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## **INTRODUCTION**

The present action before the Court involves the Plaintiff's action to quiet and confirm title by adverse possession. The Defendants have offered no proof to contest the Plaintiff's claim for adverse possession, which is evidenced by Defendant Tyler failing to respond to the Plaintiff's motion for summary judgment, Defendant Paradise attaching a fraudulent affidavit to their response, Defendant Tyler failing to respond to the Plaintiff's motion to reconsider motion denying summary judgment, and most recently the fact that Defendant Tyler simply joined in Defendant Paradise's Brief which again amounts to filing no response. The Plaintiff has established that the Defendants have no proof to contest the claim for adverse possession and summary judgment was proper. Alternatively, at the very minimum, the Trial Court erred in granting the Rule 41 dismissal because clearly evidence indicates that the Plaintiff might arguably might be entitled to judgment. Consequently, the Plaintiff respectfully requests this Court reverse the trial court's ruling and render this case.

## **ARGUMENT**

### **I. THERE ARE NO GENUINE ISSUES OF MATERIAL FACT.**

In the Brief submitted to this Court, Defendant Paradise, in response to the Plaintiff's assertion that there are no genuine issues of material fact, set forth that Defendant Tyler was consistent in her affidavit, testimony and deposition that she claimed ownership to the subject property. (Appellee's Brief at 12-13). This assertion is incorrect. When questioned at trial regarding her claim of ownership, Defendant Tyler responded as follows:

Q: You never made a claim of ownership?

A: Not a public claim.

(R. at 81).

The Defendant's Brief set forth no other evidence of a genuine issue of material fact other than the allegation that Defendant Tyler was consistent with her claim of ownership which has been proven incorrect. The Defendants inability to put forth any genuine issue of material fact further proves that the Plaintiff's motion for summary judgment should have been granted. Since there are no genuine issues of material fact, the Plaintiff respectfully requests that this Court reverse the trial court's ruling and render this case.

**II. BELIEVING LAND IS WITHIN THE CALL OF THE ADVERSE POSSESSOR'S DEED DOES NOT DEFEAT A CLAIM FOR ADVERSE POSSESSION.**

The only issue raised by Defendant Paradise is: Does a mistaken belief by an adverse possessor that the land is within the calls of the possessor's deed defeat the claim? Defendant Paradise throughout their Brief takes issue with the fact that the Plaintiff believed the disputed 6.5 acre tract was within the call of their deed. While citing no law in support, Defendant Paradise asserts that you cannot claim title by adverse possession if you believe the land is within the call of your deed. (Appellee's Brief at 20). To the contrary, it is well settled that "possession is hostile and adverse when the adverse possessor intends to claim title notwithstanding of the claim is made under a mistake and belief that the land is within the call of the possessor's deed." *Wicker v. Harvey*, 937 So.2d 983, 994 (Miss.Ct.App. 2006) (citing *Alexander v. Hyland*, 58 So.2d 826, 829 (Miss. 1952)). Defendant Paradise's argument is without merit, and the Plaintiff respectfully requests this Court reverse the trial court's ruling and render this case.

**III. THE PLAINTIFF'S OCCUPATION OF THE 6.5 ACRE WAS ACTUAL AND HOSTILE.**

The Plaintiff does not wish to waste the Court's time with repetitious arguments,

as the Plaintiff believes that its Brief adequately provides a strong legal and factual basis for the reversal of the trial court's ruling. However, the Plaintiff has more than adequately presented evidence to indicate a hostile occupation of the said disputed 6.5 acres.

The Defendant states that, "there was no indication of a hostile intent to possess the property." (Appellee's Brief at 19). However, nothing could be further from the truth. The Plaintiff by running cattle on the property, posting "No Trespassing" signs and maintaining the fence, clearly demonstrates its intent to hold the property against claims of all others. Further, Defendant Tyler unequivocally testified in her deposition and in trial that she felt that she would be trespassing if she went on the disputed 6.5 acres. (R. at 81).

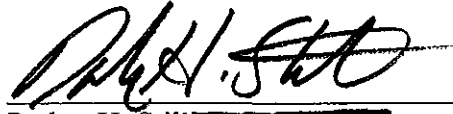
### **CONCLUSION**

Defendant Paradise's Brief, though twenty-two (22) pages in length, only raises one issue: Does the fact that the Plaintiff believed the disputed 6.5 acres was within the call of their deed defeat the claim for adverse possession? The answer, as set forth above, is no.

The Defendants' Brief is simply another illustration to support the Plaintiff's position that there is no proof to contest the adverse possession claim. This not a questionable case for adverse possession, nor does it fall within a grey area of the law. Simply stated, the disputed property has been enclosed by the Plaintiff's fence for over fifty (50) years, the Plaintiff's tenant has raised cattle on the property, all witnesses who testified at trial stated that the property had always been in control of the Plaintiff and Defendant Tyler admitted on two separate occasions that she could not go on the property because the Plaintiff claimed ownership. Furthermore, neither Defendant Tyler nor her deceased husband made a claim of ownership despite being adjoining property owners for fifty (50) years. Therefore, the Plaintiff respectfully requests that this Court reverse the ruling of the trial court with the case being rendered.

Respectfully submitted, this the 7th day of May, 2008.

DOUBLE J. FARMLANDS, INC.

A handwritten signature in black ink, appearing to read 'Parker H. Still', written over a horizontal line.

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**CERTIFICATE OF SERVICE**

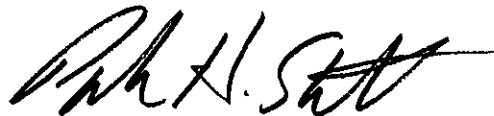
I, Parker H. Still, one of the attorneys for the Appellant, do hereby certify that I have this day mailed, postage prepaid by United States mail, a true and correct copy of the above and foregoing Reply Brief of Appellant to:

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This the 7th day of May, 2008.

A handwritten signature in black ink, appearing to read "Parker H. Still", written over a horizontal line.

PARKER H. STILL