

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2008-CA-00203

DANIEL WEBSTER

PLAINTIFF-APPELLANT

VERSUS

**CITY OF D 'IBERVILLE, CITY OF
D 'IBERVILLE CITY COUNCIL, MAYOR
OF D 'IBERVILLE AND CITY COUNCIL
PRESIDENT RUSTY QUAVE, D 'IBERVILLE
PLANNING COMMISSION, AND CITY MANAGER
OF D 'IBERVILLE, ALAN SANTA CRUZ**

DEFENDANT-APPELLEE

**APPEAL FROM THE CIRCUIT COURT
OF HARRISON COUNTY MISSISSIPPI
SECOND JUDICIAL DISTRICT**

APPELLANT'S BRIEF

**LA QUETTA M. GOLDEN
Attorney for Plaintiff-Appellant
12311 Ashley Drive., Suite D
Gulfport, MS 39503
228. 832.9111
228.832.9008 (facsimile)**

STATEMENT OF ISSUES

ISSUE ONE

WHETHER THE CIRCUIT COURT OF HARRISON COUNTY ERRED
IN GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
STATING THAT PLAINTIFF'S NOTICE OF CLAIM DOES NOT COMPLY
WITH MISS. CODE ANN. SEC. 11-46-11(2)?

STATEMENT OF THE CASE

I. Course of proceedings and disposition in court below:

On or about August 29, 2002, Daniel Webster filed a Complaint in the Circuit Court of Harrison County, Second Judicial District. (See Record Vol.1, pg. 12) On October 16, 2002, Daniel Webster filed an Amended Complaint in the Circuit Court of Harrison County, Second Judicial District. (See Record Vol. 1, pg. 37)

On December 4, 2002, Defendants/Appellees filed a Motion to Dismiss. (See Record Vol. 1, pg. 40) On January 3, 2003, Daniel Webster filed an Answer to Motion to Dismiss. (See Record Vol. 1, pg. 49) On August 23, 2003, the Circuit Court of Harrison County entered an Order dismissing the Amended Complaint. (See Record Vol. 1, pg. 53) On September 8, 2003, Daniel Webster filed a Motion to Reconsider. (See Record Vol. 1, pg. 54) On June 21, 2004, the Circuit Court of Harrison County entered an Order stating that the Court erred in ordering the case dismissed and ordered the dismissal vacated and held for naught. (See Record Vol. 1, pg. 56)

On July 19, 2004, the Defendants/Appellees filed an Answer to Complaint and Amended Complaint. (See Record Vol. 1, pg. 58) On October 19, 2006, an Entry of Appearance was filed on behalf of Daniel Webster. (See Record Vol. 1, pg. 77)

On February 1, 2007, Defendant's Motion for Summary Judgment was filed. (See Record Vol. 1, pg. 78) On March 23, 2007, Plaintiff's Response to Defendant's Motion for Summary Judgment and Plaintiff's Memorandum in Response to Defendants' Motion for Summary Judgment was filed. (See Record Vol. 2, pg. 165) On March 7, 2007, Defendant's Reply to Plaintiff's Response to Defendant's Motion for Summary Judgment was filed. (See Record Vol. 2, pg. 196) On December 17, 2007, the Circuit Court in Harrison County entered a Final Judgment granting Defendant's Motion for Summary Judgment. (See Record Vol. 2, pg. 205)

On January 14, 2008, Plaintiff-Appellant filed his Notice of Appeal to the Mississippi Supreme Court. (See Record Vol. 2, pg. 209) On January 25, 2008, Plaintiff-Appellant filed his Amended Notice of Appeal to the Mississippi Supreme Court. (See Record Vol. 2, pg. 211)

II. Statement of facts:

Your Plaintiff asserts that he is the owner of certain property located at 10162 Seymour Avenue, D 'Iberville, Second Judicial District, Harrison County, Mississippi. (See Record Vol. 2, pg. 17) That on February 6, 2001, the City of D 'Iberville conducted a public hearing regarding the above property. (See Record Vol. 2, pg.149) That Plaintiff was present at that hearing. That on February 6, 2001, the City of D 'Iberville through it's city council and its mayor, set out its findings at the public hearing in the form of Resolution No. 965. (See Record Vol. 2, pg. 180)

The City of D 'Iberville resolved to have Plaintiff do the following:

- A. Vacate and board up the building. Plaintiff complied with this provision.
- B. Remove all hazardous materials from the building. Plaintiff complied with this provision.
- C. By February 27, 2001, Plaintiff was to submit architectural and engineering plans for the City of D 'Iberville indicating how he would repair or remove the structure. However, on February 26, 2001, Plaintiff entered into a contract to sell the property to a Danny E. McDaniel with KDM Development Inc. and Plaintiff had hired an engineer Louis Rash in preparation to submit the required architectural or engineering plan to the City of D 'Iberville.
- D. By April 6, 2001, Plaintiff was to have submitted a "proven plan" to repair or remove the building or, alternatively, commence the said process. By that date, Plaintiff had sold the property to Danny E. McDaniel with KDM Development, Inc. on March 16, 2001. (See Record Vol. 2, pg. 180)

That on March 21, 2001, Danny McDaniel with KDM Development, Inc. recorded the aforementioned quitclaim deed executed by Plaintiff. That on March 22, 2001, the bank which held the funds from the real estate transaction between Plaintiff and the new owner Danny McDaniel, informed the Plaintiff's then attorney, David Daniels, Esq., that the instrument deposited on or about March 8, 2001 by Danny McDaniel was fraudulent and would not be honored.

That on April 30, 2001, via letter certified mail, Danny McDaniel was notified that the City of D 'Berville "will take action to have building 'removed by demolition' ". (See Record Vol. 1, pg. 35) The letter states that on February 23, 2001 at 4:00p.m. the City of D 'Berville building inspector, the City Attorney, met with Danny McDaniel at the Office of Attorney David Daniels. The letter also states that Danny McDaniel informed the city building inspector and city attorney that McDaniel was purchasing the property, intended to repair it , provided a copy of the Contract to Purchase Real Property. Danny McDaniel later hired an engineer who informed the City of D 'Berville he had prepared costs estimates as to repair versus demolition and rebuilding, but lost contact with McDaniel. (See Record Vol. 1, pg. 35)

That your Plaintiff, being out of state at the time, was not sent this letter, but learned of the City of D 'Berville's plan through his attorney. On May 9, 2001, Plaintiff's attorney filed for Emergency Injunctive Relief, Ex Parte in the Chancery Court of Harrison County, Second Judicial District, Cause No. C2402-01-00274. On May 11, 2001, the City filed an Answer having been notified of title dispute and Plaintiff's desire to save the building. On May 11, 2001, a hearing was held by telephone conference according to a letter dated May 23, 2001 by the D 'Berville City attorney. The letter states the court ordered Plaintiff post \$5,000.00 cash or corporate security bond within seven (7) days or by Friday May 18, 2001 or the Court would not issue a restraining order and

the City could proceed with demolition. (See Vol. 2, pg. 159) **Note there is no actual court order to this effect.******* That on May 31, 2001, Defendants demolished the building on the aforementioned property. At the time the building was demolished it had been determined by Plaintiff's hired engineer to be structurally sound and capable of rehabilitation.

That Danny McDaniel has been federally prosecuted, plead guilty, sentenced and had agreed to deed the aforementioned property back to Plaintiff, but has since refused to sign the deed. That Plaintiff filed an action in the Second Judicial District of Harrison County, Mississippi in which the Court entered an Order and Judgment Finding Conveyance Void Ab Initio and Ordering Quit Claim Deed Signed by Defendant McDaniel or the Clerk of the Court. (See Vol. 1, pg. 22)

SUMMARY OF ARGUMENT

FIRST ISSUE (RESTATED)

ISSUE ONE

WHETHER THE CIRCUIT COURT OF HARRISON COUNTY ERRED IN GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT STATING THAT PLAINTIFF'S NOTICE OF CLAIM DOES NOT COMPLY WITH MISS. CODE ANN. SEC. 11-46-11(2)?

Summary Judgment, where appropriate is designed "to secure the just, speedy, and inexpensive determination of every action." FED.R.CIV.P. 1, 56; *Celotex Corp. v. Catrett*, 477 U.S. 317, 327, 106 S. Ct. 2548, 2552, 91 L. Ed. 2d 265 (1986). A grant of summary judgment is appropriate only when, viewed in the light most favorable to the nonmoving party, " [t]he pleadings, depositions, answers to interrogatories, and admissions on file together with any affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." FED. R. Civ.P. 56(c); *Anderson c. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). Stated differently, summary judgment must be entered against a nonmoving party if that party fails to make a showing sufficient to establish the existence of a genuine issue of fact essential to that party's case. *Catrett*, 477 U.S. at 322.

Plaintiff-Appellant asserts that he has presented evidence and facts sufficient to establish the existence of a genuine issue of fact.

Defendants-Appellees *contend* that Plaintiff-Appellant admitted that he was afforded any and all due process rights that he may have in connection with the City's Resolution No. 965 and the City's demolition of the structure located on the subject premises. Defendants-Appellees *contend* that Plaintiff-Appellant admitted that the City did not violate any rule, law or regulation by enacting and complying with Resolution No. 965. (See Record Vol. 2, pg. 197)

Plaintiff-Appellant *maintains* that he substantially complied with the terms of the City's Resolution No. 965 until the property was sold to Danny McDaniel and *maintains* that the Defendants-Appellees actions are violations of the Mississippi Torts Claim Act, a trespass, an unlawful exercise of police power, a violation of Plaintiff-Appellant's Constitutional Rights, amounted to an unlawful taking of his property without compensation and due process of law, in violation of the 4th, 5th, and 14th amendments of the United States Constitution and Article 2, Sections 14 and 17 of the Mississippi Constitution. (See Record Vol. 1, pgs. 16-19; See Record Vol. 2, pg. 176)

Defendants-Appellees *contend* that Plaintiff-Appellant's notice of claim is insufficient and does not meet the requirements of the Mississippi Tort Claims Act ("MCTA"), Miss Code Ann Section 11-46-1 et seq. (See Record Vol. 1, pg. 81)

Plaintiff-Appellant *maintains* his notice of claim is sufficient and meets the requirements of the Mississippi Tort Claims Act ("MTCA"). (See Record Vol. 2, pg. 171-172) On April 16, 2002, Plaintiff-Appellant's attorney sent a letter to D'Iberville City Attorney which gave notice of Plaintiff-Appellant's intent to file suit under the Mississippi Tort Claims Act and other applicable statute. (See Record Vol. 2, pg. 184-185) The letter contained the nature of the injury which is the demolition of buildings on Plaintiff-Appellant's property in violation of specifically

stated laws. The letter includes entity or "persons involved" as the City of D'Iberville and D'Iberville City Council. A copy of the letter was sent to Rusty Quave, Mayor of the City of D'Iberville and Alan Santa Cruz, City Manager of D'Iberville. The letter stated Defendant-Appellee was negligent and that Plaintiff-Appellant was damaged. On August 29, 2002, Plaintiff-Appellant filed a Complaint against Defendants-Appellees. (See Record Vol. 1, pg. 12)

The rule of law on compliance with the requirements is one of the Mississippi Tort

withdrawn Claims Act and Miss Code Ann Section 11-46-1 et seq. is one of substantial compliance as cited in *Reaves v. Randall*, ⁷²⁹29 So.2d 1237 (Miss. 1998); *Carr v. Town of Shabuta*, 733 So.2d 261 (Miss. 1999). In *Reaves*, the appellant counsel's letter of representation sufficed to meet the ninety (90) day notice of claim requirement. *Reaves*, 729 So.2d at 1238. In reversing the summary judgment, the Court carved out a substantial compliance exception to the Act, as follows: [W]e find that Reaves substantially complied with the notice provisions of the Act. Her notice letter sent to Superintendent Stevenson, lists the persons involved in the accident, when the accident occurred, where the accident occurred, and what vehicles were involved. Superintendent Stevenson is employed in an executive capacity by the school board and through this letter the board was put on notice of the claim. The board had a duty to inquire into the details of the claim. *Id.*, at 1240.

In *Carr* the Court stated as follows: "Even though this Court now finds substantial compliance to be sufficient, we stress that substantial compliance is not the same as, nor a substitute for, non-compliance. The determination of substantial compliance is a legal, though fact-sensitive, question and is, therefore, necessarily decided on an *ad hoc* basis." *Id.*

In the case at bar, Defendants-Appellees quote "the failure to provide any one of the seven categories is failure to comply" citing *South Central Regional Medical Center v. Guffy*, 930 So.2d

The court found that *Guffy* failed to comply with the notice requirements of Miss. Code Ann. Section 11-46-11(2) due to lack of any written notice in the record as none of the seven required categories are provided. *Id* at 1240 .

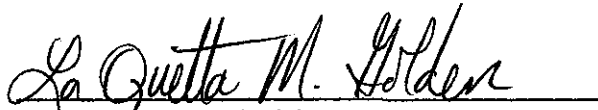
In the case at bar, Plaintiff-Appellant provided written notice as aforementioned which contained some of the required categories. (See Record Vol. 2, pg. 184-185) Therefore, based upon the foregoing, your Plaintiff-Appellant asserts that the Circuit Court erred in granting Defendants-Appellees Motion for Summary Judgment.

CONCLUSION

Your Plaintiff-appellant respectfully requests that this Honorable Court will reverse the lower court's decision and render a decision based upon the facts of the case and the laws of the State of Mississippi. Your Plaintiff-appellant prays for general or specific relief not mentioned herein.

Respectfully submitted on this the 8 day of August,

2008.


La Quetta M. Golden
Attorney for Plaintiff-Appellant

CERTIFICATE OF COMPLIANCE

I, La Quetta M. Golden, do hereby certify that the foregoing

Appellant's brief was typed as follows:


- A. Type of Print: Times New Roman
- B. Type of character: 14pt
- C. Total of words used: less than 14,000
- D. System: Word Perfect

CERTIFICATE OF SERVICE

I, La Quetta M. Golden, do hereby certify that I have this date mailed,
postage prepaid, a true and corrected copy of Appellant's Brief to:

Hon. William R. Allen
Allen, Allen Breland & Allen
P.O. Box 751
Brookhaven, MS 39602-0751

SO CERTIFIED, this the 8 of August,
2008.


La Quetta M. Golden
Attorney for Plaintiff-appellant

**LAW OFFICE OF
LA QUETTA M. GOLDEN
12311 ASHLEY DRIVE, SUITE D
GULFPORT, MS 39503
MS BAR NO.: [REDACTED]
(228) 832-9111
(228) 832-9008 (FAX)**

CERTIFICATE OF SERVICE

I, La Quetta M. Golden, do hereby certify that I have this date mailed,
postage prepaid, a true and corrected copy of Appellant's Brief to:

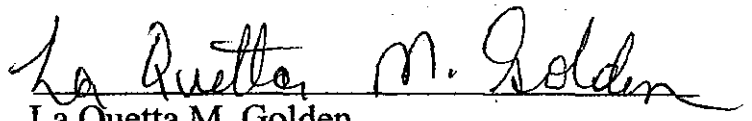
Harrison County Circuit Court Judge

Hon. Jerry O. Terry

1801 23rd Avenue

Gulfport, MS 39501

SO CERTIFIED, this the 13th of August, 2008.



La Quetta M. Golden

Attorney for Plaintiff-appellant

**LAW OFFICE OF
LA QUETTA M. GOLDEN
12311 ASHLEY DRIVE, SUITE D
GULFPORT, MS 39503
MS BAR NO.: [REDACTED]
(228) 832-9111
(228) 832-9008**