

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

H. L. MERIDETH, JR.

APPELLANT/PLAINTIFF

V.

CAUSE NO. 2007-CP-00501

PHILIP T. MERIDETH, M.D.

APPELLEE/DEFENDANT

APPEAL FROM THE CHANCERY COURT
OF
HINDS COUNTY, MISSISSIPPI

CAUSE NO. G2006-1294-O/3

REPLY BRIEF OF APPELLANT

ORAL ARGUMENT REQUESTED

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CORRECTIONS TO APPELLANT'S BRIEF AND RECORD EXCERPTS

BRIEF

1. The conclusions on page 13, in paragraph 47, of the Appellant's Brief should be corrected as follows, to wit:

47. Judgment of the trial court imposing sanctions should be reversed and rendered but the case should be remanded to the trial court for a trial on the merits.

RECORD EXCERPTS

2. A copy of the court's *Order* in this case, dated November 16, 2006, is not attached as Exhibit 1 to the *Final Judgment* in this case dated February 26, 2007. (R.E. 13, par. 3, 3rd sentence) Exhibit 1 to the *Final Judgment* dated February 26, 2007, is a court *Order* dated November 16, 2006. (R.E. 7-11)

REFERENCE TO PARTIES

3. The reference to parties in this brief will be the same as in Sonny's Appellant's brief.

REFERENCE TO RECORD

4. The reference to the record will be the same as in Sonny's Appellant's brief.

ORAL ARGUMENT REQUESTED

5. Statement under M.R.A.P. 34 (b). Oral arguments should assist the Court in better understanding what is said in the briefs. More importantly, oral argument permits a party to answer any question the Court may have that is not covered or inadequately covered in the briefs.

STATEMENT OF THE ISSUES

6. Philip's brief page 1. No comment.

STATEMENT OF THE CASE

7. Philip's brief pages 2-3. No comment.

STATEMENT OF THE FACTS

8. Merideth I, Philip's brief pages 3-4. Philip keeps complaining about what Sonny did when Philip failed to timely answer or otherwise respond in Merideth I. Philip's complete disregard for the Mississippi Rules of Civil Procedure is cited by the Court in paragraph 6 of its *Final Judgment* dated October 26, 2005. (R.E. 16-21) What Philip is complaining about, he deliberately brought on himself by ignoring the Rules. If Philip had timely filed the *Answer* that he ultimately filed in Merideth I the day before trial, then the core of what he is complaining about in Merideth I would have been avoided. In any event, any efforts made by Sonny to get Philip to comply with the Mississippi Rules of Civil Procedure in Merideth I should not be held against Sonny in Merideth III. Pro Se

9. Philip's brief page 6, fourth line. Philip also contends in his brief that he was under no obligation to sell his interest in the Livingston Road property. Even if this is correct, it is factually misleading. Sonny told Philip, in a letter to Philip, dated February 17, 2006, (4th par.) that:

"...I gave this property to you and David on the expressed understanding that each of you would build your houses on it, and that I would sell all of the remainder of the 60 acres to recapture part or all of my cost." (C. 44)

10. Moreover, Philip, in his letter to David on February 19, 2006, referred to Sonny's letter dated February 17, 2006, but Philip failed to challenge the conditions upon which Sonny gave him the lands on Livingston Road. (C. 45)

11. Merideth III, Philip's brief page 6-10. Philip makes a flat statement in the fourth line on page 7 of his brief that "Mr. Merideth subsequently forgave the loan." Philip cites no reference for this statement. This is a serious misstatement. Philip, in his answer to an interrogatory on this point, said that:

1. "Demand was never made on the note. The first mention I have heard of this note since I signed it is when you sued me 9 ½ years later. The reasonable interpretation of your silence is that the note was forgiven." (R.E. 54)

- as it can't
be sued
upon

12. This statement by Philip is clearly contradicted by Sonny's *Affidavit* dated November 7, 2006, showing that two prior notes from Philip were, in fact, expressly cancelled, but the note sued on is not cancelled in similar fashion. (R.E. 57-61)

ARGUMENT

13. Philip's brief pages 13-26. It appears that the thrust of Philip's argument in the various headings in the above pages of his brief, and the controlling issue before this Court, is whether the trial court granted the *Order of Dismissal* and denied Sonny's *Motion to Amend* under M.R.C.P. 12(b)(6) or under M.R.C.P. 56 (Summary Judgment).

14. The Court, in its *Order* dated November 16, 2006, made no mention of awarding any relief under any specific Rule. (R.E. 7-11) The same is true of the Court's *Final Judgment* dated February 26, 2007. (C. 123-126) However, it is absolutely clear

from Philip's motion that he asked the Court for a dismissal only under M.R.C.P. 12(b)(6).

15. Philip's *Motion to Dismiss* filed August 24, 2006, in his request for relief in the first paragraph moved the Court for dismissal under M.R.C.P. 12(b)(6) only. (C. 3)

16. Philip, in discussing the standard of review, in his *Motion to Dismiss* again based the standard of review on M.R.C.P. 12(b)(6). (C. 4 par. 4) The same is true in paragraph 5 of his motion on page 3 where he again recites that the motion should be dismissed under M.R.C.P. 12(b)(6). (C. 5) In the last paragraph of the motion, Philip again limited his request for relief "pursuant to Miss. R. Civ. P. 12(b)(6)." (C. 12) Philip, nowhere in his motion, requested any relief except under M.R.C.P. 12(b)(6). (C. 3-12)

17. Sonny filed his *Motion to Amend the Complaint* on September 11, 2006. (C. 52-54) Philip, on October 9, 2006, filed a *Response to Plaintiff's Motion to Amend Complaint* which is a brief and not a motion. (C. 55-59) Philip, in his brief, in footnote 1 on page 3 did ask the Court to convert the *Motion to Dismiss* to a *Motion for Summary Judgment*, if the Court deemed it necessary to refer to evidence beyond the pleadings. (C. 57)

18. There was no formal notice to Sonny that Philip was seeking relief under M.R.C.P. 56. A party seeking relief under M.R.C.P. 56 must first file a motion. M.R.C.P. 56(a)(c).

19. It is absolutely clear from the above that a motion must first be filed for relief under M.R.C.P. 56. It is equally clear that Philip has not filed a motion under

Request to his
motion for
amendment
pleadings to
show
amendment
futile.

M.R.C.P. 56. It would be grossly unfair to Sonny for the Court to grant relief under M.R.C.P. 56 without prior notice to Sonny.

20. Under the issues as framed by the motion, the Court could not have granted any relief to Philip under M.R.C.P. 56. Therefore, the compelling conclusion is that the Court granted the *Motion to Dismiss* under M.R.C.P. 12(b)(6).

21. When considering a *Motion to Dismiss* under M.R.C.P. 12(b)(6), the allegations in the *Complaint* must be taken as true and the motion should not be granted unless it appears beyond doubt that the Plaintiff will be unable to prove any set of facts in support of his claim. (emphasis added) *Arnona v. Smith*, 1998-CA-01360-SCT (¶6), 749 So. 2d. 63, 65 (Miss. 1999). The United States Supreme Court has used different language to make the same point. *Scheuer v. Rhodes*, 416 US. 232, 236, 94 S. Ct. 1683, 40 L. Ed. 2d. 90 (1974). (A trial court weighing a *Motion to Dismiss* asked not whether a plaintiff will ultimately prevail, but whether the claimant is entitled to offer evidence to support the claim.)

22. Sonny wants to again point out that Mississippi is a notice pleading state. *Bedford Health Prop., LLC v. Estate of Williams*, 2005-IA-01274-SCT (¶41) 946 So. 2d. 335, 350 (Miss. 2006).

23. Sonny alleged in the proposed Amended Complaint that:

Paragraph 5 – "... defendant is equitably estopped from pleading the statute of limitations on said note because of a confidential relationship with the plaintiff."

But what is CR besides F/Su?
When did I arise - if not during
the S/Ls was running, not inst -
& still have to have some
unequivocal contact not
identified.

Paragraph 6 – "...defendant is equitably estopped from pleading the statute of limitations on said note because of his actions or inactions..."

what?

(R.E. 69)

24. The *Complaint* as amended would not have been futile. The Court should have allowed the *Complaint* to be amended. It is not clear beyond doubt that Sonny would be unable to prove any set of facts to support his claim. *Arnona*, supra. Sonny certainly could have offered "evidence" to support his claim under the above allegations. *Scheuer*, supra.

won't
even
plead -
w/ specifics

ATTORNEY'S FEES ON THIS APPEAL

25. Philip's brief page 26. M.R.A.P. 38 permits an appellant court to award damages against an Appellant if an appeal is "frivolous." The fact that the trial court imposed sanctions does not mean that this Court must award damages under Rule 38. A case is frivolous under M.R.C.P 11 if the party has no hope of success. *Tricon Metals & Services, Inc. v. Topp*, 537 So. 2d, 1331, 1335 (Miss. 1985). If Sonny had any hope of success on this appeal, then damages should not be imposed even if the case is affirmed. Sonny admits that he has been unable to find any authority to support this argument.

CONCLUSION

26. This Court should reverse and render that part of the trial court's *Final Judgment* dated February 26, 2007, imposing sanctions and remand the case to the trial court with instructions to allow the *Complaint* to be amended and proceed with a trial on the merits.

DATED THIS 22nd DAY OF October 2007.

H. L. Merideth, Jr.
H. L. Merideth, Jr.


CERTIFICATE OF SERVICE

I, H. L. Merideth, Jr., Appellant, certify that I have this day served a copy of this *Brief of Appellant* on the following persons:

Honorable Denise Owens
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SO CERTIFIED this the 22nd day of October, 2007.


H. L. MERIDETH, JR.