

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

**HERBERT TUCKER, INDIVIDUALLY  
and d/b/a H & G CONSTRUCTION, INC.**

**APPELLANTS**

**VS.**

**CASE NO. 2007-CA-02223**

**TYRONE WILLIAMS  
and SHARON WILLIAMS**

**APPELLEES**

**APPEAL FROM THE CHANCERY COURT OF HINDS COUNTY,  
MISSISSIPPI, HONORABLE JUDGE WILLIAM H. SINGLETARY**

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**APPELLANTS REPLY BRIEF**

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**ORAL ARGUMENT IS NOT REQUESTED**

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**REPLY BRIEF**

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COME NOW, Herbert Tucker, individually and H & G Construction Company, Inc., Appellants by and through the undersigned counsel, and file this their Reply Brief in response to the Brief of Appellees and in support thereof would say and show unto this Honorable Court the following, to wit:

In this brief, the following words will mean as indicated:

“Tucker” means Herbert Tucker;

“H & G” means H & G Construction Company, Inc.;

“Williams” means Tyrone Williams and Sharon Williams

“Harrison” or “Appellees’ Counsel” means S. Malcolm O. Harrison, Esq.

“Boackle” or “Appellants’ Counsel” means K. F. Boackle, Esq.

### ***III. REPLY***

Harrison claims in his brief that the letter he sent to Boackle on January 10, 2007 was sufficient to satisfy the service requirement of the Mississippi Rules of Civil Procedure (*Miss. R. Civ. P. 4(d)*). On page 3 of the brief, Harrison states that “the Chancellor refused to set aside the default judgment holding under the circumstances, ‘counsel for plaintiff was entitled to treat K. F. Boackle, Esquire, as counsel for the defendants from and after filing the Complaint for Slander of Title and for Removal of Cloud Upon Title.’” (Rec., page 0218) The fact remains that the defendants were not served as required by *Miss. R. Civ. P. 4(d)*.

If Harrison was entitled to treat Boackle as counsel for the defendants from and after filing the Complaint, then Harrison had a duty to serve Boackle with a copy of his Application to the Clerk For Entry of Default as required by *Miss. R. Civ. P. Rule 5(b)*. Harrison did not serve Boackle with a copy of that Application. The court and the attorney were obligated under *Miss. R. Civ. P. Rule 5(b)* to serve all motions and notices upon the attorney of record and having failed to do so, the default judgment is void. *McClain v. White*, No 97-CA-01588-COA 738 So. 2d 306, 308 (Miss. 1999).

Harrison was also under a duty to give three-days notice to Boackle of the hearing on his Application to the Clerk For Entry of Default as required by *Miss. R. Civ. P. Rule 55 (b)*. Harrison failed in that duty as well.

If Harrison had served the undersigned with a copy of the Application or a notice of the hearing, the undersigned, like every other member of the bar, would have responded to

the Application and would have been present for the hearing.

In this case, the trial court abused its discretion. Tucker and H & G were not properly served with initial process. Boackle was not served with a copy of the Application to the Clerk For Entry of Default as required by *Miss. R. Civ. P. Rule 5 (b)*. Finally, Boackle was not given three-days notice of the hearing on the Application to the Clerk For Entry of Default as required by *Miss. R. Civ. P. Rule 55 (b)*.

Nowhere in his brief does Harrison explain the statement in his Affidavit (Rec., pages 0047-0048) that the defendants were “duly served... pursuant to Rule 4(d)(1)(A) of the Mississippi Rules of Civil Procedure.”

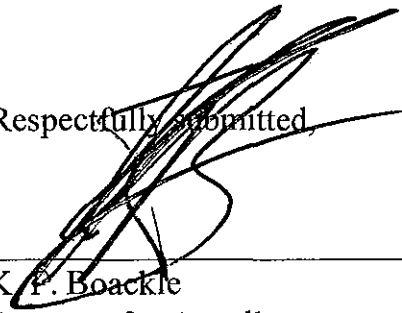
#### ***IV. CONCLUSION***

The trial court’s rulings on the Plaintiffs’ Application to the Clerk For Entry of Default and the Defendants’ Motion to set Aside the Default Judgment should be reversed and rendered. Herbert Tucker and H & G Construction Company, Inc.’s Motion To Set Aside Default Judgment should be granted by this Court and Williams’ default judgment should be reversed because there was no evidence in the court file of proper service of process of the Complaint, proper service of the Application on Boackle, and no three-day notice of the hearing to Boackle.

Therefore, Herbert Tucker and H & G Construction Company, Inc. respectfully request that this Court reverse and set aside the Order granting the Motion For Default Judgment, reverse the trial court’s ruling denying their Motion to Set Aside Default Judgment

and remand the case to the trial court for the case to proceed according to the *Mississippi Rules of Civil Procedure*.

Respectfully submitted,



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#### CERTIFICATE OF SERVICE

I, K. F. Boackle, do hereby certify that I have, this day served, by U.S. Mail, first class postage prepaid, a true and correct copy of the above and foregoing **REPLY BRIEF** to:

Betty Sephton, Supreme Court Clerk (Original & Three Copies)  
Post Office Box 249  
Jackson, Mississippi 39205

S. Malcolm O. Harrison, Esq.  
HARRISON & FLOWERS, PLLC  
Post Office Box 483  
Jackson, Mississippi 39205-0483

This the 23<sup>rd</sup> day of October, 2008.



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K. F. Boackle  
Attorney for Appellants