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

RANKIN GROUP, INC. **APPELLANT**

VS. **NO: 2007-CA-02259**

CITY OF RICHLAND **APPELLEE**

APPEAL FROM THE CIRCUIT COURT OF RANKIN COUNTY MISSISSIPPI

BRIEF OF THE APPELLANT

ORAL ARGUMENT IS REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record 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 the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Honorable Samac Richardson, Circuit Court Judge of Rankin County, MS
2. Stephen W. Rimmer, Esq., Watkins Ludlam Winter and Stennis, Attorney of Record for Appellee
3. Samuel D. Joiner, Jr., Attorney of Record for Appellant
4. Rankin Group, Inc., Appellant
5. Mr. George Sanders, President, Rankin Group, Inc.
6. City of Richland, Mississippi, Appellee
7. Mark Scarborough, Mayor of City of Richland, MS

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4. Rankin Group, Inc., Appellant
5. Mr. George Sanders, President, Rankin Group, Inc.
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This the 7th day of April 2008.

SAMUEL D. JOINER, JR.

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II. DID THE COURT BELOW ERR BY NOT CONSIDERING THE APPELLANT'S ARGUMENT OF ESTOPPEL WHICH WAS BASED ON THE FACTS IN THE RECORD THAT THE CITY TAXED THE SUBJECT MATTER PROPERTY AS A HOMESTEAD AND NOT A MOBILE HOME AND THE CITY DID NOT PETITION THE CIRCUIT COURT FOR A HEARING ON THE PROPERTY WHICH WOULD REQUIRE ALL INTERESTED PERSONS TO BE MADE DEFENDANTS AS REQUIRED BY MISS. CODE ANN. 21-19-20 (1972)?

STATEMENT OF THE CASE

I. NATURE OF THE CASE

This is a civil action wherein Appellant, Rankin Group, Inc., sought relief from a final order of the Board of Aldermen in the City of Richland, MS, by filing a Bill of Exceptions and a Petition for a Writ of Mandamus which were dismissed by the lower Court as not being timely perfected.

This case involves the City of Richland taxing the subject matter property as real property (homestead) for many years (over 40) and then attempting to demolish the house as a mobile home under ordinances that apply to mobile homes contrary to the way it has been taxing this property for many years.

The procedural developments prevented this Appellant from obtaining a proper Bill of Exceptions for this Court to have meaningful review, denying the Appellant procedural due process of law. The procedure to demolish real property requires the City to file a Petition in Circuit Court and serve all parties of interest in the title chain with a Summons in accordance with Miss. Code Ann. § 21-19-20 (1972). This was not done.

II. COURSE OF THE PROCEEDINGS AND DISPOSITION IN COURT BELOW

The City of Richland's regular City meeting was held on September 4, 2007, and recessed to September 11, 2007. (R. 50 & 118) The minutes were signed and finalized on September 18, 2007. (R. 50, 101 & 119) A Bill of Exceptions was presented to the City for Mayor Scarborough to sign, as is, or to sign with corrections. (R. 51, 67 & 119) The City refused to sign the Bill of Exceptions, and Rankin Group, Inc. filed a Verified Complaint/Bill of Exceptions with the Circuit Court for Rankin County, Mississippi, that same day, September 27, 2007. This was 9 days after the minutes were adopted on September 18, 2007.

Once Rankin Group, Inc. brought the matter into Circuit Court, its pleading stated in part as follows:

> The Complainant further respectfully requests that the Clerk of Richland transmit this Bill of Exceptions to the Circuit Court of Rankin County at once, requesting that said honorable court either in term time or in vacation hear and determine this case as presented by the Bill of Exceptions as an appellate court for affirmation or reversal of the judgement.

Rankin Group, Inc. then petitioned the Circuit Court to issue a Writ of Mandamus (R. 49) requiring the City to sign and file the Bill of Exceptions as required by statute. Miss. Code Ann. § 11-51-75 (1972). The City moved to dismiss on October 25, 2007. (R. 76) The Petition appealing the City and the City's Motion to Dismiss were heard on December 6, 2007, at which time the lower Court dismissed Appellant's Appeal and Petition for Writ of Mandamus for being outside the 10 day time frame to appeal a final Board decision. (R. 141; Tr. 27 & 28; R.E. 4-6) The Court also refused to consider the Appellant's argument of estoppel which was based on the facts in the record that the City taxed the subject matter property as a homestead and not a mobile home and was therefore

required to have a hearing and provide notice under Miss. Code Ann. § 21-19-20 (1972) (Tr.6)

III. STATEMENT OF THE FACTS

The difference between proceeding under the real property statutes and the mobile home statutes is that the Appellant was entitled to notice, the filing of a Petition, and a hearing in Circuit Court. Miss. Code Ann. § 21-19-20 (1972) All lien owners of the property involved, and any mortgagee, trustee, or other person having any interest in or lien on the property, should have been made a defendant to the proceedings if any were of record title. Miss. Code Ann. § 21-19-20 (1972)

The statute that covers the procedure a City is to follow when it decides to tear down a home is Miss. Code Ann. § 21-19-20 (1972). (R. 113; R.E. 7) The statute that the City is using to claim authority to tear down an abandoned mobile home is Miss. Code Ann. § 21-19-11 (1972). In this case the City attempts to use the mobile home statute, which is entitled "Cleaning private property" to demolish a house that it has acknowledged was no longer a mobile home many years ago for the purpose of increasing its tax revenue. (R. 7, 72, 104 & 122) The import of the differences is that the Appellant was entitled to notice and a hearing in Circuit Court that it did not receive. It could have appeared and challenged the findings of the City hearings or meetings.

The City published a notice in the newspaper for two consecutive weeks but did not file a lawsuit against the owner of the property or serve process on the owner and other persons of interest of the property as required by Miss. Code Ann. § 21-19-20 (1972). (R. 72) The property has been taxed as a home and not a mobile home since 1965, which requires the City to follow Miss. Code Ann. § 21-19-20 (1972). (R. 104 & 122; R.E. 8-12) Obviously the City has taken financial advantage of this property by taxing it as real property for over 40 years and then called

a meeting to say differently.

After the City published the wrong notice (notice for mobile homes) in the newspaper, it had a meeting and orally decided to demolish the property. (R. 29, 70 & 118) Rankin Group, Inc. was not represented at that meeting.

Rankin Group, Inc. bought this property on August 31, 2007. (R. 6 & 118) The City met on September 4, 2007, and orally decided to tear down the "mobile home" located at 242 Sloan Drive, Richland, MS, that it believed belonged to Mr. Don Griffin and then recessed that meeting. (R. 118) Rankin Group, Inc. recorded its Warranty Deed on September 5, 2007. (R. 6 & 118) On September 11, 2007, the City met and adjourned the continued meeting from September 4, 2007. (R. 118) Rankin Group, Inc. was informed by someone who had attended the September 4 and 11, 2007, meetings that its property was to be torn down. (R. 118) This was without any prior notice or any contact from the City before or after said meetings were conducted. (R. 118) Rankin Group, Inc. then sought legal assistance. The City of Richland was contacted on September 13, 2007, as evidenced by a letter to Jeff Sims. (R. 119 & 127; R. E. 13) Mr. Sims believed Rankin Group, Inc. was violating Section 2 of the Mobile Home Ordinance even though the City changed the taxation on the property from a mobile home to a real property structure in 1965 due to substantial additions to the property. (R. 119)

There were no minutes adopted, or approved, or signed as of September 13, 2007, for Mr. Sims and counsel for Rankin Group, Inc. to review and discuss. (R. 119) In fact, there was not anything in existence at all except for the copy of the Ordinance that counsel for Rankin Group, Inc. purchased that day from the City for Rankin Group, Inc.'s Bill of Exceptions. (R. 119) The City adopted, approved, and signed the minutes of the September 4, 2007, and September 11, 2007, meetings on September 18, 2007, thereby giving legal effect to the decisions of the Council for the first time and finally providing a written record from which counsel for Rankin Group, Inc.

could appeal. (R. 101 & 119) It was also the first time Rankin Group, Inc., the public, or anyone else could have known what took place at the meetings on September 4 and 11, 2007.

Rankin Group, Inc. contacted Mr. Steve Rimmer of Watkins Ludlam Winter & Stennis, P.A. on or about September 26, 2007, to discuss the impropriety of the City's actions and was told by Mr. Rimmer that the City had made up its mind on that property. (R. 119) Rankin Group, Inc. filed a Bill of Exceptions on September 27, 2007, with the Court (R. 119) and presented it to the City on September 28, 2007. (R. 6 & 119) The City refused to sign the Bill of Exceptions or file its own Bill of Exceptions, thus an immediate appeal was posted by Rankin Group, Inc. on that day to prevent the running of the 10 day appeal time from September 18, 2007, when the minutes were first displayed, signed, and approved.

SUMMARY OF THE ARGUMENT

Rankin Group, Inc. asserts two separate arguments. The first is that Rankin Group, Inc. timely perfected its appeal, and secondly, that the City is estopped from calling the subject matter property a mobile home after it has taxed and acknowledged that the subject matter property is real property since 1965.

This case involves the issue of when the time for appeal begins to run. There are only three dates to address in this decision. First, this City met twice to consider facts and make its decision. In this case it met on September 4, 2007, and continued the meeting until September 11, 2007, wherein it decided to demolish the subject property. (R. 118)

Secondly, the City formally adopted, ratified, and signed the minutes of this action on September 18, 2007. (R. 101 & 119) Thus, the 10 day notice of appeal would either start to run on one of three dates: September 4 (the beginning of the Council meeting); September 11 (the date to which the original meeting was continued); or, September 18 (the date the prior actions were reduced to writing and adopted into law as official actions of the City of Richland).

If this Court rules the 10 day right of appeal begins to run from the first meeting (September 4, 2007), then the appeal time expires on September 15, 2007, three days before the minutes were even typed and presented to the Board for approval.

If this Court rules the 10 day right of appeal begins to run from the second meeting (September 11, 2007), then the right of appeal expires September 22, 2007, four days after the City Board adopted the written minutes which effectively reduces the 10 day statutory appeal time to only four days.

If this Court rules the 10 days begin to run from the first time the minutes are reduced to writing, adopted and signed (September 18, 2007), then the appeal to the lower Court was timely and should not have been dismissed as it was filed on September 27, 2007.

If this Court is of the opinion that the 10-day period begins to run on September 4 or 11, then the lower Court should be upheld, and the City wins. (R. 141) However, if this Court believes the September 18 official action approving the minutes of the September 4 and 11 meetings is the correct starting date to calculate the appeal time, then the Appellant should win as timely perfecting its appeal, and the case should be remanded with instructions for the City to file a proper Bill of Exceptions or whatever relief this Court believes is proper. Since this case turns on interpretation of the law this Court can reverse and render.

The reason the Court should decide to use the later date is to prevent an obvious trap. All a City needs to do to prevent review on appeal is to delay typing up its minutes for more than ten days, thus preventing anyone from having a right to appeal anything.

As for the second issue of estoppel, the City has admitted and acknowledged that the subject matter property is a house because the City has taxed the property for 42 years as a house and not a mobile home and should be estopped from calling the property a mobile home so it can enforce the destruction of the house without following the requirements of Miss. Code Ann. § 21-

19-20 (1972) which would require the City to file a Petition with the Circuit Court and name all interested persons as defendants.

ARGUMENT

I. DID THE COURT BELOW ERR BY NOT FOLLOWING THE CORRECT TIME FRAME IN WHICH SOMEONE AGGRIEVED BY A DECISION MADE BY THE BOARD OF ALDERMEN MAY APPEAL?

STANDARD OF REVIEW – "*de novo*"

The issue of when one can appeal a decision is a question of law that is subject to a *de novo* review. ***Byrom v. State***, 07-CP-00638-COA (¶ 5) (Miss. 2008)

The City's position is that the appeal time starts from the day the City orally decides something. Rankin Group, Inc.'s position is that the appeal time starts from the time the City reduces the actions at the meeting to writing, and adopts and approves the minutes because the City is a corporation that only works through its minutes.

The time when the decision could have become final was on September 18, 2007, at which time the September 4 and 11, 2007 minutes were adopted and approved by a majority of all of the members of the governing body of the municipality pursuant to Miss. Code Ann. § 21-15-33 (1972). (R. 101 & 119) The September 18, 2007, meeting approving the minutes gave the legal effect of being valid from and after the date of the September 18, 2007, meeting. Miss. Code Ann. § 21-15-33 (1972)

This Court has held;

> The latest time when the decision could have become final was, as the Circuit Court dictated in its order, on August 7, 2000, at which time the minutes of the July meeting were signed by the president of the board of supervisors pursuant to Mississippi Code Annotated 19-3-27 (Rev.1995). (Emphasis added.)

Lucas v. Williamson, 01-CA-01252-COA (¶ 5) (Miss. 2003)

"We have held that any final action by municipal authorities or a board of supervisors is

appealable under § 11-51-75." ***South Cent. Turf, Inc. v. City of Jackson***, 526 So. 2d 558, 561 (Miss. 1988). (R. 102 & 120) Appellant respectfully submits it is not final until adopted and approved.

Furthermore;

> The minutes of every municipality must be adopted and approved by a majority of all the members of the governing body of the municipality at the next regular meeting or within thirty (30) days of the meeting thereof, whichever occurs first. Upon such approval, said minutes shall have the legal effect of being valid from and after the date of the meeting. The governing body may by ordinance designate that the minutes be approved by the mayor.

Miss. Code Ann. § 21-15-33 (1972) Municipal Minutes. (R. 51 & 101)

The reading of this statute is where the two sides differ. The City argued and the lower Court Judge agreed that the word "thereof" meant that the signing of the minutes relates back in time to the meeting where the City orally decided to tear down the property. (Tr. 27) The statute is compound, and if the part about the meeting "thereof" is taken out of the statute it would read as follows: "The minutes of every municipality must be adopted and approved by a majority of all the members of the governing body of the municipality at the next regular meeting. Upon such approval, said minutes shall have the legal effect of being valid from and after the date of the meeting." This sentence does not state that the signing of the minutes relates back in time.

Also, another argument that is equally important is if you read the second part of the compound statute and take out, "at the next regular meeting", it would read as follows: "The minutes of every municipality must be adopted and approved by a majority of all the members of the governing body of the municipality within thirty (30) days of the meeting thereof." If the signing of the minutes in this situation is to relate back to the meeting thereof, then the 30 days would run, the City would sign the minutes, giving legal effect to the decision, and the decision

would relate back in time. Anyone aggrieved by the decision would be 20 days outside their statutory date to appeal, before the City, a corporation, ever met to make its actions official.

This appeal is timely filed because it was filed within the 10 days following the September 18, 2007, meeting which is the date the minutes were signed. On September 27, 2007, the original appeal pleading was timely filed in the Circuit Court styled, "Verified Complaint/Bill of Exceptions", and a copy was served on Mr. Steve Rimmer, Esq. by First Class United States Mail. (R. 18; R. E. 14) Out of an abundance of caution, another copy of the Verified Complaint/Bill of Exceptions was served on the City Clerk for the City of Richland by service of process by Summons on Friday, September 28, 2007. (R. 19 & 54; R. E. 15 & 16)

The City of Richland set up its defense and Motion to Dismiss as, "The only issue is when was the meeting adjourned." (R. 78) Obviously, this can only mean the meeting that was adjourned adopting and approving the minutes of the meetings of September 4 and 11, 2007. When that meeting (September 18) adjourned there was a legal effect that made the minutes of September 4 and 11, 2007, the official acts of the City. Miss. Code Ann. § 21-15-33 (1972). This gave Rankin Group, Inc. 10 days to review the minutes, consult with counsel, and file its appeal if it thought necessary. This is consistent with the statute and case law, and it makes common sense. Also, this is in line with Miss. R. App. P. 4 that states the appeal time starts to run after the judge enters the judgment and tells one they have 30 days after the judge signs the orders in which to appeal. This is not when the judge orally decided something.

However, in this case, the lower Court ruled the appeal time "relates back" to the oral decision made at a prior meeting which eliminated the appeal time for minutes that were not even in existence. (R. 141; Tr. 27 & 28; R. E. 4-6) This is not in line with Miss. R. App. P. 4(b) which covers the time from when a judge orally makes his decision and the time he enters his judgment. It reads as follows: "A notice of appeal filed after the announcement of a decision or order but

before the entry of the judgment or order shall be treated as filed after such entry and on the day of the entry." From reading Rule 4 it seems that one can appeal when an oral decision is made and not be untimely, and then it gives a time certain as to when the final 30 days are. Appellant believes Rule 4 is a parallel as to how an appeal should be taken from a City meeting which sits as a lower court in this situation.

The above mentioned Supreme Court case, ***South Cent. Turf, Inc. v. City of Jackson,*** 526 So. 2d 558, 561 (Miss. 1988), is being misconstrued by the Appellee and the lower Court. (Tr. 20-23) At first glance it seems that it goes against the position of this Appellant. However, that is only because the person who was appealing in that case was still outside the 10 days to appeal after this Court ruled that the latest time to appeal was after it had finally decided the matter with the signing of the minutes. (Emphasis added.) A pertinent part of the case is as follows:

> At its April 1, 1986, meeting, the Council voted to award the golf cart contract to E-Z-Go; that meeting was **adjourned on April 1.**
> On April 8, 1986, the Mayor **signed the minutes** of the Council's April 1 meeting, evidencing the Council's acceptance of the E-Z-Go bid.
> At its April 29, 1986, meeting, the Council heard appellant's argument for reconsideration of bids and referred the matter to its Rules Committee; that meeting was adjourned on April 29.
> At its May 6, 1986, meeting, the Council received the recommendation of the Rules Committee that no further action be taken regarding the golf cart matter; that meeting was adjourned on May 6.
> The Court held, As in *Gatlin v. Cook*, the City of Jackson was without authority to reconsider the matter which it had already **finally decided** on April 8, 1986, when the Mayor **signed the minutes** of the April 1 meeting, thereby giving effect to the Council's decision to award the contract to E-Z-Go. Mississippi Code Annotated section 21-8-12(2) (Supp. 1987); *City of Oxford v. Inman*, 405 So. 2d 111 (Miss. 1981).

South Cent. Turf, Inc. v. City of Jackson, 526 So. 2d 558, 561 (Miss. 1988)

Clearly the 10 days ran from the April 8, 1986, signing of the minutes and expired on

April 19, 1986. While the Appellant attempted to revive the expired appeal time by filing a late "Motion to Reconsider", this Court did not fall for such deception and ruled properly that the time had already expired.

Otherwise, it would corrupt normal due process. For instance, if the Court adopts the City of Richland's position, then the City could adjourn the September 11 meeting, wait more than ten days and meet on September 22, approve the minutes of the September 11 meeting, which for the first time makes them valid and legal, publish the minutes to the people of the City and say, "No one can appeal because the appeal time relates back to the September 11 meeting and has already expired before we ever met to make the minutes official acts of the City, a corporation." This theory, presented by the City, is neither supported by any case law nor any other authority at all and does not make any practical sense.

When the meeting adjourned making the minutes the law (September 18), Rankin Group, Inc. had 10 days to appeal, and did so accordingly on September 27, thus the appeal is timely. (R. 119) What is there to appeal on September 12, where there has been no adoption of the September 4 or 11 actions whatsoever? (Tr. 18) The actions taken on those days are not even legal and binding, and are subject to being overturned by the Council or even vetoed by the Mayor. Any attempt to appeal would obviously be premature and without a record, because the City only works through its minutes and is not bound by its actions until it adopts its minutes of the prior meeting! Miss. Code Ann. § 21-15-33 (1972). This happened on September 18, 2007, thus the appeal that was filed on September 27, 2007, is timely. (R. 119)

II. DID THE COURT BELOW ERR BY NOT CONSIDERING THE APPELLANT'S ARGUMENT OF ESTOPPEL WHICH WAS BASED ON THE FACTS IN THE RECORD THAT THE CITY TAXED THE SUBJECT MATTER PROPERTY AS A HOMESTEAD AND NOT A MOBILE HOME AND THE CITY DID NOT PETITION THE CIRCUIT COURT FOR A HEARING ON THE PROPERTY WHICH WOULD REQUIRE ALL INTERESTED PERSONS TO BE MADE DEFENDANTS AS REQUIRED

BY MISS. CODE ANN. 21-19-20 (1972)?

STANDARD OF REVIEW – "Arbitrary and Capricious"

> ¶ 10. We begin our analysis by affirming three well-settled principles of judicial review. First, the circuit court's role was not as a trier of fact, but rather as an appellate court. *Board of Aldermen v. Conerly*, 509 So. 2d 877, 885 (Miss. 1987) Thus, we look beyond the decision of the circuit court and examine the decision of the City.
> ¶ 11. Second, actions of a deliberative public body such as the Mayor and Aldermen will not be set aside unless found to be arbitrary and capricious. *Broadacres, Inc. v. City of Hattiesburg*, 489 So. 2d 501, 503 (Miss. 1986); *Sanderson v. City of Hattiesburg*, 249 Miss. 656, 163 So. 2d 739, 741 (1964).

Mayor & Bd. Of Aldermen v. Welch, 03-CC-02103-SCT (¶ 10 & 11) (Miss. 2004)

Although the lower Court's ruling appears to be based on not timely perfecting its appeal, the Appellant did present a meritorious argument based on the equitable remedy estoppel. (Tr. 5 & 6) The City is trying to take property from Rankin Group, Inc. and not pay for the taking. (R. 7, 104 & 122) Not only that, but the City is trying to make Rankin Group, Inc. pay for the removal of its own house under a mobile home statute which is clearly improper. (R. 7, 104 & 122)

The property that is the subject matter of this case is not a mobile home. (R. 7, 104 & 122) It is over 1800 (eighteen hundred) square feet. (R. 7) The Appellant has offered to make substantial improvements to the property to make sure it complies with all City regulations. (R. 104 & 122)

The City admits that the subject matter property is a house because the City has taxed the property as a house and not a mobile home since 1965. (R. 104 & 122) Now the City is trying to flip the coin and call the house owned by Rankin Group, Inc. a mobile home so they can tear it down and assess the cost of the destruction to Rankin Group, Inc. through a mobile home ordinance that was adopted in April of 2007. (Emphasis added.) (R. 70, 104 & 122)

The reason the City is trying to use the mobile home statute rather than the proper house statute is that they can circumvent the notice and hearing requirement of tearing down a house as opposed to the removal of a mobile home. The City's mobile home ordinance authority is Miss. Code Ann. § 21-19-11 (1972), as evidenced by (R. 70 & 122) which is not applicable in this case. The City, having taxed the property as a house for 42 years, should be estopped from calling the property a mobile home and tearing it down unless it follows the proper procedures and files the proper proceedings in the Circuit Court under Miss. Code Ann. § 21-19-20 (1972) and not just a City meeting. (R. 122; Tr. 5 & 6)

A pertinent part of that Code reads as follows:

> (2)The municipality shall file a petition to declare the abandoned property a public hazard and nuisance and to have the property demolished with the circuit clerk of the county in which the property or some part of the property is located. All of the owners of the property involved, and any mortgagee, trustee, or other person having any interest in or lien on the property shall be made defendants to the proceedings. The circuit clerk shall present the petition to the circuit judge who, by written order directed to the circuit clerk, shall fix the time and place for the hearing of the matter in termtime or vacation. The time of the hearing shall be fixed on a date to allow sufficient time for each defendant named to be served with process, as otherwise provided by law, not less than thirty (30) days before the hearing. (Emphasis added.) If a defendant or other party in interest is not served for the specified time before the date fixed, the hearing shall be continued to a day certain to allow the thirty-day period specified.

Miss. Code Ann. § 21-19-20 (1972) (R.E. 7)

This Court has already made the decision that equitable estoppel can apply to the decisions made by a municipality as follows:

> In *Walker v. City of Biloxi, supra,* the Mississippi Supreme Court stated that "waiver estoppel or laches may operate under certain circumstances to preclude relief against zoning ordinances or regulations." The Court has also held that the State of Mississippi and its political subdivisions may, under appropriate circumstances, be equitably estopped from taking inconsistent positions. *Hill v. Thompson,* 564 So.2d 1 (1989) and Town of Florence, 759 So.2d

> 1221. In *PMZ Oil Co. v. Lucroy, supra,* our Supreme Court stated that "whenever in equity and good conscience, persons ought to behave ethically toward one another, the seeds for a successful employment of equitable estoppel have been sown."
> ¶ 52. In summary, we find for three reasons the City may not apply the Ordinance to require the Welches to remove the tree-house from their front yard. First, we agree with the Circuit Court's holding that the doctrine of laches applies to the facts of this case, and the City is equitably estopped from requiring removal of the tree house, based upon the City's interpretation of Section 401.05 of its Ordinance.

Mayor & Bd. Of Aldermen v. Welch, 03-CC-02103-SCT (¶10 & 11)(Miss. 2004)

The City is trying to create a windfall that the Mississippi Code will not allow. (R. 122) The City wants to get paid for 42 years of taxing this house, using an ordinance enacted in 2007 for mobile homes to destroy it, and telling the owner that they (the owner) have to pay for its destruction. (R. 72 & 122) Rankin Group, Inc. has informed the City that the City has been taxing the house as a house. (R. 122) Rankin Group, Inc. has proposed to the City substantial improvements that would bring its house up to all applicable City codes and has been denied that right under these improper proceedings and actions of the City. (R. 122)

CONCLUSION

The Appellant respectfully requests that this Court enter an order reversing the dismissal of this case from the lower Court and remanding it to the lower Court with further instructions to order that the City file a proper Bill of Exceptions as required by statute, and for such other and further relief as the Court deems proper.

RESPECTFULLY SUBMITTED, this the 17th day of April 2008.

Rankin Group, Inc.
Joiner Law Firm, L.L.C.

By: _____
SAMUEL D. JOINER, JR.,
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CERTIFICATE OF SERVICE

I, the undersigned Samuel D. Joiner, Jr., attorney for Appellant, Rankin Group, Inc., certify that I have this day served a copy of this Brief of the Appellant by United States mail with postage prepaid on the following person at this address:

Stephen W. Rimmer, Esq.
Watkins Ludlam Winter and Stennis
Attorney of Record for Appellee,
City of Richland, Mississippi
P.O. Box 427
Jackson, MS 39205

This the 7th day of April 2008.

SAMUEL D. JOINER, JR.

CONCLUSION

The Appellant respectfully requests that this Court enter an order reversing the dismissal of this case from the lower Court and remanding it to the lower Court with further instructions to order that the City file a proper Bill of Exceptions as required by statute, and for such other and further relief as the Court deems proper.

RESPECTFULLY SUBMITTED, this the 7th day of April 2008.

Rankin Group, Inc.
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By: _____
SAMUEL D. JOINER, JR.,
Attorney for Appellant

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AMENDED CERTIFICATE OF SERVICE

I, the undersigned Samuel D. Joiner, Jr., attorney for Appellant, Rankin Group, Inc., certify that I have this day served a copy of this Brief of the Appellant by United States mail with postage prepaid on the following person at this address:

Stephen W. Rimmer, Esq.
Watkins Ludlam Winter and Stennis
Attorney of Record for Appellee,
City of Richland, Mississippi
P.O. Box 427
Jackson, MS 39205

Honorable Samac Richardson,
Circuit Court Judge of Rankin County, MS
P.O. Box 1885
Brandon, MS 39043

This the 7th day of April 2008.

SAMUEL D. JOINER, JR.