

IN THE SUPREME COURT OF MISSISSIPPI

JAMES BRITTON

APPELLANT

VERSUS

CASE #2007-CA-01293

**AMERICAN LEGION POST 058,
POST 058 FIRE PROTECTION DISTRICT,
And JOHN DOES 1,2,& 3, AND X,Y,Z
CORPORATIONS**

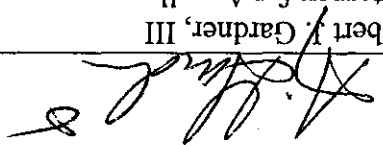
APPELLEES

1. CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel does hereby certify that the following listed persons have an interest in the outcome of the case. These representations are made so that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

- A. James Britton, Plaintiff;
- B. Casey Anderson, Plaintiff's Grandson;
- C. Lloyd Anderson,
- D. Merideth Anderson, Lloyd Anderson's Wife;
- E. Gary Yarborough, Jr., Plaintiff's Counsel of Record;
- F. Zach Butterworth, Plaintiff's Counsel of Record;
- G. American Legion Post 058, Defendant;
- H. Post 058 Fire Protection District, Defendant;
- I. Brently Youmans, Commander of American Legion Post 058;
- J. Mark Manuel, Fire Chief for Post 058 Volunteer Fire Department;
- K. Michael D. Haas, Jr., Defendant's Counsel of Record

L. Albert J. Gardner, III, Defendant's Counsel of Record


Albert J. Gardner, III
Attorney for Appellees

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4. STATEMENT OF THE CASE

A. Summary of the Facts

On or about October 1, 1990, James Britton entered into a lease agreement with the American Legion Post 58 as per appellants original complaint filed December 1, 2005, (Clerk's Papers, pp. 1) and as further alleged in appellants amended Complaint to Annul Lease Agreement filed March 8, 2007. (Clerk's Papers, p. 37). James Britton, Jonnie Britton and Billy O. Alexander signed the subject lease agreement. (Clerk's Papers, pp. 57-58). Appellant stated in its Motion for Summary Judgment filed February 14, 2007, at the end of Paragraph III (Clerk's Papers p. 18) that neither American Legion Post 58 nor any of its members signed the lease agreement. Appellant again stated in its subsequent Motion for Summary Judgment filed March 12, 2007, at the end of Paragraph III (Clerk's Papers p. 46) that neither American Legion Post 58 nor any of its members signed the lease agreement. At the time of signing of the lease agreement, Appellant, James Britton was a lifetime member of American Legion Post 58 and Billy Anderson was a Charter member of Post 58. (Transcript of Hearing, pp. 23-24). Both of these parties signed the lease agreement. Appellant stated in its Motion for Summary Judgment filed March 12, 2007, Paragraph VII that "There is no genuine issue as to any material fact within Plaintiff's motion" (Clerk's Papers p. 47)

5. SUMMARY OF THE ARGUMENT

The Chancery Court was correct in finding for Appellees and in denying the Motion for Summary Judgment as filed by Appellant due to the fact that appellant failed to carry its burden of demonstrating that no genuine issue of material fact existed. The American Legion is a federally chartered corporation, created by Congress in 1919 as codified at 36

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USC Sec. 21701, et. seq. Further, the lease entered into by the parties was in fact signed by members of the American Legion Post 58, namely James Britton and Billy Anderson. Even if the American Legion Post 58 would be considered an unincorporated association (which is herein denied) the lease would still be considered valid as unincorporated associations may be sued, thus leaving appellant with someone to hold accountable for the lease.


5. ARGUMENT

A. Standard of Review

The standard of review in considering on appeal a trial court's grant or denial of Summary judgment is de novo. *Hataway v. Nicholls*, 893 So.2d 1054, 1057 (Miss. 2005); *Miller v. Meeks*, 762 So.2d 302, 304 (Miss. 2000) (citing *Short v. Columbus Rubber & Gasket Co.*, 535 So.2d 61, 63 (Miss. 1988)). See also *McCullough v. Cook*, 679 So.2d 627, 630 (Miss. 1996). In considering this issue, we must examine all the evidentiary matters before us, including admissions in pleadings, answers to interrogatories, depositions, affidavits, etc. *Id.* at 630. The movant carries the burden of demonstrating that no genuine issue of material fact exists, and the non-moving party is given the benefit of the doubt as to the existence of a material fact. *Id.* If no genuine issue of material fact exists and the party is entitled to judgment as a matter of law, summary judgment should be entered in that party's favor. *Id.*

B. **American Legion is a Federally Chartered Corporation with the ability to lease property as well as having the authority to sue and be sued.**

Appellant sets forth legal argument and cites several cases from the early 1900's wherein the Supreme Court of Mississippi held that unincorporated associations had no legal existence and were incapable of making contracts. No cases were cited after 1934.

The American Legion is a federally chartered corporation, created by Congress in 1919 as codified at 36 USC Sec. 21701, et. seq. The Congress granted to the American Legion a perpetual existence (Sec. 21701) and authorized the corporation at Section 21704 “(4) establish State and territorial organizations and local chapter or post organizations. (5) acquire, own, lease, encumber, and transfer property as necessary to carry out the purposes of the corporation ... (7) sue and be sued; and (8) do any other act necessary and proper to carry out the purposes of the corporation.” Emphasis Mine. 

The American Legion Post 58 maintains a lawful charter from the Federal and State authorities of the American Legion (Exhibit 7) and is a post “in good standing” with the American Legion. Further, Post 58 is doing business in the State of Mississippi maintaining a beer license and a sales tax number from the State Tax Commission. Further, Post 58 has a business license issued by Hancock County, Mississippi.

Appellant urged in its Motion for Summary Judgment that the American Legion Post 58 is an unincorporated association and incapable of contracting and/or being sued. It is clearly evident from the above that Post 58 is lawfully chartered by the Federal and State authorities of the American Legion, and hence is an entity capable of contracting and being sued. This clearly demonstrates that a genuine issue of material fact exists and that the Motion for Summary Judgment was properly denied.

C. Even if deemed an unincorporated association, American Legion Post 58 is a legal entity which can sue and be sued, and hold title and or contract real property.

The Mississippi Supreme Court has recently considered a case involving an unincorporated association, Beta Beta Chapter of Beta v. May, 611 So. 2d 889 (Miss. 1993). The court therein was considering a claim for personal injury and damages against a

fraternity at Ole Miss. The fraternity was an unincorporated association and alleged that they could not be sued. The court recited precedence from other jurisdictions and the United States Supreme Court. The Court then concluded:

“Although there is no statute specifically providing that Beta is a suable entity, Beta is permitted by statute to create its organization. Beta is given the power to lease in Section 37-111-9, and there is certainly no statute stating that Beta cannot be sued. This Court recognizes that an organization such as Beta influences and affects many lives of our citizens. Beta “does business” at public and private institutions, and it is part of our economic and social fabric. This Court draws a necessary implication, from the statute authorizing Beta’s creation and the fact that it influences the lives of our citizens, that Beta be part of our legal fabric. To hold that Beta cannot be sued is to ignore the obvious viability of its organization and to deny the reality of Beta’s legal existence. In holding that Beta can be sued, this Court is lead by *Varndo*. ‘Statutes which recognize the legal entity of such associations, grant them rights, and impose liabilities on them, impliedly authorize them to sue and be sued in their association names.’ Varnado at 669, 147 So. at 480. Accordingly, this Court finds that Beta is a suable entity and that such authority can be implied from the statutes recognizing Beta as a legal entity. Miss. Code Sections 37-111-1 to 11. (611 So. 2d 889 at 894)”

This court is faced with a similar factual situation. A local chapter of a federally chartered corporation certainly has rights equal to that of Beta hereinabove. While not specifically overruling the earlier line of cases cited by the Plaintiff’s, by implication, our Supreme Court has held that unincorporated associations are legal entities which can sue and be sued.

Further, our Supreme Court has recognized the right of an unincorporated association to hold title to real property in two separate cases. Knights & Daughters of Tabor v. City of Mound Bayou, 404 So. 2^d 548 (Miss. 1981) wherein the court upheld an unincorporated association’s ad valorem assessment on real property owned by the association.

Finally, our Supreme Court in Kuhn v. Gabriel Cemetery Assoc. 202 So. 2d 634 (Miss. 1967) quieted title to real property owned by an unincorporated association, in the name of the association, by and through the trustees of the association, since it was an unincorporated association.

Appellant urged in its Motion for Summary Judgment that as the American Legion Post 58 is an unincorporated association it is incapable of contracting and/or being sued. It is clearly evident from the above that Post 58, even if considered a unincorporated association, under Beta, supra and other authority, it is an entity capable of contracting and being sued.

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This also clearly demonstrates that an genuine issue of material fact exists and that the Motion for Summary Judgment was properly denied.

D. The October 1, 1990 Lease Agreement was signed by two members of the American Legion Post 58.

Appellant stated in its Motion for Summary Judgment filed February 14, 2007, at the end of Paragraph III (Clerk's Papers p. 18) that neither American Legion Post 58 nor any of its members signed the lease agreement. Appellant again stated in its subsequent Motion for Summary Judgment filed March 12, 2007, at the end of Paragraph III (Clerk's Papers p. 46) that neither American Legion Post 58 nor any of its members signed the lease agreement. At the time of signing of the lease agreement, Appellant, James Britton was a lifetime member of American Legion Post 58 and Billy Anderson was a Charter member of Post 58. (Transcript of Hearing, pp. 23-24). Both of these parties signed the lease agreement. Appellant stated in its Motion for Summary Judgment filed March 12, 2007, Paragraph VII that "There is no genuine issue as to any material fact within Plaintiff's motion" (Clerk's Papers p. 47)

The testimony of James Britton is substantial in that it clearly raises a material fact which is in dispute in this matter. The very Motion for Summary Judgment by Appellants stated that neither American Legion Post 58 nor any of its members signed the lease agreement. Mr. Britton's testimony contradicts that claim and clearly shows that in fact, two members of the American Legion Post 58 signed the lease in question. Further, as Billy Anderson is since deceased, we cannot readily ascertain what capacity he signed the lease in – as an individual or member of the Post. This further supports appellees position that material facts are in dispute in this matter and that this Honorable Court should uphold the decision by the lower Court to deny the Motion for Summary Judgment of Appellants herein.

6. CONCLUSION

The Appellant filed for summary judgment and must establish that there are no facts in dispute and that as a matter of law the plaintiff is entitled to a judgment. Further, the court must consider the evidence and pleadings in the light most favorable to the Defendants. As outlined herein, there clearly exist numerous facts which are in dispute in this matter. Appellees respectfully submit that this court should uphold the denial of Appellants Motion for Summary Judgment for the reasons contained in the above and foregoing brief.

Respectfully Submitted on this 27th day of May, 2008.

APPELLEES, AMERICAN LEGION POST
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By: _____

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CERTIFICATE OF SERVICE

The undersigned counsel for Appellees hereby certifies that he has this day served the above and foregoing BRIEF FOR APPELLEES upon the following persons via the following means:

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SUPREME COURT CLERK

ON THIS the 27th day of May, 2008.



ALBERT J. GARDNER, III

CERTIFICATE OF SERVICE

The undersigned counsel for Appellees hereby certifies that he has this day served the above and foregoing CERTIFICATE OF SERVICE ON CHANCELLOR PERSONS upon the following persons via u.s> Mail, postage prepaid or hand delivery::

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Chancellor James Persons
P.O. Box 659
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ON THIS the 30th day of May, 2008.



ALBERT J. GARDNER, III
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