

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for the Appellant 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 Appellant Procedure.

1. Frank Garrison – Appellant and Defendant below, represent by Ben M. Logan, Esq., Post Office Box 826, Tupelo, MS 38802 on appeal and Honorable Michael McHenry, Esq., Post Office Box 7316, Tupelo, MS 38802.
2. Jimmy Garrison – Plaintiff and Appellee, represented by Chip Davis, Esq., Post Office Box 1525, Tupelo, MS 38802-1525.
3. M. R. Anderson – aunt of Frank and Jimmy Garrison, previous owner of real property conveyed to Jimmy Garrison, not represented.
4. Sandra Brown – ex-wife of Frank Garrison, mother of C. E. Garrison and J. F. Garrison, represented by Ben M. Logan, Esq. during the trial proceedings, previous owner of some of the mobile homes.
5. C. E. Garrison – son of Frank Garrison and Sandra 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 Brown, represented by Ben M. Logan, Esq., in 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 court 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.

RESPECTFULLY SUBMITTED,

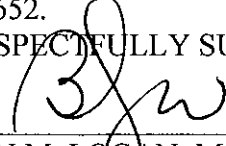

BEN M. LOGAN, MSB [REDACTED]
Attorney for Appellant

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I. STATEMENT OF ISSUES

I. The Chancellor erred as a matter of law in finding that title to mobile homes passed to Jimmy Garrison during the March 2006 real estate transaction between M. R. Anderson, Frank Garrison and Jimmy Garrison.

II. The Chancellor erred as a matter of law in failing to vest title of the mobile homes in C. E. Garrison and J. F. Garrison.

II. STATEMENT OF THE CASE

A. Nature of the Case

This appeal involves a transaction between two brothers, Frank Garrison, Appellant, and Jimmy Garrison, Appellee. The transaction was the May 2006 sale of the Twin Creeks mobile home park by Frank Garrison to Jimmy Garrison. Frank Garrison contends that the sale involved the real estate only. Jimmy Garrison contends that he purchased both the land and thirty (30) manufactured homes owned by Twin Creeks. In October 2006, Jimmy Garrison entered into a contract for the sale and purchase of the land and manufactured homes to third party buyers. From the original transaction in May 2006 until January 2007, the brothers have argued about the ownership of the thirty (30) manufactured homes, culminating in written notice by Frank Garrison on January 5, 2007 that the payoff on the real property did not include the thirty (30) units. (Transcript; January 22, 2007; Page 34, Exhibit 9).

B. Course of the Proceedings:

On January 16, 2007, Jimmy Garrison filed his Complaint for Tortuous Interference With Contract, Motion for Preliminary Mandatory Injunction, Temporary Restraining Order And For Permanent Mandatory Injunction And A Motion For Declaratory Judgment, against brother Frank Garrison, Maxium, Inc., and Eagle Horn, Inc. An “emergency” hearing was had on January 22, 2007, wherein the Chancellor granted Jimmy Garrison’s preliminary injunction, and due to testimony adduced at the hearing casting doubt as to the ownership of the thirty (30) mobile homes and their inclusion in the sale, the Chancellor ruled:

As soon as is practical, the parties shall proceed on the Plaintiff's Motion for Declaratory Judgment. The object of that proceeding shall be to determine the thirty (30) mobile homes in question. If it is determined that the Plaintiff is the owner of the thirty (30) mobile homes he shall receive the money paid into the registry of the Court. If it is determined that the Defendant, Frank Garrison, or some other person is the lawful owner of the mobile homes the money shall be distributed accordingly. Alternatively, should the Court determine after a full hearing on the merits that an agreement existed between the parties to split any profit made from the sale above \$800,000.00 the Court will adjust the equities accordingly.

(Record, Page 92).

On March 15, 2007 Sandra Brown (Frank Garrison's ex-wife), C. E. "Chris" Garrison and J. F. "Josh" Garrison (Frank and Sandra's sons) entered an appearance as necessary parties and requested the Court to reconsider its ruling of January 23, 2007. (Record 130-132). An Agreed Order was entered, denying the motion to reconsider but allowing the three to intervene as party defendants. (Records 133-134).

C. Disposition

After extensive discovery on June 5, 2007, the hearing on the merits was conducted. The Chancellor found that Frank Garrison was the "true owner" of the mobile homes and that, "Title to the land and mobile homes passed to Jimmy subject to a valid purchase him against said property, real and personal. Jimmy now owns the land and thirty (30) mobile homes subject to the above mentioned deed of trust and security agreement."

(Record 230-231).

Frank, Josh and Chris Garrison moved to reconsider and the motion was denied. Frank Garrison appealed to this Court. Jimmy Garrison moved to require Frank Garrison, the appellant, to post supersedeas, and the motion was denied. Jimmy Garrison also moved before this Court to dismiss the appeal on the basis of Frank Garrison's lack of standings, and such motion was dismissed for such argument to be made on appeal.

D. Statement of Facts

Frank Garrison acquired the real property known as the Twin Creeks Manufactured Home Community some time ago. The real property was held in the name of Mary Anderson, Frank and Jimmy Garrison's aunt. From 2001 to late 2003 or early 2004, Frank Garrison and his wife Sandra began to acquire manufactured home units to sell and to place on the property. (Deposition of Sandra Garrison, Pages 74-80, Exhibit 2, June 5, 2007) (Transcript, June 5, 2007, Pages 186-187). These units were refurbished, and some rented out to tenants, awaiting ultimate disposition. Sandra, a licensed dealer, purchased units as Sandra Garrison d/b/a Capital. Frank Garrison was later licensed, and purchased units as Frank Garrison, or A-1 Home Town Sales. On almost all of the thirty (30) units in dispute, certificates of title and bills of sale flowed to Sandra and Frank Garrison. Two or three of the units were purchased by Frank Garrison at tax sales and titled either in his name or his son's names. Title to many of the units remained "open" but possessed by either Frank Garrison, A-1-Home Town Sales, Sandra Garrison or Capital.

Frank and Sandra Garrison separated in 2004, and bitter divorce litigation ensued, culminating in divorce in July 2006. When Sandra separated, she left the titles and sale paperwork with Frank Garrison. At the time of the divorce, including her Rule 8.05 Disclosure, executed July 3, 2006, she believed that Frank Garrison had disposed of the titles and trailers or had put them in his or someone else's name. She did not claim them on her Rule 8.05

Disclosure. (Deposition of Sandra Garrison, Pages 20-21, Exhibit 2, June 5, 2007 hearing). On March 24, 2006, Frank Garrison d/b/a A-1 Home Town Sales executed bills of sales to thirteen (13) of the units to his sons Chris and Josh Garrison. (See Exhibits to Depositions of C. E. Garrison and J. F. Garrison, Exhibits 3 and 4 of June 5, 2007 hearing). Frank Garrison did not deliver the certificates of title. Frank Garrison did not claim the units on his Rule 8.05 Disclosure, also executed in July 2005. Twin Creeks was one of the Frank Garrison family businesses. Up until her separation with Frank Garrison, Sandra acted as a licensed manufactured home dealer, bookkeeper and helped run the park. Chris and Josh Garrison performed work for their parents, including work around the park. They continued to work for their dad after the separation.

Frank had been approached several times to sell the mobile home park. In early 2006, he began discussing a sale of the park to his brother, Jimmy Garrison. On May 23, 2006, Jimmy Garrison executed a Promissory Note and a Purchase Money Land Deed of Trust and Security Agreement. (Exhibit 5, January 22, 2007 hearing). The Promissory Note was made out to Maxium, Inc., one of Frank Garrison's corporations. (Exhibit 2, January 22, 2007 hearing). A Warranty Deed was also executed on May 23, 2006 conveying the real property from the record title owner, M. R. "Mary" Anderson, to Jimmy Garrison. (Exhibit 3, January 22, 2007 hearing). These execution of these documents all occurred at the Law Office of Riley, Caldwell, Cork and Alvis in Tupelo, Mississippi. None of these documents referenced or spoke to the thirty (30) mobile homes that is the subject matter of this dispute. The Deed of Trust was secured by the real property and promissory note. The promissory note was for \$800,000.00 at 8% interest to be paid back to Maxium, Inc. over 8 years with monthly payments of \$11,309.34 (Exhibit 2,

Hearing of January 22, 2007).

Later in the afternoon of May 23, 2006, without Frank Garrison present, and at Jimmy Garrison's car lot, M. R. "Mary" Anderson, the record title holder of the real property, signed a combined bill of sale for all of the mobile home units to Jimmy Garrison. (Transcript, January 22, 2007 Page 25). Jimmy Garrison took this document to the Chancery Clerk's office in Union County to record it, and was directed to file individual bills of sale. On May 26, 2006, M. R. "Mary" Anderson signed over those individual bills of sale to Jimmy Garrison.

Jimmy and Frank Garrison's mother, Ann Starling, President of Maxium, Inc., had previously executed a power of attorney to Frank Garrison. On September 6, 2006, Frank Garrison exercised this power of attorney and assigned the deed of trust to Eagle Horn, Inc., a corporation Frank Garrison set up in his sons' names. (Exhibit 6, January 22, 2007 hearing).

Frank Garrison contends that the mobile home units were not a part of the sale. Frank Garrison argues the brothers had discussed these, but did not reach agreement. Jimmy Garrison argues that the trailers were a part of this agreement.

These bills of sale were prepared from handwritten notes that Jimmy Garrison's secretary received from Frank Garrison during the earlier negotiations (Exhibit 12, Hearing January 22, 2007) and not from the original certificates of title and bills of sale to Sandra Garrison, Capital, Frank Garrison or A-1 Home Town Sales. (Transcript, Page 65, Testimony of Cathy Cunningham, January 22, 2007). Jimmy Garrison claimed that Frank Garrison delivered the titles at the subsequent closing at his car lot "on the day of the sale, the best I recall" "in a white envelope." (Transcript, page 54, Testimony of Jimmy Garrison, January 22, 2007). Frank Garrison denies this. Ann Starling, the mother of Jimmy and Frank Garrison, testified that

Jimmy Garrison told her of the titles, "I don't have to have them. I haven't got them, and I don't have to have them." (Transcript, page 115, Testimony of Ann Starling, January 22, 2007). Frank Garrison testified that he was upset when he learned that Jimmy Garrison had directed M. R. "Mary" Anderson to sign over bills of sales on the mobile homes without the actual certificates and supporting documentation. (Transcript, June 5, 2005, pages 200-202). M. R. "Mary" Anderson was never in possession of the originals nor was she anywhere in the chain of title. (Transcript, Page 83, Testimony of M. R. "Mary" Anderson, January 22, 2007). On October 14, 2007, Frank Garrison filed an offense report with the Union County Sheriff's Department that someone had stolen the original titles and supporting documentation from his automobile while it was parked at his mother's house in Sherman, Mississippi. (Exhibit 11, January 22, 2007). The original titles and supporting documents appeared at the hearing, introduced by Jimmy Garrison, not in a white envelope but in an expandable folder all neatly arranged. (Exhibit 10, January 22, 2007). When asked if he reviewed the titles, Jimmy Garrison stated, "No, I did not. I ain't looked at none of them." (Transcript, page 56, Lines 22-24; Testimony Jimmy Garrison, January 22, 2007). The original titles and supporting documents remain in the lower court file today. An examination of each of them shows that some are still open, some in Frank Garrison's name, some in Sandra Brown's name, some in Capital, some in A-1 Hometown Sales. None of them were ever signed over to M. R. "Mary" Anderson or to Jimmy Garrison.

On October 31, 2006, Jimmy Garrison entered into a contract with William and Vanessa Taylor, entitled "Contract for Purchase and Sales." (Record Page 15-22, Exhibit 1, Plaintiff's Complaint). The drafter of the contract took great care to list the thirty (30) mobile homes by year make, model and serial number, and stated, "Together with the necessary transferring bills of sale the seller also agrees to provide existing bills of sale evidencing seller ownership to

facilitate buyers acquisition of new titles covering the referenced mobile homes.” (Record; Page 17, Paragraph 1). Of note is the lack of inclusion of such identifying written provisions in any of the agreements between Frank Garrison, M. R. “Mary” Anderson or Jimmy Garrison. The sale of the land and thirty (30) mobile homes by Jim to the third party was for \$1,225,000.00, listing the consideration for the mobile homes at \$287,200.00 and the infrastructure and land at \$901,000.00. (Record, Page 17, Paragraph 2).

Frank Garrison and Sandra Brown began to have discussions after their divorce about the conflict over the trailers between Frank Garrison and Jim Garrison. Frank Garrison let Sandra Brown know that many of the trailers still belonged to her. On November 29, 2006, in a precautionary act, Sandra Brown executed a bill of sale to her son Josh Garrison of all of the trailers either titled or in the chain of title to her, and delivered it to Frank Garrison in trust to deliver to Josh Garrison at her direction if anything happened to her. (Transcript, June 5, 2007, Pages 222-225; and Exhibit 1 of that hearing). Sandra Brown grew tired of the ongoing litigation, and directed Frank Garrison convey the bill of sale to Josh Garrison the weekend prior to the June 5, 2007 hearing. She did not attend the hearing.

At the hearing on the merits, the status of the original certificates of title and chains of title thereto to the mobile homes was that they were all in Chris and Josh Garrison’s names by virtue of the March and November 2006 bills of sale from their parents. No where in the voluminous record is any support that the original titles or the chains of title were executed or placed in M. R. “Mary” Anderson, who purported to convey them to Jimmy Garrison on March 23 or March 26, 2007. Despite this, the Chancellor deemed that Frank Garrison was the true owner of the mobile homes, and he passed the title of same to Jimmy Garrison by virtue of the deed of trust and promissory note to Maxium, Inc., later assigned to Eagle Horn, Inc. to Jimmy

Garrison.

III. SUMMARY OF THE ARGUMENT

Despite these convoluted transactions and a highly dysfunctional extended family, the legal issues are fairly simple and rest on long-established principles of Mississippi law. It is expected that much will be made by the Appellee of how shady a character Frank Garrison is, which is not hereby admitted. However, assuming that Frank Garrison is a shady character, the underlying principles of law provide precautions when dealing with such men, and they simply were not followed by Jimmy Garrison, a used car dealer very familiar with both vehicle titles and brother Frank Garrison. The first issue on appeal as set forth above is settled quickly by the Statute of Frauds. The alleged sale of the mobile homes with the land was not in writing, and as such unenforceable. The second issue on appeal as set forth above likewise is settled by application of the Mississippi motor vehicle titling laws. The original certificates of titles or the chains of titles thereto were never executed to M. R. "Mary" Anderson or Jimmy Garrison. Consequently, she could not convey what she did not own – regardless of who the true owner was. Her actions are no different than having the V.I.N. number to someone's car and giving a bill of sale on it to Jimmy Garrison.

IV. ARGUMENT

A. The Chancellor erred as a matter of law in finding that title to mobile homes passed to Jimmy Garrison during the March 2006 real estate transaction between M. R. Anderson, Frank Garrison and Jimmy Garrison.

Mississippi Statute requires certain contracts to be in writing:

An action shall not be brought to charge a defendant or other party:

...

(d) upon any agreement which is not to be performed within the space of fifteen months from the making thereof.

...

unless, in each of said cases, the promise or agreement upon which such acting may be brought, or some memorandum thereof, shall be in writing, and signed by the party to be charged therewith or signed by some person by him or her thereunto lawfully authorized in writing.

Miss. Code Anno. § 15-3-1 (d)(1972 as amended).

No “document or memorandum thereof” is present in this record wherein Frank Garrison, A-1 Home Town Sales, Sandra Garrison, Capital, Maxium, Chris Garrison or Josh Garrison conveyed to M. R. “Mary” Anderson or Jimmy Garrison thirty (30) manufactured homes, established by the Plaintiff’s own complaint to be worth \$297,000.00. The buyers from Jimmy Garrison made sure that such a provision was in their contract for purchase and sale. Jimmy Garrison made sure that the land description was in a deed, and Frank Garrison made sure that such a description – along with the terms of the promissory note – were included in the deed of trust as required by Miss. Code Anno. § 15-3-1 (c), “upon any contract for sale of lands...”.

The note and deed of trust that specified the real property to be sold was for a term of at least eight (8) years, well beyond the fifteen month requirement set forth above. If the land and mobile homes were to be sold together as Jimmy Garrison argues, then the terms of the above documents clearly exceeded fifteen months.

Appellee will certainly argue that the Purchase Money Land Deed of Trust and Security

Agreement (Exhibit 5, January 22, 2007) has a dragnet provision securing “fixtures” to Maxium, Inc./Frank Garrison and including the mobile homes in such a definition. This agreement should fail for two reasons. First, the conveyance of land from M. R. “Mary” Anderson to Jimmy Garrison neither describes nor specifies such fixtures as having been conveyed. Secondly, the type of “fixtures” that a manufactured home might become can only be conveyed pursuant to the motor vehicle titling laws set forth in Miss. Code Anno. § 63-21-31 and § 63-21-33 (1972 as amended). This was simply not done.

Jimmy Garrison was taken aback, as was the Chancery Clerk, that only eight (8) mobile homes out of the thirty (30) that had been enrolled on the ad valorem tax rolls as real or personal property pursuant to Miss. Code Anno. § 27-53-15, § 27-53-13 or exempt under § 27-53-27. (Transcript, Page 26, January 22, 2007). And of those enrolled, title was in Frank Garrison or one of his sons, representing those units purchased at tax sales. Whether Frank Garrison was right or wrong in his claim that he was exempt from real or personal property taxes as a dealer under Miss. Code Anno. § 27-53-27(c), that is between Frank Garrison and Union County, not proof of “fixtures” as may be argued.

Jimmy Garrison’s claim that he bought the trailers as a part of the overall deal fails due to the lack of a writing that they were included and the lack of the signature of the party to be charged.

B. The Chancellor erred as a matter of law in failing to vest title of the mobile homes in C. E. Garrison and J. F. Garrison.

The motor vehicle titling statutes are clear:

- (1) If an owner transfers his interest in a vehicle, manufactured home or mobile home, other than by creation of a security interest, he shall at the time of the

delivery of the vehicle, manufactured home, execute an assignment and warranty of title of the transferee in the space provided therefore on the certificate or as the State Tax Commission prescribes, and cause the certificate and assignment to be mailed or delivered to the transferee.

and...

(5) Except as provided in Section 63-21-35, and as between the parties, a transfer by an owner is not effective until the provisions of this chapter are complied with.

Miss. Code Anno. § 63-21-31 (1)(5) (1972 as amended).

In the seminal case on this statutory requirement, Hicks v. Thomas, 516 So.2d 134 (Miss. 1987), the Supreme Court clearly explains both the rationale and the rule

If there be any area where we ought to move heaven and earth to avoid uncertainties and indeterminacies that seem to incessantly infect our law, it is with regard to titles. Motor vehicles, because of their mobility and value, are particularly in need of a uniform title system, one which at any point in time may allow it to be determined with certainty who is the owner. Such a title system facilitates the recovery of lost or stolen vehicles and the perfecting of security interest in vehicles.

Hicks, 516 So.2d at 1346.

As to the rule, “Our legislature has provided such a system in the form of the Mississippi Motor Vehicle Title Law, originally enacted in 1968.” Id. Further, “That statute accepts certainty of title as our primary value, and provides a simple method for transferring title to motor vehicles – endorsement and delivery to the transferee of the title certificate.” Id. (Emphasis added).

As in Hicks, “No one suggests that Thomas ever signed or endorsed his title certificate to Cross, Daniels, Hicks or anyone else,” and no one suggests that Frank Garrison, Sandra Garrison, Capital, A-1 Home Town Sales, Maxium, Josh or Chris Garrison ever signed the titles to the thirty (30) trailers to M. R. “Mary” Anderson, Jim Garrison or anyone else. Id.

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. Jimmy Garrison is not unlearned of the titling law – HE IS A CAR DEALER. Although his purchaser put the obligation to convey certificates of title in the purchase contract, Jimmy Garrison has neither proved a writing obligating Frank Garrison or any owner of the units to transfer title, nor has he received through anyone the transfer of title required by statute. Unless, Jimmy Garrison can prove that he falls within one of the exceptions, his or M. R. “Mary” Anderson’s claim to the trailers must fail as a matter of clear statutory law. If Frank Garrison is the owner as found by the Chancellor, then he must obligate himself to convey title in writing or actually convey title in accordance with the statute. He has done neither, and the Chancellor erred as a matter of law in divesting him or his son’s with ownership and placing it with Jimmy Garrison; through M. R. “Mary” Anderson or anyone else.

V. CONCLUSION

The Chancellor below erred as a matter of law in vesting title in thirty mobile homes in Jimmy Garrison in contravention of the clear requirements of the State of Frauds set forth in Miss. Code Anno. § 15-3-1(d). Frank Garrison claims that the mobile homes were not a part of the \$800,000.00 sale, asserting that price was for the land alone. Jimmy Garrison argues that the mobile homes were a part of the sale. The record below is bereft of any writing or memoranda signed by Frank Garrison, the party to be charged, either identifying the trailers as a part of the deed, promissory note or deed of trust or authorizing anyone to convey them. This lack of a signed writing is the exact problem the law is designed to prevent.

The Chancellor below also erred as a matter of law in allowing the bills of sale executed by M. R. "Mary" Anderson who had no ownership interest at all in them, to Jimmy Garrison to vest title in him, in contravention of this State's motor vehicle titling laws and to the exclusion of the titled owners or those possessing the certificates of title with proof of chain of title. The caselaw and statute is clear that the method of transfer prescribed is exclusive. No evidence exists that the certificates of title were ever transferred, nor is there evidence that Frank Garrison conveyed them to M. R. "Mary" Anderson or authorized her to convey them.

Frank Garrison urges the Court to reverse the Chancellor's decision and award ownership of the units to his sons Josh and Chris Garrison, the holders of bill of sales from Frank Garrison, A-1 Home Town Sales, Sandra Garrison Brown and Capital, the owners.

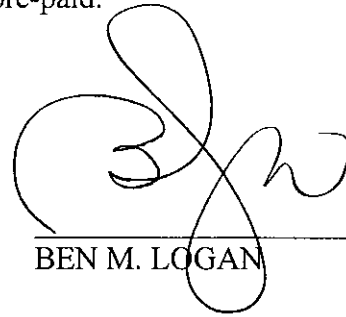
RESPECTFULLY SUBMITTED,


BEN M. LOGAN, MSB
Attorney for Appellant

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have this date mailed a true and correct copy of the above and foregoing Appellant's Brief to Honorable Judge Michael Malski, Chancellor, P.O. Box 316, Amory, Mississippi 38821; and to Robert W. Davis, Jr., Esq., Post Office 1525, Tupelo, MS 38802-1525 by United States mail, postage pre-paid.

This the 5th day of May, 2008.



A handwritten signature in black ink, appearing to read 'B. Logan', is written over a horizontal line. The signature is stylized with large loops and a cursive 'n'.

BEN M. LOGAN