

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2008-CA-00250

BLUEWATER LOGISTICS, LLC, BLUEWATER
BAY, LLC, PATRICIA L. MOSSER,
MARQUETTA SMITH AND MICHAEL J. FLOYD

APPELLANTS/CROSS-APPELLEES

vs.

JAMES STEWART WILLIFORD, JR.

APPELLEE/CROSS-APPELLANT

APPEAL AND CROSS-APPEAL FROM THE CHANCERY
COURT OF FORREST COUNTY, MISSISSIPPI

REPLY BRIEF OF APPELLEE/CROSS-APPELLANT

ORAL ARGUMENT REQUESTED

L. Clark Hicks, Jr., [REDACTED]
Gunn, Hicks, & Bennett PLLC
211 South 29th Avenue, Suite 201 39401
Post Office Box 18350
Hattiesburg, MS 39404-8350
Telephone: (601) 544-6770
Facsimile: (601) 544-6775
Email: clark@gunnandhicks.com
Attorney for Appellee/Cross-Appellant,
James Stewart Williford, Jr.

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TABLE OF AUTHORITIES

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<i>Fought v. Morris</i> , 543 So.2d 167, 173 (Miss.,1989)	1

STATEMENT OF ISSUE ON CROSS-APPEAL

Whether the trial court erred by not awarding Williford his attorney's fees due to the Defendants' intentional breach of contract and willful misconduct?

SUMMARY OF ARGUMENT

Appellee, Stewart Williford, a minority shareholder in Bluewater, cross-appeals the failure of the trial judge to award reasonable attorney's fees. The trial court's ruling supports an award of reasonable attorney's fees because the court found that the Appellants' (collectively "Bluewater") actions constituted a willful and intentional breach of contract and gross negligence.

ARGUMENT

The trial court correctly found that the Bluewater's actions constituted a willful and intentional breach of contract and gross negligence, but the court erred on a point of law by finding that no authority exists for an award of attorney's fees. This Court should remand the case for a determination of reasonable attorney's fees and affirm the decision in all other respects.

The Limited Liability Company Agreement in this case is silent on the issue of attorney's fees. Attorney's fees are allowed in contracts cases where there is proof of an "intentional wrong, insult, abuse, or such gross negligence as amounts to an independent tort." *Fought v. Morris*, 543 So.2d 167, 173 (Miss. 1989). Attorney's fees may be awarded in lieu of punitive damages. *Check Cashers Exp., Inc. v. Crowell*, 950 So.2d 1035, 1043 (Miss. App. 2007).

In *Fought*, the facts showed a corporate squeeze out of a minority shareholder, like the case at bar. The Mississippi Supreme Court restated the long standing rule that in cases of breach of fiduciary duty and intentional breach of contract an award of attorney's fees is within the discretion of the trial judge.

Here, the Chancellor found that Bluewater's actions amounted to intentional, willful and gross negligent behavior. (R. Vol. 6 at 326). The lower court stated in its Findings of Fact and Conclusions of Law that

The failure of the individual defendants to pay Williford his one-quarter interest despite agreement to do so constitutes a **willful and intentional** breach of contract and is **grossly negligent** . . . The **intentional breach of contract and gross negligence** by the individual defendants, the Court so finds, is sufficient to render the individuals liable in addition to the liability of the limited liability companies.

Id. (internal citations omitted, emphasis added). The above quoted record clearly shows that the lower court found an intentional breach of contract, despite Bluewater's contention that "He [Williford] proved no intentional breach of contract." (Br. of Appellants at 22).

The lower court erred, however, in ruling that the law does not support an award of attorney's fees in cases of intentional breach of contract. The court stated that "[a]s to the attorney's fee request, the Court does not know of any authority that the Court has to authorize attorney's fees, so the Court does not approve attorney's fees for Mr. Williford." (Appellee's R. Excerpts of Tr. Transcr. at 328). According to *Fought* and a plethora of similar cases, authority does exist for an award of attorney's fees for intentional breaches of contract.

The record evidence supports an award of attorneys fees based on the Chancellor's findings. On February 3, 2006, the majority shareholders voted to pay Williford his one-quarter share of the company. Despite their vote, the majority of Bluewater shareholders did not pay Williford, which the Court expressly found in its discretion to be willful, intentional, and grossly negligent. (R. Vol. 6 at 326).

During the lower proceedings, the court entered multiple orders preventing the majority shareholders from making distributions out of the company proceeds. The majority disregarded

these orders and made repeated payments to themselves, which they admitted at trial. (R. Vol. 6 at 275, 287). Bluewater also continued operating and receiving profits without allowing Williford access to the company and its records. (R. Vol. 6 at 323). Bluewater and the majority shareholders received over one million dollars after suit was filed, but the majority shareholders told the court that they had no idea where the money was. (R. Vol 6. at 318). The majority shareholders were unable to account for the money they received, and they failed to assist the court appointed accountant with the companies financial records, which the court considered.

The lower court found that Bluewater's actions were willful, intentional, and grossly negligent, but it erred in finding that no authority exists for an award of attorney's fees in such cases. Remand is appropriate for a determination of reasonable attorney's fees.

CONCLUSION

This Court should remand this case for a determination of reasonable attorney's fees and affirm all other aspects of the lower courts ruling.

Respectfully submitted, this the 15 day of April , A.D., 2009.

JAMES STEWART WILLIFORD, JR.

BY: Clark Hicks
L. CLARK HICKS, JR., 

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have this date served via U.S. Mail, first class, postage prepaid, the original and four (4) true and correct copies of the above and foregoing Reply of Appellee/Cross-Appellant to the following:

Honorable Johnny L. Williams
Forrest County Chancery Court Judge
Post Office Box 1664
Hattiesburg, MS 39403-1664

Robert R. Marshall, Esq.
Law Offices of Erik M. Lowrey PA
525 Corinne Street
Hattiesburg, MS 39401

Ms. Betty Sephton
Mississippi Supreme Court Clerk
Post Office Box 117
Jackson, MS 39205

THIS the 15th day of April, 2009.

Clark Hicks
L. CLARK HICKS, JR., [REDACTED]
Gunn, Hicks, & Bennett PLLC
211 South 29th Avenue, Suite 201 (39401)
Post Office Box 18350
Hattiesburg, MS 39404-8350
Telephone: (601) 544-6770
Facsimile: (601) 544-6775
Email: clark@gunnandhicks.com
Attorney for Appellee/Cross-Appellant,
James Stewart Williford, Jr.