

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2007-IA-02031-SCT

DERR PLANTATION, INC.

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APPELLANT

v.

THOMAS L. SWAREK and
THOMAS A. SWAREK

APPELLEES

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.

Thomas L. Swarek, Appellee

Thomas A. Swarek, Appellee

Walker W. Jones, III, attorney for Appellee

Barry W. Ford, attorney for Appellee

Charles W. Pickering, Sr., attorney for Appellee

Bradley S. Clanton, attorney for Appellee

Eric W. Hospodor, attorney for Appellee

William M. Bost, attorney for Appellee

Diane M. Smith, attorney for Appellee

Derr Plantation, Inc., Appellant


Hermann P. Derr, (deceased)

Robert R. Bailess, attorney for Appellant

Wohnbau-Gesellschaft H. Derr mbH & Co. KG, sole shareholder of Derr Plantation, Inc.

Kenneth B. Rector, attorney for Appellant

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. and its attorneys, including, without limitation, Charles W. Pickering, Walker W. Jones, Barry W. Ford, Bradley S. Clanton, and Eric W. Hospodor, Counsel for Appellees


Bradley S. Clanton (MSB [REDACTED])

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STATEMENT OF ISSUES

Whether the trial court erred by transferring this case from chancery court to circuit court when the Plaintiffs' complaint arises out of a breach of contract and seeks compensatory and punitive damages in addition to specific performance?

STATEMENT OF THE CASE

I. NATURE OF THE CASE AND COURSE OF PROCEEDINGS

In December 2005, Thomas L. Swarek and Thomas A. Swarek ("Appellees" or "Swarek") entered negotiations with Hermann Derr and Derr Plantation, Inc., ("Appellant") for the lease and ultimate purchase of equipment, real property and cattle located in Issaquena and Sharkey Counties known as Derr Plantation. The negotiations resulted in Swarek and Derr signing a "Lease/Buy/Sell" Agreement for Derr Plantation at the office of Herman Derr in Germany on February 14, 2005. Defendants subsequently breached the agreement and refused to lease and transfer the property as agreed.

On March 1, 2005, Swarek filed suit in the Chancery Court of Issaquena County alleging that Appellant willfully breached the contract for the lease and sale of land, equipment and cattle. In the Complaint, Swarek sought actual, consequential and punitive damages for breach of contract for the lease of land, equipment and cattle, as well as damages for breach of contract for the sale of land, equipment and cattle. While the Complaint also contained a request for the equitable remedy of specific performance, the claims at issue arise from a breach of contract and are primarily legal in nature. The Chancery Court subsequently denied both parties' motions for summary judgment, finding that material issues of fact existed as to the existence of a contract. Appellees subsequently retained new counsel to prosecute their breach of contract claims. Because it had become apparent that fact issues were present and should be resolved by a jury, Appellees' new counsel moved to transfer the matter to circuit court. The Chancery Court

granted Appellees' motion to transfer the matter to circuit court. This interlocutory appeal ensued. The term of the lease has now lapsed, leaving damages at law as the only relief available to Appellees for the breach of the lease agreement. However, Appellees are also entitled to damages at law, both compensatory and punitive, and specific performance for breach of the contract to sell.

SUMMARY OF ARGUMENT

The Chancery Court appropriately transferred this matter to Circuit Court. Appellees' Complaint involves primarily legal claims for breach of contract and seeks compensatory and punitive legal damages, in addition to specific performance. This Court has repeatedly recognized that Circuit Court is the appropriate forum for resolving such claims because of their essentially legal nature. Transferring the action to Circuit Court also preserves the Appellees' right to trial by jury. While it is true that Appellee initially filed this action in Chancery Court, this Court has held that this does not constitute a waiver of the right to a trial by jury and does not preclude Appellees from requesting a transfer to Circuit Court.

Appellant is simply incorrect in asserting that Appellees have elected not to sue for breach of contract or for legal damages, as the Complaint clearly demonstrates. Appellants are also incorrect in asserting that damages at law and specific performance are mutually exclusive remedies, as this Court has consistently recognized the appropriateness of awarding both forms of relief in a single action. The Chancery Court order transferring this matter to Circuit Court should, therefore, be affirmed.

ARGUMENT

I. STANDARD OF REVIEW

A chancellor's grant of a motion to transfer is a question of law that is subject to *de novo* review by this Court. See *United States Fidelity & Guaranty Co. v. Estate of Francis*, 825 So. 2d

38, 43-44 (Miss. 2002); *see also* *Saliba v. Salba*, 753 So. 2d 1095, 1098 (Miss. 2000); *Entergy Miss., Inc. v. Burdette Gin Co.*, 726 So. 2d 1202, 1204-05 (Miss. 1998).

II. BECAUSE APPELLEES' COMPLAINT INVOLVES PRIMARILY LEGAL CLAIMS FOR BREACH OF CONTRACT AND SEEKS COMPENSATORY AND PUNITIVE DAMAGES, THIS ACTION WAS APPROPRIATELY TRANSFERRED TO CIRCUIT COURT.

A. Appellees' Complaint Clearly Alleges Claims for Damages at Law Based on Appellant's Breach of the Lease and Sale Contract

Appellant claims that the Chancellor erred in transferring this matter to circuit court because, according to Appellant, Appellees "did not elect to sue for breach of contract," but instead brought suit for specific performance and "equitable compensation," not damages at law. Appellant's Brief at 4, 8. Appellant's argument is flawed for three reasons. First, Appellant's argument reflects a fundamental misapprehension of the nature of specific performance: specific performance is one form of *remedy* for breach of contract, not a cause of action standing alone apart from the breach of contract. *See Frierson v. Delta Outdoor, Inc.*, 794 So. 2d 220, 225 (Miss. 2001).

Second, despite Appellant's protestations otherwise, it is obvious that Appellees' complaint is based entirely on allegations of breach of contract and seeks damages at law and specific performance as remedies for that breach of contract. *See* Compl. ¶ 3 (Defendant "*breached its contractual relationship* with Plaintiffs"); *id.* (letter from defendants' counsel repudiating the contract "*constitutes the act of breach*"); *id.* ¶ 4 ("Defendants refused to go further with this sale and have *breached the contract* of sale"); *id.* ("Defendants actions *in regard to this breach* are fraudulent, willful, intentional, and calculated to cause great financial loss to the Plaintiffs who are entitled to recover actual and compensatory damages, lost opportunity costs, and punitive damages together with reasonable attorneys fees"); *id.* ¶ 5 ("As a result of Defendants' *willful, malicious, and intentional breach of the contract* to both lease and

sell the property . . . Plaintiffs have suffered significant financial damage for loss of income on the property during the lease years.”); *id.* ¶ 7 (“Because of the ***nature of the breach of contract herein***, Plaintiffs are entitled to an order of this Court directing specific performance”); *id.* ¶ 9 (“For ***breach of the agreement to lease***, Plaintiffs are entitled to actual and consequential damages of not less than \$500,000.00.”); *id.* (“For ***breach of the agreement*** to convey the equipment and cattle, Plaintiffs are entitled to actual and consequential damages of not less than \$175,000.00.”); *id.* (“For ***breach of the agreement to sell*** real estate, Plaintiffs are entitled to recover actual and consequential damages of not less than \$1,000,000.00.”); *id.* (“By reason of its ***willful, intentional and gross breach of this contract***, Defendants are entitled to recover punitive damages of not less than \$5,000,000.00 together with reasonable attorneys fees and costs.”).

Third, Appellant claims that *McKay v. Castenara*, 119 So. 155 (Miss. 1928), stands for the proposition that “a damage claim at law for breach of contract and a claim for specific performance are mutually exclusive remedies,” Appellant’s Brief at 2, and therefore Appellees were required by the doctrine of “election of remedies” to choose one or the other. However, *McKay* stands for no such thing.

In *McKay*, the plaintiff filed a suit in equity for specific performance of a contract for the sale of land. No other relief was sought. After obtaining relief in equity, the plaintiff filed a second action at law to recover damages he claimed to have suffered from the defendant’s failure to convey the land. This Court held that “[t]he question which the appellee really argues ***is not one arising out of the election of remedies***, for no such question here arises, but is that the appellant, having failed to include his claim for the damages here sought to be recovered in his suit in equity for specific performance of contract, is now barred from maintaining an action therefore.” *Id.* at 156 (emphasis added). Because the chancery court had the authority to not

only award specific performance, but also to award “the damages which he had sustained or would sustain because of appellee’s delay in conveying the land to him,” the plaintiff was precluded from splitting the single cause of action into more than one suit. *Id.* “As a general rule,” the Court held, “but one cause of action arises from the breach of a contract or agreement, and where an action is brought on a contract, all claims arising under the same, and then due, constitute an entire and indivisible cause of action, and judgment therein is a bar to any further action founded on such claims.” *Id.* (internal quotation marks omitted). Thus, contrary to Appellant’s assertions, *McKay* does not support the argument that equitable relief of specific performance for breach of contract and legal damages resulting from the breach are mutually exclusive remedies.¹

B. Appellant’s Argument That Specific Performance and Damages at Law Are Mutually Exclusive Is Without Merit

Not only is Appellant’s characterization of *McKay* incorrect, Appellant is simply incorrect as a matter of law that specific performance and damages at law are mutually exclusive remedies. In fact, it is widely held that the two are not inconsistent at all. In *Medcom Holding Co. v. Baxter Travenol Laboratories, Inc.*, 984 F.2d 223 (7th Cir. 1993), for example, the Seventh Circuit explained that specific performance and damages at law are not inconsistent “because both remedies depend upon an affirmance of the contract.” *Id.* at 229. Thus, “the remedies of specific performance and damages on a contract are not inconsistent for purposes of the [election of remedies] doctrine.” *Id.* By contrast, the court noted that rescission of a contract is

¹ Even if the doctrine of election of remedies were relevant here, this Court has held that “the doctrine of election of remedies is in disfavor nationwide, and the doctrine is generally applied with caution and only in cases where the equities so dictate.” *Beyer v. Easterling*, 738 So. 2d 221, 225 (Miss. 1999). Additionally, election of remedies is an affirmative defense that must be plead in a responsive pleading. *See Midcoast Aviation, Inc. v. General Electric Corp.*, 907 F.2d 732, 739 n.4 (7th Cir. 1990) (“Election of remedies . . . is an affirmative defense” and should be “raised in [an] answer to [the] complaint.”). Appellant did not plead election of remedies as an affirmative defense.

inconsistent with an award of damages because “in order to get a remedy of rescission, a plaintiff must disaffirm the contract.” *Id.* at 228.

Similarly, in *Berryhill v. Berryhill*, 428 N.W.2d 647 (Iowa 1988), the Iowa Supreme Court noted that “there is nothing inherently inconsistent between legal remedies for breach of contract and equitable remedies for specific performance.”² Plaintiffs could bring both actions because they both assume the validity of the contract.” *Id.* at 658 (citing 5A Corbin on Contracts § 1222 at 473-75 (1964)). In addition, the court stated that “the remedies are not necessarily alternative in nature. The power of the court in equity is not limited to settling the rights of the parties for past occurrences; it allows the court to declare their duties and rights for the future as well.” *Id.* The court further explained: “The legal remedy [i.e., damages] only determined the rights and duties of the parties up to the time the jury rendered its verdict. Specific performance would cover the future rights of the parties and the closing of the real estate contract transaction.” *Id.* Other courts have reached similar conclusions. *See, e.g., Camperlino and Fatti Builders, Inc. v. Dimovich Constr. Corp.*, 572 N.Y.S.2d 255, 256 (N.Y. App. Div. 1991) (“The doctrine of election of remedies does not apply because specific performance and damages for breach of contract are not inconsistent, both being in affirmance of the contract.”).³

The principles announced in these cases are consistent with the plethora of Mississippi cases that recognize there is no inconsistency between equitable relief such as specific performance and claims for legal damages arising out of the same breach of contract, and that

² The Mississippi Court of Appeals has cited *Berryhill* as persuasive authority on a different point of law than those at issue here. *See In re Estate of Pickett*, 879 So. 2d 467, 471 (Miss. Ct. App. 2004).

³ The Indiana case cited by Appellant, *UFG, LLC v. Southwest Corp.*, 848 N.E.2d 353 (Ind. App. 2006), appears to be a minority view regarding the consistency of specific performance and legal damages. Moreover, the decision itself is internally inconsistent. The court first held that the claims for specific performance and legal damages are mutually exclusive, but then held that it was appropriate for the plaintiffs to bring damage claims along with their claims in equity.

such actions should be litigated in circuit court. In *ERA Franchise Systems, Inc. v. Mathis*, for example, this Court held that the chancellor committed reversible error by failing to transfer the action to circuit court because the plaintiff's claims contained questions of law and equity and because the plaintiff requested punitive damages. 931 So. 2d. 1278, 1283-84 (Miss. 2006). The plaintiff requested relief in the form of a constructive trust, estoppel, specific performance, and actual and punitive damages. *Id.* at 1280 (emphasis added). Despite the presence of the equitable claims and remedies, this Court held that the fact that punitive damages are sought is "a strong indicator that the matter is a legal action rather than an equitable one." *Id.* at 1282.

In *Mathis*, this Court noted that in *Union National Life Ins. Co. v. Crosby*, 870 So. 2d 1175 (Miss. 2004), the chancellor erred in refusing to transfer the action to the circuit court because "[t]he record clearly show[ed] that each and every one of Crosby's claims, even the equitable claims of unjust enrichment and constructive trust, [arose] from the sale and alleged breach of an insurance contract' and that her claims were tied to the existence of a contractual relationship." 931 So. 2d at 1283 (citing *Crosby*, 870 So.2d at 1182). The Court concluded that "[b]reach of contract actions are best heard in circuit court." *Id.* (citing *Crosby*, 870 So. 2d at 1180). *See also Tyson Breeders, Inc. v. Harrison*, 940 So. 2d 230, 233 (Miss. 2006) ("[B]reach of contract issues are best heard in circuit court.").

The *Mathis* Court also stated that, "[w]hile we have allowed a chancery court to retain jurisdiction over cases involving questions of both law and equity, our more recent cases have held that equitable claims are more appropriately brought before a circuit court when they are connected to a contractual relationship or other claims tied to questions of law." 931 So. 2d at 1283 (citing *Copiah Med. Assocs.*, 898 So. 2d 656 (Miss. 2005); *Crosby*, 870 So. 2d at 1175; *Re/Max Real Estate Partners v. Lindsley*, 840 So. 2d 709 (Miss. 2003)). Based on these cases, the Court held that the chancery court erred by not transferring the case to circuit court because

“[the plaintiff’s] causes of action were primarily stemming from contractual obligations that he claims were not met.” *Id.*

Similarly, in *Georgia-Pacific Corp. v. Mooney*, 909 So. 2d 1081 (Miss. 2005), the Court held that an action involving both legal and equitable remedies should be heard by the circuit court. The Court explained that “if some doubt exists as to whether a complaint is legal or equitable in nature, that case is better tried in circuit court.” *Id.* at 1087. “[I]t is more appropriate,” the Court explained, “for a circuit court to hear equity claims than it is for a chancery court to hear actions at law since the circuit courts have general jurisdiction but chancery courts enjoy only limited jurisdiction.” *Id.* (internal quotation marks omitted). Of particular note, the Court stated that a “breach of contract claim is best heard in circuit court and the remedy of punitive damages is clearly legal rather than equitable in nature.” (quoting *Southern Leisure Homes, Inc. v. Hardin*, 742 So. 2d 1088 (Miss. 1999)).⁴

In *Copiah Medical Associates v. Mississippi Baptist Health Sys.*, 898 So. 2d 656, 658-59 (Miss. 2005), Copiah Medical Associates (“Copiah Medical”) brought an action in circuit court alleging breach of contract, breach of the duty of good faith and fair dealing, and breach of fiduciary duties. Copiah Medical sought specific performance of a management agreement. *Id.* Copiah Medical amended the Complaint to add the breach of good faith and fair dealing, breach

⁴ Appellant suggests that it is impermissible for a court to award punitive damages in an action involving specific performance because Appellant could find no case “where punitive damages have been awarded as an element of the equitable compensation awarded in connection with specific performance relief.” Appellant’s Brief at 13. Yet, this Court has clearly upheld the appropriateness of awarding punitive damages in actions involving specific performance. See *American Funeral Assurance Co. v. Hubbs*, 700 So. 2d 283, 285 (Miss. 1997). It is likely that Appellant could find no cases describing punitive damages as “equitable compensation” because the law is clear that punitive damages are “legal” not “equitable” relief. As the United States Supreme Court has held, “[m]oney damages are, of course, the classic form of legal relief.” *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 255 (1993). Thus, at common law, “there were many situations . . . in which an equity court could ‘establish purely legal rights and grant legal remedies which would otherwise be beyond the scope of its authority.’” *Id.* at 256 (quoting 1 J. Pomeroy, *Equity Jurisprudence* § 181, p. 257 (5th ed. 1941)). It is, therefore, simply incorrect to characterize monetary damages awarded in action also involving equitable claims as constituting “equitable compensation.” Such damages are obviously legal in nature.

of fiduciary duties, and a request for punitive damages and attorney's fees. *Id.* The request for specific performance was eliminated. Baptist filed a motion to transfer the circuit court case to chancery court. *Id.* at 659. The circuit court denied Baptist's motion to transfer to chancery court. *Id.*

Baptist later filed suit against Copiah Medical in chancery court seeking specific performance of a net lease for the medical clinic and compensatory damages. *Id.* Copiah Medical filed a motion to transfer the case to circuit court and the chancellor denied Copiah Medical's motion to transfer. *Id.* Copiah Medical filed an amended motion to transfer and requested a dismissal or a stay pending resolution of the circuit court matter. *Id.* The chancellor denied all relief, and Copiah Medical filed a motion for reconsideration. *Id.* The motion for reconsideration was denied, and Copiah Medical filed an interlocutory appeal with this Court. *Id.* On appeal, Copiah Medical argued two issues: (1) that the chancellor erred by denying the transfer of the chancery court action to circuit court based on the fact that Baptist's claims in chancery court were compulsory counterclaims to the circuit court action which was filed by Copiah Medical prior to the chancery court action filed by Baptist; and (2) that the circuit court is the more appropriate forum to hear all claims. *Id.*

Appellant argues that this case does not apply here because the case was transferred to the circuit court because the parallel action in circuit court was filed first. However, this Court specifically noted that Baptist filed a complaint for specific performance and damages in chancery court based on the lease agreement and argued that the case should remain in chancery court because specific performance is the only remedy that could make it whole. *Id.* at 660. The Court then held that "this breach of contract claim should have been brought in circuit court rather than chancery court" and that an interlocutory appeal was the proper procedure for addressing this jurisdictional issue. *Id.* at 661.

C. The Cases Cited by Appellant Provide No Support for the Argument that the Chancellor Erred in Transferring This Matter to Circuit Court.

Appellant relies on *City of Starkville v. 4-County Electric Power Association*, 909 So. 2d 1094 (Miss. 2005), in support of its argument that the Chancellor erred in transferring this action to circuit court. However, this case provides no support for Appellant's argument. At issue in *City of Starkville* was the meaning of a service agreement entered into by the City of Starkville and 4-County Electric Power Association, along with interpretation of Mississippi statutes relating to the Public Service Commission and public utilities. The chancellor denied a motion to transfer, granted partial summary judgment, and stayed the case until the Public Service Commission could rule on the validity of a proposed sale under the agreement. 909 So. 2d at 1100.

The Court noted that instead of petitioning for a ruling from the Public Service Commission for approval of the sale, the City of Starkville filed an interlocutory appeal. *Id.* In addition, the suit was filed in chancery court in 1995, and the motion to transfer was not filed until 2002 – seven years after the filing of the Complaint. *Id.* The case was appealed to this Court after the chancery court entered a final summary judgment. *Id.* at 1101. Only then did the Court consider whether the chancery court erred by not transferring the case. *Id.* The Mississippi Constitution holds that a judgment rendered by the chancery court shall not be reversed or annulled based on lack of jurisdiction. Accordingly, a final judgment, such as the final summary judgment rendered by the chancery court in *City of Starkville*, could not be reversed based on a lack of jurisdiction. The issues involved in *City of Starkville*, the procedural history, and the length of time between the filing of the Complaint and the motion are considerably different than the present case. The present case clearly arises from a breach of

contract and seeks damages at law as well as specific performance. Based on the precedent of this Court, this case was appropriately transferred to circuit court.

D. Because Appellees Are Entitled to Have Their Breach of Contract Claims Tried by Jury, This Matter Was Appropriately Transferred to Circuit Court

As discussed above, Appellees maintain that this action, based on a breach of a sales and lease agreement, is primarily legal in nature rather than equitable. Appellees do not agree that any doubt exists as to whether the claims are legal or equitable. However, “in cases in which some doubt exists as to whether a complaint is legal or equitable in nature, the better practice is to try the case in circuit court.” *Southern Leisure Homes, Inc. v. Hardin*, 742 So. 2d 1088, 1090 (Miss. 1999) (citing *McDonald’s Corp. v. Robinson Indus., Inc.*, 592 So. 2d 927, 934 (Miss. 1991) (holding that “[i]t is more appropriate for a circuit court to hear equity claims than it is for a chancery court to hear actions at law since circuit courts have general jurisdiction”)).

Any doubts regarding the transfer of a case in which it is questionable whether the claims are legal or equitable should be resolved in favor of transfer to circuit court in order to preserve the right to a jury trial. *See USF&G v. Francis*, 825 So. 2d 38, 45 (Miss. 2002) (citing *Southern Leisure*, 742 So. 2d at 1090); *Mathis*, 931 So. 2d at 1283 (citing *Crosby*, 870 So. 2d at 1182) (holding that it is more appropriate for circuit courts to hear actions at law since circuit courts have general jurisdiction and chancery courts have only limited jurisdiction, “especially in light of the fact that it is in circuit court that a right to a jury trial is preserved.”)). Transferring the present case to circuit court is necessary to preserve the Appellees’ right to a jury trial. “If this action is allowed to remain in chancery court, there will be no trial by jury, this notwithstanding the command of our constitution that ‘the right of trial by jury shall remain inviolate.’” *Tillotson v. Anders*, 551 So. 2d 212, 213 (Miss. 1989).

Appellant argues that the Appellees are “belated” in asserting their right to a jury trial. However, this argument is without merit. In *Burnette v. Hartford Underwriters Ins. Co.*, 770 So. 2d 948, 951 (Miss. 2000), this Court held that the plaintiffs who originally brought their breach of contract action in chancery court did not waive their right to a jury trial by filing their action in chancery court. The *Burnette* plaintiffs filed their complaint in chancery court through their original counsel on February 19, 1997. *Id.* at 950. In October of 1998, after their original counsel withdrew, plaintiffs’ new counsel entered an appearance, submitted discovery, and filed a motion to transfer to circuit court. *Id.* The Court ruled that a question of subject matter jurisdiction may be presented at any time before a final judgment. *Id.* In finding that the plaintiffs’ motion to transfer should have been granted, the Court first noted that “a breach of contract claim is best heard in circuit court and that the remedy of punitive damages is clearly legal rather than equitable in nature.” *Id.* (citing *Southern Leisure*, 742 So. 2d at 1090). The Court then found that the breach of contract action between the parties was legal in nature, but held if any doubt existed, it would be resolved in favor of the plaintiffs’ position seeking to transfer to circuit court. *Id.* at 952. Therefore, the Court concluded that the case should be transferred to circuit court to ensure that the plaintiffs’ right to a jury trial would not be infringed upon by having the case heard in chancery court. *Id.* As the Supreme Court’s rulings in *Burnette* and *Southern Leisure* show, the Appellees have not waived their right to a jury trial and the Chancellor correctly transferred the case to circuit court.⁵

⁵ Appellant relies on *Re/Max Real Estate Partners, Inc. v. Lindsley*, 840 So. 2d 709 (Miss. 2003) in support of its argument that Appellees are not entitled to a jury trial. However, in *Lindsley*, the denial of the transfer to circuit court was affirmed based on a finding that the case primarily involved an accounting. *Id.* at 713. The Court held that cases involving an accounting should be heard in chancery court rather than circuit court. *Id.* Unlike *Lindsley*, the present case involves a breach of contract and should be heard in circuit court.

CONCLUSION


For the foregoing reasons, Appellees respectfully request that this Court affirm the order of the Chancery Court transferring this matter to the Circuit Court of Issaquena County, Mississippi. The Chancery Court appropriately transferred this matter to Circuit Court. Appellees' Complaint involves primarily legal claims for breach of contract and seeks compensatory and punitive legal damages, in addition to specific performance. This Court has repeatedly recognized that Circuit Court is the appropriate forum for resolving such claims because of their essentially legal nature. Transferring the action to Circuit Court also preserves the Appellees' right to trial by jury.

This, the 19th day of November, 2008.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Bradley S. Clanton, do hereby certify that I have this day served, *via* United States mail, postage prepaid, a true and correct copy of the above and foregoing document upon:

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The Honorable Chancellor Vicki Roach Barnes
Issaquena County Chancery Court Judge.
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