

**COPY**

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

Y-D LUMBER COMPANY, INC.

APPELLANT

VS.

NO. 2007-CA-01388

LAWRENCE BROWDER

**FILED**

APPELLEE

**JAN 04 2008**

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SUPREME COURT  
COURT OF APPEALS

APPEAL FROM THE CIRCUIT COURT OF HUMPHREYS COUNTY,  
MISSISSIPPI  
CAUSE NO. 01-0051

BRIEF FOR APPELLANT

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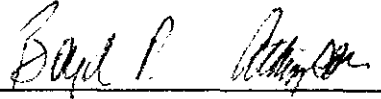
APPELLEE

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 this Court may evaluate possible disqualification or recusal.

1. Lawrence Browder – his connection and interest in this case is that he is presently the Chancery Clerk of Humphreys County, Mississippi, and the Appellee, against whom this case is against.

RESPECTFULLY SUBMITTED on this the 4<sup>th</sup> day of January,  
A.D., 2008.

  
\_\_\_\_\_  
BOYD P. ATKINSON  
MSB NO. [REDACTED]  
ATTORNEY FOR APPELLANT

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### PROPOSITION ONE

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STATEMENT OF THE ISSUES

The issue presented for review to this Honorable Court is the following single issue, to-wit:

1. The trial court committed error in interpreting and applying Section *11-35-11(2)*, Mississippi Code Annotated.

STATEMENT OF THE CASE

On May 10, 2001, Appellant obtained a default judgment against Appellee in Cause No. 01-0051 in the Circuit Court of Humphreys County, Mississippi on a suit on an open account and was granted a judgment in the amount of \$11,331.61, with attorney's fees of \$2,832.90 and court costs. Thereafter, on July 28, 2006, Appellant filed a garnishment in that cause against Appellee, alleging that the Appellee, as Chancery Clerk, was an employee of Humphreys County. The process in this matter was served on Sheriff Wayne Holloway, Sheriff of Humphreys County, Mississippi, on August 15, 2006. Thereafter, Humphreys County filed an answer alleging that there were a number of other judgment-creditors that had judgments

against the Appellee and had already filed garnishments pre-dating the garnishment filed on behalf of the Appellant.

There were six (6) judgments that did predate the judgment of the Appellant. The first judgment, in order of filing, was Healthcare Financial Services, LLC vs. Lawrence D. Browder, Cause #98-0015, and they filed a garnishment on 1/20/99 and served was had on 2/22/99. (CP.18) The next judgment was Bellsouth Telecommunications, Inc. vs. Lawrence D. Browder, Cause #99-0158, and they filed a garnishment on 2/22/00 and served Timaka Jones, Humphreys Co. Circuit Clerk, on 3/1/00. (CP.21) The next judgment was Gorton Clinic vs. Lawrence Browder, Cause #01-0061, and they filed a garnishment on 10/24/01 and served Deborah Edwards, Deputy Clerk, on 10/25/01. (CP.25) The next judgment was Grenada Lake Medical Center vs. Lawrence Browder, Cause #01-0116, and they filed a suggestion for garnishment against Humphreys County on 1/23/02 and served Lawrence Browder on 1/31/02. (CP.28) The next judgment was Great Lakes Collection Bureau, Inc. vs. Lawrence D. Browder and Brenda Browder, Cause #01-0128, and they filed a garnishment on 2/20/02 and served Deborah Edwards, Deputy Clerk. (CP.29) The next judgment was Smith, Rouchon & Associates, Inc. vs. Lawrence Browder, Hinds County Cause #251-04-5514, and they filed a garnishment on 2/9/05 to be served on Deborah Edwards, DC. (CP.31)

As an interesting side note, the answer filed on behalf of Humphreys County, by way of information, was never challenged by any of the Appellee's

attorneys, and answered that there was a garnishment in effect on behalf of the Internal Revenue Service which took priority. This answer, filed by the County, was completely false in that there was not a garnishment filed on behalf of the Internal Revenue Service but, in fact, a wage assignment that had been put in effect through an understanding entered into between the Internal Revenue Service Collection Division and Lawrence Browder, Appellee, wherein the Appellee was paying \$600.00 per month toward his substantial Internal Revenue Service lien and this was being taken out of his salary and paid by the Chancery Clerk's Office directly to the Internal Revenue Service, making this an assignment (emphasis added), not a garnishment.

On motion made by Appellant, Hon. Jannie M. Lewis finally ruled that the Internal Revenue Service's assignment did not preclude a garnishment and ordered Humphreys County to begin withholding the required statutory amount from the Appellee's salary to service garnishments in effect. (CP.11)

### **SUMMARY OF THE ARGUMENT**

The trial court made an error in its interpretation and application of Section *11-35-11(2)*.

### **BRIEF OF ARGUMENT**

**PROPOSITION ONE: THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN ITS INTERPRETATION 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.**

Section *11-35-11(2)* reads as follows:

“Service of which garnishments upon judgments against any officer or employee of a state, a county, a municipality, any state institution, board, commission or authority shall be effected as follows:

(2) In the case of a garnishment against any person who is now or may hereafter be a salaried officer or employee of a county or county institution, the writ shall be served upon the clerk of the chancery court of the county, except (emphasis added) in the case of a judgment against such clerk, the writ shall be served upon the sheriff of the county”.

Each and every other previous garnishment filed against the Appellee by the six (6) other judgment-creditors, were filed pursuant to the first portion of *11-35-11(2)* and service of process was had on a deputy clerk in the Appellee’s Office. Not one of the garnishments was served on the sheriff of Humphreys County.

Appellant submits to this Court that all of the previous garnishments that were served on deputy clerks are fatally flawed because of the wording of the last portion of Section *11-35-11(2)* that states “...in case of garnishment upon judgment against such clerk, writ shall be served upon the sheriff of the county”. It is interesting to note that the legislature, in wording this code section, used the word “shall” rather than “may”, meaning that the legislative intent of this code section was very exact in nature and should be strictly construed. It is also interesting to note that when a suggestion for a writ of garnishment is filed against a county employee, the person whose

authority it is to answer on behalf of the county, is the chancery clerk. Here, the chancery clerk was filing his answer that there was a previous garnishment on behalf of the Internal Revenue Service that, in effect, precluded other garnishments when, in reality, the chancery clerk had an assignment of wage agreement with the Internal Revenue Service. The county was voluntarily, at the behest of the chancery clerk, withholding \$600.00 per month and paying that to service the Internal Revenue Service lien. That issue was finally resolved upon motion made by the Appellant when the Hon. Jannie M. Lewis, Circuit Court Judge in this matter, ultimately ruled that the Internal Revenue Service's assignment did not preclude the county from withholding garnishment funds from the clerk's salary pursuant to statutory guidelines.

Had any of the other judgment-creditors properly served a suggestion for a writ of garnishment on the county, by service of process on the sheriff as required by *Section 11-35-11(2)*, they probably would now have a claim against Humphreys County for the improper answer that was filed on behalf of the chancery clerk's office by the chancery clerk. *Dunlap Tire & Rubber v. Williams*, 169 So.2d 783.

Appellant had the garnishment served on Lawrence Browder, by service of process on Sheriff Wayne Holloway, on August 15, 2006 and thirty (30) days thereafter, the garnishment should have gone into

effect. Notwithstanding the "hat trick" that the clerk's office had been perpetrating on any previous suggestion for writ of garnishments by the Internal Revenue Service assignment or the fact that all the other service of process on the suggestion for writs of garnishments were fatally flawed because none of them had process on the sheriff as required by the statute and therefore, Appellant's garnishment had priority. Also, under the theory of *Dunlap, Ibid*, Appellant respectfully suggests that it has a claim against Humphreys County for the incorrect answer filed to the garnishment.

### CONCLUSION

Section 11-35-11(2), Mississippi Code of 1972, Annotated, plainly and succinctly sets out the requirements for service of process on a garnishment against a chancery clerk of a county. None of the six (6) judgment-creditors of Appellee chose to serve the sheriff of Humphreys County, but rather served their writ of garnishments on the chancery clerk's office by serving a deputy clerk, a procedure that would have been correct had the employee being garnished was anyone else but the chancery clerk. When the Appellant had Sheriff Holloway served, according to the statute, the garnishment should have gone into effect then and at the absolute very least, should have priority over any of the previous garnishments that are statutorily and procedurally flawed.

RESPECTFULLY SUBMITTED on this the 4th day of  
January, A.D., 2008.

Y-D LUMBER COMPANY,  
INC., APPELLANT

BY: Boyd P. Atkinson  
BOYD P. ATKINSON  
MSB NO. [REDACTED]  
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CERTIFICATE OF SERVICE

I, Boyd P. Atkinson, Attorney for Appellant, do hereby certify that I have this day mailed, by regular United States Mail, postage prepaid, a true and correct copy of the above and foregoing Appellant's Brief to the following:

Hon. Willie Lee Bailey  
Attorney at Law  
P.O. Box 189  
Greenville, MS 38702

Hon. Jannie M. Lewis  
Circuit Court Judge  
P.O. Box 149  
Lexington, MS 39095

THIS the 4<sup>th</sup> day of January, A.D., 2008.

  
\_\_\_\_\_  
BOYD P. ATKINSON

CERTIFICATE OF FILING

I, Boyd P. Atkinson, Attorney for Appellant, pursuant to Rule 25(a), MRAP, as amended, do hereby certify that I have this day mailed by regular United States Mail, postage prepaid, an original and three (3) copies of the above and foregoing Appellant's Brief to Ms. Betty Sephton, Supreme Court Clerk, at P.O. Box 249, Jackson, Mississippi, 39205-0249.

THIS the 4<sup>th</sup> day of January, A.D., 2008.

  
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BOYD P. ATKINSON