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

NO. 2007-TS-00349-COA

CENTRAL HEALTHCARE SERVICES P.A. and WENDALL HARRELL
-APPELLANTS-

VERSUS

CITIZEN'S BANK OF PHILADELPHIA, MISSISSIPPI
-APPELLEE-

APPELLANT'S BRIEF

ORAL ARGUMENT REQUESTED

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DATED this the 29th day of April 2008.

Respectfully Submitted,

CENTRAL HEALTH CARE SERVICES, P. A.
and WENDALL HARRELL

BY: _____

J. EDWARD RAINER and LORA S. GIPSON
Attorneys of Record for Central Healthcare Services
and Wendell Harrell

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VS. — **NO. 2007-TS-00349-COA**

CITIZENS BANK OF PHILADELPHIA, MISSISSIPPI — **APPELLEE**

CERTIFICATE OF INTERESTED PARTIES

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 judges of the Supreme Court of Mississippi may evaluate possible disqualification or recusal.

1.	Central Healthcare Services, P. A. and Wendell Harrell	Appellants
2.	Hon. Janace Harvey-Goree	Chancellor
3.	Citizen's Bank of Philadelphia, Mississippi	Appellee
4.	Hon. Wilson H. Carroll, Hon. Stratton Bull, and Phelps Dunbar, LLP	Attorneys for Appellee
5.	J. Edward Rainer, Lora S. Gipson and Rainer Law Firm, P. A.	Attorneys for Appellants

Table of Contents

Table of Cases, Statutes, and Rules

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CITIZENS BANK OF PHILADELPHIA,
MISSISSIPPI — APPELLEE

APPELLANT'S BRIEF

I. STATEMENT OF THE ISSUES:

A. **The Chancery Court of Leake County, Mississippi, Committed Manifest Error by Conveying Title of the Crawford Lot to Citizens Bank of Philadelphia.**

B. **The Chancery Court of Leake County, Mississippi Committed Manifest Error by Dismissing Central Healthcare Services, P.A. and Wendall Harrell's Respective Counterclaims against Citizens Bank of Philadelphia.**

C. **The Chancery Court of Leake County, Mississippi Committed Manifest Error by Failing to Award Attorneys Fees to Central Healthcare Services, P.A. and Wendall Harrell.**

II. STATEMENT OF THE CASE:

A. NATURE OF THE CASE

(1). This civil action comes before this Honorable Court upon the First Amended Complaint to Confirm Title, Cancel Cloud and Other Relief, hereafter referred to as the ("AMENDED COMPLAINT"), filed herein by Citizens Bank of Philadelphia, Mississippi ("The Bank") against Central Healthcare Services ("CHS") and Wendall Harrell ("Harrell"), and in particular:

(a) seeking removal of any and all adverse claims of ownership asserted by or through CHS and to forever bar and extinguish any such claim by CHS, and for this Court to declare George Whitten, Joseph Kyle Welch, J.P. Culpepper and Greg Thaggard (hereafter referred to as the "Whitten Group") fee simple owners of said property;

(b) seeking actual damages from Wendall Harrell in the amount of $81,611.03, plus attorney's fees and costs incurred in bringing this action; and,

(c) seeking indemnification from Wendall Harrell for any and all claims, damages, loss costs, or other harm which it might suffer as a result of his failure to convey good and marketable title to the Trustee under the Deed of Trust dated

September 14, 2000, including, but not limited to, any claims which might be asserted by the new owners or any other party claiming title by or through them.

(2) Upon subsequent Counterclaim(s), hereafter referred to as the ("CHS COUNTERCLAIM") and the ("HARRELL COUNTERCLAIM) respectively, filed herein by CHS and Harrell against the Bank, and in particular:

(a) seeking the entry of a Judgment canceling, as clouds upon the CHS title to the "Crawford Lot," all claims, deeds, deeds of trust and/or other documents by which the Bank asserts title to said real property;

(b) seeking a judgment of, from and against the Bank in a sum sufficient to cover reasonable attorney's fees and all costs and other damages incurred by CHS and Harrell as a result of this litigation, including, but not limited to, compensation for defamation incurred in connection with CHS's and Harrell's involvement in this action and damages for defamation, abuse of process, malicious prosecution, and awards that may be due CHS and/or Harrell under the Litigation Accountability Act; and,

(c) seeking that the Bank be assessed with all costs accruing in this action, and that CHS and Harrell be awarded punitive damages of and from the Bank in the amount of $3,000,000.00.

B. COURSE OF THE PROCEEDINGS:

(1) This civil action was heard in part on April 17th and 18th, 2006, with the Honorable Janice Harvey-Goree hearing testimony from both parties concerning the Amended Complaint filed herein by the Bank against CHS and Harrell, and the subsequent CHS and Harrell Counterclaim(s) filed respectively, against the Bank. The Bank carried the burden of going forward on their Amended Complaint, and they began presenting witnesses and documentary evidence on the first day of trial, April 17, 2006. During the trial, the Bank called as its witnesses the following persons who each testified as respectively set out in the record of the Chancery Court of Leake County, Mississippi:

(a) **Mike Brooks**: Mike Brooks testified and was cross-examined;
(b) **A.W. ("Roy") Wright**: Roy Wright testified and was cross-examined;
(c) **Ralph Hall**: Ralph Hall testified and was cross-examined; and,
(d) **Joe Townsend**: Joe Townsend testified and was cross-examined;

(2) The Honorable Janice Harvey-Goree then heard testimony on the CHS and Harrell Counterclaims filed against the Bank. CHS and Harrell each respectively carried the burden of going forward and began presenting witnesses and documentary evidence on April 18, 2006. CHS and Harrell called as witnesses during the trial the following persons:

(a) **Chris Wade**: Mr. Wade was the first witness called by CHS and Harrell. Mr. Wade testified on behalf of his appraisal of the subject property and as to his interaction with the officers of the Bank and Harrell respectively;

(b) **Blanche Gregory**: Gregory (as the president and principal agent of CHS) was the second witness for and on behalf of CHS, and on behalf of the CHS Counterclaim against the Bank. Mrs. Gregory testified to the damages she requested in her counterclaim and further testified as to her intentions regarding the Crawford Lot; and,

(c) **Wendall Harrell**: Harrell was the third witness to testify for and on his own behalf, and on behalf of his Counterclaim against the Bank. Harrell testified to the damages he requested in his counterclaim against the Bank and further testified to his contact and involvement with the officers of the Bank, Chris Wade and Roy Wright regarding the Crawford Lot;

(3) During said testimony of Wendall Harrell on April 18, 2006, the Court called a recess to confer with counsel in the Judge's Chambers, whereupon the balance of this case was continued until October 20, 2006, at 9:00 a.m. in the Chancery Court of Leake County, Mississippi.

(4) On October 20, 2006, at 9:00 a.m., the court reconvened to hear the balance of this matter, which began with Mr. Harrell resuming the stand.

(a) **Wendall Harrell (testimony resumed on 10/20/06).** Harrell resumed the stand and continued to testify to redirect questioning; and,

(b) **J. Edward Rainer.** Ed Rainer was the fifth witness called by CHS and Harrell to testify regarding his attorney's fee statement (for both Harrell and CHS.) However, the Bank's attorneys stipulated to the accuracy and fairness of Mr. Rainer's legal fees, and the said attorney's fee statement was accepted into evidence, at the request and demand of CHS and Harrell for payment of their respective attorney's fees in the total sum of $32,367.95.

(5) Whereupon the Defense rested and the Bank herein called as rebuttal witnesses the following persons:

(a) **Steve Webb (Rebuttal Witness for the Bank).** Steve Webb was the first rebuttal witness called to testify on behalf of the Bank. Steve Webb testified as a rebuttal witness and was subject to cross-examination; and,

(b) **Mike Brooks (Rebuttal Witness for the Bank).** Mike Brooks was the second rebuttal witness called to testify on behalf of the Bank. Mike Brooks testified as a rebuttal witness and was subject to cross-examination.

(6) Following the testimony of the above witnesses upon the pleadings filed one against the other, the Honorable Janace Harvey-Goree instructed both attorneys to submit briefs setting forth each parties' respective legal position based on the testimony of the witnesses and the evidence presented at trial.

(7) Upon Judge Goree's review of the respective briefs of both parties, Judge Goree entered the Court's Findings of Fact and Conclusions of Law:

(a) awarding title of the Crawford Lot to George L. Whitten, J.P. Culpepper, Greg Thaggard and Joseph Kyle Welch *(which essentially awarded title to the Bank, as the Bank had repurchased the said Crawford Lot from them when the title defect was discovered)*;

(b) dismissing the CHS and Harrell Counterclaims respectively;

(c) finding that Harrell was not liable to the Bank for the sum of $81,611.03; and,

(d) denied attorneys fees to either party.

C. STATEMENT OF FACTS RELEVANT TO THE ISSUES PRESENTED FOR REVIEW.

(1) CHS purchased the Hardage Lot on November 7, 1994, by deed from Mrs. Nonie Lee Hardage, recorded in Deed Book 212, Page 27, on file and of record in the Leake County Chancery Clerk's Office. *Record at 259: 25 - 260: 9.*

(2) Harrell purchased the Crawford Lot on September 4, 1987, by Warranty Deed from Robert Lee Crawford, recorded in Deed Book

174 at Page 533, on file and of record in the Leake County Chancery Clerk's Office .*Record at 100: 1-4.*

(3) Harrell subsequently conveyed the Crawford Lot to CHS for good and valuable consideration on May 24, 1989, by Warranty Deed, recorded in Deed Book 182 at Page 668, on file and of record in the Leake County Chancery Clerk's Office. *Record at 100: 7-17.*

(4) The title to the Crawford Lot has remained in the possession of CHS since 1989. *Record at 258: 1-4.*

(5) Harrell owned several commercial properties which he desired to improve and cultivate into a shopping mall development. *Record at 8: 24-29; 9: 1-7.*

(6) The Hardage Lot and Crawford Lot are located adjacent to the properties that Harrell desired to develop.

(7) Harrell approached the Bank about borrowing funds against said commercial properties (including the Hardage Lot, as CHS had agreed to sell said Hardage Lot to Harrell) to fund his proposed shopping mall development. *Record at 8:24 - 9: 21.*

(8) On September 1, 2000, CHS executed a Warranty Deed conveying ownership of the Hardage Lot *(not the Crawford Lot)* to Harrell. The consideration for conveyance of the Hardage Lot was payment of the

debt owed by CHS to the Bank on both the Hardage and Crawford Lots. *Record at 260: 14-29; 261: 1- 26.*

(9) As part of the loan application process, Harrell was required by the Bank to pay for an appraiser to appraise the value of the property, and to pay for an attorney to prepare a Certificate of Title on the property to be included in the proposed shopping mall development, both of which were approved by the Bank. *Record at 16: 5 - 17:10; Record at 27: 22-29.*

(10) The Bank contacted Chris Wade, the appraiser, to add the Hardage and Crawford Lots into the appraisal. *Record at 243:17 - 244: 3.*

(11) The Bank also contacted Roy Wright and requested that he include the Hardage and Crawford Lots into the Certificate of Title. *Record at 135:22 -26.*

(12) Harrell was unaware that the Hardage Lot and/or the Crawford Lot were included in the Deeds of Trust in connection with his bank loan. *Record at 169:14 -22.*

(13) Mr. Wade, the appraiser hired in connection with the financing for the proposed shopping mall development, appraised the value of Harrell's commercial properties at $1,715,000.00, basing this value on the assumption that there would be sufficient landfill used to improve the lots. *Record at 241:15 -29.*

(14) The appraisal was prepared for the Bank and subsequently said appraisal was submitted to the Bank. *Record at 244:23 -29.*

(15) After receiving the loan from the Bank, Harrell made a good faith effort to develop the property, including, but not limited to, extensive dirt-moving and landfill operations. During Harrell's ownership of the properties, He spent approximately $3,058,398.00, in his efforts to improve the site. *Record at 320:17 -29.*

(16) The Bank chose not to renew the loan to Harrell, despite Harrell's timely payment to the Bank of all interest payments due thereon. *Record at 116:28 - 117:14.*

(17) Subsequently, Harrell was unable to find alternate financing during the brief period of time allocated to him by the Bank for this purpose, and the property ended up in foreclosure. *Record at 315:20 -25.*

(18) At the foreclosure sale, the Bank purchased the property for $963,649.97 and subsequently sold the foreclosed property (including the Crawford Lot) to J.P. Culpepper, George Whitten, Kyle Welch and Greg Thaggard "Whitten Group" shortly after the foreclosure sale. *Record at 104:11-15; 106: 10-25.*

(19) Shortly thereafter, the Whitten Group discovered that, at the time of the sale of the property to them by the Bank, the Bank did not hold

title to the Crawford Lot—a matter for which the Whitten Group immediately informed the Bank. *Record at 71:9 -21; 72: 18-21.*

(20) The Bank then contacted Roy Wright, the attorney who initially certified the title to said property, whereupon Mr. Wright assured the Bank that this matter would be resolved. Mr. Wright subsequently contacted Harrell, who initially denied to Wright that he had signed a Deed of Trust on the Crawford Lot; however, Roy Wright produced a copy of the Deed of Trust to Harrell, which covered both properties. *Record at 74:19 - 75: 3; 151: 2-9.*

(21) Upon reviewing the document produced to him by Roy Wright, Harrell told Mr. Wright that he would speak with his daughter. *Record at 335:1 - 336: 12.*

(22) When Roy Wright contacted Blanche Gregory, *president and principal agent of CHS,* to request that she execute a Quitclaim Deed, Roy Wright did not inform her there was a problem with the Crawford Lot. *Record at 174:20 -29.*

(23) Roy Wright came to Blanche Gregory's place of business and presented Mrs. Gregory with a quitclaim deed that contained a property description which covered and included the Crawford Lot. Blanche Gregory had no knowledge regarding the property description contained in the said Quitclaim Deed, so she specifically

told Roy Wright she wanted the description to only cover the Hardage Lot – which was the only lot CHS had agreed to sell to Harrell, and instead of fully informing Mrs. Gregory that the description contained included both lots, Mr. Wright simply included a paragraph at Gregory's request restricting the conveyance to the Hardage Lot. *Record at 265:1 - 268:23.*

(24) Blanche Gregory never intended to convey the Crawford Lot to anyone, as is clearly discernable by the terms of the Quitclaim Deed. *Record at 268:17-23.*

(25) As a result of the pending litigation, the Bank repurchased the Crawford Lot from the Whitten Group as a result of the title defect and released them as involuntary parties to this action. *Record at 80:15-21.*

(24) On October 20, 2004, Citizens Bank of Philadelphia, Mississippi filed its Complaint to Confirm Title, Cancel Cloud and Other Relief against Central Healthcare Services P.A., *[said Complaint also named as involuntary plaintiffs: George L. Whitten, Joseph Kyle Welch, J.P. Culpepper and Greg Thaggard]* in the Chancery Court of Leake County, Mississippi.

(25) On December 06, 2004, Central Healthcare Services, P.A. filed their Answer and Defenses to the Complaint to Confirm Title, to Cancel Cloud and for Other Relief, and Counterclaim.

(26) On March 04, 2005, Citizens Bank of Philadelphia, Mississippi filed its Amended Complaint to Confirm Title, Cancel Cloud and Other Relief against Central Healthcare Services P.A., *[said Complaint also named as involuntary plaintiffs: George L. Whitten, Joseph Kyle Welch, J.P. Culpepper and Greg Thaggard]* in the Chancery Court of Leake County, Mississippi.

(27) On March 30, 2005, Central Healthcare Services, P.A. filed their Answer and Defenses to the Amended Complaint to Confirm Title, Cancel Cloud and for Other Relief, and Counterclaim.

(28) On May 09, 2005, Wendall Harrell filed his Answer and Defenses to the Amended Complaint to Confirm Title, to Cancel Cloud and for Other Relief, and Counterclaim.

(29) This matter was subsequently heard in part on April 27 and 28 of 2006 and was finally concluded on October 20, 2006. Both parties were requested to submit briefs upon the conclusion of the trial.

(30) The Honorable Judge Janace Harvey-Goree rendered her Final Judgment on March 13, 2007.

(31) CHS and Harrell filed a Motion for Reconsideration and said Motion was subsequently denied.

(32) Whereupon, CHS and Harrell filed there Notice of Appeal to the Supreme Court of Mississippi.

III. SUMMARY OF ARGUMENT.

CHS and Harrell make their appeal to this Honorable Court, citing that the Chancery Court of Leake County, Mississippi, was manifestly wrong in granting fee simple ownership of the Crawford Lot to Joseph Kyle Welch, J.P. Culpepper, Greg Thaggard and George Whitten ("the Whitten group). The standard used when reversing a Chancellor's ruling states, "We shall not disturb the findings of a chancellor unless the chancellor was manifestly wrong, clearly erroneous, or there was an application by the chancellor of an erroneous legal standard. *Kenny vs. Anderson,* 881 So.2d 340 (Miss. App.2004) *[citing Buford vs. Louge,* 832 So.2d 594, 600 (Miss. App. 2002)*]*. The Chancery Court of Leake County, Mississippi reached its decision by relying up a 2004 Quitclaim Deed presented at trial, which purports to show that CHS transferred fee simple title of the said Crawford Lot to the Whitten group. CHS and Harrell assert that the 2004 Quitclaim Deed, when examined, does not convey the Crawford Lot. The Supreme Court applies a three-tiered process to examine the "four corners" of an instrument in dispute. *Pursue Energy Corp. v. Perkins,* 558 So.2d 349, 351 (Miss. 1990). "This so-called 'four corners' doctrine calls for construction through application of "correct English definition and language usage." *Thornhill vs. Systems Fuel Inc.*, 523 So.2d 983 at 1007 (Miss. 1988). "In other words, an instrument should be

construed in a manner 'which makes sense to an intelligent layman familiar only with the basics of [the] English language'." *Id.* "When an instrument's substance is determined to be clear or unambiguous, the parties intent must be effectuated." *Pursue Energy Corp. vs. Perkins*, 558 So.2d 349 (Miss. 1990) (citing *Pfisterer vs. Noble*, 320 So.2d 383, 384 [Miss. 1975]). CHS and Harrell assert that upon review the said 2004 Quitclaim Deed will be found clear and unambiguous, in that it only conveys fee simple title to the Hardage lot and not that of the Crawford Lot.

If examination solely of the language within the instrument's four corners does not yield a clear understanding of the parties' intent, the court will [implement] ... applicable 'canons' of construction." *Pursue Energy Corp.*, 558 So.2d at 352, (citing *Clark v. Carter,* 351 So.2d 1333, 1334 & 1336 (Miss.1977). Essentially, the Court will attempt to "harmonize the provisions in accord with the parties apparent intent." *Purse Energy Corp v. Perkins,* 558 So.2d 349 at 352 (Miss. 1990). If the Court does not feel that the provisions effectuate a "clear understanding of the parties intent" then the Court will proceed to another tier. *Purse Energy Corp v. Perkins,* 558 So.2d 349 at 352 (Miss. 1990) Another canon of construction that the Court applies is that "[U]ncertainties should be resolved against the party who prepared the instrument." *Purse Energy Corp v. Perkins,* 558 So.2d 349, 351(Miss. 1990). Roy Wright was contacted by the Bank and acting on behalf of the bank when he drafted the said 2004 Quitclaim Deed and presented it to Gregory, *president and principal agent of CHS,* and therefore the language of the Quitclaim Deed should be construed most strongly against the Bank. Another applicable canon of construction cited

by the Bank is, "[W]here conflicting language is found in the granting clause and the descriptive or recital clause, the granting clause controls." Roy Wright testified that the clause located at the bottom of the said 2004 Quitclaim Deed was an acquisition clause and that he regularly included these clauses in his deeds. CHS asserts that Roy Wright did not protest when she wished to add a paragraph interpreting her intent and further, Roy Wright did not object to the inclusion of only the Crawford Lot. Therefore, it is evident that the clauses do not conflict with each other, but rather mirror the intent of both parties. Another canon of construction that will apply is "[T]he deed must be read in the light of the circumstances surrounding the parties when it was executed." *Thornhill v. System Fuels, Inc.*, 523 So.2d 983, 990 (Miss. 1988); *Salem Brick & Lumber Co. v. Williams*, 50 So.2d 130 (Miss. 1951). The circumstances which guide a Court's interpretation of a Deed include "the practical construction placed thereon by the parties." *Thornhill* at 990 (Miss. 1998). Mrs. Gregory expressed to Roy Wright that she wanted to include a clause that stated "Grantor intends to convey herein, the property she acquired by deed from Mrs. Nonie Lee Hardage, dated November 7, 1994, recorded in Deed Book 212, Page 27, records of the Leake County Chancery Clerk's Office." Not only did Roy Wright not offer any protest to Mrs. Gregory's request, he subsequently included the requested clause. As such, the language contained in the said 2004 Quitclaim Deed should be read to convey the Hardage Lot only—not the Crawford Lot.

CHS and Harrell further appeal to this Honorable Court asserting that the Chancery Court of Leake County, Mississippi was manifestly wrong in dismissing both the CHS and

Harrell Counterclaims lodged herein against the Bank with respect to their claims that the Bank filed this action without Substantial Justification against either CHS or Harrell which resulted in Abuse of Process, Defamation, Malicious Prosecution and in violation of the Litigation Accountability Act of 1988. A pleading filed without Substantial Justification means, "A pleading or motion is frivolous...when, objectively speaking, the pleader or movant has no hope of success." *Stevens vs. Lake* 615 So.2d 1177, at 1184 (Miss. 1993), quoting *Tricon Metals & Services, Inc. vs. Topp*, 537 So.2d 1331, at 1335 (Miss. 1989). CHS, according to testimony, never conveyed or intended to convey the said Crawford Lot—to either Harrell or the Bank. A pleading or motion that is groundless in law or fact is the second element for a claim without substantial justification. The said Crawford Lot was not conveyed by the legal owner in the Deed of Trust therefore, the Bank has no basis to proceed with a quiet title action. A pleading or motion filed for vexatious delay is the third element for a claim without substantial justification. According to our facts, this claim is frivolous and groundless in law; so therefore, upon the filing of the action, it becomes vexatious delay. The Second allegation of the respective counterclaims of CHS and Harrell against the Bank is abuse of process. The Bank initiated a quiet title action on property that they never legally possessed. The elements of abuse of process are: (1) the party made an illegal use of the process, a use neither warranted nor authorized by the process; (2) the party had an ulterior motive; and, (3) damage resulted from the perverted use of the process. *Franklin Collection Services, Inc. v. Stewart* 863 so.2d 925, at 931 (Miss. 2003). CHS and Harrell assert that the Bank's actions are an illegal use of the judicial process. A claim for

defamation requires that the following elements be met: (1) a false and defamatory statement concerning the person(s) charged; (2) an unprivileged publication to a third party; (3) fault amounting at least to negligence on the part of the publisher; and, (4) actionability of the statement, irrespective of special harm or the existence of special harm caused by the publication. *Blake vs. Gannett Company, Inc.*, 529 So.2d 595 at 602 (Miss. 1988). This action has defamed CHS and Harrell through no fault of their own by and through damage to Harrell's and CHS's reputation, both personal and business-related, and has caused them to incur attorney's fees, Court costs, and the overall inconvenience of impending accusations and the process of their trial. The Fourth allegation of the respective counterclaims of CHS and Harrell assert that the Bank is liable to them for malicious prosecution. The elements of malicious prosecution are: (1) The institution of a proceeding; (2) by, or at the insistence of the Plaintiff; (3) the termination of such proceedings in the Defendant's favor; (4) malice in instituting the proceedings; (5) want of probable cause for the proceedings; and, (6) the suffering of injury or damage as a result of the prosecution. *Condere Corp. v. Moon*, 880 So.2d 1038, at 1042 (Miss. 2004); *McClinton v. Delta Pride Catfish, Inc.*, 792 So.2d 968, at 973 (Miss. 2001). The evidence standard for evaluating these elements is preponderance of the evidence. *Van v. Grand Casinos of Mississippi, Inc.*, 724 So.2d 889, at 891(Miss. 1998). The Bank instituted these judicial proceedings with no "substantial basis" for their claim against either Harrell or CHS, as previously set forth above. This suit was filed maliciously and with reckless disregard to the facts and without probable cause. The Bank

should be found liable of malicious prosecution. Under the Litigation Accountability Act of 1988 found in MCA (1972, as amended) § 11-55-1 through 11-55-15, attorney's fees and other reasonable costs are awarded when a claim is brought without substantial justification, or if the Court finds that the action was brought for delay or harassment, or if the Court finds the other party expanded the pleadings unnecessarily by other improper conduct. MCA § 11-55-5(1) (Rev. 2002). In examining a frivolous action, the Court applies the same standard that is applied under Rule 11. *Scruggs vs. Satterfield*, 693 So.2d 924 (Miss. 1997). The Court will look only to the facts known at the time the complaint was filed to determine if a pleading is frivolous. *Bean vs. Broussard*, 587 So.2d 908, at 912 (Miss. 1991). The Supreme Court has held that a claim is not frivolous as long as it is filed with "some hope of success." *Matter of Will of Fankboner*, 638 So.2d 493 (Miss. 1994). CHS and Harrell assert that the Bank never held title to the Crawford lot and as such the Chancery Court was manifestly wrong in dismissing their valid claims against the Bank. Further Harrell and CHS assert that pursuant to MCA (1972, as amended) § 11-55-7, they are entitled to attorney's fees as this action was clearly filed against them without substantial justification resulting in a violation of the Litigation Accountability Act of 1988. *Mississippi Code Ann. § 11-55-7 (1972 as amended).*

IV. ARGUMENT

A. THE CHANCERY COURT OF LEAKE COUNTY, MISSISSIPPI, COMMITTED MANIFEST ERROR BY CONVEYING TITLE OF THE CRAWFORD LOT TO CITIZENS BANK OF PHILADELPHIA.

The Chancery Court of Leake County, Mississippi was manifestly wrong in granting fee simple title of the Crawford Lot to the Bank. The case law for reversing the ruling of a Chancellor is well established in that a limited standard of review is used when addressing cases from Chancery Court. Kenny vs. Anderson, 881 So.2d 340 (Miss. App.2004) *[citing Buford vs. Louge,* 832 So.2d 594,600 (Miss. App. 2002)*]*. "We shall not disturb the findings of a chancellor unless the chancellor was manifestly wrong, clearly erroneous, or there was an application by the chancellor of an erroneous legal standard. *Id.* The Chancery Court of Leake County, Mississippi reached its decision by relying up a 2004 Quitclaim Deed presented at trial, which purports to show that CHS transferred fee simple title of the said Crawford Lot to the Bank. CHS and Harrell assert that the 2004 Quitclaim Deed, when examined, does not convey the Crawford Lot to the Bank, and therefore the ruling of the Leake County Chancery Court should be reversed and the Bank's Amended Complaint to Quiet Title should be dismissed.

Through examining the said 2004 Quitclaim Deed and the evidence and testimony surrounding its origin and execution, it is blatantly clear that said 2004 Quitclaim Deed does not convey fee simple title to the Crawford Lot. When a document is in question, the Supreme Court applies a three-tiered process to examine the "four corners" of an instrument in dispute. Pursue Energy Corp. v. Perkins, 558 So.2d 349, 351. "This so-called 'four corners' doctrine calls for construction through application of "correct English definition and language usage." Thornhill vs. Systems Fuel Inc., 523 So.2d 983 at 1007 (Miss. 1988). "In other words, an instrument should be construed in a manner 'which makes sense to an

intelligent layman familiar only with the basics of [the] English language'." *Id.* "When an instrument's substance is determined to be clear or unambiguous, the parties intent must be effectuated." Pursue Energy Corp. vs. Perkins, 558 So.2d 349 (Miss. 1990) (citing *Pfisterer vs. Noble*, 320 So.2d 383, 384 [Miss. 1975]). In our case, Roy Wright, at the request of Gregory, added an acquisition clause which states, "Grantor intends to convey herein the property that she acquired by deed from Mrs. Nonie Lee Hardage..." *Record at 267: 6-10.* Wright, further testified that he regularly included acquisition clauses to show derivation of title. *Record at 174: 9-11.*

Gregory and Wright's respective testimonies differed where the construction of the 2004 Quitclaim Deed was concerned. Wright stated in his testimony that he omitted to include an acquisition clause for the Crawford Lot; however, Gregory testified that she refused to sign the said 2004 Quitclaim Deed until a clause was added which stated clearly the property being conveyed. Wright's testimony, when examined, simply does not hold water. As an experienced attorney who regularly added acquisition clauses in his deeds, Wright would have been especially careful with this deed, as he was already at fault for incorrectly certifying title to the said Crawford Lot. Wright sought to cure his former mistake by deceiving Gregory into signing away her rights to the Crawford Lot, despite her statement to him that she only wanted to convey the Hardage Lot. Gregory, as *president and principal agent of CHS,* according to her testimony is not familiar with property descriptions and requested that a clause be added clarifying the property conveyance, which clearly states that she conveyed the Hardage Lot. The said 2004 Quitclaim Deed is not ambiguous. The

property description covers both properties, but the acquisition clause, requested by Gregory and added by Roy Wright – without objection– clearly demonstrates that both parties were in agreement to conveyance of the Hardage Lot. It is not CHS' fault that Wright attempted to deceive Gregory into signing away her property. Wright, as an attorney would know the effect of including a clause granting the Hardage Lot and not the Crawford Lot. However, Wright would have us believe that he simply forgot to include an acquisition clause for the Crawford Lot, when said Crawford Lot was the whole purpose of the said 2004 Quitclaim Deed. It is obvious that Wright, in his attempt to clear up his liability to the Bank, attempted to deceive CHS into signing away the Crawford Lot.

The language of the said 2004 Quitclaim Deed clearly states, without ambiguity, that CHS' intent was to convey the Hardage Lot (for the implied purpose of curing any defect that previously existed with respect solely to the "Hardage Lot") evidenced by the language of the entire deed stating that CHS intended to "convey the property acquired by deed from Mrs. Nonie Lee Hardage." Further the property description, prepared by Wright, covered and included the Hardage Lot (even though there was no reason for Wright to draft a Quitclaim Deed with respect to the Hardage Lot). CHS was an innocent bystander in this action. CHS did not intend to convey title to the Crawford Lot. CHS never entered into any discussions with Harrell, Wright, or the Bank about conveying said title. Wright had no reason to approach Gregory and attempt to deceive her into conveying property. Wright did not contact her and explain the title defect, he simply showed up at her place of business to obtain title through fraud. CHS should not be held accountable for Wright's misconduct. CHS and

Harrell assert that upon review the said 2004 Quitclaim Deed will be found clear and unambiguous, in that it only conveys fee simple title to the Hardage lot and not that of the Crawford Lot.

If examination solely of the language within the instrument's four corners does not yield a clear understanding of the parties' intent, the court will [implement] ... applicable 'canons' of construction." *Pursue Energy Corp.*, 558 So.2d at 352, (citing *Clark v. Carter,* 351 So.2d 1333, 1334 & 1336 (Miss.1977). Essentially, the Court will attempt to "harmonize the provisions in accord with the parties apparent intent." *Purse Energy Corp v. Perkins,* 558 So.2d 349 at 352 (Miss. 1990). Meaning that the Court will apply applicable canons of construction to determine the intent of the parties evidenced by the language found in the deed. As previously argued in the preceding paragraphs, when read in its entirety, the said 2004 Quitclaim Deed contains a description that covers and includes both the Hardage Lot and the Crawford Lot, but at the bottom the Deed states, "Grantor intends to convey herein the property that she acquired by deed from Mrs. Nonie Lee Hardage..." According to testimony, Roy Wright contacted Mrs. Gregory regarding a Quitclaim Deed that needed to be executed in order to clarify title to property upon which foreclosure was initiated by the Bank. Roy Wright testified that he did not specifically inform Mrs. Gregory that the title defect was on the Crawford Lot. As such, Blanche Gregory assumed that the title defect was in respect to the Hardage Lot, which she did agree to convey to Harrell for inclusion in his proposed shopping mall development. Roy Wright, upon learning from the Bank that he had incorrectly certified the Crawford Lot as the property of Harrell, drafted a Quitclaim Deed

and traveled to Mrs. Gregory's place of business for her to execute same. Said 2004 Quitclaim Deed included both the Hardage Lot and Crawford Lot descriptions, although Roy Wright made no attempt to inform Gregory of that fact. Upon being presented with said 2004 Quitclaim Deed, Gregory, wanting to make sure that she only conveyed the Hardage Lot, testified that she refused to sign same until certain language was added to evidence that she only intended to convey the Hardage Lot. Instead of informing Gregory that both property descriptions were contained in the 2004 Quitclaim Deed, Wright listened to her concern that only the Hardage Lot be conveyed, and acting as an agent and/or officer of the Bank, he underhandedly amended the Quitclaim Deed, and included the above referenced paragraph. Gregory, who by her own testimony is not familiar with property descriptions, intended to limit her conveyance to cure the pretentious defect with respect to the Hardage Lot, otherwise, she would have included a phrase for the Crawford Lot as well. Therefore, CHS and Gregory assert that the circumstances surrounding the execution of the said 2004 Quitclaim Deed, show clearly that CHS only intended to convey the Hardage Lot.

Another canon of construction that the Court applies is that "[U]ncertainties should be resolved against the party who prepared the instrument." *Purse Energy Corp v. Perkins*, 558 So.2d 349, 351. In the present matter, Roy Wright was the attorney who prepared the said 2004 Quitclaim Deed. According to his sworn testimony at trial, Mr. Wright was contacted by Mike Brooks at the Bank and asked to help clarify the "title defect" with respect to the Crawford Lot. In truth, there was no title defect because the owner of the Crawford lot had never conveyed it. Both Gregory and Roy Wright testified that CHS was not a client of

Roy Wright. As such, the said 2004 Quitclaim Deed should be construed most strongly against the Bank, due to the fact that Roy Wright was acting as an employee and/or agent of the Bank by preparing said 2004 Quitclaim Deed—for and on behalf of the Bank. By Roy Wright's own admission, he went to Mrs. Gregory's place of business to clarify title with respect to the Crawford Lot. Either he made a mistake in the Deed, which should be construed against him since he was the party preparing the document on behalf of the Bank, or he was attempting to deceive Mrs. Gregory into conveying the Crawford lot, which should also be construed against him. After all, it was Mr. Wright that stood to gain the most from Mrs. Gregory signing the Deed, as he was the one trying to escape liability for the mistake he made. There can be no other conclusion than to hold that the 2004 Quitclaim Deed conveys the Hardage Lot—solely.

Another applicable canon of construction cited by the Bank is, "[W]here conflicting language is found in the granting clause and the descriptive or recital clause, the granting clause controls." Roy Wright, during his testimony, referred to this paragraph as an "acquisition paragraph." It is important to note that Mr. Wright regularly prepares Deeds to property and as such, he would be aware that said statement would be interpreted by the Court as a recital clause and that the property description contained therein would be held valid. It is unfair to allow the Bank and Roy Wright to knowingly "steal" land from Blanche Gregory when she obviously did not have any intentions of conveying that land. CHS and Harrell assert that there is no conflicting language found in the said 2004 Quitclaim Deed. When read in its entirety, said 2004 Quitclaim Deed conveys the property acquired by Deed from Mrs.

Nonie Lee Hardage, specifically setting forth the Deed Book and page number of said conveyance. Another canon of construction that will apply is "[T]he deed must be read in the light of the circumstances surrounding the parties when it was executed." *Thornhill v. System Fuels, Inc.*, 523 So.2d 983, 990 (Miss. 1988); *Salem Brick & Lumber Co. v. Williams*, 50 So.2d 130 (Miss. 1951). Mrs. Gregory was contacted by Roy Wright, who asked her to sign a Quitclaim Deed for the purposes of clarification. The circumstances which guide a Court's interpretation of a Deed include "the practical construction placed thereon by the parties." *Thornhill* at 990 (Miss. 1998). Mrs. Gregory expressed to Roy Wright that she wanted to include a clause that stated "Grantor intends to convey herein, the property she acquired by deed from Mrs. Nonie Lee Hardage, dated November 7, 1994, recorded in Deed Book 212, Page 27, records of the Leake County Chancery Clerk's Office." Not only did Roy Wright not offer any protest to Mrs. Gregory's request, he subsequently included the requested clause. At trial, Roy Wright stated that he originally included the phrase, as was his customary practice. Regardless of whether Roy added the phrase or if Mrs. Gregory requested that said phrase be included, if Roy Wright customarily included said "acquisition" phrases in his Deeds then he knew the effect that said phrase would have on the conveyance of the Crawford Lot. Wright did not deal with Mrs. Gregory in a straightforward and upright manner. He did not clearly state which property was to be conveyed through the said Deed, and he further muddied the water by including that phrase in the Deed. It seems that following the language of the document, absent parole evidence and simply looking at the practical construction placed thereon by the parties, Roy Wright not only did not object to this

language, he added this language to the document. As such, the language contained in the said 2004 Quitclaim Deed should be read to convey the Hardage Lot only—not the Crawford Lot. CHS and Harrell assert that upon examination the said 2004 Quitclaim Deed should be held invalid and CHS should be granted fee simple title to the Crawford Lot.

B. THE CHANCERY COURT OF LEAKE COUNTY, MISSISSIPPI, ERRED IN DISMISSING CENTRAL HEALTHCARE SERVICES P.A. AND WENDALL HARRELL'S RESPECTIVE COUNTERCLAIMS.

Harrell and CHS each filed a respective counterclaim against the Bank asserting that the Bank filed this action without substantial justification, resulting in Abuse of Process, Malicious Prosecution, Defamation and in violation of the Litigation Accountability Act pursuant to Miss. Code (1972, as amended) §§ 11-55-1 through 11-55-15. MCA (1972, as amended) §11-55-3. The Litigation Accountability Act provides,"Without substantial justification, when used with reference to any action, claim, defense or appeal, including without limitation, any motion, means that it is frivolous, groundless in fact or in law, or vexatious, as determined by the court." *Miss. Code. Ann. §§ 11-55-1 through 11-55-15. MCA (1972, as amended.*

"A pleading or motion is frivolous...when, objectively speaking, the pleader or movant has no hope of success." Stevens vs. Lake 615 So:2d 1177, at 1184 (Miss. 1993), quoting *Tricon Metals & Services, Inc. vs. Topp*, 537 So.2d 1331, at 1335 (Miss. 1989). Absent a dispute over the ownership of the "Crawford Lot," there is no hope of success for the Bank because there is no premise on which to proceed. CHS, according to testimony, never conveyed or intended to convey the said Crawford Lot—to either Harrell or the Bank.

Although the Bank mistakenly believed that Harrell conveyed the "Crawford Lot" to them in the initial loan, as argued above, said Quitclaim Deed is not enforceable against CHS, the legal owner of the said Crawford Lot. Harrell had discussions with the Bank concerning both the Hardage and Crawford Lots, but he never expressly stated that the Crawford Lot would be included in the overall project. Harrell hired Roy Wright to certify the title to his 10.5 acres of land (absent the Hardage and Crawford lots) for the initial loan. The Bank subsequently contacted Roy Wright requesting that he certify title to the Hardage and Crawford lots. Further Chris Wade testified, to his recollection, that the Bank contacted him regarding an additional appraisal that included both the Hardage and Crawford Lots, although he was not entirely certain. Harrell admitted that he naively signed the documents presented to him at the loan closing by the Bank and by Roy Wright, not realizing that the Crawford Lot was being conveyed therein. The Bank knowingly filed this suit against CHS and Harrell without any hope of success, in that Harrell was not aware that the Bank included the Crawford lot in the initial loan and CHS never intended to convey the said Crawford Lot. Roy Wright admitted that he incorrectly certified the title to said Crawford Lot. Harrell should not be held accountable for the mistakes and misunderstandings of Roy Wright and/or the Bank.

CHS is a party to this lawsuit merely because of the 2004 Quitclaim Deed that was presented for execution by Roy Wright to Mrs. Gregory, as president and principal agent of CHS. CHS has no other involvement with the Bank or Roy Wright with respect to the above referenced action. Mrs. Gregory was presented with a Quitclaim Deed that contained a land

description, of which she was not familiar. As such, Mrs. Gregory requested that a clause be added to said Quitclaim Deed to reference her intent. Roy Wright did not attempt to explain the document to Mrs. Gregory, nor did oppose the language that Mrs. Gregory wished to add, because Wright knew that such language would not hold up in court. There is no legal basis to hold CHS accountable for a transaction for which CHS had no involvement. CHS did not represent to the Bank that Harrell owned said Crawford Lot, nor did CHS ever intend to convey said Crawford Lot. Harrell did not provide any documents on the Crawford Lot or Hardage Lot to either Wright or Chris Wade, the appraiser. Both Wright and Wade testified that the Bank contacted them regarding these properties. The Bank knowingly filed this suit against CHS and Harrell without any hope of success. Rather this suit was an attempt to bully CHS into conveying the said Crawford Lot—despite there being no prior intention on the part of CHS to do so.

A pleading or motion that is groundless in law or fact is the second element for a claim without substantial justification. The said Crawford Lot was not conveyed by the legal owner in the Deed of Trust therefore, the Bank has no basis to proceed with a quiet title action. There is no basis to sustain a quiet title action when the title has no cloud. . Said property was never conveyed to Harrell and as such, the property was never conveyed to the Bank. The cloud that is supposedly on the title occurred after the Bank sent their attorney to Mrs. Gregory in an attempt to "dupe" Mrs. Gregory into signing over title to the said Crawford Lot. Roy Wright did not fully inform Mrs. Gregory of the fact that he and the Bank wanted the title to the Crawford lot. Mrs. Gregory was not knowledgeable concerning property descriptions,

and therefore she requested that a phrase be included, specifically evidencing her conveyance intent. CHS contends that this Court should find that fee simple title of the said Crawford Lot never transferred to the Bank, and therefore, there is no cloud on the title. Without a cloud on the title, there is no basis to proceed with a quiet title action which makes this suit groundless in law and in fact.

A pleading or motion filed for vexatious delay is the third element for a claim without substantial justification. According to our facts, this claim is frivolous and groundless in law; so therefore, upon the filing of the action, it becomes vexatious delay. When the Bank researched the chain of title for their initial complaint— said chain of title provided them with actual knowledge that there is no dispute of ownership. The "Crawford Lot" was owned in fee simple by CHS—not Harrell. Harrell could not convey something that he did not own. Consequently, as the elements have been met, the action is filed without substantial justification. This lawsuit has served as a vexatious delay to CHS through time spent preparing for a lawsuit and monies expended in attorney's fees.

The Second allegation of the respective counterclaims of CHS and Harrell against the Bank is abuse of process. The Bank initiated a quiet title action on property that they never legally possessed. The elements of abuse of process are: (1) the party made an illegal use of the process, a use neither warranted nor authorized by the process; (2) the party had an ulterior motive; and, (3) damage resulted from the perverted use of the process. *Franklin Collection Services, Inc. v. Stewart* 863 so.2d 925, at 931 (Miss. 2003). The Bank's actions are an illegal use of the judicial process. It is filed for the sole purpose of forcing CHS to convey the said

Crawford Lot to the Bank, when CHS clearly holds fee simple title to same. The Bank had notice of non-conveyance when they conducted a title search of said property and found that Harrell conveyed the said property to CHS on May 24, 1989. The chain of title clearly demonstrates that the Crawford Lot has not changed ownership since it was conveyed to CHS in 1989. Therefore, the Bank had notice that Harrell did not have any legal right whatsoever to convey said property.

The Bank's ulterior motive in this action is to force conveyance of the "Crawford Lot." CHS never intended to convey said the Crawford Lot. Harrell never specifically told the Bank, Roy Wright or Chris Wade that the said Crawford Lot was to be included in the initial loan from the Bank. The Bank did not present evidence, either oral or documentary, that would evidence trickery or deceit on the part of Harrell or CHS. As a result of this lawsuit, CHS and Harrell have suffered damage to their reputation because of the perverted use of this process. Due to the above case law and incorporated facts, the Bank should be found liable for abuse of process. The third allegation of the respective counterclaims of CHS and Harrell assert that the Bank is liable to them for defamation. A claim for defamation requires that the following elements be met: (1) a false and defamatory statement concerning the person(s) charged; (2) an unprivileged publication to a third party; (3) fault amounting at least to negligence on the part of the publisher; and, (4) actionability of the statement, irrespective of special harm or the existence of special harm caused by the publication. *Blake vs. Gannett Company, Inc.*, 529 So.2d 595 at 602 (Miss. 1988). By filing the above referenced action, The Bank accused CHS and Harrell of fraud and misconduct. The Bank

has implied through its actions that CHS and Harrell were at fault because Harrell allegedly deceived and tricked the Bank into loaning him money against the said Crawford Lot, while he did not hold fee simple title to said Lot, and that CHS was at fault by fraudulently refusing to cure the title defect of the said Crawford Lot for the Bank when it became apparent that the 2004 Quitclaim Deed did not convey clear title to the Bank. The Bank published this knowledge to persons in and around CHS' and Harrell's respective places of business through the writing filed in this action, causing damage to their reputation—both personal and business-related. This quiet title action was filed without regard to the truth of the accusations. CHS did not aid in curing the title defect to the said Crawford Lot, because CHS never intended to convey the Crawford Lot. This action has defamed CHS and Harrell through no fault of their own by and through damage to Harrell's and CHS's reputation, both personal and business-related, and has caused them to incur attorney's fees, Court costs, and the overall inconvenience of impending accusations and the process of their trial. Therefore, the Bank should be found liable for defamation.

The Fourth allegation of the respective counterclaims of CHS and Harrell assert that the Bank is liable to them for malicious prosecution. The elements of malicious prosecution are: (1) The institution of a proceeding; (2) by, or at the insistence of the Plaintiff; (3) the termination of such proceedings in the Defendant's favor; (4) malice in instituting the proceedings; (5) want of probable cause for the proceedings; and, (6) the suffering of injury or damage as a result of the prosecution. *Condere Corp. v. Moon*, 880 So.2d 1038, at 1042 (Miss. 2004); *McClinton v. Delta Pride Catfish, Inc.*, 792 So.2d 968, at 973 (Miss. 2001).

The evidence standard for evaluating these elements is preponderance of the evidence. *Van v. Grand Casinos of Mississippi, Inc.*, 724 So.2d 889, at 891(Miss. 1998).

The first two (2) elements are easily proved by CHS and Harrell. The Bank instituted these judicial proceedings with no "substantial basis" for their claim against either Harrell or CHS, as previously set forth above. The only basis that the Bank proceeds on in this action is their overall intent to coerce CHS to convey the Crawford Lot to the Bank. This suit was filed at the insistence of the Bank in an effort to divest CHS of fee simple title to the Crawford Lot. There is no legal recourse for the Bank against CHS or Harrell; the Bank cannot force CHS to convey title to said Crawford Lot when it has not been demonstrated, through either testimony or evidence, that CHS made *any* representations as to ownership of the Crawford Lot. The Bank has not proved through either testimony or evidence that Harrell represented to the Bank that he had fee simple title to the said Crawford lot—Roy Wright did that. Due to the malicious nature of this action, CHS and Harrell hope that upon careful examination of the testimony offered at trial, this Court will find that said suit should be dismissed upon adjudication. This suit was filed maliciously and with reckless disregard to the facts. CHS never conveyed the said Crawford Lot to Harrell or the Bank. CHS never represented that it would convey the said Crawford Lot, and Harrell did not represent to the Bank that he owned the said Crawford lot. A bank is certainly not in the practice of taking a person's word for property that the said person may represent to the Bank that they own. If Bank's took a person's word that they owned title to collateral, certificates of title from lawyers and title insurance would not be necessary. And it is obvious, albeit grievous, that an error was made

in the Deed of Trust, but it was not made by Harrell as Roy Wright admitted, under oath, rather it was Wright that mistakenly certified Harrell with fee simple title to the said Crawford Lot.

This suit was filed without probable cause. The chain of title in the initial complaint filed by the Bank demonstrates the Bank's lack of probable cause. Said chain of title clearly shows that CHS retained ownership of said property and never conveyed said property to Harrell or to the Bank. This suit has harmed CHS both momentarily in legal fees and through injury to their reputation—with no fault on the part of CHS or Harrell. Therefore, the Bank should be found liable of malicious prosecution.

Under the Litigation Accountability Act of 1988 found in MCA (1972, as amended) § 11-55-1 through 11-55-15, attorney's fees and other reasonable costs are awarded when a claim is brought without substantial justification, or if the Court finds that the action was brought for delay or harassment, or if the Court finds the other party expanded the pleadings unnecessarily by other improper conduct. MCA § 11-55-5(1) (Rev. 2002).

In examining a frivolous action, the Court applies the same standard that is applied under Rule 11. *Scruggs vs. Satterfield*, 693 So.2d 924 (Miss. 1997). The Court will look only to the facts known at the time the complaint was filed to determine if a pleading is frivolous. *Bean vs. Broussard*, 587 So.2d 908, at 912 (Miss. 1991). The Supreme Court has held that a claim is not frivolous as long as it is filed with "some hope of success." *Matter of Will of Fankboner*, 638 So.2d 493 (Miss. 1994).

At the time the Bank filed the suit, they conducted a title search on said Crawford Lot. Said title search revealed that said property belonged to CHS and was never conveyed to another subsequent owner. This served as notice to the Bank that CHS was the owner of said property in fee simple. Such discovery negates the claim of a quiet title action. Upon discovering that there was a mistake in the original Deed of Trust which Harrell unknowingly executed, the Bank contacted Roy Wright, who then contacted Harrell and CHS regarding the said 2004 Quitclaim Deed to the said Crawford Lot. CHS executed the said 2004 Quitclaim Deed, but only after Roy Wright included a clause which conveyed only the Hardage Lot. The Bank, regardless of the argument that the 2004 Quitclaim Deed conveys title, was not originally a fee simple owner of the said Crawford Lot, and as such, the said Crawford Lot could not have been conveyed to the Whitten Group. It is the position of both CHS and Harrell that CHS was the fee simple owner of the Crawford Lot, and that it was never the intent of CHS to transfer title of the said Crawford Lot. As a result, CHS and Harrell assert that there is no cloud on the title of the said Crawford Lot. If there is no cloud on the title, this action was filed with "no substantial justification." Therefore the Chancery court of Leake County, Mississippi manifestly erred by dismissing the respective Counterclaims of CHS and Harrell and further erred by not finding that the Bank filed this action without substantial justification which resulted in abuse of process, defamation of character, malicious prosecution and in violation of the Litigation Accountability Act of 1988.

C. THE CHANCERY COURT OF LEAKE COUNTY, MISSISSIPPI, ERRED IN FAILING TO AWARD ATTORNEYS FEES TO CENTRAL HEALTHCARE SERVICES, P.A. AND WENDALL HARRELL RESPECTIVELY.

The Chancery Court of Leake County, Mississippi manifestly erred, when it failed to award attorneys fees to both Central Healthcare Services and Harrell. The Chancery Court correctly stated that attorney's fees may not be awarded in a Quiet Title action. However, this action is not one of Quiet Title. Rather, this entire action arose because the Bank and/or its agents and officers decided to fraudulently acquire land, merely because the Bank and/or its agents and officers failed in their duty to make sure that Harrell owned the property they decided to loan money against. Mrs. Gregory/ CHS has been dragged into this litigation simply because Gregory is Harrell's daughter and according to the Bank that must mean that she intended to convey CHS's property to Harrell.

CHS and Harrell submit to this Court that they are entitled to attorney's fees because of the action of the Bank and/or its agents and officers, who filed this action against them without substantial justification, which resulted in Abuse of Process, Defamation, Malicious Prosecution and is in violation of the Litigation Accountability Act of 1988.

> In determining the amount of an award of costs or attorney's fees, the court shall exercise its sound discretion. When granting an award of costs and attorney's fees, the court shall specifically set forth the reasons for such award and shall consider the following factors, among others, in determining whether to assess attorney's fees and costs and the amount to be assessed:
>
> > (a) the extent to which any effort was made to determine the validity of any action, claim or defense before it was

asserted, and the time remaining within which the claim or defense could be filed;

(b) The extent of any effort made after the commencement of an action to reduce the number of claims being asserted or to dismiss claims that have been found not to be valid;

(c) The availability of facts to assist in determining the validity of an action, claim or defense;

(d) Whether or not the action was prosecuted or defended, in whole or in part, in bad faith or for improper purpose;

(e) Whether or not issues of fact, determinative of the validity of a party's claim or defense, were reasonably in conflict;

(f) The extent to which the party prevailed with respect to the amount of and number of claims or defenses in controversy;

(g) The extent to which any action, claim or defense was asserted by an attorney or party in a good faith attempt to establish a new theory of law in the state, which purpose was made known to the court at the time of filing;

(h) The amount or conditions of any offer of judgment or settlement in relation to the amount or conditions of the ultimate relief granted by the court;

(I) The extent to which a reasonable effort was made to determine prior to the time of filing of an action or claim that all parties sued or joined were proper parties owing a legally defined duty to any party or parties asserting the claim or action;

(j) The extent of any effort made after the commencement of an action to reduce the number of parties in the action; and

(k) The period of time available to the attorney for the party asserting any defense before such defense was interposed.

Miss. Code Ann. § 11-55-7 (1972, as amended)

As previously argued above, the Bank filed this action with substantial justification, which has resulted in Abuse of Process, Defamation, Malicious Prosecution and which constitutes a violation of the Litigation Accountability Act of 1988. The Bank conducted a title search prior to filing this action, which put them on notice that there was no title defect. The Bank accused Harrell of deceiving them, but could produce no definitive evidence that Harrell "tricked" them into believing the Crawford Lot would be included. The trial court did not find any liability on Harrell's part. CHS is only involved in this action because of Gregory's relationship to Harrell. Both Harrell and CHS assert that they are entitled to attorney's fees due to the actions of the Bank and/or Wright, acting as an employee and/or agent of the Bank. Harrell and CHS are confident that once this Court reviews the facts and evidence presented, they will be awarded attorney's fees.

VII. CONCLUSION

The Ruling of the Chancery Court of Leake County, Mississippi, should be reversed by this Honorable Court based on the relevant facts and Mississippi Law evidencing that the 2004 Quitclaim Deed did not convey title to the Crawford Lot and should declare CHS the fee simple owner of the Crawford Lot; that this Court should find in favor of the Counterclaims of both CHS and Harrell based on the evidence and testimony presented at trial and hold the Bank liable to both CHS and Harrell for reasonable attorney's fees and all costs and other damages incurred by CHS and as a result of this litigation, including, but not limited to, compensation for defamation incurred in connection with CHS' and Harrell's involvement in this action and damages

CERTIFICATE OF SERVICE

The undersigned does hereby certify that he has this the 29th day of April caused to be mailed, by United States Mail, postage prepaid, a true and correct copy of the above and foregoing Appellant's Brief to:

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