

**No. 2008-CA-01072**

**IN THE SUPREME COURT OF  
MISSISSIPPI**

**REEVES CONSTRUCTION & SUPPLY, INC.,  
A CORPORATION, AND KEN REEVES D/B/A  
REEVES CONSTRUCTION,  
Appellant,**

**v.**

**KATE CORRIGAN,  
Appellee.**

**Appeal from the Circuit Court of  
Forrest County, Mississippi**

---

**REPLY BRIEF FOR APPELLANT**

---

**BRANDON L. BROOKS and  
SHIRLEE FAGER BALDWIN,  
ATTORNEYS AT LAW  
610 WEST PINE STREET  
HATTIESBURG, MS 39401  
PHONE 601-544-6110**

## TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS .....	i
TABLE OF CITATIONS .....	ii
SUMMARY OF THE ARGUMENT .....	1
ARGUMENT .....	1
<b>I.    WHETHER THE CONSTRUCTION LIEN FILED BY REEVES           WAS DONE FALSELY IS A GENUINE ISSUE OF MATERIAL           FACT..</b> .....	1
A.    Elements for Penalty for False Notice . . . . .	1
B.    When Viewing the Evidence in a Light Most Favorable to Reeves, There is a Genuine Issue of Material Fact.. . . . .	4
CONCLUSION .....	6
CERTIFICATE OF SERVICE .....	7

## TABLE OF CITATIONS

	<u>Page</u>
<i>Beale v. Yazoo Yarn Mill</i> 125 Miss. 807 (1921).....	2
<i>Manderson v. Ceco Corp.</i> 587 F.Supp. 445 (N.D. Miss. 1984).....	2, 3, 4
<i>Mason v. State</i> 32 So.2d 140, 141 (1947).....	2
<i>McClellan v. State</i> 183 Miss. 184, 191 (1938).....	2
<i>Mississippi State Board of Dental Examiners v. Mandell</i> 198 Miss. 49, 65 (1945).....	2
<i>Phelps v. Clinkscales</i> 247 So.2d 819 (Miss. 1971).....	5
<i>Prellion v. Ott</i> 150 So. 2d 143, 146-47 (Miss. 1963).....	4
<i>Walley v. Hunt</i> 54 So.2d 393 (Miss. 1951).....	5
<i>Welford v. Dickerson</i> 524 So.2d 331 (Miss. 1988).....	5
<i>Wise v. Scott</i> 495 So.2d 16 (Miss. 1986).....	5

## STATUTES

§ 85-7-201 Miss. Code Ann. of 1972

Miss. Rules of Civ. Procedure 56

## **SUMMARY OF THE ARGUMENT**

The Plaintiff, Mrs. Kate Corrigan, has alleged that she is entitled to summary judgment against Defendant Reeves as to Reeves' filing a Construction Lien against Corrigan's property as "Ken Reeves d/b/a Reeves Construction" rather than filing the lien as Reeves Construction & Supply, Inc. The lower court erred in granting summary judgment against Reeves as to Court Two for Expungement of False Notice of Construction Lien and for statutory Damages in that there was no showing that the filing of the Construction Lien by Reeves was done falsely and with notice as required by Reeves was done falsely and with malice as required by § 85-7-201 of the Mississippi Code Annotated of 1972. Malice is subjective, goes to the intent of Reeves, and therefore, should be determined from the testimony of the parties. Whether Defendant Reeves had the requisite malice when filing the Construction lien is a genuine issue of material fact, and therefore, summary judgment should have been denied.

## **ARGUMENT**

### **I. WHETHER THE CONSTRUCTION LIEN FILED BY REEVES WAS DONE FALSELY IS A GENUINE ISSUE OF MATERIAL FACT.**

#### **A. Elements for Penalty for False Notice**

Mississippi Code § 85-7-201, states that "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 there by the full amount for which such claim was filed..." A party seeking to bring a claim for the filing of a false construction lien must clearly show that the lien in question was filed "falsely, knowingly, and without just cause." *Manderson v. Ceco Corp.*, 587 F.Supp. 445 (N.D. Miss. 1984). The "knowing" violation consists of act done with evil or bad intentions. The filing of a lien in good faith on advice of counsel in an attempt to protect one's interest is not filing with bad or evil purposes. *Manderson* (N.D. Miss. 1984). Reeves filed the Construction Lien against Corrigan's property because Reeves made substantial repairs on the property, provided materials to the property, and payment was not forthcoming. When Reeves requested the final payment from Corrigan (a partial payment for work already completed had already been paid for Reeves in the amount of \$26,181.05) ( R.E. 26), and Corrigan refused payment, Reeves contacted counsel, and was advised to file a Construction Lien against the property to protect his interest, and this is exactly what he did.

This Court in *Beale v. Yazoo Yarn Mill*, defined "knowingly" as importing a "knowledge of the act or thing so done, as well as an evil intend or bad purpose in doing such thing." *Beale v. Yazoo Yarn Mill*, 125 Miss. 807 (1921). This Court has held that the term "knowingly" is synonymous with the term "willfully", see *Mason v. State*, 32 So.2d 140, 141 (1947); *McClellan v. State*, 183 Miss. 184, 191 (1938). In *Mississippi State Board of Dental Examiners v. Mandell*, 198 Miss. 49,

65 (1945), the term “willful” in the context of a penal statute, was defined as “with a bad purpose, an evil purpose, without ground for believing the act to be lawful. . .” Therefore, in regards to a penal statute such as Miss. Code Ann. § 85-7-201 (1972), a “knowing” violation consists of an act done with an evil or bad purpose. *Manderson* at 447.

Not only did Corrigan make a partial payment to Reeves for work performed on her property, but Reeves also gave Corrigan a Contractor’s Release of Lien on Corrigan’s property in the amount of the partial payment as an act of good faith (R.E. 26). In addition, Corrigan has made admissions that funds were still due and owing to Reeves by stating in her letter to Reeves dated March 4, 2006, that “The balance of payment to Reeves as of the date of this letter is \$10,148.16, which includes the siding and the above outstanding items.” (R.E. 25). This letter was sent approximately three (3) weeks after the first and only payment to Reeves. This admission by Corrigan that funds were owed to Reeves coupled with the Affidavit of Ken Reeves stating that no further payments were recieved by Corrigan after February 15, 2006, and that Reeves had no malicious intent in filing the lien (R.E. 20), goes to show that Reeves had every right to file a construction lien against Corrigan’s property in order to protect his interest.

Since Reeves did not file the Construction Lien with a bad or evil purpose,

or with malice, but rather on the advice of counsel and on the good faith, and correct belief that funds were still owed to him by Corrigan, then the lien was filed with just cause. *Prellion v. Ott*, 150 So. 2d 143, 146-47 (Miss. 1963) (advice of counsel a complete defense to malicious prosecution action). The court in *Manderson* referring to Miss. Code Ann. §85-7-201 (1972), stated that:

The statute obviously is intended to punish the malicious filing of a construction lien with no basis whatsoever. In the case at bar, Mitchell acted in good faith on the advice of counsel in attempting to protect his interests through the filing of a possible lien against the property in issue. Any other statutory construction would place a claimant in the untenable position of being forced to choose between a forfeiture of his rights through non-filing or lawsuit of such filing proved erroneous, no matter how honestly and sincerely done. The court declines to accept such a construction of this statute.

There was no bad faith or evil purpose in Reeves filing the lien. Whether or not this bad faith, evil purpose or malice on the part of Reeves existed, is a genuine issue of material fact, and therefore, the lower court erred in granting summary judgment.

**B. When Viewing the Evidence in a Light Most Favorable to Reeves, There is a Genuine Issue of Material Fact.**

When determining whether summary judgment is proper, the evidence should be considered in a light most favorable to Reeves. Miss. R. Civ. P. 56 ( c). When viewing the aforementioned letter, Contractor's Release of Lien, and

Affidavit of Ken Reeves, in a light most favorable to Reeves, there is a genuine issue of material fact as to whether the Construction Lien filed by Reeves was false, and therefore, the lower court erred in granting partial summary judgment as to Corrigan's Motion for Summary Judgment on Count Two for Statutory Damages. In addition, there is sufficient evidence to dispute the fact that Reeves clearly filed the lien falsely, knowingly, and without just cause, which would allow a jury to find in favor of Reeves. Since these genuine issues of material fact exist, this Court should overturn the ruling of the lower court.

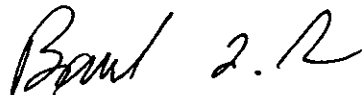
Reeves filing of the on Lien on Corrigan's property was a good faith effort to protect his interest. Corrigan argues that the lien was false because Reeves filed lien as "Ken Reeves d/b/a Reeves Construction" and not "Reeves Construction & Supply Inc.". Corrigan alleges that there was only a contractual relationship with Reeves Construction & Supply, Inc., and not Ken Reeves d/b/a Reeves Construction. Even if this were the case at hand, this only shows that the lien may have been false, but not filed with malice. This Court has stated that in order for a property owner to recover statutory damages which are penal in nature, malice on the part of the vender must be shown. *Walley v. Hunt*, 54 So. 2d 393 (Miss. 1951); *Phelps v. Clinkscales*, 247 So. 2d 819 (Miss. 1971); *Wise v. Scott*, 495 So. 2d 16 (Miss. 1986); and *Welford v. Dickerson*, 524 So. 2d 331 (Miss. 1988).



### CONCLUSION

The Construction Lien which Reeves caused to be filed with the Forrest County Chancery Clerk was not filed falsely, nor was the Lien filed with malice on the part of Reeves. Therefore, there is a genuine issue of material fact as to whether Corrigan can recover and/or has been damaged by an alleged false lien. Consequently, summary judgment should be denied for all of the foregoing reasons. Reeves respectfully urges this Court to: deny Corrigan's Motion for Summary Judgment as to Count Two of her Complaint.

Respectfully submitted,



---

BRANDON L. BROOKS and  
SHIRLEE FAGER BALDWIN,  
915 WEST PINE STREET  
HATTIESBURG, MS 39401

**CERTIFICATE OF SERVICE**

I, BRANDON L. BROOKS, certify that today, April 30, 2009, a copy of the reply brief for appellant, were served upon Hon. Robert B. Helfrich, Circuit Judge Forrest County Justice Court Bldg. 700 Main Street Hattiesburg, MS 39401, and Hon. Ronald Doleac, P.O. Box 655 Hattiesburg, MS 39401.

  
\_\_\_\_\_  
BRANDON L. BROOKS