SCT 2008-CA-01155RT

I. 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.

1. Robert Willis — Plaintiff/Appellee
   Post Office Box 160
   Grenada, MS 38902

2. James P. Vance — Attorney for Plaintiff/ Appellee
   Attorney at Law
   Post Office Box 159
   Grenada, MS 38902

4. Gary Houston — Defendant/Appellant
   2048 Wooded Drive
   Grenada, MS 38901

5. S. Kirk Milam — Attorney for Defendant/Appellant Clark
   HICKMAN, GOZA & SPRAGINS
   1305 Madison Avenue
   P.O. Drawer 668
   Oxford, MS 38655

6. The Honorable Percy L. Lynchard, Jr. — Trial Court Judge
   P.O. Box 340
   Hernando, MS 38632-0340

S. KIRK MILAM, [redacted]

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III. ARGUMENT

This matter is very simple and it all comes down to three basic issues. The first issue is whether specific performance can be required when specific performance is one of two remedies for breach and the non-breaching party chose to accept the earnest money. The section issue is whether the last addendum was part of the original contract as the plain language states. The third issue focuses on the release of the earnest money and whether it was a down payment or simply the release of the earnest money as liquidated damages. The answers to these narrowly defined issues are, or should be, determinative of the outcome of this appeal. Appellant Houston does not wish to rehash any of the arguments covered in his original brief but is obligated to address several mischaracterizations in Willis' Brief.

First, if the Chancellor's finding that the March 11, 2005, addendum was a continuation of the original lease to purchase contract, the specific performance sued for could only require that Houston finish out the remainder of the lease. Willis cannot require Houston to purchase the house when there are two options with one being the decision to breach the contract and the other the purchase of the house. Specific performance is generally used in the sale of real estate but, this was a contract for a lease and as the definition of specific performance is "the rendering, as nearly as practicable, of a promised performance through a judgment or decree..... a court-ordered remedy that requires precise fulfillment of a legal or contractual obligation." Black's Law Dictionary (8th ed. 2004) The only remedy that Willis can demand is that Houston finish out the remainder of the six-month period contracted for in the final addendum, which he

did. It is not allowable for Willis to require Houston to pick a certain option and therefore, specific performance only requires that Houston choose one of the options.

Secondly, the clear and unambiguous language states in paragraph 25 of the March 11, 2005, addendum that the seller agrees to extend the original contract. The original contract was a lease with the option to buy and this fact cannot be denied. Any unexpressed intentions of Willis unsupported by the clear language of the contract are parol evidence and should not be considered. It does not matter how many times Willis asserts the addendum was a new contract, the plain language of the addendum states otherwise. This is not simply one person's word against the other but Willis' word versus the plain reading of the terms in the contract. The contract allowed for three remedies and the acceptance of the earnest money was the remedy chosen by Willis.

The last question is whether the release of the earnest money was a down payment. Willis claims that Houston agreed to release the earnest money as a down payment but this is not true. Even if this was intended by Willis, it was unexpressed in the contract and not included within the final addendum making it inadmissible parol evidence. In addition, common sense dictates that Houston would not simply throw away Twenty Thousand Dollars ($20,000) as consideration for the final addendum when monthly rent is sufficient consideration. Willis also asserts that Houston did not put up any more earnest money so he only had one option and that was specific performance. While this is a convenient argument, it completely ignores the fact that Willis already took the Twenty Thousand Dollars ($20,000). Willis is correct when saying he had no option after that because he had already picked option number one.

Willis is arguing two opposing sides first saying that Houston entered into a new contract to purchase the home and then asserting Houston was leasing the house. While this situation is possible, it only happens when there is a lease purchase agreement rather than the lease with the option to purchase contract that was executed on March 3, 2003. In fact, if the situation was as Willis claimed, Houston, the purchaser of a house, agreed to buy the house, gave a down payment and then continued to rent the property. This argument is illogical and without merit. There is no better example of obvious error by a Chancellor than when he ignores the plain language of the contract and inserts his own view.

Finally, Willis asserts that Janet Kinard was the agent of Appellant Houston. However, he makes this claim when it benefits him yet he refers to her as the dual agent when it suits his argument. Mrs. Kinard characterizes herself as a dual agent. (R. 23). Also, Houston disagrees with characterizations of Kinard's testimony and her reference to Willis not being agreeable to leasing the property with the option to purchase. If he was not agreeable to this then he would not have agreed to lease the property as he did.

IV. CONCLUSION

The Chancellors Judgment was clear error. This case is very simple. There was binding language in the addendum that stated it was a continuation of the original contract. The original contract was a lease with the option to purchase. Mississippi law takes a strict view of contract law and requires the plain words to be followed. The Contract and addmendum provided for two remedies if the contract was breached: Accept the earnest money (down payment) and the contract shall be void **or** sue for specific performance. Willis accepted the $20,000 regardless of the name given and also sued for specific performance. The trial court allowed Willis to have

his cake and eat it to. Appellant Houston would not buy a house and then continue to lease it as this makes no sense. Willis' argument is contrary to Mississippi law and to the clear language of the contract and no amount of argument otherwise can change the actual language of the contract. Willis can point to no language in the contract supporting his side of the argument and therefore Appellant Houston requests that this Court overturn the lower court's judgment and render a decision in favor of Appellant Houston.

Respectfully submitted,

GARY HOUSTON

HICKMAN, GOZA & SPRAGINS, PLLC
1305 Madison Avenue
P.O. Drawer 668
Oxford, MS 38655-0668
(662) 234-4000

SHELBY KIRK MILAM, [redacted]

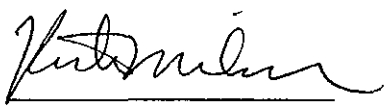
V. CERTIFICATE OF SERVICE

I, Shelby Kirk Milam, of the law firm of Hickman, Goza & Spragins, PLLC, do hereby certify that I have this day mailed by United States Postal Service, postage prepaid, a true and correct copy of the foregoing "Reply Brief of Appellant" to the following people, as well as a disk of same to the clerk:

James P. Vance, Esq.
Attorney at Law
Post Office Box 159
Grenada, Mississippi 38902

The Honorable Percy L. Lynchard, Jr.
P.O. Box 340
Hernando, MS 38632-0340

This the 13th day of April, 2009.



SHELBY KIRK MILAM