

IN THE SUPREME COURT OF MISSISSIPPI

CAUSE NUMBER: 2008-CA-01072

**REEVES CONSTRUCTION & SUPPLY, INC., and
KEN REEVES D/B/A REEVES CONSTRUCTION.....APPELLANT(S)**

VERSUS

MRS. KATE CORRIGAN.....APPELLEE

BRIEF OF APPELLEE

**APPEAL FROM THE HONORABLE CIRCUIT COURT
OF FORREST COUNTY, MISSISSIPPI**

RESPECTFULLY SUBMITTED BY:

**M. RONALD DOLEAC [REDACTED]
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ATTORNEY FOR MRS. KATE CORRIGAN

IN THE SUPREME COURT OF MISSISSIPPI

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VERSUS

MRS. KATE CORRIGAN.....APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

Appellee is Mrs. Kate Corrigan, 2710 Julianne Place, Hattiesburg, MS, 39402. Mrs. Kate Corrigan's counsel of record is M. Ronald Doleac, P.O. Box 655, Hattiesburg, Mississippi 39403-0655.

Appellants are Reeves Construction & Supply, Inc., 3804 North John Young Parkway, Unit 10, Orlando, Florida, 32804, and Ken Reeves d/b/a Reeves Construction, P.O. Box 42201, Indianapolis, Indiana, 46242. Appellants' counsel of record in this matter is Brandon L. Brooks and Shirlee Fager Baldwin, Attorneys at Law, 610 West Pine Street, Hattiesburg, Mississippi, 39401.

The Circuit Court Judge who heard this matter presently on appeal is the Honorable Robert B. Helfrich.

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STATEMENT OF ISSUES

Reeves Construction & Supply, Inc., a Corporation, and Ken Reeves d/b/a Reeves Construction bring this Appeal from the Circuit Court of Forrest County, Honorable Robert B. Helfrich presiding, asserting error on the part of the Trial Judge in granting Summary Judgment for statutory damages in favor of Appellee, Mrs. Kate Corrigan, on Count Two of her Complaint against Ken Reeves d/b/a Reeves Construction for wrongfully filing a Construction Lien Notice against Corrigan's homestead in violation of Section 85-7-201 MCA 1972. Reeves urges there were genuine issues of material fact for trial on Count Two; that the filing of the Construction Lien Notice by the individual Appellant Reeves does not constitute slander of title; and that the Circuit Court lacked authority to grant Summary Judgment under Section 85-7-201 following transfer of the case from the Forrest County Chancery Court to the Forrest County Circuit Court upon motion of the Reeves Defendants below.

Appellee Mrs. Corrigan contends that there was no genuine issue of material fact as to the Contract between herself and Reeves Construction & Supply, Inc., and the lack of any contractual relationship or other legal duty between herself and Ken Reeves d/b/a Reeves Construction. Mrs. Corrigan urges that the Trial Judge properly granted Summary Judgment for statutory damages on Count Two. Mrs. Corrigan maintains that the Circuit Court took jurisdiction of the issues between the parties as transferred to the Circuit Court by order of the Chancery Court upon motion of the Appellants in Chancery for transfer to Circuit Court. In addition to the false lien notice filing claim by Corrigan against Ken Reeves on Count Two, Mrs. Corrigan sued Reeves Construction & Supply,

Inc., for Breach Of Contract on Count One and also sued Ken Reeves d/b/a Reeves Construction for Slander Of Title on Count Three. The Reeves Corporation filed a Counterclaim for enforcement of the Construction Lien filed by Ken Reeves d/b/a Reeves Construction against Mrs. Corrigan. Those claims remain pending in the Trial Court.

STATEMENT OF THE CASE

Section 85-7-201 MCA 1972 provides:

“Penalty for false notice; expungement

“Any person who shall falsely and knowingly file the notice mentioned in Section 85-7-197 without just cause shall forfeit to every party injured thereby the full amount for which such claim was filed, to be recovered in an action by any party so injured at any time within one year from such filing; and any person whose rights may be adversely affected may apply, upon two days’ notice, to the chancery court or to the chancellor in vacation, or to the county court, if within its jurisdiction, to expunge; whereupon proceedings with reference thereto shall be forthwith had, and should it be found that the claim was improperly filed rectification shall at once be made thereof.”

This case began in Forrest County Chancery Court with Corrigan filing her Complaint For Expungement Of False Notice Of Construction Lien And For Statutory Damages And For Slander Of Title And Complaint For Breach Of Contract against the Reeves Defendants on August 10, 2006, C.P. 8-22. The Reeves Defendants filed their

Answer and Reeves Construction & Supply, Inc., filed its Counterclaim on October 3, 2006. C.P. 23-29. Subsequently, Defendants/Counter Plaintiffs filed their Motion To Transfer To Circuit Court And Answer To Corrigan's Motion To Dismiss And Motion For Judgment On The Pleadings on December 8, 2006. C.P. 37-38.

Following a hearing in Chancery Court on December 18, 2006, the Chancellor ordered the Notice of Construction Lien filed by Ken Reeves d/b/a Reeves Construction cancelled of record (R.E. 14-16) and by separate Order granted the Motion of Reeves Construction & Supply, Inc., and Ken Reeves d/b/a Reeves Construction to transfer the remainder of the case to Forrest County Circuit Court. C.P. 42-43.

On March 25, 2008, Mrs. Corrigan filed her Motion For Summary Judgment on Count Two For Statutory Damages Under Section 85-7-201 MCA 1972 against Ken Reeves d/b/a Reeves Construction for the wrongful filing of the Construction Lien Notice against her homestead. Corrigan also moved the Court for Summary Judgment on Count Three against Ken Reeves d/b/a Reeves Construction for Slander Of Title. C.P. 62-105. Mrs. Corrigan included in her Motion For Summary Judgment her Affidavit (C.P. 104) stating that Reeves Construction & Supply, Inc., a Corporation, was the only Reeves entity with whom she contracted for repair work to her home and that at no time did she enter into any repair agreement or authorize any work to be performed by Ken Reeves d/b/a Reeves Construction and that at no time did she have any contractual agreement, written, verbal, direct or indirect with Ken Reeves d/b/a Reeves Construction. (C.P. 104) Mrs. Corrigan also filed her Itemization Of Undisputed Facts in support of her Motion For Summary Judgment. C.P. 106-121. Following the Defendants' Combined Response in opposition to Plaintiff's Motion For Summary Judgment On Counts Two And Three

(C.P. 122-144) Defendant Ken Reeves subsequently filed his Affidavit opposing Corrigan's Motion. C.P. 145-146. R.E. 20, 21. Mrs. Corrigan then filed her Motion To Strike the Affidavit of Ken Reeves on April 18, 2008, asserting that the Affidavit was on an individual basis and not on behalf of the corporate defendant with regard to the Contract between Corrigan and Reeves Construction & Supply, Inc., asserting that Ken Reeves admitted that he filed a Notice Of Construction Lien against Mrs. Corrigan for \$12,450.00 in his individual capacity; asserting that the Reeves Affidavit offered no evidence of any contractual relationship between Ken Reeves d/b/a Reeves Construction and Mrs. Corrigan nor any allegation thereof in support of Reeves statement that he had "just cause" in filing the Construction Lien Notice and asserting that the Affidavit was not probative nor did it sufficiently contest Mrs. Corrigan's Affidavit and that same should be stricken. (C.P. 147-148).

The Summary Judgment Motion Hearing was conducted by Circuit Judge Robert B. Helfrich without a record on April 18, 2008. On May 16, 2008, Judge Helfrich issued his Opinion, Ruling And Order on Plaintiff's Motion For Summary Judgment on Counts Two and Three granting Summary Judgment for Mrs. Corrigan on Count Two for statutory damages against Ken Reeves d/b/a Reeves Construction for wrongfully filing his Construction Lien Notice against her homestead and assessing the statutory penal lien claim amount of \$12,450.00 against Ken Reeves d/b/a Reeves Construction. The Court denied Mrs. Corrigan's Motion For Summary Judgment on Count Three for Slander Of Title against Ken Reeves d/b/a Reeves Construction. Final Judgment was entered by Judge Helfrich on May 16, 2008, granting Mrs. Corrigan judgment against Ken Reeves

d/b/a Reeves Construction in the sum of \$12,450.00 with interest at the rate of 8% per annum thereon from date until paid. C.P. 152-155, C.P. 156-157.

Mrs. Corrigan's Count One Claim For Breach Of Contract against Reeves Construction & Supply, Inc., and the Counter-Claim For Lien Enforcement by Reeves Construction & Supply, Inc., against Mrs. Corrigan, as well as Mrs. Corrigan's Count Three Claim against Ken Reeves d/b/a Reeves Construction For Slander Of Title remain pending in the Trial Court.

Mrs. Kate Corrigan sustained substantial damage to her homestead in Hattiesburg from Hurricane Katrina in August of 2005. On or about January 25, 2006, she entered into a Contract for repair work on her home at 2710 Julianne Place, Hattiesburg, Forrest County, Mississippi, with the corporate Defendant Reeves Construction & Supply, Inc., which Contract called for repair work and a total contract payment sum of \$46,500.00. R.E. 10, C. P. 18. The Reeves Corporate Defendant commenced repair work on the dwelling house and received partial payment but failed to fully perform the Contract with Mrs. Corrigan. She finished the work at additional expense to herself.

On March 9, 2006, Defendant Ken Reeves d/b/a Reeves Construction filed a Construction Lien Notice against Plaintiff's homestead in the sum of \$12,450.00 which Notice was recorded in the Chancery Clerk's Office notwithstanding that there was no contractual relationship between Mrs. Corrigan and the individual Defendant Ken Reeves d/b/a Reeves Construction. R.E. 11-13.

Plaintiff Corrigan sued the Corporate Defendant, Reeves Construction & Supply, Inc., on Count One For Breach Of Contract. She sued the individual Defendant Ken

Reeves d/b/a Reeves Construction on Count Two for Expungement Of False Notice Of Construction Lien And For Statutory Damages and on Count Three For Slander Of Title.

SUMMARY OF THE ARGUMENT

Plaintiff and Appellee, Mrs. Kate Corrigan, urges that the Summary Judgment Ruling of the Trial Judge below be affirmed. There is no factual dispute that the Contract for repairs was between Mrs. Corrigan and the Corporate Defendant, Reeves Construction & Supply, Inc. There is no evidence of any contractual agreement between Mrs. Corrigan and Ken Reeves d/b/a Reeves Construction, the party against whom Summary Judgment was granted. Mrs. Corrigan filed her Motion To Strike The Affidavit Of Ken Reeves in opposition to her Summary Judgment Motion. Reeves filed no such Motion To Strike. There is no dispute as to the material fact that Ken Reeves d/b/a Reeves Construction wrongfully and falsely filed a Construction Lien Notice against Mrs. Corrigan's homestead. The Trial Judge ruled that Mr. Reeves is charged with the duty to distinguish between his actions as President of his Corporation and those he takes individually. The Reeves Defendants urge that the filing of the Construction Lien Notice by Ken Reeves d/b/a Reeves Construction does not constitute slander of title. While Mrs. Corrigan filed for Summary Judgment on her Count Three Slander Of Title Claim against Ken Reeves d/b/a Reeves Construction, the Trial Judge denied the Summary Judgment Motion on the Slander Of Title Count Three. Appellants' position and argument as to the Slander Of Title Count Three is misplaced on this appeal.

Appellants urge that the Construction Lien Notice was filed without malice. The Trial Judge correctly interpreted and applied Section 85-7-201 MCA 1972 and awarded

Mrs. Corrigan Summary Judgment for the statutory penal sum of the wrongful lien filed against her homestead.

This case began in Forrest County Chancery Court with Mrs. Corrigan filing her Complaint for Expungement Of False Notice Of Construction Lien and for Statutory Damages and for Slander Of Title and Complaint For Breach Of Contract against the Reeves Defendants. The Reeves Defendants subsequently filed a Motion To Transfer the case to Forrest County Circuit Court urging that the Contract issues and the Lien Enforcement Counterclaim brought by the Corporate Reeves Defendant are appropriate for litigation in Circuit Court. The Chancellor agreed and granted the Reeves Defendants' Motion To Transfer the case concerning all issues, except Cancellation of the Construction Lien Notice, (which the Chancellor ordered) to Forrest County Circuit Court. The Reeves Defendants now complain that the Circuit Court lacked authority to grant Summary Judgment under Section 85-7-201 because the statute addresses filing in Chancery which is where Mrs. Corrigan initiated her litigation against these Defendants. Mrs. Corrigan urges that the Defendants by their Motion waived any objection to the Circuit Court's authority and that the Circuit Court has jurisdiction and authority of the issues and claims in the case. Based upon previous rulings by this Honorable Court, the Circuit Judge acted properly in adjudicating Mrs. Corrigan's claim for Statutory Damages against Ken Reeves d/b/a Reeves Construction under Section 85-7-201 after the Chancery Court had transferred the case, including that claim, to the Circuit Court on Defendants' Motion. Defendants below filed no motion, objection or defense as to the Circuit Court's authority.

No record was made at the Summary Judgment Argument before the Trial Judge. The record and the law supports the Summary Judgment Ruling below granted in favor of Mrs. Corrigan.

ARGUMENT

Summary Judgment Standard Of Review

Summary Judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Short v. Columbus Gasket & Rubber Company, Inc.*, 535 So. 2d 61 (Miss.1988). *Deaton v. Mississippi Farm Bureau Cas. Ins.*, 994 So. 2d 164 (Miss. 2008). Summary Judgment may be granted “if the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a Judgment as a matter of law.” MRCP 56 (c). A fact is material if it “tends to resolve any of the issues properly raised by the parties.” *Webb v. Jackson*, 583 So. 2d 946, 949 (Miss. 1991). (*Citing Mink v. Andrew Jackson Casualty Insurance Co.*, 537 So. 2d 431, 433 (Miss. 1988). The evidence must be viewed in the light most favorable to the non-moving party. *Morgan v. City of Ruleville*, 627 So. 2d 275, 277 (Miss. 1993).

The standard of review for this Honorable Court is to determine if there is a triable material issue on Corrigan’s Complaint against Ken Reeves for wrongfully liening Corrigan’s property given the facts before the trial judge for consideration on Summary Judgment. *Nygaard v. Getty Oil Co.*, 918 So.2d 1237 (Miss. 2005). The trial Judge’s decision granting Summary Judgment for Mrs. Corrigan can only be reversed if there is a

triable issue of material fact between the parties. *Owen & Galloway, L.L.C. v. Smart Corp.*, 913 So.2d. 174 (Miss. 2005). The Appellate Court reviews the grant of Summary Judgment under the same standard as that of the trial court. *Gant v. Maness*, 786 So.2d. 401 (Miss. 2001).

In responding to a Motion For Summary Judgment, assertions are not good enough to avoid Summary Judgment and a non-moving party may not rest upon allegations or denials in his pleadings. *Travis v. Stewart*, 680 So. 2d 214, 217 (Miss. 1993). A Motion For Summary Judgment may not be defeated by simply making general allegations of unsupported denials of material fact. Specific facts must be set forth showing that there are material issues at trial to be determined by the trier of fact. *Drumman v. Buckley*, 627 So. 2d 264 (Miss. 1993).

Where the party against whom a Motion For Summary Judgment is made wishes to attack one or more of the affidavits upon which the motion is based, he must file in the Trial Court a motion to strike the affidavit. *Van v. Grand Casinos of Mississippi, Inc.*, 767 So.2d 1014, 1023 (Miss. 2000). Failure to file the motion to strike constitutes waiver of any objection to the affidavit. *Van, supra*; *Travis, supra*. Plaintiff Corrigan filed her Motion To Strike the Affidavit of Ken Reeves in the trial court. Defendant Ken Reeves filed no Motion To Strike. The learned trial judge correctly relied upon Mrs. Corrigan's Affidavit in sustaining her Motion For Summary Judgment as to Count Two on her Complaint against Ken Reeves d/b/a Reeves Construction for wrongfully filing a Construction Lien against her homestead.

The Ken Reeves Affidavit C.P. 145-146 R.E. 20,21

Where a motion for summary judgment is made and supported as provided by MRCP 56, an adverse party must by affidavit, or as otherwise provided in the rule, set forth specific facts showing that there is a genuine issue for trial. MRCP 56(e). *Mallette v. Church Of God Intern.*, 789 So.2d. 120 (Miss. App. 2001). Ken Reeves set forth no specific facts creating a legal relationship or duty between Ken Reeves d/b/a Reeves Construction and Mrs. Kate Corrigan, while Corrigan established no such relationship and, therefore, her entitlement to Summary Judgment against Reeves.

Ken Reeves' Affidavit is not supported by legal documentation, contains legal conclusions outside the scope of his personal knowledge and experience, contains statements that cannot be testified to by Affiant, and is inadmissible hearsay. The Reeves Affidavit is not competent evidence to rebut the Corrigan Affidavit. The Reeves Affidavit does not generate a genuine issue of material fact. *Magee v. Transcontinental Gas*, 551. So.2d 182, 186 (Miss. 1989).

Respectfully, a reading of the Reeves Affidavit indicates only the nebulous position of the Appellant(s) in this case. There is no distinction nor identification made in the Reeves Affidavit as to the capacity in which Affiant Ken Reeves was acting whether for the Corporation, Reeves Construction & Supply, Inc., (the Reeves party to the Corrigan Contract) or in his individual capacity or d/b/a Reeves Construction or d/b/a Reeves All Pro Roofing. (It should be noted that Reeves All Pro Roofing is not a party to this action.) The only construction contract in evidence and before the Court is between Reeves Construction & Supply, Inc., and Mrs. Kate Corrigan. Reeves' self serving statement that "Affiant had just cause in filing said Construction Lien and had no malice intent when doing so." does not create a material issue of fact as to the lack of

contractual relationship and lack of any legal duty owed by Mrs. Corrigan to Ken Reeves d/b/a Reeves Construction. The trial judge was within his discretion to give no credit or weight to the Ken Reeves Affidavit as it wholly fails to dispute the Affidavit of Mrs. Corrigan supporting her Motion For Summary Judgment against Ken Reeves.

The facts and inferences most favorable to Ken Reeves fail to establish a material fact in dispute that would require the trier of fact to decide if there was a contractual or lawful right for Ken Reeves d/b/a Reeves Construction to file a Construction Lien against Corrigan's homestead. There is no dispute that the contract giving rise to the dispute between these parties is between Reeves Construction & Supply, Inc., a Florida Corporation, and Mrs. Kate Corrigan. There is no dispute that no contractual relationship or duty was created nor did any exist as between Ken Reeves d/b/a Reeves Construction and Mrs. Kate Corrigan for the work performed on Mrs. Corrigan's home. The inability of Ken Reeves to rebut this fact as established by Mrs. Corrigan leaves no issue for determination by the trier of fact as to Reeves' wrongful lien filed against Mrs. Corrigan's homestead. Mrs. Corrigan demonstrated below that there was no material fact in existence as to any right of Ken Reeves to file a construction lien against her homestead and that he wrongfully and unlawfully did so. *Elkins v. McKenzie*, 865 So.2d 1065 (Miss. 2003). Under the pleadings and affidavits before the trial judge for consideration, Reeves had no legal right to lien Corrigan's property. The trial judge ruled accordingly and properly applied the statute and granted Summary Judgment for Corrigan on Count Two of her Complaint against Ken Reeves d/b/a Reeves Construction. The trial judge's decision is supported by the facts and the law and should be affirmed by this Honorable Court.

The admission of Ken Reeves d/b/a Reeves Construction through his attorney in the Chancery Court proceeding to cancel of record his Construction Lien Notice against Corrigan's homestead constitutes a significant admission of his violation of Section 85-7-201 MCA 1972. The statute creating the penalty for false notice of a Construction Lien is penal in nature and makes a wrongdoer liable to the person wronged for a fixed sum without reference to the damage inflicted by the commission of the wrong. *Manderson v. Ceco Corp.* 587 F. Supp. 445, (N.D. Miss. 1984).

Defendant Ken Reeves is a principal, officer and director of the Corporate Defendant, Reeves Construction & Supply, Inc., a Corporation. He was on actual notice as to the Corporate Defendant's Contract with the Plaintiff. Individually Ken Reeves likewise knew there was no Contract between Plaintiff Kate Corrigan and Ken Reeves d/b/a Reeves Construction nor was there any Contract between Plaintiff Kate Corrigan and Reeves All Pro Roofing – whatever legal entity Reeves All Pro Roofing may be. Mr. Reeves is charged with the duty to know what he was doing with his Corporation and what he was doing as an individual in his dealings with Mrs. Corrigan. He had no legal right personally to file a Lien against her property.

At Page 3 of Appellants' Brief, Counsel opposite represents matters not in the record as to a proposed Order submitted to Chancellor Williams during the time this matter was in Chancery Court and the refusal of Chancellor Williams to sign same. Moreover, Counsel opposite speculates that the Chancellor refused to find the filing by Ken Reeves wrongful. Undersigned Counsel respectfully objects to Counsel Opposite's purported representation of and speculation of matters not of record and respectfully moves this Court to strike or otherwise disregard same as improper on this appeal.

Appellant(s) assert that somehow because Mrs. Corrigan was dealing with Ken Reeves, (i.e. letter to Mr. Reeves dated March 4, 2006, R.E. 25) that somehow Mrs. Corrigan was dealing with the individual and not the corporation per her contract with Reeves Construction & Supply, Inc. This argument begs the question and is unfounded. Judge Helfrich ruled:

“that Defendant Ken Reeves individually was under a duty and obligation to distinguish the contractual relationship with Plaintiff (Corrigan) as between Plaintiff and the Reeves Corporation and Ken Reeves d/b/a Reeves Construction. The issue of no contractual relationship between Plaintiff and Ken Reeves d/b/a Reeves Construction is undisputed and the Court finds that there is no dispute as to the lack of contractual relationship in this case between Plaintiff Kate Corrigan and Defendant Ken Reeves d/b/a Reeves Construction. Therefore, the Court finds that Defendant Ken Reeves d/b/a Reeves Construction wrongfully filed his Construction Lien Notice against Plaintiff’s homestead property and for which Defendant Ken Reeves d/b/a Reeves Construction is liable in the statutory penal amount of \$12,450.00 being the amount of his wrongful Lien Notice and for which Plaintiff is entitled to Judgment.....as allowed by Section 85-7-201 of the Mississippi Code of 1972 Annotated.” R.E. 5-8 C.P. 152-155.

Slander Of Title

The trial Judge denied Corrigan’s Motion For Summary Judgment on Count Three for Slander Of Title against Ken Reeves d/b/a Reeves Construction. R.E. 7, 8.

Appellant(s) assert that “The disputed material issue of fact in the instant case is whether Reeves filed the Notice of Construction Lien falsely, and with malice.”

Appellant's Brief, page 6. The trial judge found that the Notice was wrongfully and falsely filed in violation of Section 85-7-201. Bad faith or bad purpose can be inferred from the circumstances and documents and the Affidavit testimony of Mrs. Corrigan in support of her Motion For Summary Judgment. There is no transcript of the Summary Judgment argument for this court to consider. The trial judge's ruling is supported by the facts and the law before him on the issue of Summary Judgment.

Mrs. Corrigan is suing Ken Reeves d/b/a Reeves Construction for Slander of Title on Count Three of her Complaint in the trial court. Those issues are for determination by the jury at such time as the case proceeds in the trial court on Count One brought by Corrigan against the Reeves Corporate Defendant and on Count Three brought by Corrigan against Ken Reeves d/b/a Reeves Construction and on the Counter Claim brought by the Reeves Corporate Defendant against Mrs. Corrigan. The case of *Walley v. Hunt*, 54 So2d. 393 (Miss. 1951) cited by Appellants is not applicable here. The argument of malice applicable to slander of title is misplaced by Appellants at this time as the slander of title action has not been tried nor finally adjudicated in the trial court.

Appellants assert estoppel against Corrigan for Corrigan's counsel "agreeing" before the Chancellor that the Construction Lien Notice should be cancelled. (See Judge Williams' Order Canceling Notice Of Construction Lien Of Ken Reeves D/B/A Reeves Construction. R.E. 14-16.) It should be noted that Chancellor Williams in the same Order "makes no further ruling on Plaintiff's and Counterdefendant's Motion For Judgment On The Pleadings and defers to the Honorable Circuit Court of Forrest County, Mississippi, to which this cause will be transferred by separate Order of the Court;" It was clearly the intent of the Order by Judge Williams to cancel the Lien Notice because

of the documentary admission and the representation by Counsel for Reeves (by signing the Order) that the Lien Notice should be cancelled. For counsel opposite to suggest that by Corrigan's counsel agreeing to relief requested somehow creates an estoppel makes no sense. No such objection or defense has been raised by Defendants below. All other issues and claims were transferred by Judge Williams from Chancery Court to Circuit Court. Judge Helfrich has now decided the claim of Corrigan on Count Two for statutory damages and Summary Judgment has been rightfully entered.

Circuit Court Authority

Appellant's position that the Circuit Court has no authority to grant Summary Judgment under Section 85-7-201 is misplaced in this case. The Reeves Defendants, (Defendants and Counter claimant below) and both of them, filed their motion in Chancery Court to transfer this case to Circuit Court. C.P. 37-38. Judge Williams granted that Motion by Order Allowing Transfer To Forrest County Circuit Court on January 26, 2007, ruling that because of legal issues concerned "jurisdiction is proper in the Circuit Court of Forrest County." Counsel for Reeves prepared the Order. Counsel for Corrigan approved same as to form only. C.P. 42-43. Having succeeded in getting the case transferred from Chancery to Circuit, the Appellants now object on appeal to the authority of the Court to which they sought to have the case transferred in its entirety because Summary Judgment has been granted. Their position is inconsistent, untimely and waived. No MRCP 12 motion, objection or defense as to Circuit Court authority or jurisdiction has been filed. (See also MRCP 12h (1)). Moreover, this Court has previously ruled that where there is in a case one issue of exclusive equity cognizance,

such an issue can bring the entire case within the subject matter jurisdiction of the Chancery Court and that Court may proceed to adjudicate all legal issues as well. *Re/MaxReal Estate Partners, Inc. v. Lindsley*, 840 So. 2d 709 (Miss. 2003). That doctrine applies here. The Circuit Court has jurisdiction of contract disputes and lien enforcement claims and, in keeping with the public policy doctrine of legal relief in general, there is nothing violative of the Circuit Court ruling on the statutory damages claim following transfer from Chancery to Circuit on motion of the Reeves Defendants. Moreover, our Court long ago held that if a Defendant answers a bill without objection to the jurisdiction and contests the merits of the case, the Court can entertain the bill, if the matter be fit for equitable adjudication even if the subject matter is not cognizable in equity. *Brown v. Bank of Mississippi*, 31 Miss. 454, 2 George 454, (Miss. Err. & App. 1856). While Circuit Court subject matter jurisdiction may not be waived, a litigant by his course of action may assert the jurisdiction and, if the record shows the Court did have jurisdiction, it will be sustained. *Myrick v. Mansel*, 185 So. 581, 184 Miss. 701 (1939). The Reeves Defendants should not be now heard to complain because the Circuit Court ruled against the individual Reeves Defendant on Corrigan's Statutory Claim For Damages for falsely filing a lien against her homestead following Reeves' Motion To Transfer being granted in Chancery.

Appellants' position of lack of authority for the Circuit Court to rule on Section 85-7-201 is without merit under the facts in this case.

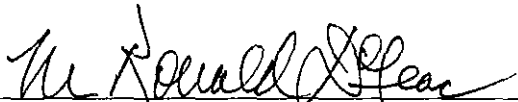
CONCLUSION


The trial judge ruled that the statute is what it is, penal in nature against one who wrongfully files a lien claim against another's property. R.E. 5-8, C.P. 152-155. There is

no statutory requirement of a showing of damages nor was there any transcript or record made at the Summary Judgment hearing for this Court to review. Mrs. Corrigan was and is entitled to Judgment against Ken Reeves d/b/a Reeves Construction for the penal amount because he wrongfully and knowingly filed a lien against her homestead when he knew it was Reeves Construction & Supply, Inc., with whom Mrs. Corrigan had contracted for the repair work to her home. Ken Reeves violated the statute. Mrs. Corrigan proved the violation at Summary Judgment. The trial judge correctly granted Summary Judgment for Mrs. Corrigan against Ken Reeves d/b/a Reeves Construction for the wrongful lien amount of \$12, 450.00 as allowed by statute.

Respectfully submitted,

MRS. KATE CORRIGAN
APPELLEE

By: 
M. RONALD DOLEAC, Her Attorney

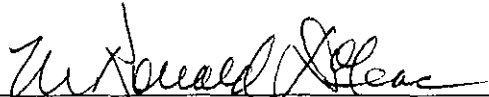
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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have this day mailed, by United States mail, postage prepaid, a true and correct copy of the foregoing Brief Of Appellee to Brandon L. Brooks, Esq., Attorney at Law, P.O. Box 1008, Hattiesburg, MS 39401, and to Shirlee Fager Baldwin, Esq., 610 West Pine Street, Hattiesburg, MS 39401, Of Counsel for Reeves Construction & Supply, Inc., a Corporation and Ken Reeves d/b/a Reeves Construction.

I further hereby certify that I have this day mailed, by United States mail, postage prepaid, a true and correct copy of the foregoing Brief Of Appellee to Honorable Robert B. Helfrich, Circuit Judge, P.O. Box 309, Hattiesburg, MS, 39403-0309.

This, the 13th day of January, A.D., 2009.


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