

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

Y-D LUMBER COMPANY, INC, APPELLANT

VS.

LAWRENCE BROWDER, APPELLEE

CAUSE NO. 2007-CA-01388

APPEAL FROM THE CIRCUIT COURT OF HUMPHREYS COUNTY, MISSISSIPPI

BRIEF OF THE APPELLEE

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CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons have an interested in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Y-D Company Lumber, Inc., a Mississippi Corporation
2. Larry Solomon, owner and operator of Y-D Lumber Company, Inc.
3. Lawrence Browder, Chancery Clerk of Humphreys County, Mississippi
4. Humphreys County, Mississippi acting through its Board of Supervisors
5. Latrice Westbrooks, Esq., The Law Office of Latrice Westbrooks, PLLC, attorney of record for Appellee, Lawrence Browder
6. Boyd Atkinson, Esq., attorney of record for Y-D Lumber Company, Inc.

This the 29th day of April, 2008



Latrice Westbrooks, Esq.

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STATEMENT OF THE ISSUE

- I. Whether The Trial Court Committed Reversal Error In Its Interpretation of and Application of Section 11-35-11(2) When It Failed To Order That The Garnishment, On Behalf of Appellant, Y-D Lumber Company, Inc., Was Paramount To Any Other Previous Garnishments Because of the Correctness of the Service of Process?**

STATEMENT OF THE CASE

II. Nature of the Case

The Appellant seeks to reverse the ruling of the Humphreys County Circuit Court. The lower court ruled, *inter alia*, that the six (6) garnishments filed on behalf of judgment-creditors against the Humphreys County salary of the Y-D Lumber are proper and will be addressed in the usual priority of their filing. The six garnishments were filed prior to the garnishment filed by Y-D Lumber Company, Inc. (Y-D Lumber). However, the garnishments in question have been acknowledged and are now being paid by Humphreys County, Mississippi, making service of process proper.

III. Course of Proceedings and Disposition Below

A. Procedural History

The Appellee agrees with the procedural history as stated by the Appellant.

B. Substantive Facts

The Appellee agrees with the procedural history as stated by the Appellant.

SUMMARY OF THE ARGUMENT

The Circuit Court of Humphreys County, Mississippi did not commit reversal error

in its determination that garnishments filed prior to Y-D Lumber's garnishment were properly served and will be addressed in the usual priority of their filing. The inaction to challenge the service of the writs of with Mr. Browder, the garnishee, and the Board of Supervisors. However, service was accepted through their inaction to challenge the insufficiency of service and/or the county's action to pay the liens.

ARGUMENT

IV. The Trial Court Did Not Commit Reversal Error In Its Interpretation of and Application of Section 11-35-11(2) When It Failed To Order That The Garnishment, On Behalf of Appellant, Y-D Lumber Company, Inc., Was Paramount To Any Other Previous Garnishments Because of the Correctness of the Service of Process.

19 Y-D submits that the previous garnishments are fatally flawed because the service was not upon the Sheriff of Humphreys County, Mississippi. **Mississippi Code Annotated §11-35-11(2)**, explains how service of process is to be effected or completed on an officer of the county to answer a garnishment. Service of process was accepted by Humphreys County's Board of Supervisors as well as Mr. Browder, in his capacity as Chancery Clerk. Neither challenged the appropriateness of the personal service, therefore waiving it. Service of process is simply the physical means by which personal jurisdiction is asserted. *Lexington Ins. Co. v. Buckley*, 925 So.2d 859 (Miss.Ct.App. 2005). Improper service of process is subject to waiver by acquiescence. *Wayne Lee's Grocery and Market Inc. v. Bay St. Louis*, 580 So.2d 1295 (Miss. 1991) citing *Alger v. Hayes*, 425 F.2d 841 (8th Cir. 1972).

2¶ Y-D Lumber cites *Dunlop Tire and Rubber Corp. v. Williams*, 251 Miss. 442, 169 So.2d 783 (Miss. 1964) as it's sole authority for priority of garnishments in the case at bar. However in that case, the issue was not priority of garnishments. The question centered around a county chose not to acknowledge service of a writ of garnishment that had been properly made upon it. The Supreme Court found that since service had been properly made on Tallahatchie County, the Chancery Clerk (who had been skittish in her previous answer the writ of garnishment) had to properly respond to the writ as the representative for the Board of Supervisors. *Id.* at 447.

3¶ In the case at bar, Y-D Lumber is asking the Court to allow it to trump other creditors because their liens were not properly served. As stated earlier, Mr. Browder and the Board of Supervisors, accepted service of process (or otherwise waived service) of the other previously filed garnishments. Hence, perfecting their priorities in their perspective chronological order. The Circuit Court did not err in the determination that the garnishments were proper and should be address in the priority of their order of filing.

CONCLUSION

4¶ The garnishments/liens filed against Mr. Browder that came prior to the lien filed by Y-D Lumber are properly filed and served against him and the County. Appellees respectfully pray that this Court affirm the Opinion and Order of the Humphreys County Circuit Court. The decisions of the lower court was proper and should be affirmed. The Appellees also request any relief under the principals of law and equity to which they may

be entitled.

Respectfully Submitted this the 27th day of April 2008.


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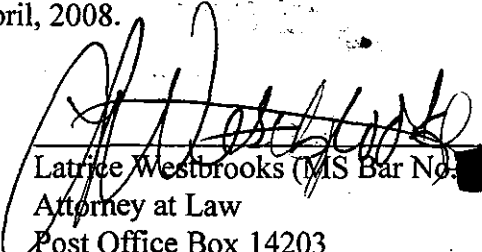
CERTIFICATE OF SERVICE

I, LATRICE WESTBROOKS, do hereby certify that I have this day forwarded, via facsimile and U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing the Brief of the Appellee to all parties concerned as listed below:

Boyd Atkinson, Esq.
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Post Office Box 427
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Honorable Jannie M. Lewis
Humphreys County Circuit Court Judge
Post Office Box 149
Jackson, Mississippi 39095

THIS the 29th day of April, 2008.


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