IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

EVANNA PLANTATION, INC., DAVID KLAUS. TRUSTEE OF THE DAVID KLAUS TRUST, AND SABILL FARMS, A PARTNERSHIP — APPELLANTS

VS. — NO. 2007-CA-02087

ERNEST THOMAS and CAMILLE S. THOMAS — APPELLEES

APPEAL FROM THE CHANCERY COURT
OF
SHARKEY COUNTY, MISSISSIPPI

REPLY BRIEF OF APPELLANTS

ORAL ARGUMENT REQUESTED

Submitted by:

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Oral argument is requested in order to adequately inform the Supreme Court of the State of Mississippi as to the issues involved in this case.

Respectfully submitted this 21st day of July, 2008.

Nathan P. Adams

NATHAN P. ADAMS, JR.

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STATEMENT OF THE ISSUES

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1. The Court erred when it found that no express easement existed.

2. The Court erred when it found that the Plaintiffs had failed to meet their burden to establish an easement by necessity.

3. The Court erred when it found that Plaintiffs' theory of an easement fails, because the use of the land was permissive as evidenced by William Klaus' and Moore's gentlemen's agreement, as well as their respective depositions, which reveal that the Moore family initially gave the Klaus family permission before Thomas purchased the property.

4. The Court erred in holding that Appellants failed to establish a prescriptive easement either from Oil Well Road on the north or Coon Bayou Road on the south.

5. The Court erred when it found that Plaintiffs' request for damages should be denied.

COME NOW the Appellants, Evanna Plantation, Inc., David Klaus, Trustee of the David Klaus Trust, and Sabill Farms, a Partnership, and file the following response to the Brief of Appellees, Ernest Thomas and Camille S. Thomas, and respond as follows:

ARGUMENT

Appellants seek to perfect and establish easements enabling them to reach 100 acres of their land located on the East side of Coon Bayou. Appellees have blocked access by Appellants to the 100 acres of land both from Oil Well Road on the North and Coon Bayou Road on the south so the 100 acres of land is inaccessible to Appellants. There is no direct access to a public road from the 100 acres of land except either over Thomas land or over the Coon Bayou stream.

The Thomas property "L's" the Klaus property so that Klaus is enclosed by the "L" both on the Klaus' South and East sides. Oil Well Road runs along the North side of the Klaus property. There is a field road called Coon Bayou Road running from Sabill Road east to the 100 acres of land. Coon Bayou runs diagonally in a northeasterly direction across the Klaus land. As a result of the Coon Bayou stream, 100 acres of Klaus land is cut off from the principal Klaus land. Appellees have blocked access from Oil Well Road on the North and the Coon Bayou field road running East and West which crosses the stream. As a result, Klaus cannot reach the 100 acres of land. (Defendants' Exhibits 62 and 63,

956, Exhibit 51, Vol. 7, T.R. 944). (See maps pages 12, 14, 16 18 and 20 of Appellees' Brief).

PROPOSITION I

THE COURT ERRED WHEN IT FOUND THAT NO EXPRESS EASEMENT EXISTED.

The Court found on page 18, Vol. 5, T.R. 674, R.E. 22 as follows:

> The Plaintiffs assert that an express easement exists from Oil Well Road with regard to the Northeast quarter of Section 22, Township 11 North, Range 7 West, because when Partee conveyed this land to William Klaus, he conveyed to Klaus the right to reach the property east of Coon Bayou by right of access from Oil Well Road south and Delta Gulf conveyed the right to reach the property by right of access from Oil Well Road south to the Klaus tract.

Notwithstanding the above finding, the court concluded that no express easement existed.

> In Dieck v. Landry, et al, 796 So.2d 1004, 1009 (Miss. 2001) the Court states:
>
> > In *Browder v. Graham*, 204 Miss. 773, 38 So.2d 188 (1948), *Browder* purchased a dominant tenement and it was ruled that 'the conveyance to him of the dominant tenement carried with it the appurtenant easement.' The acquisition of an easement by adverse user for the statutory time is no less efficacious than a deed (properly drawn and delivered) in investing such user with full rights to use, enjoy, own and convey such an easement.

As previously demonstrated on pages 3 and 4 of Appellants' Brief under the heading Source of Title, on September 1, 1954 (Exhibit 4, Vol. 4, T.R. 498-500) Lee Pickett and Amber Pickett conveyed by Warranty Deed to Billy Partee,

predecessor of the Klaus interest, the Northeast Quarter of Section 22, Township 11 North, Range 7 West, Sharkey County, Mississippi. Billy Partee in turn conveyed property to William J. Klaus which included nine-tenths (9/10) of an acre in the Northeast Quarter of 22 which lies to the East side of Coon Bayou. The deed conveyed "rights, easements, improvements and appurtenances thereon situate and thereunto belonging." Two-tenths (2/10) of an acre are vested in Ernest G. Thomas to the West of Coon Bayou. The conveyance from Billy Partee under the case law granted to William J. Klaus the right to reach the .9 tenths of an acre located to the East of Coon Bayou from Oil Well Road. Examination of the map, page 20 of Appellees' Brief, shows the .9 of an acre of Klaus land located to the east of Coon Bayou was easily reached by traveling east on Oil Well Road, crossing Coon Bayou on the public road, and, turning south for a short distance to reach the Klaus land. Such right would be a pertinent easement which would travel with the Partee deed.

PROPOSITION II

THE COURT ERRED WHEN IT FOUND THAT THE PLAINTIFFS HAD FAILED TO MEET THEIR BURDEN TO ESTABLISH AN EASEMENT BY NECESSITY.

The Court found on page 19 (Vol. 5, T.R. 675, R.E. 23) of its ruling as follows:

The Plaintiffs argue that without an easement by necessity or an implied easement, they are unable to reach their land east of Coon Bayou. The Plaintiffs argue that they are entitled to an easement by necessity, because the land had common identity prior to the division of the property, i.e. Camille Thomas' land borders Evanna Plantation's land on the south, which is bisected by Coon Bayou, Moore was the original owner of both Evanna Plantation's land and co-owner of Mrs. Thomas' land, and Moore was predecessor in title of both lands. (Emphasis added.)

In Fike v. Shelton, 860 So.2d 1227, 1230-1231, 1232 (Miss. Ct. App. 2003) the Court states:

> A claimant seeking an easement by necessity has the burden of proof and must establish that he is entitled to a right of way across another's land. *Broadhead v. Terpening*, 611 So.2d 949, 954 (Miss. 1992). An easement by necessity arises by operation of law when part of a commonly-owned tract of land is severed in a way that renders either portion of the property inaccessible except by passing over the other portion or by trespassing on the lands of another. *Id.* (Emphasis added.)

On June 10, 1976, Julian H. Moore and wife, Virginia W. Moore, conveyed to William Moore and Mrs. Jane Moore Raney by Warranty Deed of record in Book 175 at Page 146 (Plaintiffs' Exhibit 15, Vol. 6, T.R. 774-776), recorded June 21, 1976, all of Section 27 except the North Half of the North Half of 27. (See map page 20 of Appellees' Brief). On August 2, 1976, recorded August 30, 1976 in Book 175 (Plaintiffs' Exhibit 8, Vol. 6, T.R. 763-764) at Page 235, William W. Moore, predecessor in title to Camille Thomas, conveyed to Evanna Plantation, Inc. North Half of Northeast Quarter of Section 27, Township 11 North, Range 7

West, Sharkey County, Mississippi, containing 80 acres, more or less, together with easements, improvements and appurtenances thereon situate and thereunto belonging. (See map page 20 of Appellees' Brief). The conveyance from Julian H. and Virginia Moore to William Moore and Mrs. Jane Moore Raney dated June 10, 1976 recorded June 21, 1976 in Book 175 at Page 146 (Plaintiffs' Exhibit 15, Vol. 6, T.R. 774-776) predates the William W. Moore conveyance to Evanna Plantation. Therefore, at the time of the conveyance from William W. Moore to Evanna Plantation he already owned a one-half interest in all of Section 27 except the North Half of the North Half of Section 27 (the Evanna property).

The land of Camille Thomas borders the Evanna property on the south. The William Moore property conveyed to Evanna is bisected by Coon Bayou. The conveyance by Moore to Evanna Plantation conveyed property both on the east side and the west side of Coon Bayou. By conveying land on both sides of Coon Bayou, Moore of necessity conveyed the right to Evanna to cross Coon Bayou. The Coon Bayou crossing and Coon Bayou road are on Thomas land, formerly belonging to William Moore and Mrs. Rainey (Plaintiffs' Exhibit 15, Vol. 6, T.R. 774-776) (See Plaintiffs' Exhibit 1, Vol. 4, T.R. 481) and Defendants' (Exhibit 51, Vol. 7, T.R. 944). William W. Moore constituted the owner of the Evanna tract and co-owner of the now Camille Thomas tract. The Evanna west tract that is blocked in its access to the Evanna property east of Coon Bayou was once adjacent

to and thus joined with the Thomas tract over which access is necessary. *Swan v. Hill*, 855 So.2d 459, 467 (Miss. App. 2003), *Fike v. Shelton, supra.*

The conveyance from William W. Moore to Evanna Plantation, Inc. necessarily conveyed at the exact moment of conveyance both an implied easement and an easement by necessity running from Sabill Road across Coon Bayou in that without either an easement by necessity, an implied easement or prescriptive easement it would have been impossible for the Plaintiff to reach the land located to the east of Coon Bayou.

In this case the right of easement of necessity or implied easement was vested in Evanna Plantation upon the conveyance form William W. Moore on August 2, 1976. The right of necessity was further vested in the Klaus Trust by conveyances from Delta Gulf Drilling on November 5, 1956 and Partee on October 4, 1954.

The predecessors in title of both Evanna and Thomas had identity prior to the division of property in Section 27, Township 11, Range 7. An easement by necessity arises by implied grant when a part of a commonly-owned tract of land is severed in such a way that either portion of the property has been rendered inaccessible except by passing over the other portion or by trespassing on the lands of another. An easement by necessity requires no written conveyance because it is a vested right for successive holders of the dominant tenement and remains binding

on successive holders of the servient tenement. *Fike v. Shelton*, 806 So.2d 1227 (Miss. Ct. App. 2003). Here, the 100 acre tract of land is not accessible to either Evanna or The Klaus Trust or their tenants because Appellants Thomas have blocked access from both Oil Well Road to the north and Sabill Road to the west and Coon Bayou blocks access on the west side of the 100 acres.

The trial judge found that Appellants' property is adjoined by both Sabill Road and Oil Well Road. It is correct that the bulk of the Klaus property is adjoined on the north by Oil Well Road and on the west by Sabill Road. It is further correct that Sabill Road and Oil Well Road are public roads. However, with respect to the trial judge, she is incorrect that the triangular shaped 100 acres of land is adjoined by either Sabill Road or Oil Well Road. The tract stands alone and does not touch either Sabill Road or Oil Well Road. (Map, page 20 of Appellees' Brief)

The 100 acre tract of land is cut off from the Oil Well Road and is further cut off from Coon Bayou Road. It is cut off on the north by the actions of Thomas in blocking access from the Oil Well Road. The 100 acres is cut off from public roads on the west by Coon Bayou. It is cut off on the east by the lands of Thomas. It is cut off from the south by the lands of Thomas. The end result is that Plaintiffs cannot reach the 100 acres of land from a public road without crossing Thomas land.

The Court found that Mr. Klaus did not testify that "additional expense would arise if he were required to build his own crossing over Coon Bayou, there is no evidence that such expense would exceed the entire value of the property to which access is sought." (Vol. 6, T.R. 679, R.E. 27) The finding is contrary to the principal that "an easement is reasonably necessary if the landowner's only other alternative route is by building a bridge." *Swan v. Hill, supra.*

PROPOSITION III

THE COURT ERRED WHEN IT FOUND THAT PLAINTIFFS' THEORY OF AN EASEMENT FAILS, BECAUSE THE USE OF THE LAND WAS PERMISSIVE AS EVIDENCED BY WILLIAM KLAUS' AND MOORE'S GENTLEMEN'S AGREEMENT, AS WELL AS THEIR RESPECTIVE DEPOSITIONS, WHICH REVEAL THAT THE MOORE FAMILY INITIALLY GAVE THE KLAUS FAMILY PERMISSION BEFORE THOMAS PURCHASED THE PROPERTY.

A. Dirt Road from Oil Well Road. Defendants claim the prescriptive easement over the dirt and partially gravel road from the North that runs south from Oil Well Road to the 100 acres is defective because adverse possession was not exercised and that use of said road by the Plaintiffs was by permission of the Moore family and then Thomas.

The trial testimony of David Klaus illustrates the use of the road from Oil Well Road to access the 100 acres of land. Mr. Klaus testified the use was from the time that he arrived in Mississippi in 1972 forward. (Plaintiffs' Exhibit 35, line 20, Vol. 6, T.R. 865; Vol. 9, T.R. 40 line 10) The use consisted of the farming of

the 100 acres of land including planting the land to soybeans, cultivation of the crop, and harvest of the crop at maturity. The farming necessitated the moving of both tractors and farm equipment, including combines, from Oil Well Road south to the 100 acres of land. The usage was open, notorious, visible, actual, peaceful, and under the specific control and claim of right to use by Klaus interest while the usage was occurring. This testimony is corroborated by the deposition testimony of David Klaus. (Plaintiffs' Exhibit 35, page 43, Vol. 6, T.R. 862, 870). Additionally, the testimony of Archie Sanders, who was a tractor driver for Klaus interest for many years, shows, without challenge, that he drove tractors and combines from the Klaus farm headquarters over Oil Well Road and then south over the road in question. Mr. Sanders further testified as to the placing of gravel from the old railroad right-of-way on the road from Oil Well Road south, and thus improving the road as did Mr. Klaus. This usage continued until it was stopped by Thomas in 2003. Thus, we have a usage of Oil Well Road south from at least 1972 until 2003.

B. Moore Conveyance to Federal Land Bank. On November 18, 1987, W. W. Moore, Mary Frances Moore and William W. Moore, II, The Ballard Company, Inc., Moore Planting Company, Inc. and W. W. M. Company, a partnership, et al. conveyed to the Federal Land Bank of Jackson, of record in Book 200 at Page 96 (Exhibit 19, Vol. 7, T.R. 1038-1050), a large block of land.

Included in the land was the West Half, Section 23, West Half Section 26, Township 11 North, Range 7 West, Sharkey County, Mississippi. The Deed further provided "All of the above land is subject to all outstanding mineral rights and easements existing thereon." This is the property that lies immediately East of the Klaus property and across Coon Bayou to the east. Any oral gentlemen's agreement or permission to use by Klaus would have been abrogated upon this conveyance because the Federal Land Bank did not grant permission, and was not a party to any agreement, and any subsequent use by Klaus interests was therefore adverse. In *Tucker v. Long*, 873 So.2d 1064 (Miss. Ct. App. 2004) the court held that a deed executed by a party claiming title to property by adverse possession to the dominant estate easement owner interrupted possession so that it destroyed the actual, hostile, open, notorious, visible, continuous and uninterrupted possession necessary to establish adverse possession. In like manner, the conveyance from Moore to Federal Land Bank destroyed any permissive agreement and possession from November 18, 1987 forward by the Klaus interest was adverse to Federal Land Bank, Mississippi Farm Group and Thomas.

C. Mississippi Farm Group. Mississippi Farm Group Limited Partnership, a Mississippi limited partnership, successor in interest to Federal Land Bank, after the Moore conveyance as described in the preceding paragraph, on April 13, 1993 conveyed 52.85 acres in the Northwest Quarter of Section 23,

Township 11 North, Range 7 West to John A. Hennessey. (Defendants' Exhibit 56, Vol. 7, T.R. 949-950). This is the property directly to the east of the Klaus Trust property and fronting on Oil Well Road. Mississippi Farm Group reserved a non-exclusive easement for the purpose of ingress and egress to Sections 23 and 26, Township 11 North, Range 7 West lands 10 feet in width to follow the meanderings of the east bank of Coon Bayou. The conveyance is dated April 13, 1993. (See Defendants' Exhibit 56, Vol. 7, T.R. 959-950). On July 20, 1995, Mississippi Farm Group conveyed to Ernest G. Thomas, Defendant herein, West Half of Section 23, West Half of Section 26 and east Half of Section 26 together with an easement running along South Half, North Half of Section 27 for the benefit of Sections 23 and 26. This would be the easement from Sabill Road east to Sections 23 and 26. The conveyance provides it is a non-exclusive right of use in common. Of particular note is the provision on page 163 which recites: "the Grantor herein further covenanting and warranting that it has granted no third party any right of ingress and egress over and across said roadway therein described and that same continues to be a private road for use only by the Grantor herein and its successors in title, namely, the Grantee herein and by the successor in title to the said John A. Hennessey." (Plaintiffs' Exhibit 32, Vol. 6, T.R. 818-823) The language means that Mississippi Farm Group has not granted any permission to anyone for use of the route south from Oil Well Road and that any use of the said

route by Plaintiffs of necessity was adverse to interest of title holders of Section 23 from the time of the conveyance to Federal Land Bank by W. W. Moore on November 18, 1987. On February 4, 2003, Ernest Thomas withdrew any permission that he had the right to give to Klaus interest (Plaintiffs' Exhibit 26, Vol. 6, T.R. 806). Plaintiffs contend their prescriptive easement had long before vested and the alleged Thomas permission was actually of no legal force.

D. Prescriptive Easement over Coon Bayou Road. Defendants claim that Plaintiffs' claim of prescriptive easement to the southern portion of its property located East of Coon Bayou fails because the use of the road that crosses Coon Bayou was interrupted for a period of three years beginning in 1995. It is charged the crossing was washed out and not available for anyone to use and, in consequence, there has not been uninterrupted adverse use of said road. The claim by implication admits that an adverse use by Plaintiffs was occurring. On pages 42, 43 and 44 the testimony of David Klaus (Plaintiffs' Exhibit 35, Vol. 6, T.R. 869-871) dealt with the washed out crossing. Although the judge found this to apply to both roads it only applies to the east-west Coon Bayou Road, not the Oil Well Road. Mr. Klaus testified as follows:

Page 44, line 6 (Vol. 3, T.R. 443)

A. What ceased completely after the culvert where the crossing washed out was the crossing of the culvert. The using of this road up to this culvert was always used. We never stopped using it.

Q. So the crossing and the part east of Coon Bayou ceased being used?

A. No. Sir. We would come down this road. Now, we'd use this part, too. We'd come down this way because remember we had crops which we'd look at. You take trucks down there and look at what was going on and who's planting and everything else.

We always would come down this way up to the crossing from the east, and we'd come on this part on the west side of Coon Bayou up to where the crossing was washed out to look at our crops on this part.

Page 40, line 1 (Vol. 3, T.R. 444) Mr. Thomas testified in deposition as follows:

Q. And what did Mr. Moore report to you?

A. Well, I was aware that Mr. Klaus was using that road to access his hundred acres. And I was aware that either he had an easement or something, and I wanted to find out what was the situation.

Q. All right. And what did Mr. Moore tell you?

A. Mr. Moore said that they had an agreement with Mr. Klaus where he had permission to use that road. And in consideration for the permission, he would help them maintain the crossing over the bayou on that road.

Q. In consideration you mean the Klaus' would help maintain the Coon Bayou crossing?

A. Share in the maintenance of it.

Q. Did he say how long that had been going on?

A. For years he said.

Q. All right. And you were aware - - Mr. Moore was not the owner of that property at that time, was he?

A. No. Ms. Raney was.

Q. Ms. Raney was the owner of the property?

A. Mr. Moore was the owner of the property just as you cross the bayou.

Page 41, line 1 (Vol. 3, T.R. 444)

Q. And were you aware that Mr. Moore had conveyed his property, the Moore family I guess had conveyed their properties to the Federal Land Bank in 1987 approximately?

A. Yes, sir.

Q. How did you acquire that information?

A. I knew Mr. Moore. He told me he did it.

Q. What was your source of information that the Klaus' were using the Coon Bayou Road?

A. Eyes visible, right. And tearing it up.

Q. You were seeing that use from your property that was on the east side of the bayou?

A. Oh, yes, sir. Oh, yes, sir.

Page 42, line 1 (Vol. 3, T.R. 445)

Q. And that source of knowledge would have been all the way back in 1993?

A. It would have been prior to that because when Mr. Moore owned the land, I had permission to hunt it.

Appellants' right to prescriptive easement was not revoked by Appellees in that the easement had long since matured in Appellants. Once an easement has matured or vested in a party, title to said easement is only lost by acts amounting to adverse possession for the statutory period of ten years.

PROPOSITION IV

THE COURT ERRED IN HOLDING THAT APPELLANTS FAILED TO ESTABLISH PRESCRIPTIVE EASEMENTS EITHER FROM OIL WELL ROAD ON THE NORTH OR COON BAYOU ROAD ON THE SOUTH.

The Chancery Court found as follows:

> The Defendants assert that the Plaintiffs' use of both roadways was permissive, non-exclusive, and not continuous and uninterrupted, as evidenced by the three years when the crossing was washed out. (R.E. 28)

The crossing which was washed out only affected the Coon Bayou east-west road. It did not affect the Oil Well Road easement. Additionally, the Coon Bayou Road was useable both on the east and west sides of the crossing over Coon Bayou. (Page 44, line 2, Klaus deposition, Vol. 3, T.R. 443, also page 31 of Appellants' Brief. See page 44, line 3-21, Klaus deposition Plaintiffs' Exhibit 35, Vol. 6, T.R. 871).

Biddix v. McConnell, 911 So.2d 468, is not factually similar to the case at bar. *Biddix*, involves the construction to be placed upon a protective covenant providing for an easement for the installation of utilities or other uses deemed to be

necessary for the service of property. The court held the golf cart path was not necessary for servicing of utilities and further held the owners were limited from demonstrating their exclusive ownership because of the provisions of the covenant. The *Biddix* case is factually distinguishable from the case at bar.

The Appellants respectively assert the Chancery Court's reliance on the "joint use" rule to address the element of "exclusivity" is misplaced. In *Gadd v. Stone*, 459 So.2d 773 (Miss. 1984) the issue was title to the land, not prescriptive easements, which of course do not take title to the land. Adverse possession of land is acutely different from adverse possession of a prescriptive easement. In *Browder v. Graham*, 38 So.2d 188 (Miss. 1948), the court stated in part:

> . . . During all of this period of time, Emery Browder, his father, and his predecessor in title Smith had used a right of way over an adjoining and separately owned forty acres, on the SE¼ of NE¼, Sec. 26, T. 5, R. 9W, now owned by Graham, and across the same as an outlet from their lands to the school, the church, and the public road. The use of this roadway had been by car, by truck, by wagon and on foot by those residing on the Browder land as business or pleasure might direct. The road was fairly defined and continued in the same location for far more than the prescriptive period of ten years, except for an occasional slight diversion because of some mud hole or other obstruction.
>
> [3] We are convinced by the evidence that Albert Smith, Emery Browder's father, and Emery Browder, and their families continued to use this way, through the years, as a means of ingress and egress to and from their home and this having continued for more than ten years it ripened into an easement by prescription across the lands of Graham. Alcorn v. Sadler, 71 Miss. 634, 14 So. 444, 42 Am.St.Rep. 484; Cummins v. Dumas, 147 Miss. 215, 113 So. 332, and Jenkins v. McQuaid, 153 Miss. 185, 120 So. 814.

> [5] The question has been raised as to the extent of use of the way by Browder and his predecessors in title, but the answer of Graham, himself, admits there has been a passageway over his lands. It is not necessary, in order to establish an easement by prescription, that the way has been in constant use, day and night, but it may be established by such use as business or pleasure may require. Alcorn v. Sadler, 71 Miss. 634, 14 So. 444, 42 Am.St.Rep. 484.

See also the common driveway case *Gano v. Strickland*, 52 So.2d 11 (Miss. 1951)

At the conclusion of the Chancellor's opinion, the Court finds on page 26, T.R. 682, R.E. 30, that:

> The Court finds that the Plaintiffs' theory of an easement fails, because the use of the land was permissive as evidenced by William Klaus' and Moore's "gentlemen's agreement", as well as their respective depositions, which reveal that the Moore family initially gave the Klaus family permission before Thomas purchased the property.

Appellants have previously dealt with the "gentlemen's agreement" and "Moore family permission" in Proposition III, page 25 of Appellants' Affirmative Brief.

Appellants contend the requirements of *Thornhill v. Caroline Hunt Trust Estate*, 594 So.2d 1150, 1152-1153 (Miss. 1991) have been amply fulfilled for the establishment by the Appellants of prescriptive easements.

(a) Under claim of ownership. The testimony of Klaus illustrates the use of the road from Oil Well Road to the 100 acres of land. The use began when Mr. Klaus arrived in Mississippi in 1972. (Plaintiffs' Exhibit 35, line 20, Vol. 6, T.R.

865, Vol. 9, T.R. 40, line 10). Appellants found it necessary to move tractors and farm equipment, including combines, from Oil Well Road south to the 100 acres of land.

(b) Actual or hostile. On November 18, 1987, the Moore family conveyed the land to the Federal Land Bank of Jackson, of record in Book 200 at Page 96 (Exhibit 19, Vol. 7, T.R. 1038, 1050, page 27 of Appellant's Affirmative Brief. The conveyance effectively destroyed any permissive agreement given to Klaus as to possession or use of any easement or right of use from November 18, 1987 forward. Mississippi Farm Group Limited Partnership, successor to Federal Land Bank, after the Moore conveyance, on April 13, 1993 conveyed 52.85 acres to John A. Hennessey (Defendants' Exhibit 56, Vol. 7, T.R. 949, 950, Appellants' Brief page 28). Mississippi Farm Group also conveyed to Ernest Thomas certain property on July 20, 1995. The conveyances contain language that Mississippi Farm Group granted no permission to anyone for use of the route south from Oil Well Road. (See page 28 and 29 of Appellants' Affirmative Brief.)

December 29, 1993 was when the Deed was signed from John Hennessey to Ernest Thomas (Exhibit F, Vol. 3, T. R. 404). According to the deposition of Thomas, the first time he talked to David Klaus was after December 29, 1993. (Plaintiffs' Exhibit 1, page 30, Vol. 5, T.R. 729) The next time Mr. Thomas talked to David Klaus, according to his testimony, was some time in 2001.

(Plaintiffs' Exhibit 1, Vol. 5, T.R. 731, page 32, line 7-25, page 33, line 1-7). From the time of the conveyance from the Moores to Federal Land Bank in 1987 to when Mr. Thomas first talked to Klaus in 1993 or early 1994 is approximately six years. Thomas later testified that he talked to Klaus some time in 2001, another seven years, or a total of thirteen years without anything being mentioned about permission to use the land. It was not until February 4, 2003, or fifteen years later, that Klaus was told not to use the entrance off of Oil Well Road or the Coon Bayou field Road. (Exhibit D-2, Vol. 1, T.R. 143).

(c) Actual, notorious and visible. Mr. Thomas testified, page 40, line 1 Vol. 3, T.R. 444, that he was aware that Klaus was using the road to access the 100 acres of land. Mr. Thomas further testified, page 41, line 1, Vol. 3, T. R. 444, that he saw the Klauses using the road on the east side of the bayou (Coon Bayou Road) while he was hunting. He further testified this knowledge would have been obtained before 1993.

(d) Continuous and uninterrupted for a period of ten years. Klaus testified the use of the easements had been continuous for a period in excess of ten years. The use made of the easements by the Klaus interest was exclusive to them for the service of their farming interest of the 100 acres of land.

(e) Peaceful. Appellants used the prescriptive easements continually for a period in excess of ten years in a peaceful manner without protest by anyone until the demand by Thomas in 2001 for the use to be terminated.

PROPOSITION V

THE COURT ERRED WHEN IT FOUND THAT PLAINTIFFS' REQUEST FOR DAMAGES SHOULD BE DENIED.

No response was filed by Appellees to this Proposition. The actions of Appellees have prevented the Appellants from leasing the 100 acres of land. Testimony of David Klaus was that the land was rented for $42.00 per acre times 100 acres or $4,200.00 per year. (Vol. 9, T.R. 53) He has been prevented from leasing the land for a period of five (5) years (i.e. 2003, 2004, 2005, 2006 and 2007) for a total rental of $21,000.00 for which he should be compensated.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Appellants, Evanna Plantation, Inc., a Mississippi corporation, David Klaus, Trustee of the David Klaus Trust, and Sabill Farms, a Partnership, bring this appeal and pray that the Supreme Court of the State of Mississippi reverse and remand this cause to the Chancery Court of Sharkey County, Mississippi with instructions to establish easements over and across the Appellees' land so as to enable Appellants to reach the 100 acres of land on the east side of Coon Bayou and that instructions be given to the Chancery Court to issue an injunction prohibiting Appellees from blocking

access of the Appellants to the 100 acres of land from either Oil Well Road on the north or Coon Bayou Road on the south. Appellants further pray that the Supreme Court of the State of Mississippi issue directions to the Chancery Court of Sharkey County, Mississippi to enter a judgment in favor of Appellants for lost rental in the amount of $21,000.00. Appellants respectfully pray for such other and further relief as the Mississippi Supreme Court may deem appropriate and proper.

Respectfully submitted this 21st day of July, 2008.

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CERTIFICATE OF SERVICE

I, Nathan P. Adams, Jr., attorney of record for Appellant, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the foregoing Reply Brief of Appellant to the following:

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Honorable Vickie R. Barnes
Chancery Court Judge
P. O. Box 351
Vicksburg, MS 39181-0351

This 21st day of July, 2008.

Nathan P. Adams

NATHAN P. ADAMS, JR.