaint against Plaintiff/Appellant in the Chancery Court of Benton County, Mississippi, on May 22, 2002 (Exhibit Volume 20-28). Said Complaint was filed as cause number 02-0068 and prayed for the following: imposition of an equitable lien on Plaintiff/Appellant's farm property; a declaratory judgment that Plaintiff/Appellant was in default under the equitable lien; and damages suffered as result of Plaintiff/Appellant's alleged failure to comply with the terms of the June 30, 2000, letter/loan agreement (Exhibit Volume 20, 23). On March 28, 2003, the court entered a Default Judgment and Equitable Lien for Plaintiff/Appellant's failure to cooperate in discovery (Exhibit Volume 29-34). The court granted Guy P. Ruff, Sr., an equitable lien against the farm property of Plaintiff/Appellant; a judgment for compensatory damages in the amount of $357,678.35 (representing a principal debt of $281,000 plus interest accrued at 10% annum from June 30, 2000 to March 24, 2003) plus interest; and a judgment for attorney's fees of Guy P. Ruff, Sr. (Exhibit Volume 31-32).

On August 26, 2004, the United States Bankruptcy Court, Northern District of Mississippi, in the matter styled "In Re: Guy Philp Ruff, Jr., Case No. 04-10602," entered a Consent Order Resolving Motion for Relief from a Automatic Stay Filed by Guy P. Ruff ("Consent Order entered August 26, 2004") (Exhibit Volume 7-11). Said Consent Order stated, in pertinent part,

3. . . . [Plaintiff/Appellant] will retain his right to collect distributions from A units or shares of Big Oaks, LLC, and any development fees owed to him from Big Oaks, LLC.

1. [Plaintiff/Appellant] will pay to [Guy P. Ruff, Sr.,], for application to the balance due on the Judgment, no less than $16,500 a calendar quarter beginning with the quarter ending September 30, 2004. . . .

. . .

6. Simultaneously with the entry of this Order, [Plaintiff/Appellant] will execute an assignment of all funds, disbursements or income from Big Oaks, LLC to [Plaintiff/Appellant] ("Default Assignment"). The Default Assignment and the Security Agreement and UCC 1 will be delivered to Stephan McDavid and will not be delivered to [Guy P. Ruff, Sr.,] or Big Oaks, LLC, unless default occurs by [Plaintiff/Appellant] with no cure within sixty (60) days, as provided in paragraph 7, below. The Default Assignment will be held in escrow by Stephan McDavid, attorney. If [Guy P. Ruff, Sr.,] makes demand in writing on McDavid for delivery of the Assignment, McDavid will notify [Plaintiff/Appellant] of such demand no less than ten days before delivering the Assignment, McDavid will notify [Plaintiff/Appellant] of such demand no less than ten days before delivering the Assignment to Ruff. Upon payment in full of the Ruff Debt, McDavid will deliver the Default Assignment to [Plaintiff/Appellant]. [Plaintiff/Appellant] agrees that should Big Oaks, LLC require any additional documents to be executed by [Plaintiff/Appellant] before any funds owed to [Plaintiff/Appellant] shall be paid to [Guy P. Ruff, Sr.,], [Plaintiff/Appellant] will execute such documents and deliver same to [Guy P. Ruff, Sr.,] within five (5) days of receipt of demand therefore.

(Exhibit Volume 9-10)

In December of 2005, Plaintiff/Appellant filed a motion for preliminary mandatory injunction in the Chancery Court of Benton County (R. 2:4). Plaintiff/Appellant's motion was filed as cause number 05-0128. On February 1, 2006, the court entered a Consent Order of

Dismissal with Prejudice based upon Settlement of All Claims ("Consent Order entered February 1, 2006")[1]. Said consent order stated, in pertinent part,

> 2. [Plaintiff/Appellant] will pay the Estate the sum of $2,000 on the first day of February 2006, and on the first day of each month thereafter, as payments towards [a note in the amount of $363,139.60 (the "Debt")]. Payments are to be made to Stephan Land McDavid, ("McDavid") (sic) as attorney for the Estate at his Oxford, Mississippi office.
>
> 3. [Plaintiff/Appellant] will grant and execute a Quitclaim Deed in Lieu of Foreclosure ("Deed") to the Estate, subject to the approval of the prior lien holders, covering the property covered by the Deed of Trust. The Deed will be held in escrow by McDavid. If any payment due is not received by McDavid by the fifth (5^{th}) calendar day of the month, then McDavid shall file the Deed on the sixth (6^{th}) day of the month with the Chancery Clerk of Benton County. . . .
>
> 4. The full remaining amount of the Debt shall come due on December 31, 2008.
>
> . . .
>
> 9. Except as specifically stated herein, the Note and Deed of Trust, and all obligations under the same and the Consent Order of the Bankruptcy Court remain in full force and effect, Nothing (sic) in this Order shall be deemed to otherwise modify any other obligations of the parties.
>
> (Exhibit Volume 2-4)

Prior to the filing of Plaintiff/Appellant's motion for preliminary mandatory injunction in December 2005, counsel for the Estate issued a letter dated June 22, 2005, to Plaintiff/Appellant

[1] The Default Judgment and Equitable Lien entered in the Chancery County of Benton County (cause number 02-0068), the Consent Order of Dismissal with Prejudice based upon Settlement of All Claims entered Chancery Court of Benton County (cause number 05-0128), and the subject order on appeal were all entered by the Honorable V. Glenn Alderson.

and his counsel[2] regarding "Default – Notice of Intent to Present Assignment" (R. 1:62-63). Said letter stated, in pertinent part,

> As you are aware, and as we noticed to you on March 21, 2005, [Plaintiff/Appellant] is currently in default of his payment obligations under the Consent Order Resolving Motion for Relief from Automatic Stay as filed by Guy P. Ruff, Sr. More than sixty (60) days have now lapsed from the date of the notice of default, and, as allowed by the terms of the Consent Order, my client now intends to move forward with remedy provisions for [Plaintiff/Appellant's] failure to cure.
>
> The Estate of Ruff, Sr., has requested that I release the Assignment of all funds, disbursements or income from Big Oaks, LLC, as referenced in Paragraph 6 of the Consent Order. Under the terms of the Consent Order, you are entitled to ten (10) days notice before the Assignment is delivered to the Estate of Ruff, Sr., and/or Big Oaks, LLC. PLEASE CONSIDER THIS YOUR NOTICE OF OUR INTENT TO RELEASE AND PRESENT THE ASSIGNMENT.
>
> By copy of this letter, we are also notifying Big Oaks, LLC, of [Plaintiff/Appellant's] default and requesting that any disbursement of funds be withheld for at least the ten (10) day period between this notice and presentment for the Assignment or collection of debt.
>
> If [Plaintiff/Appellant's] default is not cured within ten (10) days of the date of this Notice, I will deliver that Assignment to the Estate of Ruff, Sr., and/or Big Oaks, LLC, and my client will pursue all further remedies allowed under the terms of the Consent Order or the laws of this state.
>
> (R. 1:62-63)

Said letter was carbon copied to David Ruff and Big Oaks, LLC (R. 1:63).

David Ruff testified at the trial held on June 18, 2007 (R. 1:3). David Ruff is one of two executors of the Estate (R. 1:3), and he is also one of five managers of Big Oaks, LLC (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).

[2] At that time, Plaintiff was represented by David Blaylock, Esq., of Glankler Brown, PLLC, Memphis, Tennessee.

Counsel for the Estate issued a letter dated July 19, 2005, to Big Oaks, LLC, and Big Oaks Farm, A Limited Liability Partnership, regarding "PRESENTMENT OF ASSIGNMENT, *Estate of Ruff v. Ruff*, Our File No. 10601" (Exhibit Volume 5-6). Said letter stated, in pertinent part,

> As you are aware, and as we noticed to you by copy of a pervious letter dated June 22, 2005, [Plaintiff/Appellant] is currently in default of his payment obligations under a Consent Order Resolving Motion for Relief from Automatic Stay as filed by Guy P. Ruff, Sr. More than ten (10) days have now passed since the date of our previous correspondence, and [Plaintiff/Appellant] has yet to cure the default. As allowed by the terms of the Consent Order, my client now presents unto you the Court's Order (see ¶6) assigning all funds, disbursements or income from Big Oaks, LLC, as executed by [Plaintiff/Appellant] and referenced in the Court's Order. Copies of our previous correspondence and the Court's Order are enclosed herewith for your convenience.
>
> Please direct any previously withheld and all future disbursements of funds to the Estate of Guy P. Ruff, Sr. . . .
>
> (Exhibit Volume 5-6)

Said letter was carbon copied to Plaintiff/Appellant and his counsel (Exhibit Volume 6).

Counsel for the Estate sent a letter dated December 29, 2006, to Plaintiff/Appellant regarding "NOTICE OF DEFAULT, Our File No. 17574.0000" (Exhibit Volume 16-17). Said letter stated, in pertinent part,

> This letter comes as Notice that you are in default under Consent Order of Dismissal with Prejudice Based on Settlement of All Claims (Benton County Chancery Court on February 8, 2006) and Consent Order Resolving Motion for Relief from Automatic Stay Filed by Guy P. Ruff (U.S. Bankruptcy Court in the Northern District of Mississippi on August 26, 2004). As a result the, [Quitclaim] Deed in Lieu [of Foreclosure] has been filed and all personal property including cattle will be sold between sixty to ninety days from the date of this letter.

Any attempt to enter the real property and obtain the personal property will be trespassing and theft.

(Exhibit Volume 16)

Dorothy Ruff Nicolau, President of the Board of Managers for Big Oaks, LLC, executed an affidavit on February 1, 2007, regarding the subject case on appeal. Said affidavit stated the following, in pertinent part,

> 3. The Board of Managers [of Big Oaks, LLC] oversees payment of dividends based on Units of ownership in the LLC. Around or just after June 19, 2005, the Board received two letters from the attorney for the [Estate] putting the LLC on notice of the assignment of the interest of [Plaintiff/Appellant] in the LLC due to his default under a Consent Order in the U.S. Bankruptcy Court. . . .
>
> 4. After receiving the notice of default letters from the [Estate], representatives of the board spoke with the [Estate's] attorneys and the attorney for the LLC, and the board determined to suspend A Unit payments to [Plaintiff/Appellant].
>
> 5. After the suspension of payment to [Plaintiff/Appellant], the LLC has made two distributions to its A Unit members including the children of [Plaintiff/Appellant]. However, no payment has been made to [Plaintiff/Appellant] since the notice of default and assignment referenced above. Furthermore, at no time since the suspension of payments to [Plaintiff/Appellant] has [Plaintiff/Appellant] contacted the Board to request payment based upon his A Units.
>
> (R. 1:78-79)

SUMMARY OF THE ARGUMENT

The following are the actions of the Estate that violated the terms of the Consent Order entered February 1, 2006, and the Consent Order entered on August 26, 2004:1) the filing of the Quitclaim Deed in Lieu of Foreclosure in December 2006 when Plaintiff/Appellant was not in default; 2) the intercepting of disbursements due to Plaintiff/Appellant in November 2007 when Plaintiff/Appellant was not in default and wherein said monies would have been utilized by Plaintiff/Appellant to make scheduled monthly payments to the Estate; and 3) the failure of the Estate to utilize said disbursement as a scheduled payment under the terms of the Consent Order entered on February 1, 2006, and the Consent Order entered on August 26, 2004. At no time during December of 2006 was Plaintiff/Appellant in default according to the terms of either consent orders. The lower court should have set aside the Quitclaim Deed in Lieu of Foreclosure and allowed the Estate and Plaintiff/Appellant to return to the *status quo* under the terms of the Consent Order entered on February 1, 2006.

Furthermore, the lower court should have entered a mandatory and/or permanent injunction preventing the Estate from intercepting disbursements due Plaintiff/Appellant. In the alternative, if the lower court found that the Estate was and is still entitled to Plaintiff/Appellant's disbursements from Big Oaks, LLC, then the lower court should have instituted a mandatory and/or permanent injunction compelling disbursements from Big Oaks, LLC, received by the Estate to be utilized as full or partial payments towards Plaintiff/Appellant's $2,000 monthly scheduled payments to the Estate.

ARGUMENT

Standard of Review

In making its decision to deny Plaintiff/Appellant's motion, the lower court obviously made factual determinations and interpreted the terms of the Consent Order entered on February 1, 2006, by the Chancery Court of Benton County and the Consent Order entered on August 26, 2004. On review, this Court should review the lower court's apparent factual determinations and interpretation of the terms of the consent orders.

This Court reviews the factual findings of a chancellor under a manifest error standard. *Chalk v. Lentz*, 744 So.2d 789, 791-92 (¶7) (Miss. Ct. App. 1999). This Court has further stated that it will not disturb a chancellor's factual findings when supported by substantial evidence, unless we find, with reasonable certainty, that the chancellor abused his discretion, the findings were manifestly wrong, clearly erroneous, or because the chancellor applied an erroneous legal standard. *Saunders v. Saunders*, 724 So.2d 1132, 1135 (¶11) (Miss. Ct. App. 1998). If the factual finding of the lower court was manifestly wrong this Court "should not hesitate to reverse." *Tilley v. Tilley*, 610 So.2d 348, 351 (Miss.1992).

I. 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.

In Mississippi, equity will prevent an intolerable injustice such as where a party has gained an unconscionable advantage by mistake and the mistaken party is not grossly negligent:

> But where the mistake is of so fundamental a character, that the minds of the parties have never, in fact, met; or where an unconscionable advantage has been gained, by mere mistake or misapprehension; and there was no *gross negligence* on the part of the plaintiff, either in falling into the error, or in not sooner claiming redress; and no intervening rights have accrued; and the parties may still be placed in *status quo*; equity will interfere, in its discretion, in order to prevent intolerable injustice. This is the clearly defined and well established rule upon the subject, in courts of equity, both in England and America.

Rotenberry v. Hooker, 864 So.2d 266, 271 (¶17) (Miss. 2003).

"To obtain a permanent injunction, a party must show an imminent threat of irreparable harm for which there is no adequate remedy at law." *Punzo v. Jackson County*, 861 So.2d 340, 347 (¶ 26) (Miss.2003). "It is likewise true, however, that the remedy by injunction is preventive in its nature, and that it is not necessary to wait for the actual occurrence of the injury, since, if this were required, the purpose for which the relief is sought would, in most cases, be defeated." *McGowan v. McCann*, 357 So.2d 946, 949 (Miss.1978).

Consent Orders/Judgments have been held by the Mississippi Supreme Court to be the equivalent of "judgments rendered after litigation" which are "binding and conclusive" and operate as res judicata and estoppel. *Gutherie v. Gutherie*, 102 So.2d 381, 383 (Miss. 1958). Consent Orders/Judgments are "in the nature of a contract" and "should be construed as a written contract." *Id.* Unless fraud, mutual mistake or collusion can be proved, the consent order is "binding and conclusive upon the parties and those in privity with them." *Id.*

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).

The Consent Order dated February 1, 2006, incorporated the provisions of the previous Consent Order dated August 26, 2004, that allowed the Estate to assign any payments that would otherwise be made to Plaintiff/Appellant from Big Oaks, LLC.

The terms and provisions of the February 1, 2006, Consent Order were clear and unambiguous as to the payment amount, the payment due date, and the place payment was required to be delivered.

Plaintiff/Appellant made payments to the Estate from February through November pursuant to the Consent Order entered on February 1, 2006 (R. 2:27).

David Ruff stated at trial that he understood that the Consent Order entered on February 1, 2006, was "to get [Plaintiff/Appellant] back on track" (R. 2:6). He affirmed that as long as Plaintiff/Appellant paid $2,000 a month to the Estate via Stephan McDavid that Plaintiff/Appellant would not be in default (R. 2:6, 2:11). He then acknowledged and verified the letter from Stephan McDavid to Big Oaks, LLC, and Big Oaks Farm, A Limited Liability Partnership, dated July 19, 2005 (R. 2:10-11). He affirmed that he had not directed Stephan McDavid to take any steps to rescind the assignment of Plaintiff/Appellant's disbursements from Big Oaks, LLC (R. 2:11-12).

Plaintiff/Appellant knew that Big Oaks, LLC, had made a disbursement in November 2006 because his children also received disbursements from Big Oaks, LLC, at his address (R. 2:27, 2:47). Plaintiff/Appellant understood that the assignment perfected by the Estate pursuant to the Consent Order entered on August 26, 2004, was still in effect when the November 2006 disbursement was made (R. 2:27). Plaintiff/Appellant stated that he believed the Estate received the November 2006 disbursement from Big Oaks, LLC (R. 2:26).

According to David Ruff, Big Oaks, LLC, made a disbursement in June 2005 and another in November 2006 (R. 2:14). He stated that he and Plaintiff/Appellant each get 1.3% of each disbursement made by Big Oaks, LLC, and the total amount of the disbursement in November 2006 was $200,000 (R. 2:14). He stated that Plaintiff/Appellant's share of the November 2006 disbursement would have been adequate to make the December payment under the terms of the Consent Order entered on February 1, 2006 (R. 2:15). He further stated that the bank records of the Estate reflect that Plaintiff/Appellant's disbursement was deposited into the Estate's account in November but sometime after November 5th (R. 2:15). He further "assumed" that Big Oaks, LLC, would have sent Plaintiff/Appellant the November 2006 disbursement but for the assignment letter dated July 29, 2005, that had been sent by the Estate to Big Oaks, LLC (R. 2:15-16, 2:17).

The statements of both Plaintiff/Appellant and David Ruff were in concert with the assertions contained in the affidavit of Dorothy Ruff Nicolau, President of the Board of Managers of Big Oaks, LLC (R. 1:78-79).

According to the Consent Order entered on February 1, 2006, the Quitclaim Deed in Lieu of Foreclosure was only to be filed by the Estate upon the default of Plaintiff/Appellant.

David Ruff stated that he received a foreclosure notice from the Bank of Holly Springs stating that they were going to foreclose on Plaintiff/Appellant's loan (R. 2:18).[3] He stated that the Estate filed the Quitclaim Deed in Lieu of Foreclosure because he thought the Bank of Holly Springs was about to foreclosure on Plaintiff/Appellant's farming property (R. 2:19). He also said that the Estate paid the amount owed by Plaintiff/Appellant to the Bank of Holly Springs to prevent foreclosure (R. 2:18).

[3] The foreclosure noticed by the Bank of Holly Springs was void because the bank improperly addressed the foreclosure notice and there was no publication of foreclosure on the Plaintiff/Appellant farm property (R. 2:28-29).

According to David Ruff, the Estate has not received a monthly $2,000 payment from Plaintiff/Appellant since December 2006 (R. 2:21). He said that Plaintiff/Appellant has also not repaid the Estate the amount that the Estate paid to the Bank of Holly Springs (R. 2:21).

Plaintiff/Appellant stated that he was prepared to make his regular $2,000 payment to the Estate in January 2007, but for the actions taken by the Estate that prevented him from going onto his farm property to get access to his cows for sale (R. 2:38).

David Ruff verified and acknowledged the language of the letter from the Estate to Plaintiff/Appellant dated December 29, 2006, that stated that Plaintiff/Appellant would be criminally prosecuted if he entered upon the premises of his farm property to try to sell any of his cows (R. 2:24).

Plaintiff/Appellant testified that if the Quitclaim Deed in Lieu of Foreclosure is not rescinded that he will suffer irreparable damage in the following: the integrity of Plaintiff/Appellant's cattle breed could be compromised; Plaintiff/Appellant's cattle will not be fed using the forage system implemented by Plaintiff/Appellant; and Plaintiff/Appellant will lose his herd (R. 2:37).

Plaintiff/Appellant had funds available and was prepared to pay the Bank of Holly Springs in December 2006 when the Estate filed the Quitclaim Deed in Lieu of Foreclosure (R. 2:29-30). At the hearing, Plaintiff/Appellant stated that he was prepared to reimburse the Estate for any monies it paid to the Bank of Holly Springs as well as bring the payments up-to-date (R. 2:30, 2:38, 2:57-58).

There has been no intervening interest that has occurred from the time the Estate filed the Quitclaim Deed in Lieu of Foreclosure.

All four of the prongs set forth in *Rotenberry* are met and supported by the substantial evidence recounted above. Therefore, the ruling of the lower court should be reversed, the Quitclaim Deed in Lieu of Foreclosure should be set aside, the parties should be allowed to return to the *status quo* under the terms of the Consent Order entered on February 1, 2006, and the Estate should be enjoined from filing another Quitclaim Deed in Lieu of Foreclosure except under the express terms of the Consent Order entered on February 1, 2006.

II. The Chancellor abused his discretion wherein he found that the Estate of Guy P. Ruff, Sr., had the right as a matter of law to intercept payments due the Plaintiff/Appellant, Guy "Philp" Ruff, Jr., from a closely held family limited liability company pursuant to a Consent Order wherein said monies would have been utilized to make scheduled payments by Plaintiff/Appellant, Guy "Philp" Ruff, Jr., to the Estate of Guy P. Ruff, Sr.

The legal authorities and the recall of the trial testimony stated in Part I, above, are incorporated here by reference. The Consent Order entered on February 1, 2006, allowed Plaintiff/Appellant to cure his default under the Consent Order entered on August 26, 2004. The cure of Plaintiff/Appellant's default effectively canceled the Estate's right to assign the disbursements otherwise due to Plaintiff/Appellant by Big Oaks, LLC. The Consent Order entered on August 26, 2004, expressly allowed Plaintiff/Appellant to retain his right to collect disbursements from his shares of Big Oaks, LLC, as long as Plaintiff/Appellant was not in default according to the terms of that Consent Order.

Furthermore, Plaintiff/Appellant's cash flow and solvency is affected by the withholding of his disbursements from Big Oaks, LLC.

The lower court erred in not exercising its discretion to enjoin the Estate's interception of Plaintiff/Appellant's disbursements from Big Oaks, LLC. There is substantial evidence in support of such injunctive relief.

III. The Chancellor erred wherein he found as a matter of law that payments due Plaintiff/Appellant, Guy "Philp" Ruff, Jr., from a closely held family limited liability company and intercepted by the Estate of Guy P. Ruff, Sr., et al. could not be considered as payments timely received as contemplated by a previously entered Consent Order.

The legal authorities, the recall of the trial testimony, and the arguments stated in Parts I and II, above, are incorporated here by reference.

David Ruff is a principal of the Estate and Big Oaks, LLC. For this reason, the position that Plaintiff/Appellant's disbursements from Big Oaks, LLC, cannot be received by the Estate as timely payments according to the terms of the Consent Order entered on February 1, 2006, is untenable. Knowledge regarding the business of the Estate and Big Oaks, LLC, is imputed to David Ruff by virtue of his position in both entities.

The lower court erred in not exercising its discretion to clarify and instruct the Estate to acknowledge and utilize Plaintiff/Appellant's disbursements from Big Oaks, LLC, according to the terms of the Consent Order entered February 1, 2006. There is substantial evidence in support of such injunctive relief.

CONCLUSION

The lower court erred in denying Plaintiff/Appellant's Motion for Preliminary and Mandatory Injunction, Temporary Restraining Order and for Permanent and Mandatory Injunction. The record in this matter provides more than substantial evidence to support Plaintiff/Appellant's position that he was not in default under the terms of either Consent Order when the Estate filed the Quitclaim Deed in Lieu of Foreclosure. The Court must recognize that there is an "intolerable injustice" in allowing the Estate to take Plaintiff/Appellant's disbursements from Big Oaks, LLC, and simultaneously disclaim the revenue thereof as a scheduled payment pursuant to the terms of the Consent Order entered on February 1, 2006. Plaintiff/Appellant requests that the lower court be reversed and remanded.

Respectfully submitted, this the 8th day of January 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 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
P.O. Box 1113
Oxford, Mississippi 38655

This the 8th day of January 2008.

Edwin H. Priest