

2007-CA-01417

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

RE: FRANK GARRISON V. JIMMY W. GARRISON
SUPREME COURT # 2007-CA-01417

APPEAL FROM THE CHANCERY COURT OF UNION COUNTY, MISSISSIPPI

BRIEF OF APPELLEE

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for the Appellee in this matter certifies that he 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 disqualification or recusal, pursuant to Rule 28 (1) of the Rules of Appellant Procedure.

1. Jimmy Garrison- Plaintiff and Appellee, represented by Robert W. Davis, Jr., Esq., 542 Jefferson Street, Post Office Box 1525, Tupelo, Mississippi 38802.

2. Frank Garrison- Defendant and Appellant, represented by Ben M. Logan, Esq., Post Office Box 826, Tupelo, Mississippi 38802 on appeal and Honorable Michael McHenry, Esq., Post Office Box 7316, Tupelo, Mississippi 38802.

3. M. R. "Mary" Anderson- aunt of Frank and Jimmy Garrison, previous owner of real property conveyed to Jimmy Garrison, not represented.

4. Sandra Garrison Brown- ex-wife of Frank Garrison, mother of C. E. Garrison and J. F. Garrison, represented by Ben Logan, Esq. during the trial proceedings, previous owner of some of the mobile homes.

5. C. E. Garrison- son of Frank Garrison and Sandra Garrison Brown, represented by Ben M. Logan, Esq., in the trial proceedings and owner of mobile homes.

6. J. F. Garrison- son of Frank Garrison and Sandra Garrison Brown, represented by Ben M. Logan, Esq., in the trial proceedings and owner of mobile homes.

7. Maxium, Inc. – Mississippi Corporation, original holder of promissory note and deed of trust executed by Jimmy Garrison, represented at trial by Regan Wise, Esq., Post Office Box 496, Tupelo, MS 38802, and defendant in the proceedings before the lower court.

8. Eagle Horn, Inc. Mississippi Corporation, assigned holder of promissory note and deed of trust referenced in No. 7 above, represented by Ben M. Logan, Esq. in the proceedings before the trial as a Defendant.

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for the Appellee in this matter 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 disqualification or recusal, pursuant to Rule 28 (1) of the Rules of Appellate Procedure.

1. Jimmy Garrison- Plaintiff and Appellee, represented by Robert W. Davis, Jr., Esq., 542 Jefferson Street, Post Office Box 1525, Tupelo, Mississippi 38802.

2. Frank Garrison- Defendant and Appellant, represented by Ben M. Logan, Esq., Post Office Box 826, Tupelo, Mississippi 38802 on appeal and Honorable Michael McHenry, Esq., Post Office Box 7316, Tupelo, Mississippi 38802.

3. M. R. "Mary" Anderson- aunt of Frank and Jimmy Garrison, previous owner of real property conveyed to Jimmy Garrison, not represented.

4. Sandra Garrison Brown- ex-wife of Frank Garrison, mother of C. E. Garrison and J. F. Garrison, represented by Ben Logan, Esq. during the trial proceedings, previous owner of some of the mobile homes.

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8. Eagle Horn, Inc.- Mississippi Corporation, assigned holder of promissory note and deed of trust referenced in No. 7 above, represented by Ben M. Logan, Esq. in the proceedings before the trial as a Defendant.

9. William H. Taylor, Jr. and Vanessa C. R. Taylor prospective purchasers of the Twin Creek Mobile Home Park from Jimmy Garrison and represented by Tom McDonough, Esq., Post Office Box 186, New Albany, MS 38652.

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Statement of the Issues

Issue One

The Appellant has no legal interest in the subject matter of this litigation, and thus lacks standing to bring the instant appeal.

Issue Two

Should this Court find that the Appellant does have standing to bring the instant appeal, it should find that the Statute of Frauds, Mississippi Code Annotated §15-3-1, is satisfied by the Bills of Sale drafted and signed at the direction of the Appellant.

Issue Three

Should this Court find that the Appellant does have standing to bring the instant appeal, it should find that Mississippi Code Annotated §63-21-31 did not require the Appellant to sign and deliver any Certificates of Title to the Appellee because a Security Interest was created in the mobile homes by Paragraph 51 of the Purchase Money Land Deed of Trust and Security Agreement.

Issue Four

Because it so clearly apparent, and absolutely undisputed, that the Appellant has no legal interest in the subject matter of this litigation, this Court *must* award just damages and single costs, and *should* award double costs to the Appellee pursuant to Rule 38 of the Mississippi Rules of Appellate Procedure.

Statement of the Case

Nature of the Case

The Appellee is satisfied with the Appellant's statement of the nature of the case.

Course of the Proceedings

The Appellee is satisfied with the Appellant's statement of the course of the proceedings.

Disposition

The Appellee is satisfied with the Appellant's statement of the disposition.

Statement of the Facts

Frank Garrison, the appellant, hereinafter Frank, controlled approximately thirty-three (33) acres in Union County Mississippi which he developed into a mobile home park called Twin Creeks Mobile Home Park¹. Twin Creeks and the approximately thirty (30) mobile homes located thereon were owned directly by M.R. Anderson.

Sometime early 2006 Frank began to solicit offers to buy Twin Creeks. Mr. David Tutor who owns and operates several mobile home parks was at one point interested in purchasing Twin Creeks. Tutor testified that he met with Frank who held himself out as the go to person with respect to a sale.² Tutor explained that Frank indicated what was to be included in the sale, the land, the rents being produced by the mobile homes owned by others, and approximately thirty (30) mobile

¹ Unless otherwise indicated with a foot note, the information contained within the "Statement of the Facts" section of this brief has been distilled from the Chancellors findings of fact in the Memorandum Opinion and Judgment. (Record pages 231-237).

² Mr. Tutor's testimony begins on page 153 of the Transcript.

homes which went with the mobile home park. Frank's asking price, which he never reduced, was \$800,000.00. Mr. Tutor testified that he and Frank were never able to come to agreement as to price, and that their negotiations fell through.

Shortly after Frank and Mr. Tutor failed to reach agreement, Frank's brother, Jimmy Garrison, the appellee, hereinafter Jimmy, began negotiating with Frank to purchase the Twin Creeks development including the mobile homes. In May of 2006 Jimmy and Frank negotiated, and finally agreed upon a purchase price of \$800,000, the same price at which Frank was willing to sell the mobile home park along with the 30 mobile homes to Mr. Tutor. The purchase price was to be paid bearing 8% interest and payable in monthly installments over eight (8) years.

Although Frank did all the negotiating, and it was he who arrived at a price, and he held himself out to be the owner, the actual title to the real property where Twin Creeks is located was vested in M.R. Anderson, Frank and Jimmy's aunt. Ms. Anderson executed a warranty deed to the thirty three (33) acres. She also executed Bills of sale for each of the thirty mobile homes. Cathy Cunningham prepared bills of sale for the mobile homes at the request of, and at the specific direction of Frank, from a list prepared by Frank.³

In order to secure payment, a purchase money land deed of trust and security agreement was executed by Jimmy in favor of J. Patrick Caldwell, Trustee in Maxim, Inc., the Beneficiary.⁴ Paragraph 51 of the said purchase money land deed of trust and security agreement provides that, "... a security interest is created in all mobile homes which may be now or in the future be located on the subject's property." Neither Ms. Anderson nor Ms. Starling knew that the property was in their

³ These bills of sale were introduced at trial as exhibit four and seven.

⁴ Record page 188.

names nor have they in anyway profited from the transaction. It would appear that the purchase money deed of trust and security agreement executed by Jimmy has since been transferred to Eagle Horn, Inc., which is allegedly owned and controlled by Frank's son, C.E. Garrison.

Frank claims to have absolutely no ownership interest in the mobile homes. In his deposition he explicitly denied any ownership interest in the thirty (30) mobile homes which are the subject of this litigation, or in any corporation which itself has an ownership interest in the mobile homes..⁵ He did not list any mobile homes, or corporations owning any mobile homes, as assets on his Rule 8.05 disclosure form when he and his ex-wife Sandra divorced. He testified at trial that he had no interest in them whatsoever..⁶ Finally, he asserts no ownership interest in the mobile homes before this Court, and does not ask this Court to vest any ownership interest in him.⁷

In the Chancery Court below three other parties *did* claim an ownership interest in the mobile homes. Specifically claiming an interest in the mobile homes were Frank's ex-wife, Sandra Garrison Brown, and Frank and Sandra's two sons C.E. Garrison, and Josh Garrison. The Chancellor found their claims of ownership unpersuasive. Neither Sandra, nor C.E., nor Josh has pursued an appeal of the Chancellor's ruling.

Sandra's, C.E.'s and Josh's claims of ownership appear to have surfaced only after Frank learned that Jimmy had negotiated a sale of Twin Creeks for \$1,225,000.00. Before Jimmy sold Twin Creeks for a profit neither Sandra nor Joshua or C. E. did anything to demonstrate or manifest

⁵ Appellee's Record Excerpt 1.

⁶ Transcript page 172.

⁷ Appellant's Brief at page 14.

ownership of the mobile homes in anyway. They did not pay lot rent to jimmy. They did not attempt to collect rent from the tenants. They did not maintain the mobile homes. And of course, they paid no taxes associated with the mobile homes.

It was clearly established at trail that after Ms. Anderson executed a deed and bills of sale to the mobile homes, Jimmy took possession of the land and mobile homes. Jimmy considered himself to be the owner of the real property and the mobile homes. He went to the tax assessor and transferred the mobile homes to his name. He paid the taxes on the mobile homes for two (2) years. He collected rent and put it in his account. He maintained the mobile homes. No other alleged owners ever asked for these funds. Jimmy made payments to Maxium and subsequently to Eagle Horn. No other individuals paid jimmy lot rent. And of course, no one else paid taxes on the mobile homes. Furthermore, the actual titles to the mobile homes were delivered to Jimmy by Frank himself.

In short, the chancellor found as a matter of fact that the thirty mobile homes which are the subject mater of this litigation were included in the 80000 sale. The Court did not believe that Jimmy would pay between \$24,000.00 and \$25,000.00 per acre for thirty three (33) acres of land without the mobile homes. Without the income produced by the mobile homes Jimmy would not have been able to make the \$11,000.00 per month note payment. As previous noted above, the purchase money Deed of Trust securing Jimmy's \$800,000.00 debt contains numerous references to mobile homes and to tentaments and attachments. The Chancellor specifically found that these attachments could only be the thirty (30) mobile homes.⁸

In addition to all of the above, Ms. Anderson , Frank and Jimmy's aunt, testified that Frank knew and permitted her to convey the land and mobile homes to Jimmy. Mrs. Anderson recalled

⁸ Appellant's Brief at page 14.

Frank saying that he wanted to be through with the trailers and that he hoped Jimmy made a million dollars.

In spite of all of this, Frank claims no interest in the mobile homes. Frank claims that he conveyed his interest in the mobile homes to his sons, Josh and Christopher. As previously noted, Sandra, (Franks x- wife) claims to have conveyed any interest she may have had to her son Josh. Josh and Christopher testified by deposition. Josh's testimony is very revealing.

Josh testified that he had no interest in Maxium, Inc., that he is not sure if he is on the board of Directors or if he has been to a corporate meeting. At one point in his deposition Josh claimed an interest in Eagle Horn, Inc., (the corporation which now appears to own the purchase money deed of trust) only to later testify that he does not know if he has an interest. He never paid for stock and does not know if someone has given him stock. He claims to have been to corporate meetings when it was both hot and cold but does not recall who was at the meetings or the number of meetings. Josh's credibility is amply illustrated by pages 10 to 13 of his deposition, wherein he responded twenty times that he did not recall or did not remember the most basic information.

The Chancellor found C.E.'s testimony to be less credible even than that of his brother.⁹ C.E. exhibited one bill of sale dated April 25, 2003. With respect to that mobile home, C.E. admitted he would have been sixteen (16) years old in 2003, he paid nothing for the mobile home, he never collected rent, he never paid taxes, he never paid utilities, he did not remember if he had paid lot rent, he did not negotiate the purchase, he was not part of the deal, and he did not authorize his father to purchase the mobile home in his name. He claims his father just conveyed the mobile home

⁹ In his Memorandum Opinion and Judgment at page 6 thereof and on page 236 of the Record, the Chancellor incorrectly identified C.E. Garrison as "Josh." If one reads the Memorandum Opinion and Judgment in conjunction with Josh Garrison's deposition and the deposition of C.E. Garrison the misidentification is apparent.

to him in 2006, and that he paid nothing nor does he have a Certificate of Title.

C.E.'s claim to the remaining six mobile homes is much the same. The Bills of Sale are not notarized, there are no Certificates of Title and there was no consideration paid. C.E. paid no taxes, utilities or insurance, he was not sure if he received rent but he knew he did not personally collect any and he offered no proof that he had maintained the various mobile homes.

The Court found no credible evidence that Josh or Christopher owned any of the mobile homes. The Court found that to the extent that the bills of sale purported to convey the mobile homes to Josh and Christopher they were not supported by any consideration and they were drawn simply to create the impression that someone other than Frank Garrison owned the mobile homes.

The Chancellor concluded that Frank attempted in various ways to hide his ownership of the land and mobile homes operated as Twin Creeks. He was the true owner with the authority to buy and sell the mobile homes.

As to Sandra Garrison Brown's claim of ownership to the mobile homes, she did not list them as assets on her Rule 8.05 disclosures during her divorce from Frank, because, she testified at her deposition, she believed that Frank had conveyed them away, and that she no longer owned them.¹⁰ She further testified that she did not litigate the issue in her divorce, and that she took ten thousand dollars (\$10,000.00) in the property settlement as consideration for every piece of marital property acquired during the marriage.¹¹ Ms. Brown also testified on multiple occasions that she bought and sold mobile homes as Sandra Garrison d/b/a Capital, and that Frank Garrison was the

¹⁰ Appellee's Record Excerpt 2.

¹¹ Id.

agent of Capital.¹² On one occasion, she said explicitly that, “He could buy and sell through Capital.”¹³

Whether Ms. Brown actually owned those mobile homes or not during the course of her marriage to Frank, whether she surrendered any rights to them in exchange for ten thousand dollars (\$10,00.00) as is stated in the property settlement agreement in their divorce, and whether Frank had the actual or apparent authority to sell them on her behalf, before the trial on the merits of this matter, she attempted convey whatever interest she might have in them, and in the instant litigation to her son Josh.¹⁴ Furthermore, she did not appeal the Chancellor’s ruling that she had no interest in the mobile homes to this Court.

Similarly, neither of the other two parties who are alleged by the Appellant to have an interest in the mobile homes, Josh and C.E. have joined in the instant appeal.

¹² Appellee’s Record Excerpt 3.

¹³ Appellee’s Record Excerpt 4.

¹⁴ Record page 226.

Summary of the Argument

Issue One

Appellant, Frank Garrison, has no standing to pursue the instant appeal. Whether or not Frank ever owned or controlled the mobile homes that are the subject matter of this litigation, he now has absolutely no legal interest in them whatsoever. Frank, from the beginning of the litigation, claimed that he had no interest in the mobile homes, or in any corporation that itself had an interest in the mobile homes. The Chancellor found, as a matter of law and fact, that he did have an interest in the mobile homes, but that he conveyed that interest to the Appellee, Jimmy Garrison. Whether Frank is correct, or whether the Chancellor is correct, it is undisputed by any party that Frank *now* has no legal interest in the subject matter of this litigation.

Issue Two

Should this Court find that the Appellant *does* have standing to bring the instant appeal, it should find that the Statute of Frauds, Mississippi Code Annotated §15-3-1, is satisfied by the Bills of Sale drafted and signed at the direction of the Appellant. At the specific direction of the Appellant, Ms/ Cunningham prepared, and Ms. Anderson signed Bills of Sale on each and every mobile home that is the subject matter of this litigation. Said Bills of Sale certainly satisfy the memorandum of the agreement requirement in §15-3-1.

Issue Three

Should this Court find that the Appellant *does* have standing to bring the instant appeal, it should find that Mississippi Code Annotated §63-21-31 did not require the Appellant to sign and deliver any Certificates of Title to the Appellee. Paragraph 51 of the Purchase Money Land Deed of Trust and Security Agreement creates a security interest in "...such Personal Property, which shall

include but not be limited to all mobile homes which are now, or may be in the future located on the subject real property.” Thus, under §63-21-31 (4) no transfer to the Appellee of any Certificates of Title was required.

Issue Four

It is undisputed that the Appellant, Frank Garrison, has no legal interest in the subject matter of this litigation. Indeed, nowhere in his appeal brief does the Appellant does seek to be vested with any interest in the mobile homes. The law regarding standing is clear and unambiguous. Furthermore, the Appellant is benefiting financially from the delay between trial and the outcome of this appeal. Pursuant to Rule 38 of the Mississippi Rules of Appellate Procedure this Court *must* award just damages and single or double costs to the Appellee.

Argument

Issue One

The Appellant has no legal interest in the subject matter of this litigation, and thus lacks standing to bring the instant appeal.

In order for a party to have standing to seek relief that party must have some legal interest at stake in the outcome of the litigation. Smith v. Malouf, 722 So.2d 490 at 499 (Miss. 1998). In the instant appeal, it is undisputed by anyone that the Appellant has no legal interest at stake in the outcome of this litigation.

As noted above, Frank disclaimed in any interest in the subject matter of this litigation in deposition,¹⁵ and at trial,¹⁶ and on appeal.¹⁷ Jimmy, has always contended that while Frank was the true owner of the mobile homes they were conveyed to him as part of the purchase of Twin Creeks Mobile Home Park, and that after the transfer of that property in September 2006, the mobile homes no longer belonged to Frank. The Chancellor ruled that regardless of in whose name the mobile homes may have been titled, the true owner of those homes was in fact Frank, but that his ownership of those mobile homes transferred to Jimmy upon Jimmy's purchase of Twin Creeks Mobile Home Park.

The one and only thing in this litigation that everyone agrees on is that Frank Garrison, the one and only Appellant herein, *now* has no legal interest in the mobile homes which are the subject matter of this litigation. Thus, under Smith v. Malouf, this appeal should be dismissed would no

¹⁵ Appellee's Record Excerpt 1.

¹⁶ Transcript page 172.

¹⁷ Appellant's Brief at page 14.

further consideration of the issues raised by the appellant.

Issue Two

As argued above, the Appellant does not have standing to bring the instant appeal. Therefore, this Court need not decide whether the Chancellor's ruling was in error. However, should this Court find that the Appellant *does* have standing to bring the instant appeal, it should find that the Statute of Frauds, Mississippi Code Annotated §15-3-1, is satisfied by the Bills of Sale drafted and signed at the direction of the Appellant.

At trial Ms. Cunningham testified that she, at Frank's specific direction prepared a Bill of Sale for each one of the thirty mobile homes in question.¹⁸ Those Bills of Sale were marked and admitted into evidence as Exhibit 7. Those Bills of Sale were signed by the "owner" of the corporation, Maxim, Ms. Anderson, with the knowledge of and at the direction of Frank.¹⁹ Thus, the memorandum requirement in §15-3-1 is satisfied.

That Frank himself did not sign these Bills of Sale is of no consequence. The Chancellor concluded that Frank tried in various ways to hide his ownership of the land and the mobile homes.²⁰ Having his and Jimmy's aunt, M. R. Anderson execute the Bills of Sale on behalf of a corporation that she supposedly controlled was merely part of this ruse. The Chancellor saw through the ruse, and found that the transfer of the mobile homes to Jimmy, by Ms. Anderson, at the direction of Frank was valid and binding.

¹⁸ Transcript pages 64-68.

¹⁹ Transcript pages 79-81.

²⁰ Record page 236.

Issue Three

As argued above, the Appellant does not have standing to bring the instant appeal. Therefore, this Court need not decide whether the Chancellor's ruling was in error. However, should this Court find that the Appellant *does* have standing to bring the instant appeal, it should find that Mississippi Code Annotated §63-21-31 did not require the Appellant to sign and deliver any Certificates of Title to the Appellee.

Appellant points out that Mississippi Code Annotated §63-21-31 requires that a Certificate of Title be endorsed by the seller and delivered to the buyer. Appellant notes that in the instant case, neither Frank, nor anyone else acting on his behalf, nor anyone acting on behalf of those he contends to be the "true owners" of the mobile homes endorsed any Certificates of Title. This is true.

What is also true, however, is that Frank delivered the titles to Jimmy.²¹ The titles were introduced into evidence as Exhibit 10. Frank claims that he never delivered the titles to Jimmy. Rather Frank insists that Jimmy stole the titles from him.

Either way it simply makes no difference for the purposes of analyzing the effect of Mississippi Code Annotated §63-21-31 on Jimmy's ownership of the mobile homes. Pursuant to Mississippi Code Annotated §63-21-31(4) neither Frank nor anyone else acting on behalf of the owner needed to have endorsed any certificate of title to Jimmy. Because §63-21-31(4) provides in part as follows:

If a security interest is reserved or created at the time of the transfer, the certificate of title shall be retained by or delivered to the person who becomes the lien holder...

²¹ Transcript pages 38 and 39.

Frank alleges in his brief that no security interest was created in the mobile homes at the time of the transfer. However, the facts fail to bear that out. On the date of the purchase, Jimmy executed a Purchase Money Land Deed of Trust and Security Agreement in favor of J. Patrick Caldwell, Trustee and Maxium, Inc., the Beneficiary.²² A security interest was created in the mobile homes by Paragraph 51 of the Purchase Money Land Deed of Trust and Security Agreement.²³ Thus, even though Frank delivered the blank certificates of title to jimmy it was not necessary that any certificates of title, much less endorsed certificates of title be delivered to Jimmy as Frank argues in his brief.

Issue Four

Mississippi Rule of Appellate Procedure 38 reads as follows:

In a civil case if the Supreme Court of Court of Appeals shall determine that an appeal is frivolous, it shall award just damages and single or double costs to the appellee.

An appeal is frivolous when, objectively speaking, the appellant has no hope of success.

McCoy v. City of Florence, 949 So.2d 69 at 39 (Miss.Ct.App. 2006), citing Little v. Collier, 759 So.2d 454 (Miss.Ct.App. 2000).

The present appeal is clearly frivolous, because the Appellant has, objectively speaking, no hope of success. To begin with, it's obvious from a simple reading of the Appellant's brief that he claims no legal interest in the subject matter of the litigation. Neither does the Appellant claim to be protecting any legal interest of his that was adversely affected by the Chancellor's ruling. It is an

²² Record page 188.

²³ Record page 207.

elementary principal of law that if one has no legal interest in the outcome of litigation, one has no standing to pursue the said litigation. Smith v. Malouf, 722 So.2d 490 at 499 (Miss. 1998).

Further, the two main points the Appellant brings forward in his brief are easily dismissed even upon a cursory review of the record. Appellant claims in his brief that no memorandum of the transaction exists as called for by Mississippi Code Annotated §15-3-1. Yet one Bill of Sale, prepared at the direction of the Appellant and signed with his knowledge and acquiescence, was introduced at trial as Exhibit 4, and thirty other such Bills of Sale were introduced at trail as Exhibit 7.

As his second point, the Appellant contends that Mississippi Code Annotated §63-21-31 was not complied with. He even goes so far as to assert:

As has been pointed out in the argument above, no security interest was created in these mobile homes because they were never identified in the deed, promissory note or deed of trust.²⁴

This is patently false, and a cursory glance at the record would have told him this. Paragraph 51 of the Purchase Money Land Deed of Trust and Security Agreement expressly creates "...a security interest in all mobile homes which are now, or may be in the future located on the subject real property."²⁵

Beyond being simply frivolous, the Appellee respectfully asserts that the present appeal was taken by the appellant in bad faith. On or about October 30, 2006 the Appellee entered into a contract with William H. Taylor, Jr. and Vanessa C. R. Taylor whereby he would sell the mobile

²⁴ Brief of the Appellant page 13.

²⁵ Record page 207..

home park, inclusive of the mobile homes, to the Taylors for a substantial profit.²⁶ Upon learning of this sale, and being requested to provide a payoff for the property, the Appellant, through counsel, refused to provide a payoff insisting that the mobile homes were not sold along with the land.²⁷ Thus, the sale to the Taylors was thwarted. As of the date of this filing, the Appellant, Frank Garrison, and all other entities created and controlled by him, including Maxim, Inc. and Eagle Horn, Inc. have refused to provide an unqualified payoff.

Despite the delays and the difficulties, the Taylors are still willing to purchase the Twin Creeks development. They have made efforts to appease Frank and work with him so that the sale can be consummated. At one point, after trial but prior to the filing of this brief, Mr. Taylor was told that Frank believed that he was entitled to a portion of Jimmy's profit from the sale of the park, and that he intended to delay the sale long enough to receive the equivalent amount of money in interest payments from Jimmy.²⁸

Should this Court find the appeal to be frivolous within the meaning of Rule 38, then it *must* award "just damages" and single costs. This Court *may* award double costs. Since the Appellee had a ready willing and able buyer for the mobile home park before the initial complaint was filed, and since that same buyer stands ready today to consummate the sale, "just damages" should include not only the Appellee's attorney's fees, but also the interest and expenses he has paid in relation to the park since the date of the Chancellor's ruling.

²⁶ Record page 8.

²⁷ Trial Exhibit 9.

²⁸ See the Affidavit of William H. Taylor, Jr. attached hereto as Appendix A.

Since the date of the Chancellor's ruling, the Appellee has incurred \$5,000.00 in attorney's fees, \$54,598.82 in interest payments, and \$69,987.13 in operational related expenses.²⁹ This totals damages in the amount \$129,585.95. Because of the nature of this case, the Appellee's damages will continue to accrue daily until this matter is resolved. Therefore, should this Court find the appeal to be frivolous and award just damages plus single or double costs in this matter, it should specify in its ruling the items of damage it believes should be awarded, and remand this matter to the Chancellor for the purpose of calculating the exact amount of those damages.

Conclusion

The Appellant has no legal interest in the subject matter of this litigation, and thus lacks standing to bring the instant appeal. He neither asserts a legal interest in the subject matter of this litigation, nor does he request that this Court vest any such interest in him. As an elementary principal of law, a person must have standing in order to proceed with litigation. Since the appellant, by his own assertions has no interest of the subject matter of the litigation, he has no standing to appeal the judgment of the chancellor. The appellee claims, and the chancellor found, that the appellant transferred his interest in the mobile homes to the appellee. The appellee claims that he never had an interest in the mobile homes to transfer away. Either way, it is absolutely undisputed that the appellant *has no* legal interest in the subject matter of this litigation. Therefore, the appeal should be dismissed without consideration of the issues raised in the appellants brief.

Should this Court find that the Appellant does have standing to bring the instant appeal, it should find that the Statute of Frauds, Mississippi Code Annotated §15-3-1, is satisfied by the Bills


²⁹ See the Affidavit of Jimmy W. Garrison attached hereto as Appendix B, the spreadsheet attached hereto as Appendix C, and the spreadsheet attached hereto as Appendix D.

of Sale drafted and signed at the direction of the Appellant.

Should this Court find that the Appellant does have standing to bring the instant appeal, it should find that Mississippi Code Annotated §63-21-31 did not require the Appellant to sign and deliver any Certificates of Title to the Appellee because a Security Interest was created in the mobile homes by Paragraph 51 of the Purchase Money Land Deed of Trust and Security Agreement.

Because it so clearly apparent, and absolutely undisputed, that the Appellant has no legal interest in the subject matter of this litigation, this Court *must* award just damages and single costs, and *should* award double costs to the Appellee pursuant to Rule 38 of the Mississippi Rules of Appellate Procedure. Because the Appellee damages are continuing in nature, and because the extent of those damages will need sworn testimony to prove, this court should determine the items of damage, for which the appellee is entitled to recover and remand the question of the amount of these damages to the Chancellor for determination.

Respectfully Submitted this the 8th, day of July, 2008.



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CERTIFICATE OF SERVICE

The undersigned, Robert W. Davis Jr., attorney for the Appellee, in this matter does hereby certify that he has this date placed in the United States Mail, postage prepaid, a true and correct copy of the above and foregoing Appellee's Brief to the following:

Ben M. Logan, Esquire
Mims & Logan, LLC.
Post Office Box 826
Tupelo, Mississippi 38802-0826

THIS, the 8 day of July, 2008.



Robert W. Davis, Jr.
Attorney for Appellee
MSB # 10411

STATE OF _____

COUNTY OF _____

AFFIDAVIT

I, William H. Taylor Jr., state my wife and I desire to be the owners of the Twin Creeks Mobile Home Park located in New Albany, Mississippi. At this date we still have a substantial amount of good faith money in the escrow account of our attorney for this purchase. We have discussed many possible ways to attempt to finalize the sale but due to the circumstances, none of the solutions met the needs of myself or Mr. Garrison. One of the sale solutions is the subject of this affidavit that is written in my own words.

At this time, I do not remember the exact dates of the conversations between me and Mr. Frank Garrison and his attorney, Mr. Ben Logan. Before I contacted Frank Garrison or his attorney I called my attorney, Mr. Tom McDonough to ask if this was appropriate. He advised me that since I was not named in any court action between Frank Garrison and Jim Garrison, there should not be a problem in me contacting either of them.

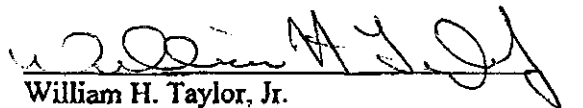
I believe the initial call was from me to Ben Logan proposing that Frank Garrison hold the mortgage for the mobile home park as he was doing for his brother Jim. This would have allowed my wife and I to own the park and mobile homes until a decision was made about who actually owned the park and homes. At some point I got Frank Garrison's phone number, possibly from his attorney, and contacted him with the same scenario. Frank Garrison told me that he would talk to his attorney Ben Logan and in a specified time period for me to call Ben Logan for an answer. It took several weeks before I could talk to Ben Logan and the answer was that Frank was not interested in



holding the mortgage for me and my wife. During the conversation with Ben Logan it was explained to me that Frank felt he was owed a profit from the sale of the park and homes. Mr. Logan said that Frank had calculated if he held the mortgage for two and a half years he will have received the profit he deserved. I explained to Mr. Logan that if Frank held the mortgage for us he would get much more than that he felt he deserved from his brother because his brother's mortgage had a short term limit. He told me he understood that but Frank wanted the money from his brother.

These conversations were the only ones between me, Frank Garrison and Ben Logan.

PERSONALLY APPEARED before me, the undersigned authority in and for the County and State aforesaid, the within named William H. Taylor, Jr., who, after being first duly sworn, states that all the facts contained herein his said affidavit are true and correct as therein stated.


William H. Taylor, Jr.

SWORN TO AND SUBSCRIBED BEFORE ME, this the 25TH day of
JUNE, 2008.


NOTARY PUBLIC

MY COMMISSION EXPIRES:

Nov 9, 2009

JIMMY L ROHN
Notary Public, State of Florida
My comm. exp. Nov. 9, 2009
Comm. No. DD 489464


STATE OF MISSISSIPPI


COUNTY OF LEE

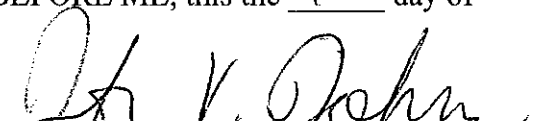
AFFIDAVIT

I, Jim Garrison state that after the ruling of the Chancellor in this case, I have incurred outrageous amounts in expenses. As of today's date, I have paid \$5000.00 dollars in attorney fees. I have paid \$54,598.82 dollars in interest and \$69,987.13 in expenses and maintenance on the property involved in this litigation.

PERSONALLY APPEARED before me, the undersigned authority in and for the County and State aforesaid, the within named Jim Garrison, who, after being first duly sworn, states that all the facts contained herein his said affidavit are true and correct as therein stated.


Jim Garrison

 SWORN TO AND SUBSCRIBED BEFORE ME, this the 7th day of July, 2008.


NOTARY PUBLIC

MY COMMISSION EXPIRES:



----- PREPARED FOR -----
MAXIUM, INC.

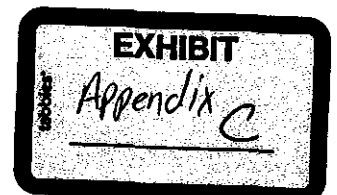
----- NAME/LOAN # -----
JIMMY W. GARRISON

----- PREPARED BY -----
RILEY, CALDWELL CORK & ALVIS
207 COURT STREET
TUPELO, MISSISSIPPI 38804

PRINCIPAL amount of loan: \$800,000.00 NUMBER OF PAYMENTS: 96
INTEREST (simple annual rate): 8.00000% PAYMENT AMOUNT: \$ 11309.34

DUE DATE	INTEREST THIS YR.	INTEREST TO DATE	INTEREST PAYMENT	PRINCIPAL PAYMENT	LOAN BALANCE	PI
6/ 5/06		5333.33	5333.33	5976.01	794023.99	
7/ 5/06		10626.82	5293.49	6015.85	788008.14	
8/ 5/06		15880.21	5253.39	6055.95	781952.19	
9/ 5/06		21093.22	5213.01	6096.33	775855.86	
10/ 5/06		26265.59	5172.37	6136.97	769718.89	
11/ 5/06		31397.05	5131.46	6177.88	763541.01	
12/ 5/06	36487.32	36487.32	5090.27	6219.07	757321.94	
1/ 5/07		41536.13	5048.81	6260.53	751061.41	
2/ 5/07		46543.21	5007.08	6302.26	744759.15	
3/ 5/07		51508.27	4965.06	6344.28	738414.87	
4/ 5/07		56431.04	4922.77	6386.57	732028.30	
5/ 5/07		61311.23	4880.19	6429.15	725599.15	
6/ 5/07		66148.56	4837.33	6472.01	719127.14	
7/ 5/07		70942.74	4794.18	6515.16	712611.98	
8/ 5/07		75693.49	4750.75	6558.59	706053.39	
9/ 5/07		80400.51	4707.02	6602.32	699451.07	
10/ 5/07		85063.52	4663.01	6646.33	692804.74	
11/ 5/07		89682.22	4618.70	6690.64	686114.10	
12/ 5/07	57768.99	94256.31	4574.09	6735.25	679378.85	
1/ 5/08		98785.50	4529.19	6780.15	672598.70	
2/ 5/08		103269.49	4483.99	6825.35	665773.35	
3/ 5/08		107707.98	4438.49	6870.85	658902.50	
4/ 5/08		112100.66	4392.68	6916.66	651985.84	
5/ 5/08		116447.23	4346.57	6962.77	645023.07	
6/ 5/08		120747.38	4300.15	7009.19	638013.88	
7/ 5/08		125000.81	4253.43	7055.91	630957.97	
8/ 5/08		129207.20	4206.39	7102.95	623855.02	
9/ 5/08		133366.23	4159.03	7150.31	616704.71	
10/ 5/08		137477.59	4111.36	7197.98	609506.73	
11/ 5/08		141540.97	4063.38	7245.96	602260.77	
12/ 5/08	51299.73	145556.04	4015.07	7294.27	594966.50	
1/ 5/09		149522.48	3966.44	7342.90	587623.60	
2/ 5/09		153439.97	3917.49	7391.85	580231.75	
3/ 5/09		157308.18	3868.21	7441.13	572790.62	
4/ 5/09		161126.78	3818.60	7490.74	565299.88	
5/ 5/09		164895.45	3768.67	7540.67	557759.21	
6/ 5/09		168613.84	3718.39	7590.95	550168.26	
7/ 5/09		172281.63	3667.79	7641.55	542526.71	

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4,392-69 +
4,438-89 +
4,485-99 +
4,529-19 +
4,574-09 +
4,618-70 +
4,663-01 +
4,707-62 +
4,750-75 +
4,794-18 +

0-008+

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Intuit
7/5/07
6/6/08

TWIN CREEKS

PAYEE	MATERIALS	PARTS	ADVERTISING	INSURANCE	OFFICE SUPPLIES	UTILITES	CLEANING SUPPLIES	TAXES	MISC
7/9/07 1134 NEW ALBANY LGW						267.43			
7/9/07 1135 HENDERSON PEST CONT								PEST CONTR	112.35
7/13/07 1136 SPRATLIN	3.84								
7/30/07 1138 CASH	6815.29	1639.56	150.36		83.61		1072.25	GAS/OIL	763.42
								APPLIANCES	397.12
								LABOR	10357.59
8/3/07 1139 UNION CO SOLID WASTE								GARB DISP	42.40
8/3/07 1140 HENDERSON PEST CONT								PEST CONTR	160.50
8/3/07 1141 FOREMOST				805.48					
8/3/07 1142 NEW ALBANY LGW						347.31			
9/4/07 1145 TERMINIX								PEST CONTR	80.44
9/4/07 1146 FOREMOST				805.48					
9/11/07 1147 NEW ALBANY LGW									12.97
9/11/07 1148 NEW ALBANY GAZETTE			25.38						
9/11/07 1149 NEW ALBANY LGW						137.42			
9/11/07 1150 HENDERSON PEST CONT								PEST CONTR	80.25
9/20/07 1418 RAFCO								DOORS	498.36
10/3/07 1427 UNION CO SOLID WAST								GARB DISP	8.00
10/4/07 1428 FOREMOST				805.48					
10/8/07 1431 NEW ALBANY LGW						444.91			
10/15/07 1432 NEW ALBANY GAZETT			25.38						
10/26/07 1433 DENNIS RAKESTRAW								42.60	
11/7/07 1439 DAILY JOURNAL			82.65						
11/07/07 ONLINE PAY FOREMOST				805.48					
11/7/07 1440 UNION CO SOLID WAST								GARB DISP	7.2
11/8/07 1442 NEW ALBANY LGW						116.95			
12/07/07 1445 UNION CO SOLID WAST								GARB DISP	8.00
12/7/07 1446 FOREMOST				805.48					
12/7/07 1447 NEW ALBANY GAZETT			52.86						
12/07/07 1448 NEW ALBANY LGW						469.63			
12/24/07 1450 MCMINN CONSTR								LABOR	10,400.00
1/7/08 1452 NEW ALBANY GAZETTE			163.48						
1/8/08 1453 NEW ALBANY LGW						408.46			
TOTAL	6819.13	1639.56	500.11	4027.40	83.61	2192.11	1072.25	42.60	22928.60

EXHIBIT
Appendix D

PAYEE	MATERIALS	PARTS	ADVERTISING	INSURANCE	OFFICE SUPPLIES	UTILITES	CLEANING SUPPLIES	TAXES	MISC
1/8/08 WITHDRAWEL FOREMOST				805.48					
1/28/08 1455 DENNIS RAKESTRAW							MOBILE HOME	5054.96	
1/28/08 1456 DENNIS RAKESTRAW							LAND	3362.63	
2/9/08 1458 UNION CO SOLID WAST								GARBAGE DIS	16.80
2/9/08 WITHDRAWEL FOREMOST				805.48					
2/9/08 1459 NEW ALBANY LGW						421.98			
3/6/08 1461 FOREMOST				805.48					
3/10/08 1462 NEW ALBANY LGW						625.23			
4/8/08 1464 RALFCO								DOORS	399.64
4/8/08 1465 FOREMOST				805.48					
4/8/08 1466 NEW ALBANY LGW						274.49			
5/7/08 1469 UNION CO SOLID WASTE								GARBAGE DIS	7.20
5/7/08 1470 FOREMOST				1895.96					
5/7/08 1471 NEW ALBANY LGW						217.00			
6/6/08 1473 UNION CO SOLID WASTE								GARBAGE DIS	8.00
6/6/08 1474 NEW ALBANY LGW						181.05			
6/6/08 1475 NEW ALBANY LGW						189.90			
6/6/08 1476 MCMINN CONSTR								LABOR	10500.00
TOTAL				5117.88		1909.65		8417.59	10931.64

69,987.13*

014

4,305.00+
10,931.64+
8,417.59+
1,909.65+
5,117.88+
22,928.60+
42.60+
1,072.25+
2,192.11+
83.61+
4,027.40+
500.11+
1,639.56+
6,819.13+

0.*

Expenses @
7/07 - 6/08
Per

0.*


CERTIFICATE OF SERVICE

The undersigned, Robert W. Davis Jr., attorney for the Appellee, in this matter does hereby certify that he has this date placed in the United States Mail, postage prepaid, a true and correct copy of the above and foregoing Appellee's Brief to the following:

Chancellor, Mike Malski
Post Office Box 543
Amory, Mississippi 38821

Ben M. Logan, Esquire
Mims & Logan, LLC.
Post Office Box 826
Tupelo, Mississippi 38802-0826

THIS, the 16th day of July, 2008.



Robert W. Davis, Jr.
Attorney for Appellee
MSB # 