

**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**

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**BRIEF FOR APPELLANT**

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**CERTIFICATE OF INTERESTED PERSONS**

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

**Appellants**

**v.**

**NO. 2008-CA-01072**

**KATE CORRIGAN**

**Appellee**

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 judges of this Court may evaluate possible disqualification or recusal.

- |    |                             |                        |
|----|-----------------------------|------------------------|
| 1. | Ken Reeves                  | Appellant              |
| 2. | Reeves Construction, Inc.   | Appellant              |
| 3. | Kate Corrigan               | Appellee               |
| 4. | M. Ronald Doleac, Esq.      | Attorney for Appellee  |
| 5. | Shirlee Fager Baldwin, Esq. | Attorney for Appellant |
| 6. | Brandon L. Brooks, Esq.     | Attorney for Appellant |
| 7. | Hon. Robert B. Helfrich     | Trial Judge            |

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**ORAL ARGUMENT NOT REQUESTED**

The Defendant-appellant, REEVES CONSTRUCTION & SUPPLY, INC.,  
AND KEN REEVES D/B/A REEVES CONSTRUCTION, respectfully do not request  
oral argument.

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## STATUTES

§ 85-7-133 Miss. Code Ann. of 1972

§ 85-7-201 Miss. Code Ann. of 1972

Miss. Rules of Civ. Procedure 56

## **STATEMENT OF THE CASE**

### **A. PROCEEDINGS BELOW**

This case is an appeal from the ruling of the Circuit Court of Forrest County, Mississippi granting Summary Judgment against the appellant on May 16, 2008.

### **B. STATEMENT OF THE CASE**

The parties to this case are in dispute over a certain contract for repair work performed on the Appellee's, Mr's Kate Corrigan's (hereinafter referred to as Corrigan) home located at 2710 Julianne Place, Hattiesburg, Mississippi.

The Appellants, Reeves Construction & Supply, Inc., and Ken Reeves D/B/A Reeves Construction (hereinafter referred to as Reeves), is a roofing company whom made repairs to Corrigan's home for damages caused by Hurricane Katrina. The parties entered into a contract for the repair work on Corrigan's home on or about January 25, 2006. The total amount of the contract was \$46,500.00. Reeves immediately began performing the requisite work under the contract, and on or about February 15, 2006, Corrigan made a partial payment of \$26,181.05 to Reeves All Pro Roofing. The partial payment was for work already completed.

After receiving the partial payment from Corrigan, Reeves, per Corrigan's request, execute a Release of Lien in the amount of \$26,181.05 (R.E. 26). After the partial payment was made, Reeves continued to make the repairs under the Contract.



On or about March 4, 2006, Corrigan sent a letter to "Mr. Reeves", which stated "The balance of payment to Reeves as of the date of this letter is \$10,148.16" (R.E. 25). This is clearly an admission by Corrigan that additional funds were owed to Reeves after the partial payment was made. Reeves, however, never received any other payments from Corrigan other than the partial payment of \$26,181.05 on February 15, 2006.

On March 9, 2006, Reeves filed a construction Lien Notice against Corrigan's property for the sum of \$12,450.00 because, despite demands by Reeves for additional payments from Corrigan, Corrigan refused to pay the funds due and owing to Reeves despite making admissions to Reeves that additional funds were owed (R.E. 11-13). The Lien was signed as Ken Reeves d/b/a Reeves Construction. Corrigan was aware that she was dealing with Ken Reeves because she had sent numerous amounts of correspondence addressed directly to "Mr. Ken Reeves."

On August 10, 2006. Corrigan filed a 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 Defendants Reeves Construction & Supply, Inc., a Corporation, and Ken Reeves d/b/a Reeves Construction in Forrest County chancery court as Cause No. 06-0515-GN-W. Thereafter, Reeves filed its Answer to the Complaint and Counterclaim to Enforce Construction Lien at addition to a Motion to Transfer the matter to circuit court. On January 26, 2007. Chancellor

Johnny L. Williams, ordered the matter to be transferred to the Forrest County Circuit Court. While in conference, the Chancellor suggested, and the attorneys for the partners agreed that Reeves Lien would be cancelled, but Reeves would be able to protect his rights while the matter was litigated by filing a *Lis Pendens* notice on Corrigan's property.

A proposed Order was submitted to the Chancellor by Corrigan's counsel which found the filing of the Notice of Construction Lien by Reeves to be wrongful, but Chancellor Williams refused to sign the Order stating that by holding that the filing of the lien was wrongful, then he would be a finder of fact, and since the matter was to be transferred to the Circuit Court, the Chancellor was not going to engage in fact finding. As a result, the Forrest County Chancery Court entered an Order Cancelling Notice of Construction, stating that "Counsel for the parties agree that the Notice of Construction Lien filed by Defendant Ken Reeves d/b/a Reeves Construction, should be, and hereby is, cancelled" (R.E. 14-16). Corrigan next filed her Motion for Summary Judgment on Counts Two and Three, and Reeves filed a Combined Response and Memorandum in Opposition of the Motion with supporting affidavit. The Motion came before the lower court on April 18, 2008, and the court granted partial summary judgment against Reeves as to Count Two. It is from this decision that Appellant Reeves respectfully appeals.

## **SUMMARY OF THE ARGUMENT**

In order for Corrigan to obtain partial summary judgment against Reeves as to slander of title, Corrigan must show that there is no genuine issue of material fact as to whether the filing of the Notice of Construction Lien by Reeves was done falsely and with malice. Also, the court was in error by holding that Reeves would be liable for the wrongful filing of a lien that the parties had already agreed would be cancelled. Corrigan should be estopped from recovering damages for the filing of a Lien that the parties had previously agreed to cancel over a year earlier.

## **ARGUMENT**

### **I. THE GRANTING OF PARTIAL SUMMARY JUDGMENT WAS IMPROPER.**

#### **A. Elements for Summary Judgment and Standard of Review**

Under Mississippi law, summary judgment is appropriate (1) when there is no genuine issue of material fact and (2) the movant is entitled to judgment as a matter of law. Miss R. Civ. P. 56(c). In determining whether there are genuine issues of material fact, the Court is to view the evidence most favorably to the party opposing summary judgment. *Doe v. Stegall*, 757 So.2d 201 (Miss. 2000). Partial summary judgments, just like summary judgments granted in whole, should be granted only after careful consideration. The granting of partial summary judgment has “the effect of removing from trial issues that ought not be there [and] the courts and the litigants

are thus freed to concentrate on the real to the exclusion of the pretended.” *Brown v. Credit Ctr., Inc.*, 444 So.2d 358 (Miss. 1983). In the instant case, when considering the pleadings, responses to discovery, and the affidavit of Reeves, there is clearly an issue of material fact as to whether the filing of the Lien was false and with malice, and therefore, summary judgment should have been denied.

When reviewing the trial court’s decision to grant summary judgement, this Court applies a *de novo* standard of review to the granting or the denial of summary judgement by a trial court. *Leffler v. Sharp*, 891 So.2d 152, 156 (Miss. 2004).

**B. The Court Erred in Granting Partial Summary Judgment.**

The lower court determined in its ruling that there was no genuine issue material fact as to whether Reeves wrongfully filed the Construction Lien against Corrigan’s homestead property, and therefore, Reeves is liable for the statutory penal amount of \$12,450.00, being the amount of the wrongful Lien Notice as allowed by §85-7-201 of the Mississippi Code of 1972 Annotated.

Summary Judgement is appropriate when the evidence is considered in the light most favorable to the nonmoving party, there are no genuine issues of material fact, and the moving party is entitled to judgement as a matter of law. Miss. R. Civ. P. 56 (c); *Russell v. Orr*, 700 So.2d 619, 622 ( Miss 1997). Material issues of fact are those facts which affect the outcome of the case. *Prescott v. Leaf River Forest Prods., Inc.*, 740 So.2d 301 (Miss. 1999). A party may establish that a dispute of a

material fact if there is sufficient evidence on that particular issue for a jury to find in favor of that party. The disputed material issue of fact in the instant case is whether Reeves filed the Notice of Construction Lien falsely, and with malice. In her correspondences to Reeves dated after February 15, 2006, the date Corrigan made the partial and only payment to Reeves, Corrigan made several admissions that additional funds were owed to Reeves, but no further payments were ever made by Corrigan after the partial payment of \$26,181.05 was made to "Reeves All Pro Roofing" on February 15, 2006. These admissions by Corrigan coupled with the affidavit by Reeves (R.E. 20, 21), create a material issue of fact that should be determined by a jury as to whether Reeves filed the Notice of Construction Lien with just cause, and without malice. Summary judgment in this matter was improper in that there are genuine issues as to the material facts, and even if the facts become undisputed, but can support more than one interpretation, summary judgment would be inappropriate. *Clark v. St. Dominic-Jackson Memorial Hosp.*, 660 So.2d 970 (Miss. 1995). The lower court erred in its application of the facts to the elements of partial summary judgment, and therefore, this Court should find that summary judgment as to Count Two of Corrigan's Complaint should be denied.

## **II. THE FILING OF THE CONSTRUCTION LIEN BY REEVES DOES NOT CONSTITUTE SLANDER OF TITLE**

### **A. The Filing of the Construction Lien Was Not Done Falsely.**

A party seeking to recover in a slander of title suit must show that the action

disparaging the party's property must have been made not only falsely, but maliciously. *Walley v. Hunt*, 54 So.2d 393 (Miss. 1951). When filing the lien, Reeves met the requirements of Miss. Code Ann. §85-7-133, by containing in the notice: (1) a description of the land on which the structure is located; (2) the name of the contractor; (3) the date of filing; (4) a statement concerning whether a suit has been filed to enforce the lien; and (5) a statement concerning whether the contract itself has been filed and recorded. Reeves met the filing requirements under Mississippi law when filing its Construction Lien. Reeves filed the Lien to place Corrigan on notice as to the identity of the lienholder, and in addition, attached a copy of the requisite Warranty Deed describing Corrigan's property and a copy of the Contract. Corrigan, however, is arguing that the Lien is "wrongful" because the Lien was filed by Ken Reeves d/b/a Reeves Construction rather than by Reeves Construction & Supply, Inc. Corrigan knew, and was on notice that she was dealing with Ken Reeves as owner of Reeves Construction which is indicative of the letters Corrigan sent to "Mr. Reeves," and the correspondence she received from "Reeves Construction" (R.E. 22-28)

Furthermore, Corrigan's argument that she is entitled to statutory damages for the wrongful filing of the Lien should be negated by the fact that the parties had already agreed to cancel the Lien by court order on January 26, 2007. Corrigan did not have to agree that the Lien be cancelled, but did so, and then once the matter was

transferred in circuit court, Corrigan requests that Reeves be penalized for allegedly filing a wrongful Lien against her property which had already been cancelled over a year earlier by agreement of the parties. Therefore, Corrigan should be estopped from making any further claims as to the wrongful filing of the Lien. Upon agreement of the parties, the Lien was cancelled on or about January 26, 2007, and as a result the Lis Pendens Notice was recorded by Reeves (R.E. 17-19).

The finding of malice on the part of Reeves is a factual inquiry to be determined by a jury trial, and therefore, partial summary judgment should be denied. "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;" §85-7-201 of the Mississippi Code of 1972 Annotated. There was evidence produced at the hearing that the Notice of Construction Lien filed by Reeves was not filed without just cause. Such evidence included the Affidavit executed by Ken Reeves, letters to Reeves from Corrigan admitting that additional funds were owed to Reeves, and the partial payment to Reeves from Corrigan for work already performed. If this evidence had been considered in a light most favorable to Reeves, as is required for summary judgment, then it is apparent that there was no malice on the part of Reeves when filing the Lien, and therefore, summary judgment should be denied.

**B. The Filing of the Construction Lien was not Done Maliciously**

A slander of the action is “commonly employed to describe words or conduct which bring or tend to bring in question the right or title of another to particular property, as distinguished from the disparagement of the property itself.” *Walley v. Hunt*, 54 So.2d 393, 396 (Miss. 1951). In order to form the basis of a right of action for slander of title, the action against the property in question must have been made not only falsely, but maliciously as well. *Welford v. Dickerson*, 524 So.2d 331, 334 (Miss. 1988). This Court in *Wise v. Scott*, 495 So.2d 16 (Miss. 1986) stated that:

The seminal Mississippi case regarding slander of title is *Walley v. Hunt*, 212 Miss. 294, 54 So.2d 393 (1951). In *Walley* this Court recognized that the malicious filing for record of an instrument which is known to be inoperative, and which disparages the title to land, is a false and malicious statement, however, in order for it to form the basis for a right of action it must have been made, not only falsely, but maliciously.

Malice in relation to slander of title has been defined by the Court in *Phelps v. Clinkscales*, 247 So.2d 819, 821 (Miss. 1971), as something that “exists in the mind and usually is not susceptible of direct proof. The law determines malice by external standards; a process of drawing inferences by applying common knowledge and human experience to a person’s statements, acts, and the surrounding circumstances.” The Court in *Phelps* considered the long drawn out history of litigation between the two partners, and determined that the executing and filing of a quitclaim deed was without question done to could the property owner’s title. In contrast to this, Reeves



was not attempting to cloud Corrigan's title, but rather was protecting his interest for the unpaid labor and materials provided on Corrigan's home. There was no evidence submitted by Corrigan that Reeves had the requisite malicious intent. Reeves' actions were the product of a good faith belief that he was entitled to a lien against Corrigan's property and did not arise out of frustration or malice.

In *Perrien v. Mapp*, 374 So. 794 (Miss. 1979), the property owner sued the vender for slander of title and to have a cloud on the title removed. The Court held that the vender's claim was a "result of a bona fide belief that they were entitled to the disputed property", so no malice existed, and therefore, no damages were allowed, *Id.* at 798. The *Perrien* case mirrors the instant action in that Ken Reeves had a bona fide dispute with Corrigan, and in order to protect Reeves' interest, he filed a Construction Lien as Ken Reeves d/b/a Reeves Construction. There is evidence to show that Reeves made substantial repairs on Corrigan, and that additional funds are owed to Reeves by Corrigan in the amount of \$12,450.00. Whether or not a person was acting with malice is a fact question that should be decided by a jury after testimony is given, and extrinsic evidence submitted.

### **III. THE CIRCUIT COURT LACKED AUTHORITY TO GRANT SUMMARY JUDGMENT UNDER § 85-7-201**

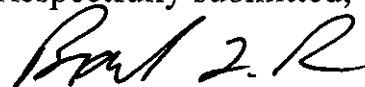
Mississippi Code §85-7-201, provides that ". . .and any person whose rights may be adversely affected may apply, upon the days' notice, to the chancery court or

to the chancellor in vacation, or to the county court, if within its jurisdiction, to expunge;" The decision to penalize for false lien notice is one for the chancery court according to the statute, and as stated earlier, Chancellor Williams refused to find the filing of the Lien by Reeves as wrongful. The statute provides that a chancellor has the jurisdiction to decide whether the lien holder should be penalized for a false lien notice, and does not give the circuit court the authority to make such a finding, and therefore, the trial court's holding that Reeves should be liable for the statutory penal amount of \$12,450.00 as allowed by §85-7-201 of the Mississippi Code of 1972 Annotated should be overturned.

### **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, partial 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,



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**CERTIFICATE OF SERVICE**

I, BRANDON L. BROOKS, certify that today, November 12, 2008, a copy of the brief for appellant, a copy of the record excerpts, and the official record in this case, consisting of one volumes of the pleadings, one volume of transcript, and one volume of supplemental record, were served upon HON. M. RONALD DELEAC, by U.S. regular mail, postage pre-paid, to 615 WEST PINE STREET, HATTIESBURG, MS 39401.

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