**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**CASE NO. 2007-CA-01402**

**W.D. RUSSUM** **APPELLANT**

**v.**

**UNITED PLUMBING & HEATING COMPANY, INC., PRICE'S GLASS & MIRROR CO., INC., JAMES THOMAS, CARR PLUMBING SUPPLY INC., RICKY JACKSON, TOMMY MEADOWS, PRECISION CEILING LLC, AND RONNIE DEFOREST** **APPELLEES**

---

# BRIEF OF APPELLEES

---

APPEAL FROM THE CHANCERY COURT
OF RANKIN, COUNTY, MISSISSIPPI

ORAL ARGUMENT NOT REQUESTED

William W. Fulgham, Esq.
Mississippi Bar No. [redacted]
WILLIAM W. FULGHAM, PLLC
533A Keyway Drive
P. O. Box 321386
Flowood MS 39232
Telephone: (601) 932-9710
Facsimile: (601) 932-9712

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CASE NO. 2007-CA-01402

W.D. RUSSUM — APPELLANT

v.

UNITED PLUMBING & HEATING COMPANY, INC., ET AL. — APPELLEES

## 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 Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. William W. Fulgham, Esq., Attorney of record for Appellees
2. Thomas Prewitt, Esq. Attorney of record for Appellant
3. United Plumbing & Heating Company, Inc., Appellee
4. Price's Glass & Mirror Co., Inc., Appellee
5. James Thomas d/b/a T's Tile, Appellee
6. Carr Plumbing Supply Co., Appellee
7. Ricky Jackson d/b/a Jackson Sheet Metal and Welding, Appellee
8. Tommy Meadows d/b/a F & M Construction, Appellee
9. Precision Ceiling, LLC, Appellee
10. Ronnie Deforest, Appellee
11. Honorable Dan H. Fairly, Trial Court Judge
12. Brenda Dale Hunt, Court Reporter

This the 23rd day of June 2008.

Wm W Fulgham

William W. Fulgham

## TABLE OF CONTENTS

## TABLE OF CASES, STATUTES, AND OTHER AUTHORITIES

## STATEMENT REGARDING ORAL ARGUMENT

The Appellees aver that oral argument is not necessary given the straightforward nature of the law upon which the trial court's ruling was correctly based. Further, the Appellant failed to comply with Rule 34(b) if the Mississippi Rules of Appellate Procedure by failing to include "a concise statement of the reasons that oral argument will be helpful to the Court." Thus, by rule, his request for oral argument is not properly based and should be denied. M.R.A.P. 34(b).

## I. STATEMENT OF THE ISSUES

A. The Trial Court was manifestly correct in granting summary judgment based on a complete failure of evidence to show (a) malice, and/or (b) that the filings were known to be inoperable at the time they were filed.

B. The Trial Court was manifestly correct in ruling as a matter of law that the Creditors had a right and/or interest in the property by virtue of their desire to protect the assets of the bankruptcy estate through their pursuit of fraudulent conveyances. The Trial Court was further correct in finding that the Creditors' rights paralleled those of the Examiner they had been successful in having appointed.

C. The Trial Court, being one of equity, was correct in refusing to recognize claims of damages which not only failed to spring from any showing of liability, but also could only have been the product of a contract purportedly entered into at a time the purported seller knew the land to be the subject of the Bankruptcy Examiner's Complaint to set aside a fraudulent conveyance.

## II. STATEMENT OF THE CASE

### A. NATURE OF CASE, COURSE OF PROCEEDINGS, AND DISPOSITION

The Appellant's (hereinafter "Russum" or "Plaintiff") nature of the case appears to be accurate in basic substance, with one exception: Appellees' (hereinafter "Creditors" or "Defendants") did not claim "...that the Bankruptcy Court had invested them with the necessary authority to file the Lis Pendens..." Rather, the Creditors (a) believed they had such right, (b) informed counsel for the Plaintiff of the case law on which they relied at the time of filing the Lis Pendens, and (c) thereafter received that very finding of fact/conclusion of law by the Bankruptcy Judge. (R. at 110-11).

B. STATEMENT OF FACTS RELEVANT TO THE ISSUES

By virtue of their Motion for Summary Judgment and the oral argument held thereon, the Creditors evinced a complete failure on the part of Russum to bring forth probative evidence upon which to base the claims of his Complaint. Accordingly, the trial court correctly granted summary judgment to the creditors and dismissed Russum's claims in their entirety, with prejudice.

The action giving rise to the Creditors' interest in protecting the assets of Mr. Russum's company, including the Flowood property at issue, took place on July 23, 2004, when Mr. Russum, the sole owner and officer of his company, placed his company in bankruptcy. As the bankruptcy judge would later state, "Once you decide to step through the door of the bankruptcy court, the world changes." (R. at 111).

Thereafter on October 1, 2004, the Defendants and others appeared at the Section 341 bankruptcy hearing to examine the debtor over its assets and liabilities. In response to questions by undersigned counsel, Mr. Russum testified under oath with respect to maintaining records on transfers of the Flowood property between his individual name and the name of his company, that "I – I realize what the answer should be, but I ask you to understand that Wee Care and I have – have walked in the same path for so long that oftentimes there's only one set of records." (R. at 167). Mr. Russum was later asked in a separate deposition, also under oath, to reaffirm that testimony and he did so reaffirm. (R. at 162). Mr. Russum then tried to backtrack out of his testimony (R. at 163-64); however, ultimately, Mr. Russum acknowledged that he did not dispute his earlier testimony. (R. at 164).

With respect to the Flowood property Mr. Russum also admitted that he paid no consideration to his company when he deeded the approximately $1 million parcel of property of valuable commercial property in Flowood from his company to himself. (R. at 165). During his

341 hearing, Mr. Russum was also asked if "...any money changed hands during those times?" Though under oath, Mr. Russum initially gave the misleading answer "whatever was required by the attorneys and the bank," (R. at 167), and only later did he admit that no consideration was paid. (R. at 165).

Thus, by Mr. Russum's own testimony, he had transferred a commercial, non-homestead property worth approximately $1 million from his company's name to his own personal name for zero dollars. From the moment this testimony was given, the possibility, if not likelihood, that a fraudulent conveyance had occurred, and that Mr. Russum was not a good faith, bona fide purchaser for value, was evident. As the Bankruptcy Court has now found, the Defendants herein had a right to protect the assets of the bankruptcy estate.

From that point forward, the Defendants began keeping a close eye on the monthly operating reports required to be filed by Mr. Russum on behalf of his company in the bankruptcy matter. Questions continued to arise with respect to suspicious activities and transactions which were raised by the monthly operating reports. Some of these transactions, on their face, appeared not to be legitimate business expenses for a child care center, including expenditures at Victoria's Secret and cash withdrawals at casinos.

Based upon Mr. Russum's own sworn testimony and irregularities found in the monthly operating reports, Defendant United Plumbing filed a Motion for Appointment of a Trustee on June 15, 2005. (R. at 171). The remaining Defendants joined in that motion.

That motion was set to be heard on or about November 16, 2005. However, the resting of control from Mr. Russum by the appointment of a trustee was avoided when he voluntarily agreed to have an examiner with expanded powers appointed over his business. (R. at 172). However, the irregularities of Mr. Russum's activities continued, and on April 5, 2006, Defendant United again filed a Motion for Appointment of a Trustee, or in the Alternative, for a

Continuation of Examiner with Expanded Powers, to which the remaining Defendants herein joined. (R. at 176).

Also in April of 2006, AmSouth Bank filed a petition in Rankin County Chancery Court dealing with irregularities concerning the very same Flowood property at issue herein. Mr. Russum's company had negotiated certain mortgage transactions with AmSouth Bank and secured those transactions by pledging the very same Flowood property at issue as collateral. However, Mr. Russum had signed a deed of trust on the Flowood property in the name of his business, Wee Care, even though he claimed to own, and held a deed on, the Flowood property in his personal name.

As part of AmSouth Bank's efforts to secure its interests, AmSouth filed a lis pendens on the Flowood property in April 13, 2006. (R. at 183).

Thereafter, given certain statutes of limitations concerns, United filed an Emergency Motion for Leave for the Examiner to Pursue Causes of Action, to which the remaining Defendants herein joined. (R. at 186).

On the day before that motion was set to be heard, Mr. Russum's business, Wee Care, filed a Complaint in Bankruptcy Court against Mr. Russum. (R. at 192). As Mr. Russum continued to be the sole owner and officer in possession and control of his business at that point in bankruptcy, he was, in effect, directing the attorney for his company to sue himself. That suit alleged, *as the Defendants herein had maintained since Mr. Russum's Section 341 sworn testimony in November of 2004,* that:

> Prior to the filing of the petition herein, the debtor transferred real property and cash, to Mr. Russum. In connection with such transfers, ...the transfers were made such that *the debtor, on information and belief, may have received less than a reasonable equivalent value and exchange for such transfers or obligations.* These transfers were made at such times as the debtor may have been insolvent or, alternatively, the transfers may have rendered, on information and belief, the debtor insolvent.

> *The transfers included, at a minimum, real property located in Flowood, Mississippi, that is presently titled to Mr. Russum*, perhaps transfers of other items of real or personal property and cash.
>
> ***
>
> WHEREFORE, PREMISES CONSIDERED, the Debtor respectfully prays that upon a hearing hereof, *this Honorable Court will enter its order setting aside all such transfers that were made to Mr. Russum for less than a reasonable equivalent value*, made while the debtor was insolvent or that rendered the debtor insolvent; in the alternative, the debtor prays for a money judgment against Mr. Russum, plus interest, costs and expenses for the value of the items transferred if they cannot be recovered. The debtor prays for general relief.

(R. at 193).

Thus, Mr. Russum was suing himself, through his company, seeking the very same relief that he now accuses the Defendants/Counter-Plaintiffs herein of seeking, that being the exercise of rights to protect the Flowood property for the benefit of the debtor, Wee Care.

The Bankruptcy Court denied Mr. Russum's attempts to control the litigation of his company against him, and instead authorized the Examiner to pursue such causes of action. (R. at 196-97). The Examiner did so pursue an action to have the Flowood property, or the benefit thereof, placed back within the Bankruptcy Court by filing a complaint against Mr. Russum individually. (R. at 200-206). Just as the Creditors did one week prior, the Examiner filed a Lis Pendens Notice on September 13, 2006. (R. at 207-210).

Specifically, Defendant United had, without the assistance of counsel, filed a Statutory Notice of Construction Lien on June 9, 2006, to protect the Flowood property from being sold by Mr. Russum out from underneath the protection of the Bankruptcy Court. Though the substance of this action was taken pursuant to the legitimate right to protect the assets of the bankruptcy estate, the form was technically incorrect as the *pro se* filing should have been a Lis Pendens Notice, rather than a Statutory Notice of Construction Lien. At that point in time, AmSouth Bank's Lis Pendens Notice had already been in effect since April 13, 2006. (R. at 183).

When counsel for the Creditors was notified by counsel for Russum of the technical

irregularities in the notice filed solely by United, said notice was removed and replaced by a lis pendens notice on September 5, 2006. Letters of counsel sent at that time clearly set forth the Creditors' case law authority to support the filing of their motion. (R. at 211). Their filing preceded the filing of a Lis Pendens Notice by the Examiner on September 13, 2006. Some five (5) months later, after the Creditors' lis pendens was no longer necessary due to the Examiner's activities, the Creditors' voluntarily removed their lis pendens.

The final adjudication of the rights of Wee Care and its creditors, including the Defendants herein, in the Flowood property versus those claimed by Russum came to a head in the Bankruptcy Court on March 21, 2007. On that date, a settlement was announced in which Russum agreed to execute a demand note secured by the Flowood property in the approximate amount of $750,000, with approximately $60,000 being for the benefit of Trustmark Bank, $290,000 being for the benefit of AmSouth Bank, and $400,000 being for the benefit of the Defendants herein, in the event they prevailed against Wee Care in the Hinds County construction litigation underlying the entirety of these events. (R. at 234). In fact, Russum's company Wee Care, though the appointed Trustee, would eventually settle with Defendants/Creditors herein, using funds that derived from the Flowood property. Thus, the end result sought to be achieved for several years by the Defendant/Creditors herein, as well as by Russum in the attempt to sue himself, was finally achieved, that being the transfer of money or other value to the bankruptcy estate for the satisfaction of the claims of creditors based upon the Flowood property at issue.

## III. SUMMARY OF THE ARGUMENT

The learned Chancellor was manifestly correct in granting the unsecured creditors' Motion for Summary Judgment. The Plaintiff's Complaint was dismissed upon a complete failure to bring forth probative evidence of either malice or knowledge on the part of the Creditors of the inoperability of their filings. Not only were their filings not known to be inoperable, but the Bankruptcy judge even found that they indeed possessed the very right that they had been proceeding to protect: "...to have the corporate funds preserved and spent properly."

## IV. ARGUMENT

### A. Standard of Review

Summary Judgment is appropriate and should be granted when the "pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any show there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." M.R.C.P. Rule 56(c). The summary judgment process focuses the parties and the court on the question of whether disputes of relevant fact exist that need to be tried, or only disputes of relevant law for which there need be no trial. Cook v. Stringer, 764 So.2d 481, 482 (Miss. App. 2000).

Pursuant to Rule 56, the entry of summary judgment is mandated when, after adequate time for discovery and upon motion, a party:

> ...fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof necessarily renders all other facts immaterial. The moving party is "entitled to judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she had the burden of proof.

Galloway v. Travelers Ins. Co., 515 So.2d 678, 683 (Miss, 1987).

When analyzing a motion for summary judgment, the court:

> looks at all the evidentiary matters before it--admissions in pleadings, answers to interrogatories, depositions, affidavits, etc. The evidence must be viewed in the light most favorable to the party against whom the motion has been made. If, in this view, the moving party is entitled to judgment as a matter of law, summary judgment should forthwith be entered in his favor. Otherwise, the motion should be denied.

Mantachie Natural Gas Dist. v. Mississippi Valley Gas Co., 594 So.2d 1170,1172 (Miss. 1992).

Faced with a motion for summary judgment, a nonmoving party may not rely upon mere allegations and averments; rather, the nonmoving party must bring forth probative evidence upon which to show the genuine issues of material fact exist, the resolution of which in its favor may form the proper basis for relief.

**B. The Trial Court Was Correct In Finding A Complete Failure Of The Plaintiff To Produce Evidence to Support his Claims on Liability or Damages.**

**1. Complete Lack of Evidence to show (a) Malice and/or (b) knowing falsity or inoperability.**

As correctly stated by the Trial Court, in order to prevail on his claims for slander of title, Russum must have proven "the malicious filing for record of an instrument known to be inoperative and which disparages the title of land." (T. at 69.)

The Plaintiff also argues that he could have prevailed upon his claim for "statutory damages" distinct from his claim for slander of title. However, he acknowledges that the statute on which he bases such a claim also requires a showing of knowing falsity "without just cause". Appellant's Brief at pg. 41.

Upon a complete failure of proof on the part of Russum, and in the face of voluminous evidence submitted by the Creditors showing the foundation for their belief in their right to file

the notices at issue, if not proving the existence of that right or interest, the Trial Court was well-founded in dismissing the Complaint with prejudice.

As set forth in their Statement of Facts, at the time Russum demanded that the notices at issue be cancelled, citation was made and forwarded to his attorney of the relevant authorities and holdings of the Mississippi Supreme Court showing that the Defendants herein did not have to accept his version of the "truth" and had a right to pursue their interest. (R. at 211).

Further, Russum, as well as the Creditors, were fully aware of the fact that he had authorized his attorney to file suit essentially against himself on behalf of his solely owned, operated, and controlled company, Wee Care. (R. at 192). As stated above, that suit expressly alleged that Russum had fraudulently transferred the Flowood property in question from his company's name to his known name. Russum was also aware of his own sworn testimony that (a) he and his company's records with respect to the land had "walked in the same path"; and (b) that he paid no money to his company when he transferred the approximately million-dollar parcel of property to his individual name.

In response to the Creditors' Motion for Summary judgment, Russum filed his own Affidavit as well as that of his personal Bankruptcy attorney, Marc Brand. With respect to the Affidavit of Mr. Brand, rather than set forth factual knowledge, offers statements in the nature of expert opinion on the law, which the Chancellor was not obligated to follow.

As for the Affidavit of Mr. Russum, no facts were established upon which it could be found (a) that the Creditors acted with malice or (b) that the Creditors knew their notices to be inoperable. The majority of his Affidavit appeared not to contain factual, personal knowledge, but rather consisted of his version of the procedural history and characterizations, or mischaracterizations, of the legal positions of the Creditors. The extent of Russum's Affidavit touching upon the required elements of his claims, being malice and knowing falsity on the part

of the Creditors, consisted of the following:

> (7) I don't understand how the Defendants can legitimately contend that they had a right to file a lis pendens covering my Rankin County real estate when they had never sued me in any court saying that they had an interest in or claim to that property, had never performed any work on that property, had never had a contract with me and in the only case in which they had ever sued me, the Court said I had no liability to them."

R. at 294-95. As a threshold matter, this statement is patently false as the Creditors had filed Notices of Claim in the Bankruptcy matter, and Russum was admittedly aware of the Creditors' bankruptcy filings.

To the point of the inquiry, however, it can hardly be argued that the Creditors' filings were knowingly false or inoperable when the right/interest *they believed they had* ***would later be confirmed by the Bankruptcy Judge.*** Even had that not been confirmed, this statement by Russum only shows his inability or unwillingness to "understand" the Creditors' position; his self-professed lack of understanding, or even incredulity, does not equate to proof of the Creditors' (a) malice or (b) knowing falsity, both of which must have been shown for him to prevail on his claims. No genuine issue of material fact was brought forth, and summary judgment was proper.

Neither could Russum show that he could have suffered any damages pursuant to the filings of notices by the Defendants herein. As of the time of the first filing by United, on June 9, 2006, AmSouth Bank already had a Lis Pendens Notice filed in the land records of the Chancery Clerk of Rankin County on April 13, 2006. As mentioned previously, the Examiner would also follow the lead of the Creditors by filing his own lis pendens eight (8) days after their own. Thus, Mr. Russum's claims that the Defendants filings prevented him from selling his land cannot be sustained. Nor will equity countenance a claim for damages that could have only been the product of an attempt to beat a lawfully appointed Examiner to the punch by selling land that

he knew to be the subject of a fraudulent conveyance suit outstanding against him.

Thus, Russum wholly failed to produce evidence to show malice or that the Creditors knew their filings to be inoperable, particularly in the face of evidence showing that they were armed with legal authority when they refused to cancel their notice. (R. at 211). His failure of proof continued with respect to the ability to show damages which equity could reward. As such, the granting of summary judgment and dismissal of the Complaint with prejudice was wholly proper.

**2. Case law Supports failure of proof on the required elements and establishes entitlement to the judicial proceeding privilege.**

On March 21, 2007, the United States Bankruptcy Court for the Southern District of Mississippi removed Mr. W. D. Russum from his position of control over his company, Wee Care Child Care Center, Inc., due to his misappropriation of corporate assets for personal uses, and appointed a trustee to control Mr. Russum's business. (R. at 112). Upon so doing, the Court ruled that the Defendants/Counter-Plaintiffs in the instant matter, referred to by the Bankruptcy Court as the "Construction Claimants", "...have got a right to have the corporate funds preserved and spent properly." (R. at 111).

The Bankruptcy Court's ruling came at the end of a long process to protect the assets of Mr. Russum's company after he placed it in bankruptcy. This process was instituted by the Defendants/Creditors herein, and included the filing of the notices which are the subject of the Plaintiffs' Complaint.

Mississippi case law in matters very similar to the one at hand expressly provides protection for parties such as the Creditors below. In the case of Dethlefs v. Beau Maison Development Corporation, 511 So.2d 112 (Miss. 1987), the Mississippi Supreme Court found that:

> **Certain communications published in due course of a judicial proceeding are absolutely privileged and will not sustain an action for slander of title.** Firstsouth's theory of recovery on slander of title was that by filing lis pendens notices, Dethlefs prevented Firstsouth from being able to sell the land. The lis pendens notice was a privileged communication and therefore not actionable for slander of title. The chancellor expressly found that Dethlefs had a right to assert her interest in the underground pipe, although he expressed great displeasure with the manner in which she proceeded to protect her interest. Since Dethlefs had a valid right to have her case decided, her filing of lis pendens notice cannot be slander of title. [Emphasis added; internal citations omitted.].

Dethlefs v. Beau Maison Development Corporation, 511 So.2d 112, 117 (Miss. 1987).

The Court went on to further analyze the question and, citing to the Fifth Circuit Court of Appeals case of Sellers v. Grant, 196 F.2d 677 (5th Cir. 1952), Mississippi Supreme Court stated further:

> In Sellers v. Grant, Plaintiff refused to remove a lis pendens notice after plaintiff was advised by the defendant as to the truth of the facts. The district court held that *since plaintiff was not required to accept the defendant's version, but was entitled to have the lawsuit adjudicated on sworn testimony,* ***then plaintiff was not liable to defendant for slander of title.*** *The same rule applies to the instant case.*

Dethlefs v. Beau Maison Development Corporation, 511 So.2d at 117.

In both the Dethlefs and Sellers v. Grant cases, the parties in the position of the Defendants herein, who had filed notices against real property, eventually *lost* on the issue of whether they had a claim against the land in question therein. However, the courts still found that they had a right to pursue their claims against the land, and have the opposing party's claims tested on evidence. Further, their right to file notices against the real property in order to protect their right to pursue claims against the property without it being sold out from the reach of the courts, was deemed to be *absolutely privileged* by the Mississippi Supreme Court in the Dethlefs case and to be "the exercise of reasonable care and sound judgment" by "[the party] and his attorney" by the Fifth Circuit in the Sellers v. Grant case. See Dethlefs v. Beau Maison Development Corporation, 511 So.2d at 117; Sellers v. Grant, 196 F.2d at 680.

In the instant matter, the Creditors have (a) been found by a court of competent jurisdiction, the Bankruptcy Court, to have a right to protect their claims against the land; and (b) they have actually prevailed in having Russum execute a demand note secured by the very Flowood property in question.

Given the extensive history set forth *supra* regarding the bankruptcy matter and the Defendants' actions with respect to the Flowood property therein, including the filing of notices against the Flowood property, only a brief citation will be made to the Uniform Fraudulent Transfer Act, which further undergirded the Creditors' right to protect their interests in the fraudulently conveyed property. Mississippi has passed and codified the Uniform Fraudulent Transfer Act, found at Section 15-3-101, et seq., (see also Section 11-5-75) and the same was argued before the Trial Court at the hearing of the Creditors' Motion for Summary judgment. (T. at 88-90.). The rights of United and the subcontractors to take the actions they have taken are also protected by this Act, which parallels the remedies available to them in the Bankruptcy action. As argued to the learned Chancellor, the Defendants need not have pursued duplicitous actions to accomplish the same goal. However, either their Bankruptcy claims or a suit in Chancery Court under the Act would have afforded the right to pursue recovery of fraudulently conveyed property, such as the real estate which was at issue before the Trial Court.

## V. CONCLUSION

The learned Chancellor was manifestly correct in granting the unsecured creditors' Motion for Summary Judgment. The Plaintiff's Complaint was dismissed upon a complete failure to bring forth probative evidence of either malice or knowledge on the part of the Creditors of the inoperability of their filings. Not only were their filings not known to be inoperable, but the Bankruptcy judge even found that they indeed possessed the very right that they had been proceeding to protect: "...to have the corporate funds preserved and spent

properly." Accordingly, the granting of summary judgment and dismissal of the Plaintiff's Complaint by the Trial Court should be upheld, with costs of appeal awarded to the Appellees.

Respectfully Submitted, this the 23rd day of June 2008.

William W. Fulgham (MS Bar No[redacted])
Attorney for the Appellants

WILLIAM W. FULGHAM, PLLC
533A Keyway Drive
P.O. Box 321386
Flowood, MS 39232
Telephone: (601) 932-9710
Facsimile: (601) 932-9712

## CERTIFICATE OF SERVICE

I hereby certify that I, William W. Fulgham, have served a copy of the above and foregoing document, via U.S. Mail, First Class, postage prepaid, on this the 23rd day of June 2008, to the following:

Thomas Prewitt, Esq.
7720 Old Canton Rd., Suite A
Madison, MS 39130-2327
Fax: (601) 427-2330
*Attorney for Appellant*

Hon. Dan Fairly
Rankin County Chancery Court
P. O. Box 1437
Brandon MS 39043

Wm W Fulgham
WILLIAM W. FULGHAM