

IN THE SUPREME COURT OF MISSISSIPPI

JAMES BRITTON

APPELLANT

VERSUS

CASE #2007-CA-01293

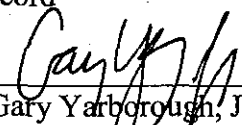
**AMERICAN LEGION POST 058,
POST 058 FIRE PROTECTION DISTRICT,
and JOHN DOES 1,2, & 3, and X,Y,Z
CORPORATIONS**

APPELLEES

1. CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel does hereby certify that the following listed persons have an interest in the outcome in this 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, Plaintiff's
- D. Meredith 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 Haas, Jr., Defendants' Counsel of Record



Gary Yarborough, Jr.
Attorney for Appellant James Britton

2. TABLE OF CONTENTS

A. Certificate of Interested Parties.....	1
B. Table of Contents.....	2
C. Table of Cases.....	3
D. Statement of Issues.....	3
E. Statement of the Case.....	4
a. Nature of the Case and Course of Proceedings.....	4
b. Summary of the Facts.....	5
F. Summary of the Argument.....	6
G. Argument.....	7
a. Standard of Review on Appeals of Motions for Summary Judgment.....	7
b. James Britton was entitled to Summary Judgment on his claim to annul the October 1, 1990 Lease Agreement with American Legion Post 058, because American Legion Post 058 is an unincorporated association and is not a legal entity.....	8
c. The October 1, 1990 Lease Agreement is null and void because no person or agent signed such Lease Agreement on the American Legion Post 058's behalf, and James Britton has no person to hold accountable on such Lease Agreement.....	9
H. Conclusion.....	10

3. TABLE OF CASES

<i>Alkahest Lyceum System v. Featherstone</i> , 113 Miss. 226, 74 So. 151, 152 (Miss. 1916).....	8, 9, 10
<i>Johnson v. Howard</i> , 167 Miss. 475, 141 So. 573, 576 (Miss. 1932).....	8
<i>Palmer v. Anderson Infirmary Benevolent Ass'n</i> , 656 So.2d 790, 794 (Miss. 1995).....	7
<i>Partin v. North Mississippi Medical Center, Inc.</i> , 929 So.2d 924, 928 (Miss. App. 2005).....	7
<i>Peebles v. Enochs</i> , 170 Miss. 472, 153 So. 796, 797 (Miss. 1934).....	8
<i>Richmond v. Benchmark Construction Corp.</i> , 692 So.2d 60, 61-62 (Miss. 1997).....	8
Rule 56, Mississippi Rules of Civil Procedure.....	7, 8
<i>Russell v. Orr</i> , 700 So.2d 619, 622 (Miss. 1997).....	8
<i>Saucier ex. Rel. Saucier v. Biloxi Regional Medical Center</i> , 708 So.2d 1351, 1354 (Miss. 1998).....	7
<i>Victor v. Adams</i> , 140 Miss. 643, 106 So. 433, 435 (Miss. 1925).....	9, 10
<i>Williamson ex. rel. Williamson v. Keith</i> , 786 So.2d 390, 393 (Miss. 2001).....	8

4. STATEMENT OF ISSUES

- A. Whether, as a matter of law, the Appellee American Legion Post 058, an unincorporated, non-legal entity, had the capacity to contract or lease land, and, if the Appellee had no capacity to contract or lease land, whether the lease

agreement between Appellant James Britton and Appellee American Legion Post 058 should be declared null and void.

5. STATEMENT OF THE CASE

A. Nature of the Case and Course of Proceedings

On December 1, 2005, Plaintiff James Britton filed his *Complaint to Annul Lease Agreement* against American Legion Post 058 in the Hancock County Chancery Court for the State of Mississippi. (*Clerk's Papers*, pp. 1-5). Such *Complaint* sought to have a lease agreement between James Britton and American Legion Post 058 annulled, and to have the subject leased property revert back to Plaintiff James Britton. (*Id.*). Defendant American Legion Post 058 filed its *Response to Summons* on July 19, 2006, then separately filed an *Answer* on September 14, 2006. (*Clerk's Papers*, pp. 6-17).

Trial in such matter was scheduled for February 26, 2007, before Chancellor Jim Persons in the Chancery Court of Hancock County, Mississippi. Before such hearing, Plaintiff filed a ~~motion for summary judgment~~, claiming that because Defendant American Legion Post 058 is an unincorporated association, it has no right to contract or to enter a lease agreement and that the subject lease between James Britton and American Legion Post 058 should be declared null and void as a matter of law. (*Clerk's Papers*, pp. 46-67). The trial of that matter went forward on February 26, 2007, ~~with Plaintiff's motion for summary judgment~~. Before conclusion of such trial, Chancellor Jim Persons mandated that Plaintiff add Post 058 Fire Protection District as a necessary party, with trial of the matter to be continued to a later date; Chancellor Persons, through an *Order*, also mandated that Defendant American Legion Post 058 file a response to

Plaintiff James Britton's *Motion for Summary Judgment*. (Transcript of February 26, 2007 Hearing, pp. 99-100; Certified Copy of Docket Sheet, pp. 36)

Plaintiff James Britton filed his *Amended Complaint to Annul Lease Agreement* on March 8, 2007, and served both his ~~Amended Complaint~~ and his ~~Motion for Summary Judgment~~ upon Post 058 Fire Protection District. (Clerk's Papers, pp. 46-71). ~~A hearing on James Britton's Motion for Summary Judgment~~ was held on May 11, 2007, with Michael Haas, Jr. representing both American Legion Post 058 and Post 058 Fire Protection District. Post 058 Fire Protection District filed its *Answer* on May 14, 2007, the same day that trial of that matter continued. (Transcript of Hearing, pp. 104-114).

~~Plaintiff James Britton~~ Plaintiff James Britton filed his *Motion for Clarification*, asking that the Court ~~deny~~ *rule* on Plaintiff's *Motion for Summary Judgment*. (Clerk's Papers, pp. 76-78). In the Court's June 27, 2007 *Findings of Fact, Conclusions of Law and Final Judgment*, the Court found for Defendants and ~~denied~~ Plaintiff James Britton's *Motion for Summary Judgment*. (Clerk's Papers, pp. 79-82).

Plaintiff James Britton filed his *Notice of Appeal* on July 24, 2007. (Clerk's Papers, pp. 83-84).

B. Summary of the Facts

On or around October 1, 1990, James Britton intended to enter a Lease Agreement with the American Legion Post 058. (Clerk's Papers, pp. 57-58). James "Jim" Britton, Jonnie Britton, and Billy O. Alexander signed the subject lease agreement; American Legion Post 058 did not sign the agreement and no one signed such document on its behalf. (Id.).

unsigned

The Lease Agreement signed by James Britton on or around October 1, 1990, was intended to lease James Britton's property to the American Legion Post 058 for use as a volunteer Fire Department. (*Transcript of Hearing*, p. 12). The property that is subject to this lease is described in the October 1, 1990 "Lease Agreement." (*Clerk's Papers*, p. 57).

Subsequent to the signing of the October 1, 1990 lease document and on or around March 7 1997, the American Legion Post 058 purported to enter another lease agreement, leasing the subject property to the Post 058 Fire Protection District. (*Clerk's Papers*, pp. 59). Herbert Deschamp, commander of the American Legion Post 058 at the time, signed such lease agreement on the American Legion Post 058's behalf. (*Id.*). George Manuel signed such lease agreement for the Post 058 Fire Protection District. (*Id.*).

Appellee American Legion Post 058 is currently, and has at all relevant times hereto, been an unincorporated association and not a legal entity. (*Clerk's Papers*, pp. 63-65). The American Legion Post 058 has never registered with the Mississippi Secretary of State to become an incorporated entity or to become a registered tax exempt entity. (*Id.*).

6. SUMMARY OF THE ARGUMENT

Because the American Legion Post 058 is an unincorporated association, not registered to do business in Mississippi, nor registered as a Mississippi tax-exempt entity, the American Legion Post 058 is not a legal entity and, thus, has no power or authority to contract or enter a lease. As such, the American Legion Post 058 had no power to enter the lease with Appellant James Britton on October 1, 1990, and the October 1, 1990

Lease Agreement should be declared null and void, as a matter of law. James Britton has no one to hold accountable on such Lease Agreement, because the American Legion Post 058 is not an entity and no one signed that Lease Agreement on the American Legion Post 058's behalf. Therefore, the October 1, 1990 Lease Agreement should be declared null and void, and the property that is the subject of such October 1, 1990 Lease Agreement should revert to James Britton. ~~Chancellor Jim Persons committed reversible error by denying Plaintiff James Britton's Motion for Summary Judgment.~~

7. ARGUMENT

A. Standard of Review on Appeals of Motions for Summary Judgment

The standard of review on appeal of a ~~motion for summary judgment~~ is the same standard a trial court has in reviewing a motion for summary judgment. *Partin v. North Mississippi Medical Center, Inc.*, 929 So.2d 924, 928 (Miss. App. 2005). The appellate court employs a reviews the disposition of the motion for summary judgment *de novo* and examines all evidentiary matters before it, including admissions in pleadings, answers to interrogatories, depositions, affidavits, etc. (*Id.*).

A court shall grant summary judgment if "the pleadings, deposition, answers to interrogatories and admissions on file, together with affidavits, show there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." M.R.C.P. 56 (c); *Saucier ex. Rel. Saucier v. Biloxi Regional Medical Center*, 708 So.2d 1351, 1354 (Miss. 1998). A material fact is one that tends to resolve any of the issues raised by the parties. *Palmer v. Anderson Infirmary Benevolent Ass'n*, 656 So.2d 790, 794 (Miss. 1995). If there is no issue of material fact, and the moving party is entitled to judgment as a matter of law, summary judgment should be entered in its favor.

Williamson ex. rel. Williamson v. Keith, 786 So.2d 390, 393 (Miss. 2001). The evidence on such motion must be viewed in the light most favorable to the non-moving party, but, to avoid summary judgment, that non-moving party must establish a genuine issue of material fact within M.R.C.P. 56. *Russell v. Orr*, 700 So.2d 619, 622 (Miss. 1997); *Richmond v. Benchmark Construction Corp.*, 692 So.2d 60, 61-62 (Miss. 1997).

B. James Britton was entitled to Summary Judgment on his claim to annul the ~~October 1, 1990 Lease Agreement with American Legion Post 058~~, because American Legion Post 058 is an unincorporated association and is not a legal entity

Plaintiff James Britton was entitled to a grant of summary judgment on his claim to annul the lease agreement he entered with Defendant American Legion Post 058, because Defendant American Legion Post 058 is, and has been at all times, an unincorporated association, thus having no capacity to contract or lease property. Thus, the lease agreement between Plaintiff James Britton and Defendant American Legion Post 058 should be rendered null and void. ~~This Court should overrule the decision of the chancellor to not render such lease null and void, and not having the subject property revert to Plaintiff James Britton.~~

Unincorporated associations, such as Defendant American Legion Post 058, have no legal existence, and, with such status as legal non-entities, are incapable of contracting, or leasing property. *Peebles v. Enochs*, 170 Miss. 472, 153 So. 796, 797 (Miss. 1934) (providing that an unincorporated religious society is without the power to contract); citing *Alkahest Lyceum System v. Featherstone*, 113 Miss. 226, 74 So. 151, 152 (Miss. 1916) (holding that an unincorporated civic league has no power to contract); also See *Johnson v. Howard*, 167 Miss. 475, 141 So. 573, 576 (Miss. 1932), holding that the

republican party, an unincorporated voluntary society, cannot contract, and *Victor v. Adams*, 140 Miss. 643, 106 So. 433, 435 (Miss. 1925), following *Alkahest* and stating that an unincorporated association could not contract.

Because Defendant American Legion Post 058 was an unincorporated association at the time of the Lease Agreement with Plaintiff James Britton, Jonnie Britton and Billy O. Alexander, and because Defendant American Legion Post 058 has at all times since that Lease been such an unincorporated association, with no legal existence, Defendant American Legion was incapable of entering a contract or lease. Thus, the lease between Plaintiff James Britton, Jonnie Britton and Billy O. Alexander and Defendant American Legion Post 058 should be rendered null and void. Similarly, any lease purportedly entered between Defendant American Legion Post 058 and Defendant Post 058 Fire Protection District should be rendered null and void. ~~The chancellor erred by not rendering all such contracts and leases null and void, and by not reverting the subject property to James Britton, Jonnie Britton and Billy O. Alexander.~~

C. The October 1, 1990 Lease Agreement is null and void because no person or agent signed such Lease Agreement on the American Legion Post 058's behalf, and James Britton has no person to hold accountable on such Lease Agreement

Aside from the subject lease agreement between Plaintiff James Britton, Jonnie Britton and Billy O. Alexander, and Defendant American Legion Post 058 being null and void and unenforceable because Defendant American Legion Post 058 has no legal existence and is thus incapable of contracting, such Lease Agreement is also void because no person signed the Lease Agreement as purported agents of the non-entity American Legion Post 058. (*Clerk's Papers*, pp. 67; pp. 57-58). The only person association with the American Legion Post 058 who signed the contract is Plaintiff James Britton; he

lease only
signed by
lessors

signed such document as lessor. (Id.). Thus, there is no one for Plaintiff to hold accountable for the lease agreement, and no one against whom to enforce any duty Defendant American Legion Post 058 has under such Lease Agreement. (See *Alkahest*, 113 Miss. 226, 74 So. at 152; *Victor v. Adams*, 140 Miss. 643, 106 So. at 434-5).

James Britton, Jonnie Britton and Billy O. Alexander have no one to hold accountable for the Lease Agreement, because the American Legion Post 058 is a non-entity and no one signed the agreement as that non-entity's agent. Binding Plaintiff James Britton to the Lease Agreement with no one to hold accountable for such Lease Agreement's obligations conflicts with the sound principles the Supreme Court of Mississippi promulgated in *Alkahest*, 113 Miss. 226, 74 So. at 152, which provides that a party to a contract cannot be without a remedy. As such, the chancellor erred by not rendering the Lease Agreement null and void, and did not make the subject property revert to James Britton, Jonnie Britton and Billy O. Alexander.

8. CONCLUSION

The Chancellor erred by not rendering the Lease Agreement between Defendant American Legion Post 058 and James Britton, Jonnie Britton, and Billy O. Alexander null and void, and by not reverting the subject property to James Britton, Jonnie Britton, and Billy O. Alexander. Because American Legion Post 058 is an unincorporated, non-legal entity with no capacity to contract, and because no person signed such Lease Agreement on the behalf of the non-legal entity, no person or entity is accountable to Plaintiff James Britton on the Lease Agreement. Plaintiff cannot be without a remedy on his agreement, and, ~~thus, Plaintiff should have been granted summary judgment on its~~ ~~Attended Complaint to Annul Lease Agreement~~. As such, this Court should overrule the

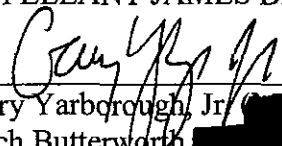
chancellor's denial of Plaintiff James Britton's Motion for Summary Judgment, should render the Lease Agreement between American Legion Post 058 and James Britton, Jonnie Britton, and Billy O. Alexander null and void, and should render all purported agreements between American Legion Post 058 and any entity or person null and void. This Court should also rule that the subject property should revert to James Britton, Jonnie Britton and Billy O. Alexander.

fine dept.

Respectfully submitted on this the 21st day of February, 2008.

APPELLANT JAMES BRITTON

By:


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CERTIFICATE OF SERVICE

The undersigned counsel for Appellant James Britton does hereby certify that he has this day served the above and foregoing BRIEF FOR APPELLANT upon the following persons via the following means:

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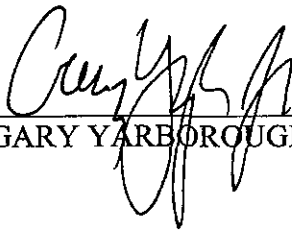
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SUPREME COURT CLERK

ON THIS the 21st day of February, 2008.



GARY YARBOROUGH, JR.

IN THE SUPREME COURT OF MISSISSIPPI

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DISTRICT, and JOHN DOES 1,2, &
3, and X,Y,Z CORPORATIONS

APPELLEES

CERTIFICATE OF SERVICE ON CHANCELLOR PERSONS

The undersigned counsel for Appellant James Britton does hereby certify that he has this day served a true and correct copy of the *Brief of Appellant, James Britton, Record Excerpts, and Appellant's Record Excerpts*, all of which Appellant filed on February 21, 2008, upon the following person via U.S. Mail, postage prepaid:

Chancellor James Persons
P.O. Box 659
Gulfport, MS 39502

ON THIS the 29th day of February, 2008.

By:

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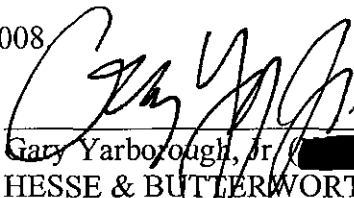
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Chancellor James Persons
P.O. Box 659
Gulfport, MS 39502

ON THIS the 29th day of February, 2008

By:



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