

IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2007-CA-00693-SCT

**GREENE COUNTY, MISSISSIPPI, JOHN
MARSHALL EUBANKS, TOMMY ROBERTS
and MARION PIERCE**

Appellant

v.

CORPORATE MANAGEMENT, INC.

Appellee

**Consolidated with:
2008-CA-00122-SCT**

CORPORATE MANAGEMENT, INC.

Appellant

v.

GREENE COUNTY, MISSISSIPPI

Appellee

**Appeal from the Chancery Court of Greene County, Mississippi
Cause No. 2005-134PW**

**SUPPLEMENTAL BRIEF OF
CORPORATE MANAGEMENT, INC.**

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1. **Whether Greene Rural Health Center, through its Board of Trustees ("Trustees"), negotiated and entered the contracts at issue in this litigation as a party to the contracts, or as agent for a disclosed principal.**

The Mississippi Supreme Court has adopted a non-exclusive list of factors for determining whether an agency relationship exists:

Whether the principal master has the power to terminate the contract at will; whether he has the power to fix the price in payment for the work, or vitally controls the manner and time of payment; whether he furnishes the means and appliances for the work; whether he has control of the premises; whether he furnishes the materials upon which the work is done and receives the output thereof, the contractor dealing with no other person in respect to the output; whether he has the right to prescribe and furnish the details of the kind and character of work to be done; whether he has the right to supervise and inspect the work during the course of employment; whether he has the right to direct the details of the manner in which the work is to be done; whether he has the right to employ and discharge the subemployees and to fix their compensation; and whether he is obliged to pay the wages of said employees.

Raul Fonte and Helen Flammer v. Audubon Insurance Company, NO. 2008-CA-00222-SCT, ¶9 (Miss. 2009), (citing *Miller v. R.B. Wall Oil Co.*, 970 So. 2d 127, 131 (Miss. 2007)) (quoting *Kisner v. Jackson*, 132 So. 90, 91 (1931)).

Generally a community hospital owned by a subdivision of the state and governed by a board of trustees or by a board of supervisors is considered a subdivision of the state thereof.

Enroth v. Memorial Hosp. at Gulfport, 566 So.2d 202, 206 (Miss. 1990). The issues of control and the rights to control are keys in determining whether an agency relationship exists. *Fruchter v. Lynch Oil Co.*, 522 So. 2d 195, 199 (Miss. 1988). The Restatement (Second) of Agency, § 394 (1958) adds that "an agent is subject to a duty not to act or to agree to act during the period of his agency for persons whose interests conflict with those of the principal in matters in which the agent is employed."

The statutory scheme under which community hospitals are formed and operated create a somewhat unique situation. Miss. Stat. Ann. § 41-13-10(d) defines the owner as "Owner" shall

mean any board of supervisors of any county having an ownership interest in any community hospital or leased facility on behalf of the county or on behalf of any supervisors district, judicial district or election district of the county and shall also mean any governing council or board of any municipality having an ownership interest in any community hospital or leased facility.

Clearly, Greene Rural Health Center is owned by Greene County, Mississippi. This fact is undisputed. The Greene Rural Health Center Board of Trustees were appointed by the Board of Supervisors to operate the facility pursuant to Miss. Stat. Ann. §41-13-29, which allows appointment of such a board, but does not require it. When a Board of Trustees for a community hospital is appointed, the Board of Trustees is granted far reaching and extensive authority and powers as set forth in Miss. Stat. Ann. §41-13-35 *et seq.* Miss. Stat. Ann. §41-13-35(4) gives the Trustees full authority to act and it states "The decisions of said board of trustees of the community hospital shall be valid and binding unless expressly prohibited by applicable statutory or constitutional provisions." In this case the Board of Trustees of Greene Rural Health Center negotiated as a party to the contracts for all such decisions they could make as a Board of Trustees, that being all decisions which are not prohibited by statute or constitutional provisions.

The Board of Trustees is granted the full authority to

To contract by way of lease, lease-purchase or otherwise, with any agency, department or other office of government or any individual, partnership, corporation, owner, other board of trustees, or other health care facility, for the providing of property, equipment or services by or to the community hospital or other entity or regarding any facet of the construction, management, funding or operation of the community hospital or any division or department thereof, or any related activity, including, without limitation, shared management expertise or employee insurance and retirement programs, and to terminate said contracts when deemed in the best interests of the community hospital;

Miss. Stat. Ann. §41-13-35(5)(g).

For all matters the Trustees were granted the full authority to act without approval from the Board of Supervisors, the Board of Trustees clearly negotiated and entered the contracts at issue in this litigation as a party to the contracts. It is clear from the record, the Board of Trustees also negotiated and entered the contracts at issue in this matter as agent for the Greene County Board of Supervisors which were the clearly disclosed principal and owner of Greene Rural Health Center. The Owner chose to accept final responsibility on a number of matters, in essence guaranteeing performance of the Board of Trustees and making the Board of Trustees an agent of a disclosed principal on those matters. The statutory scheme, although paradoxical in nature in some respects, clearly does not allow the Board of Trustees to sell or acquire real property without the approval of, in this case, the Board of Supervisors or the Owner as set forth in the relevant statutes.

The question posed by this Court for additional briefing seems to preclude the ability of a party to a contract to also act as agent for a disclosed principal. This is exactly what happened in this matter. These are not mutually exclusive events. Greene Rural Health Center Board of Trustees clearly had the express authority to enter the contracts at issue as a party regarding the operation of Greene Rural Health Center. The Board of Trustees clearly acted as agent for a disclosed principal on issues regarding guarantee of payment and the proposed and/or required sale or lease of Greene Rural Health Center. Furthermore the Greene County Board of Supervisors certainly cloaked the Board of Trustees with the authority to act as its agent in the negotiation of the contracts at issue. The Board of Supervisors attended meetings, and approved and executed the contracts in question as the "Owner" of Greene Rural Health Center.

Greene County, Mississippi, as the Owner of Greene Rural Health Center, has certain authority and control over the facility which in some facet makes the Board of Trustees its agent.

While the operation of the facility is under the broad powers and authority of the Board of Trustees, making the Trustees a party to the management contracts and an agent for the Board of Trustees regarding issues of sale of the facility, lease with an option to sell and right of first refusal to purchase. If the Trustees wish to purchase real property, the Owner, must approve such. Only the Owner can sell the facility. Miss. Stat. Ann. 41-13-15(10). The Owner also has authority to appoint trustees and remove trustees in two (2) very particular situations. Miss. Stat. Ann. § 41-13-29(6). However the Owner cannot lease the facility without first requesting approval from the Board of Trustees. Miss. Stat. Ann. 41-13-15(7).

In answering this question, the Court must remember, the contracts in question originated through a Request for Proposal process began by the Greene County Board of Supervisors. (RE pg 14 and Appellee CMI Brief pg 21-23). It is clear after reading the minutes of the Greene County Board of Supervisors and GRHC Trustees, Greene County was a disclosed principal on all issues over which it has authority and the Greene Rural Health Center Board of Trustees was a party to the management contracts concerning the operation of the facility while an agent for Greene County concerning the sale provisions, first right of refusal, option to purchase provisions.

2. Whether the Trustees had authority under Mississippi Code Annotated, Section 41-13-35(5)(g) to enter into the contracts without the approval of the Board of Supervisors.

It is without question the Greene Rural Health Center Board of Trustees had full and final authority to enter the contracts at issue in this matter. Miss. Code Ann. §41-13-35 *et seq.*, set forth below, evinces the broad and final authority the Board of Trustees of a community hospital has at its disposal. This statute enumerates a number of powers or authority but does not limit the power of the Board of Trustees to just the powers enumerated. The Boards power and authority is only limited to actions which are statutorily or constitutionally prohibited. Miss. Stat. Ann. §41-13-35(4).

§ 41-13-35. Board authority and responsibilities

(1) The board of trustees of any community hospital shall have full authority to appoint an administrator, who shall not be a member of the board of trustees, and to delegate reasonable authority to such administrator for the operation and maintenance of such hospital and all property and facilities otherwise appertaining thereto.

(2) The board of trustees shall have full authority to select from its members, officers and committees and, by resolution or through the board bylaws, to delegate to such officers and committees reasonable authority to carry out and enforce the powers and duties of the board of trustees during the interim periods between regular meetings of the board of trustees; provided, however, that any such action taken by an officer or committee shall be subject to review by the board, and actions may be withdrawn or nullified at the next subsequent meeting of the board of trustees if the action is in excess of delegated authority.

(3) The board of trustees shall be responsible for governing the community hospital under its control and shall make and enforce staff and hospital bylaws and/or rules and regulations necessary for the administration, government, maintenance and/or expansion of such hospitals. The board of trustees shall keep minutes of its official business and shall comply with Section 41-9-68.

(4) The decisions of said board of trustees of the community hospital shall be valid and binding unless expressly prohibited by applicable statutory or constitutional provisions.

(5) The power of the board of trustees shall specifically include, but not be limited to, the following authority:

(a) To deposit and invest funds of the community hospital in accordance with Section 27-105-365;

(b) To establish such equitable wage and salary programs and other employment benefits as may be deemed expedient or proper, and in so doing, to expend reasonable funds for such employee salary and benefits. Allowable employee programs shall specifically include but not be limited to, medical benefit, life, accidental death and dismemberment, disability, retirement and other employee coverage plans. The hospital may offer and fund such programs directly or by contract with any third party and shall be authorized to take all actions necessary to implement, administer and operate such plans, including payroll deductions for such plans;

(c) To authorize employees to attend and to pay actual expenses incurred by employees while engaged in hospital business or in attending recognized educational or professional meetings;

(d) To enter into loan or scholarship agreements with employees or students to provide educational assistance where such student or employee agrees to work for a stipulated period of time for the hospital;

(e) To devise and implement employee incentive programs;

(f) To recruit and financially assist physicians and other health care practitioners in establishing, or relocating practices within the service area of the community hospital including, without limitation, direct and indirect financial assistance, loan agreements, agreements guaranteeing minimum incomes for a stipulated period from opening of the practice and providing free office space or reduced rental rates for office space where such recruitment would directly benefit the community hospital and/or the health and welfare of the citizens of the service area;

(g) To contract by way of lease, lease-purchase or otherwise, with any agency, department or other office of government or any individual, partnership, corporation, owner, other board of trustees, or other health care facility, for the providing of property, equipment or services by or to the community hospital or other entity or regarding any facet of the construction, management, funding or operation of the community hospital or any division or department thereof, or any related activity, including, without limitation, shared management expertise or employee insurance and retirement programs, and to terminate said contracts when deemed in the best interests of the community hospital;

(h) To file suit on behalf of the community hospital to enforce any right or claims accruing to the hospital and to defend and/or settle claims against the community hospital and/or its board of trustees;

(i) To sell or otherwise dispose of any chattel property of the community hospital by any method deemed appropriate by the board where such

disposition is consistent with the hospital purposes or where such property is deemed by the board to be surplus or otherwise unneeded;

(j) To let contracts for the construction, remodeling, expansion or acquisition, by lease or purchase, of hospital or health care facilities, including real property, within the service area for community hospital purposes where such may be done with operational funds without encumbering the general funds of the county or municipality, provided that any contract for the purchase of real property must be ratified by the owner;

(k) To borrow money and enter other financing arrangements for community hospital and related purposes and to grant security interests in hospital equipment and other hospital assets and to pledge a percentage of hospital revenues as security for such financings where needed; provided that the owner shall specify by resolution the maximum borrowing authority and maximum percent of revenue which may be pledged by the board of trustees during any given fiscal year;

(l) To expend hospital funds for public relations or advertising programs;

(m) To offer the following inpatient and outpatient services, after complying with applicable health planning, licensure statutes and regulations, whether or not heretofore offered by such hospital or other similar hospitals in this state and whether or not heretofore authorized to be offered, long-term care, extended care, home care, after-hours clinic services, ambulatory surgical clinic services, preventative health care services including wellness services, health education, rehabilitation and diagnostic and treatment services; to promote, develop, operate and maintain a center providing care or residential facilities for the aged, convalescent or handicapped; and to promote, develop and institute any other services having an appropriate place in the operation of a hospital offering complete community health care;

(n) To promote, develop, acquire, operate and maintain on a nonprofit basis, or on a profit basis if the community hospital's share of profits is used solely for community hospital and related purposes in accordance with this chapter, either separately or jointly with one or more other hospitals or health-related organizations, facilities and equipment for providing goods, services and programs for hospitals, other health care providers, and other persons or entities in need of such goods, services and programs and, in doing so, to provide for contracts of employment or contracts for services and ownership of property on terms that will protect the public interest;

(o) To establish and operate medical offices, child care centers, wellness or fitness centers and other facilities and programs which the board determines are appropriate in the operation of a community hospital for the benefit of its employees, personnel and/or medical staff which shall be

operated as an integral part of the hospital and which may, in the direction of the board of trustees, be offered to the general public. If such programs are not established in existing facilities or constructed on real estate previously acquired by the owners, the board of trustees shall also have authority to acquire, by lease or purchase, such facilities and real property within the service area, whether or not adjacent to existing facilities, provided that any contract for the purchase of real property shall be ratified by the owner. The trustees shall lease any such medical offices to members of the medical staff at rates deemed appropriate and may, in its discretion, establish rates to be paid for the use of other facilities or programs by its employees or personnel or members of the public whom the trustees may determine may properly use such other facilities or programs;

(p) Provide, at its discretion, ambulance service and/or to contract with any third party, public or private, for the providing of such service;

(q) Establish a fair and equitable system for the billing of patients for care or users of services received through the community hospital, which in the exercise of the board of trustees' prudent fiscal discretion, may allow for rates to be classified according to the potential usage by an identified group or groups of patients of the community hospital's services and may allow for standard discounts where the discount is designed to reduce the operating costs or increase the revenues of the community hospital. Such billing system may also allow for the payment of charges by means of a credit card or similar device and allow for payment of administrative fees as may be regularly imposed by a banking institution or other credit service organization for the use of such cards;

(r) To establish as an organizational part of the hospital or to aid in establishing as a separate entity from the hospital, hospital auxiliaries designed to aid the hospital, its patients, and/or families and visitors of patients, and when the auxiliary is established as a separate entity from the hospital, the board of trustees may cooperate with the auxiliary in its operations as the board of trustees deems appropriate; and

(s) To make any agreements or contracts with the federal government or any agency thereof, the State of Mississippi or any agency thereof, and any county, city, town, supervisors district or election district within this state, jointly or separately, for the maintenance of charity facilities.

(6) No board of trustees of any community hospital may accept any grant of money or other thing of value from any not-for-profit or for-profit organization established for the purpose of supporting health care in the area served by the facility unless two-thirds (2/3) of the trustees vote to accept the grant.

(7) No board of trustees, individual trustee or any other person who is an agent or servant of the trustees of any community hospital shall have any

personal financial interest in any not-for-profit or for-profit organization which, regardless of its stated purpose of incorporation, provides assistance in the form of grants of money or property to community hospitals or provides services to community hospitals in the form of performance of functions normally associated with the operations of a hospital.

Miss. Stat. Ann. §41-13-35.

The only matter contained in the contracts at issue which is statutorily or constitutionally prohibited without approval of the Board of Supervisors is the sale, option to sell, or lease with an option to sell the facility known as Greene Rural Health Center. On this point, it is evident the Board of Trustees were acting as the agent for a disclosed principal on the matters pertaining to the sale or proposed sale of the facility. The Board of Trustees was well within its authority to enter the contracts in question without the approval of the Greene County Board of Supervisors concerning all matter not statutorily or constitutionally prohibited.

The Greene Rural Health Center Board of Trustees are clearly given broad authority to operate the facility and to contract for "...the operation of the community hospital or any division or department thereof, or any related activity, including, without limitation, shared management expertise..." Miss. Stat. Ann. 41-13-35(5)(g). The contracts in question also contain a partial invalidity paragraph which provides if any portion of the contract is deemed invalid, the remaining terms remain in full force and effect as if the invalid section were omitted. (RE pg 28,40).

3. What effect, if any, a finding by this Court that the contracts at issue were not enforceable would have on the special chancellor's order of sanctions.

This issue seems pretty black and white. If this Court should deem the contracts in their entirety not enforceable, the Court has stated "In short, unless we can say that a judgment was void ab initio, one bound by it must either comply or gain relief from an appropriate court on the pain of contempt. *Stacy v. Ross* 798 So.2d 1275,1282, (Miss. 2001). If the contracts in totality, as the issue for additional briefing stated , are declared unenforceable and essentially void, then any sanctions or finding of contempt stemming from a judgment enforcing the contracts are likewise unenforceable and void.

This Court may well have to determine if any provisions of the contracts are unenforceable, then are the remaining provisions enforceable and do the sanctions and finding of contempt, which are on appeal, apply to the remaining enforceable provisions of the contracts and was CMI able to comply with the judgment. The Supreme Court of Mississippi has held "where it appears that it is or was impossible to comply with the order without fault on the part of the one charged, there is no contempt." 798 So.2d at 1283 (quoting *Keppner v. Gulf Shores, Inc.*, 462 So. 2d 719, 726 (Miss. 1989)). It is the position of CMI, the sanctions ordered and the finding of contempt are baseless, as the parties acted upon a Mississippi Attorney General's opinion which clearly stated the Trustees had the authority to lease the facility. "It is the opinion of this office that the plain language of Miss. Code Ann. Sections 41-13-15(4) and 41-13-35(g) clearly allows the board of trustees of a community hospital to lease the hospital. It follows that the Board of Trustees of the Greene County Rural Health Center is authorized to lease the community hospital." *Op. Atty. Gen. No. 2007-00552*, Dearman, October 15, 2007. Such opinions can be relied upon with impunity until such time a court deems the opinion in error.

There were no provisions in the Second Amended Final Judgment which precluded the actions of Greene Rural Health Center Board of Trustees and CMI's act of leasing the facility. The lease executed did not contain an option to purchase which would have required approval of the Greene County Board of Supervisors. Should the Court find the judgment is not void *ab initio*, and CMI could comply without fault it would appear the finding of contempt should stand. Should this Court find the contracts at issue totally unenforceable, and/or the judgment unable to be complied with without fault by CMI, the contracts and judgment would essentially be *void ab initio* and any such sanctions or findings of contempt in an effort to enforce void contracts should be reversed.

4. Whether the special chancellor had authority to remove I.D. Brown (who is not a party to this litigation) from the Board of Trustees.

It has long been the rule in this state that when a court of equity obtains jurisdiction it will give full relief, whether legal or equitable as to all matters relating to the subject matter of the bill even though it be required to pass on matters which would not have been proper subjects of equitable jurisdiction if they alone were the subject of original relief. *H. K. Porter Co., Inc. v. Board of Supervisors of Jackson County*, 324 So.2d 746, 751-52 (Miss.1975). This rule is set forth in Griffith, *Mississippi Chancery Practice* s 36 (2d ed. 1950), p. 39:

It is our settled policy that if equity have jurisdiction of the cause of action it is to assume full jurisdiction and settle all disputed questions in one and the same suit so far as within the pleadings and when necessary the court will allow and even suggest amendments to the plea as will permit full adjudication.

To begin the analysis of this contention, first the Court must look to the statutory law regarding the appointment and removal of Community Hospital Trustees in Miss. Stat. Ann. § 41-13-29(6). **Community hospital board of trustees states:**

6) The owner which appointed a trustee may likewise remove him from office by majority vote for failure to attend at least fifty percent (50%) of the regularly scheduled meetings of said board during the twelve-month period preceding such vote, or for violation of any statute relating to the responsibilities of his office, based upon the recommendation of a majority of the remaining trustees.

The underlying action was an action for injunction to prevent breach of contract and the Chancellor was well within the authority of the Chancery Court to grant equitable relief as required. Larry Brown never lawfully resigned and was never lawfully removed by the Board of Supervisors. Even if the Supervisors did authorize such a reprehensible act, they were not within the specific authority granted them by statute regarding removal of Community Hospital Board

of Trustee members. In an attorney general's opinions, interestingly enough dealing with the same county Board of Supervisors, the attorney general held:

The board [Supervisors] may not "reappoint" all the trustees, replacing one trustee with someone else; where that trustee is lawfully appointed to a five-year term and does not **lawfully** resign, that trustee is still member of the board of trustees, and no other person has any authority to act in his place or on behalf of the board. *Op. Atty. Gen. No. 2005-0173*, Bowman, April 8, 2005

Larry Brown did not lawfully resign. He was forced to resign under duress and intimidation of Supervisor Marion Pierce, a party Defendant, in this matter and, at the time, a member of the Board of Supervisors of Greene County, Mississippi, also a party defendant. I.D. Brown was appointed after unlawful actions of the Board of Supervisors. The act of appointing I.D. Brown was unlawful as the Board of Supervisors had not received the statutory authority to appoint a new member to the Board of Trustees.

The Board of Supervisors did not have the authority to remove Larry Brown, Larry Brown never lawfully resigned, and the Greene Rural Health Center never recommended Mr. Brown's removal as required by statute. The trial court held the Greene County Board of Supervisors' decision to appoint, terminate and restructure the GRHC Board violated the Supervisors' statutory obligation to "appoint trustees for the purpose of operating and governing community hospitals" thereby imposing their will and usurping the independent nature of the GHRC Board. Miss. Stat. Ann. §41-13-29. The Chancellor corrected an unlawful act of the Board of Supervisors and Marion Pierce which was relief requested by Corporate Management, Inc. on page 9 of the initial Complaint and clearly put all parties on notice of this egregious action. (RE 97 CP 18).

The trial court ruled Larry Brown's ouster was not lawful and he did not lawfully resign. A Board of Trustees for a community hospital can have no more than seven (7) members. Miss. Stat. Ann. 41-13-29(1). I.D. Brown never lawfully took possession of Larry Brown's Trustee position.

The act of removing Larry Brown was done so for the purpose of controlling votes concerning the contracts at issue. CMI also requested this relief to correct the illegal actions of Supervisor Marion Pierce and the Greene County Board of Supervisors. Corporate Management did not attack I.D. Brown's right to office as he was never legally placed on the Board of Trustees. *It must again be stated, the Greene Rural Health Center Board of Trustees did not appeal any aspect of the Trial Court's Judgment.* The courts of Mississippi have often corrected illegal acts by various Boards. As shown by the Supreme Courts following statement: "[A court] can direct an official or commission to perform its official duty or to perform a ministerial act, but it cannot project itself into the discretionary function of the official or the commission. Stated differently, it can direct action to be taken, but it cannot direct the outcome of the mandated function." In re *Wilbourn*, 590 So.2d 1381,1385 (Miss. 1991) (quoting *Hinds County Democratic Executive Committee v. Muirhead*, 259 So.2d 692, 695 (Miss.1972)). The Supreme Court has also said, "[t]hus, a court could, if necessary, compel by mandamus an election commission or executive committee to perform its statutory duty upon its failure to do so, or prohibit it by way of injunction." *Id.*

The Greene County Board of Supervisors, without a doubt, exceeded their statutory authority by forcing the unlawful and invalid resignation of Larry Brown through coercion and duress and then attempting to appoint a new Board of Trustee member, I.D. Brown, to a position never lawfully open for appointment. The Board of Trustees did not request removal of Larry

Brown by a majority vote on the minutes of the Trustees, as required by statute. The Board of Supervisors did not remove Larry Brown for failing to attend 50% of the regularly scheduled meetings of the Board of Trustees.

The Chancellor took the proper action by restoring Larry Brown to a position never relinquished as required by statute and effectively prohibiting the Board of Supervisors from usurping the independent nature of the Board of Trustees and retaining jurisdiction to monitor compliance his final judgment. The Mississippi Supreme Court has long held that boards of supervisors are held to the strictest limitations of their powers. *Adams v. Bank*, 60 So. 770, 771 (1912). Boards of Supervisors can do valid acts consistent only with such regulations as the legislature may prescribe. *H. K. Porter Co., Inc. v. Bd. of Supervisors of Jackson County*, 324 So.2d 746,754 (Miss.1975).

In the *Porter* case, the Court held the Jackson County Board of Supervisors could not deed property. In *Porter* the Court held the Jackson County Board of Supervisors did not have authority to execute a deed until the port authority authorized the deed by an affirmative vote of two-thirds of the membership of the port authority by an order or resolution entered on its minutes. *Porter* at 754. In *American Oil Co. v. Marion County*, 192 So. 296, 298 (1939), the Supreme Court of Mississippi stated: "It matters not whether its (board of supervisors) action . . . be regarded as judicial, legislative, or ministerial. Excess of authority in either capacity is simply void. . . . They can do valid acts, only as empowered by law." *Porter* at 754. This case is analogous.

In this matter the Board of Supervisors chose to eviscerate the statutory provisions regarding appointment and removal of Community Hospital Board of Trustees by unlawfully forcing Larry Brown to tender an invalid resignation. The Board of Supervisors is simply not

allowed to do this. The Board of Trustees never requested, by a majority vote, the Board of Supervisors remove Larry Brown and the Board of Supervisors did not vote to remove Mr. Brown for failure to attend fifty percent (50%) of the regularly scheduled meetings.

The conditions precedent for the Board of Supervisors to remove Larry Brown and lawfully appoint a new trustee never occurred. Any resolution passed by the Board of Supervisors regarding appointment of I.D. Brown was void and in direct opposition to the statutory authority of the Board of Supervisors and, as this Court has held, the action was void. This matter was a complaint for injunctive relief and as such, the Chancellor was well within his authority to prohibit the continued unlawful actions of Greene County, Mississippi and end I.D. Brown's unlawful and void tenure as a Trustee and allow Larry Brown to resume his lawful position. At this point in time, the Court could well deem this point moot. The trial court's judgment has taken effect and Larry Brown is no longer a member of the Board of Trustees. I.D. Brown was not appointed to replace Larry Brown when Larry Brown did lawfully resign at a later time. The position has been filled by an appointment from the Board of Supervisors

CONCLUSION

The evidence undoubtedly compels one to realize the Greene Rural Health Center Board of Trustees negotiated and entered the contracts at issue as a party and as an agent for a disclosed principal. This is the only rational understanding of the contracts. A party can be an agent of a disclosed principal for matters outside the party's authority. It is without doubt the Board of Supervisors and the Board of Trustees both knowingly, willingly and lawfully entered the contracts. The Greene Rural Health Center Board of Trustees had authority to enter the contracts at issue without the approval of the Board of Supervisors. Should the Court deem the contracts unenforceable, and thereby void ab initio, any sanctions or finding of contempt should be reversed by this Court. The Special Chancellor had authority to remove I.D. Brown from the Board of Trustees. The Board of Supervisors, Marion Pierce and Larry Brown are parties to the underlying action and the Board of Supervisors exceeded its statutory authority in their attempt to manipulate the Board of Trustees. The Board of Supervisors never attained the statutory authority to appoint a new member to the Board of Trustees and their attempted appointment is void pursuant to Mississippi Law.

Respectfully submitted this the 16th day of March, 2009

CORPORATE MANAGEMENT, INC.

BY: 

DARREN E. GRAY MSB NO [REDACTED]
ATTORNEY FOR APPELLEE
CORPORATE MANAGEMENT, INC.

CERTIFICATE OF SERVICE

I, Darren E. Gray, do hereby certify that I have this date mailed, postage prepaid, by First Class United States mail an original and three (3) copies to the Clerk of the Mississippi Supreme Court and Court of Appeals and additional copies of the foregoing Supplemental Brief of Appellant to the following:

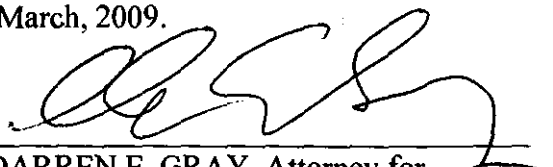
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✓ Mississippi Court of Appeals
✓ Post Office Box 22847
✓ Jackson, MS 39225

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