

**COPY**

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**CAUSE NO. 2008-CA-01159**

**RUSSELL PUCKETT**

**APPELLANT**

**versus**

**FILED**

**NOV 05 2008**

**ROBERT N. GORDON, III d/b/a**

**TREY GORDON ROOFING CONTRACTOR**

**OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS**

**APPELLEE**

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**On Appeal from the County and Circuit Court of Warren County, Mississippi**

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**APPELLEE'S BRIEF**

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**BEFORE THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

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**APPELLANT**

**VS.**

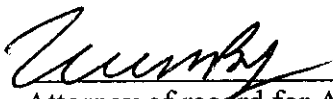
**ROBERT N. GORDON, III D/B/A  
TREY GORDON ROOFING CONTRACTOR**

**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.

1. Robert N. Gordon, III, Appellee
2. Russell Puckett, Appellant
3. Honorable Thomas P. Setser, Counsel for Appellant
4. Honorable William M. Bost, Jr., Counsel for Appellee

  
\_\_\_\_\_  
Attorney of record for Appellee  
Robert N. Gordon, III

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## **STATEMENT OF ISSUES**

**I      The weight of the credible evidence supports the finding of fact adopted by the trial court and the judgment entered in this case.**

A. Gordon was Puckett's agent and construction manager and no state contractor's license was required.

B. Gordon performed his part of the bargain, Puckett received the insurance money to pay him, and Gordon is entitled to his full compensation.

C. Gordon's version of the "gun incident" is credible and corroborated by the sole eye witness. Thus Puckett is guilty of assault and was entitled to receive the nominal damages awarded by the Trial Court.

D. Puckett being guilty of an intentional tort was liable for the imposition of punitive damages.

E. Attorneys fees were properly awarded and the Circuit Court should grant a reasonable fee to Appellee upon the affirmance of this matter.

**II.     Appellant Puckett is estopped from denying payment to Gordon**

**III.    The Circuit Court properly affirmed the County Court's judgment**

**BEFORE THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**NO. 2008-CA-01159**

**RUSSELL PUCKETT**

**APPELLANT**

**VS.**

**ROBERT N. GORDON, III D/B/A  
TREY GORDON ROOFING CONTRACTOR**

**APPELLEE**

**APPELLEE'S BRIEF**

**STATEMENT OF THE CASE**

**A. NATURE OF THE CASE**

This case arose from Trey Gordon's efforts to collect a debt from Russell Puckett for work performed in removing a tree from Mr. Puckett's house on Cherry Street in Vicksburg, Mississippi and repairing the serious damage caused to the structure. When Hurricane Katrina struck Vicksburg, a large oak tree was blown across the northeast corner of Puckett's house. Gordon had worked for Puckett a few months before and shortly after the storm Puckett called Gordon. Puckett has a back problem that affects his mobility and he felt he could not deal with the insurance representative or the subcontractors. Gordon agreed to help by acting as Puckett's agent to deal with the insurance representatives and to coordinate the activities for the repairs. Gordon prepared a written estimate for the repairs of \$119,300.00 and successfully negotiated an insurance payment to Puckett of \$118,300.00 (the estimate of \$119,300.00 less a deductible of \$1,000.00,) arranged for someone to remove the tree from the house, secured a general contractor and subcontractors, and coordinated the repair of the damage for a total cost to Puckett of much less than \$118,300.00. But when it came time for Gordon to be paid for his

services, Puckett refused to pay a bill slightly in excess of \$17,000.00, and in an argument over the payment at Puckett's house, Puckett pulled a gun and threatened to kill Gordon. This was on or about April 11, 2006. When he had not been paid by July, Gordon retained counsel who gave a 30 day demand letter which was ignored and suit was filed in September. Puckett filed a counterclaim for fraud, and for the damage or loss of two rugs and a statue. The case was tried before the County Judge without a jury resulting in a judgment in favor of Gordon. Puckett appealed this judgment to the Circuit Court of Warren County which affirmed the County Court's finding of fact and judgment. Puckett has now appealed to the Supreme Court citing the same issues as before the Circuit Court.

Puckett's case is based on his assumption that he has a legal right to induce Gordon into entering into an agreement to oversee and supervise the repair of his home, negotiate with contractors and the insurance company, repair the roof, and then refuse to pay for the work after the job is essentially completed on the basis that an unlicensed contractor is not allowed to recover compensation in accordance with the Mississippi Contractor Licensing laws. Puckett would argue that even though his insurance company paid him more than it cost him to repair his house, he isn't liable for paying Mr. Gordon who provide valuable services as his agent.

## **B. STATEMENT OF THE FACTS**

The trial court adopted the following statement of facts, all of which are supported by the evidence. Appellee has annotated this recitation showing the Record source of support for the respective statements of fact:

1. Plaintiff is an adult resident citizen of Warren County, Mississippi and is doing business in Warren County, Mississippi as Trey Gordon Roofing Contractor. Defendant is an adult resident citizen whose post office and street address is 2108 Cherry

Street, Vicksburg, MS 39180. (Not contested.)

2. Defendant owns the Feld House at 2108 Cherry Street. On or about August 29, 2005 the home was seriously damaged when a large tree was blown across the house during Hurricane damaging the cobalt blue tile roof along other damage to the structure. (Not contested.)

3. Defendant has been largely confined to his bed due to back problems. In 2005 he operated an antique business from the Feld House. At trial Defendant stated that he no longer operated this business. (Not contested.)

4. Due to his physical inability to take care of the repairs himself, Defendant retained the Plaintiff to assist in making the repairs. Plaintiff acted as Defendant's agent and construction manager. Plaintiff was neither general contractor nor subcontractor. Defendant agreed to pay Plaintiff for all of the services he performed. Plaintiff was justified in relying on Defendant's promises to pay for the services. **(Record pages 12 - 14, Supp. Abs. Pages 4 - 6)**

5. Plaintiff secured a general contractor, Ricky Antoine, who was a licensed, residential contractor and who agreed to do the structural repairs. **(Record pages 15, 94, Supp. Abs. Pages 7, 23)**

6. Plaintiff, assisted by Mr. Antoine, prepared an estimate for the repairs which was approved by Defendant and submitted to the Defendant's insurance carrier. The total of the necessary repairs to the structure was estimated to be \$119,300.00. **(Record page 18, Supp. Abs. Page 10, and exhibit P-1)** The insurance company paid \$118,300.00 on the damages to the structure. **(Record Page 20, Supp. Abs. Page 11, and exhibit P-2)** Defendant testified that he believed that his deductible was \$1,000.00. **(Record page 140, Supp. Abs. Page 30.)** Defendant received additional funds from the carrier for contents and other matters. **(Record page 204, Supp. Abs. Page 47.)**

7. Plaintiff secured a company to remove the tree from the house and Defendant paid the \$9,500.00 bill for that **(Record page 141, Supp. Abs. Page 31).**

8. At Defendant's request Plaintiff secured and paid for the services of Kenny Boone (\$1,745.30), Norman Purvis (\$500.00) and Glenda Rivers (\$660.00). These payments along with material and supply purchases were included in the disputed bill of \$17,603.65. **(Record Page 25, 40, Supp. Abs. Pages 12, 16-5, Exhibit P-3, P-4)**

9. Plaintiff submitted his first bill in the amount of \$9,128.81 **(exhibit P-3, Record 29, Supp. Abs. Pages 14)** and it was paid without incident. However, Defendant refused to pay the second invoice in the amount of \$17,603.65 and when Plaintiff came to Defendant's home to secure the final payment, Defendant pulled a gun and threatened to



kill the Plaintiff (**Exhibit P-4, Record 45-47, Supp. Abs. Pages 19 - 21.**)

10. It is undisputed that for completing the repairs, Defendant paid a total of \$59,207.10 to Ricky Antoine, \$9,500.00 for the tree removal, and \$9,128.81 to Plaintiff. Defendant received \$118,300.00 from the insurance company. (**Record 203-205 Supp. Abs. Pages 46 - 48**) All of the repair costs, including the unpaid portion of Plaintiff's invoice, was programmed into the amount paid by the insurance company, so if Defendant pays Plaintiff the full amount, it is with insurance money delivered to him from that purpose (**Record 157-160, Supp. Abs. Pages 39 - 42.**)

11. Defendant thought the bill was excessive, (**Record 157. Supp. Abs. Page 39**) but he did not defend on the basis that the charges were unreasonable. He offered two excuses for not paying Mr. Gordon, one was there were leaks from work previously done by Gordon on another portion of the house that had nothing to do with the work that is the subject of this suit. Two, he wanted to experience a driving rain to be sure there were no leaks before he paid. (**Record 145, 161 Supp. Abs. Pages 33, 43.**)

12. The dispute about the bill occurred on April 11, 2006 and suit was not filed until September 27, 2006. (Undisputed) Defendant received a written demand for payment on July 17, 2006. (**Exhibit 5**) Defendant admits that since April 11, 2006 that there have been numerous driving rains and there are no leaks. (**Record 162, Supp. Abs. Page 44.**)

13. Defendant had ample opportunity to pay the bill. Defendant conceded that the repairs were satisfactorily performed (**Record 156, Supp. Abs. Page 38.**) The Court concludes that there is no basis for denying this payment.

14. Defendant admitted to a net worth in excess of \$1,000,000.00 (**Record 154, Supp. Abs. Page 36.**)

15. Defendant never established that he was justified in threatening Plaintiff with a gun. Defendant's testimony that Plaintiff had threatened him in his bedroom and by telephone was unsupported by any other proof and denied by Plaintiff. Defendant's version of the events are not supported by independent evidence and Mr. Antoine corroborated Gordon's assertion that he never threatened Mr. Puckett while in the bedroom (**Record 100-101, Supp. Abs. Pages 25 - 26.**)

16. Defendant was completely unable to establish that his statue was broken or that his rugs were stolen by Plaintiff as charged in the counterclaim. (**Record 194, Supp. Abs. Page 45a**) There was insufficient proof offered to support a claim of fraud or misrepresentation and there was no proof at all offered concerning other claims raised in the counterclaim, thus the counterclaim should be dismissed.

17. The Court concludes that Defendant assaulted Plaintiff when he pulled out

a gun and threatened him with it, justifying at least nominal damages for the assault and the imposition of punitive damages and attorneys fees.

18. The debt of \$17,603.65 is a liquidated amount and was due and payable in full on April 11, 2006 justifying the imposition of prejudgment interest as requested in the complaint. This date is undisputed based on the testimony of Plaintiff and Defendant.

### **SUMMARY OF THE ARGUMENT**

Gordon submits that to the extent that there was a conflict of testimony or disputed facts at trial, all of these conflicts or disputes were resolved by the trial judge in favor of Gordon. Gordon presented more than sufficient facts to support the trial court's finding of fact and judgment as rendered. The Circuit Court affirmed this ruling finding it to be "supported by substantial, credible and reasonable evidence and . . . not manifestly erroneous. . . . [T]he County Court Judge correctly applied the law applicable to this case." (**Record Excerpts at page 8**) The appellate court has to resolve all conflicts of testimony in favor of Gordon, and once that is done, the judgment is entirely appropriate.

Puckett vehemently argues that because of a perceived technical violation of the state licensing law, that he gets the benefit of Gordon's work and services without having to pay for them, and was justified in using a gun to deny payment. There is no clearer case of estoppel. Moreover, it is no violation of the licensing laws for Mr. Gordon to act as Puckett's agent and construction manager. Puckett just ignores the fact that the General Contractor was Ricky Antoine, who secured the building permit and received the bulk of the payments.

indebtedness to Gordon for the work done on his house, all that remains is an examination of Mr. Puckett's disreputable effort to keep both the insurance money and Gordon's work product.

**I      The weight of the credible evidence supports the finding of fact adopted by the trial court and the judgment entered in this case.**

**A. Gordon was Puckett's agent and construction manager and no state contractor's license was required.**

The trial Court made a factual determination that Mr. Gordon functioned as Mr. Puckett's agent and construction manager. The Court found that Mr. Gordon was not the general contractor or a subcontractor. Mr. Antoine was identified by the Court as the general contractor. All of these findings are amply supported by the record. A party can be both an independent contractor and an agent as the two roles are not mutually exclusive. See Aladdin Const. Co., Inc. v. John Hancock Life Ins. Co. 914 So.2d 169 (Miss.,2005.) The Aladdin case points out the distinction between a contractor and a construction manager. According to Aladdin a construction manager is not an agent and Aladdin implies that, as agent, a construction manager need not have a license because the construction manager in Aladdin had no state license. The Court's analysis as to what is a construction manager vis a vis a general contractor was as follows (citations omitted:)

This Court has defined a general contractor as "the party to a building contract who is charged with the total construction and who enters into sub-contracts for such work as electrical, plumbing and the like." . . . The term "construction manager" has not yet been defined in Mississippi. Other courts have defined the term, however, finding that "[a] general contractor and a construction manager are separate and distinct titles with different responsibilities and different relationships to the parties to a construction project." . . . (the existence of a distinction between "general contractor" and "construction manager" is a question of fact for trial on the merits). While "[t]here is no single, widely accepted definition of construction management," the Plaintiffs cite the

distinction drawn between a general contractor and a construction manager by the Rhode Island Supreme Court in *Brogno v. W & J Associates, Ltd.*, 698 A.2d 191, 194 (R.I.1997). The *Brogno* Court found that “the [construction manager] acts as a mere agent for a project's owner and ... engages ‘trade contractors’ in his principal's name to perform most or all of the actual work.” “Today ... [a construction manager] is more commonly a group, a company, or a partnership with two paramount characteristics: construction know-how and management ability.”). On the other hand, a general contractor “is in the chain of liability and ... hires ‘subcontractors’ in his own name to perform work.” . . . The *Brogno* Court also added that “the mere self-serving label of [construction manager] or general contractor will not in and of itself determine a party's legal status.”

It is a pity that Mr. Gordon needs to now explain his legal relationship to the man who refuses to pay his just debts, but that is where he is. He did the work. He took no advantage of Mr. Puckett, but devoted his time for six months when there was lot of other work to be done. There was no proof that the subject of Mr. Gordon's license or absence of a license ever came up. Gordon's version is that this was never mentioned other than he told Mr. Puckett he would have to get a general contractor, Mr. Antoine, who was licensed and would secure the permits.

**B. Gordon performed his part of the bargain, Puckett received the insurance money to pay him, and Gordon is entitled to his full compensation.**

After paying \$59,207.10 to Ricky Antoine, \$9,500.00 for the tree removal, and \$9,128.81 to Plaintiff for his first invoice, Defendant had approximately \$40,464.09 left over to pay Mr. Gordon his \$17,603.65 leaving him a profit off the insurance company of some \$23,000.00, but that wasn't good enough for Mr. Puckett. Basically, he took Mr. Gordon's services (and his \$17,603.65) at gun point. He never argued that the work was done improperly, he was complaining about previous work done by Gordon being defective (an assertion denied by Gordon) and wanting to wait until a driving rain to be sure there were no leaks. But two years later, there were no leaks and he still hadn't paid. It didn't take the trial court long to figure out

that the work was done correctly, that Puckett wasn't out anything if he paid Gordon as agreed, and that Puckett's behavior in all this was less than honorable.

**C. Gordon's version of the "gun incident" is credible and corroborated by the sole eye witness. Thus Puckett is guilty of assault and Gordon was entitled to receive the nominal damages awarded by the Trial Court.**

Generally, where the wrong is intentional, but the proof of actual damage is slight, nominal damages are appropriate.

Because wilful torts involve a conscious act by the defendant undertaken in disregard of the plaintiff's rights, the law contemplates that a plaintiff is entitled to formal redress for the wrong committed against him even if he cannot demonstrate by a preponderance of the evidence that he suffered an actual injury as a result. (*Citations omitted.*)

However, the *Harbin* Court of Appeals went on to hold that the plaintiffs still bear the burden of demonstrating the need for compensatory damages beyond nominal damages, because a plaintiff who has been intentionally wronged without demonstrable injury is to be awarded only nominal damages. See *Whitten v. Cox*, 799 So.2d 1, (Miss.,2000.)

Appellee submits that he offered substantial proof of the emotional impact of this assault, but has not cross appealed. Clearly, Mr. Puckett was very wrong in what he did and there was nothing to corroborate his version of the events.

**D. Puckett being guilty of an intentional disregard of Gordon's rights was liable for the imposition of punitive damages.**

The trial court awarded punitive damages on the basis of the ruthless and intentional disregard of Mr. Gordon's rights.

As a general rule, exemplary or punitive damages are 'added damages' and are in addition to the actual or compensatory damages due because of an injury or wrong. The kind of wrongs to which punitive damages are applicable are those, which besides the violation of a right or the actual damages sustained, import insult, fraud, or oppression and not merely injuries, but injuries inflicted in the spirit of wanton disregard for the rights of others.

In order to warrant the recovery of punitive damages, there must enter into the injury some element of aggression or some coloring of insult, malice or gross negligence, evincing ruthless disregard for the rights of others, so as to take the case out of the ordinary rule. Bradfield v. Schwartz, 936 So.2d 931, 936 (Miss.2006)

It is hard to imagine a clearer case for punitive damages than where a party uses a gun to keep from paying for services rendered.

The amount of the award, if anything, is insignificant in this case. The factors to be considered are set forth in Andrew Jackson Life Ins. Co. v. Williams, 566 So.2d 1172 (Miss.,1990.)

Under current Mississippi law, the “quantum” of a punitive-damages award is measured upon consideration of certain general factors. First, the amount awarded should serve to punish the insurer and to deter it from committing similar offenses in the future. Second, the amount should serve as an example set to deter others from committing similar offenses. Third, the amount awarded should account for the insurer's pecuniary ability and financial worth. And fourth, the amount constitutes compensation for the plaintiff for his or her “public service” in bringing the action.

In this case Mr. Puckett admitted to having a net worth in excess of \$1,000,000.00 and admitted that he did not have to work due to his investments. \$2,500.00 amounts to .25% of his net worth. Evidently, the trial court felt that this quantum of award would serve to punish and deter and maybe set an example to others. It hardly takes into account the defendant's ability to pay and is no reward for Mr. Gordon's public service. However, having said all that, Gordon has not seen fit to cross appeal. He urges that the punitive damage award be affirmed.

**E. Attorneys fees were properly awarded and the Appellate Court should grant a reasonable fee to Appellee upon the affirmance of this matter.**

Generally attorneys fees can be awarded in cases where there is a written contract making provision for the imposition of attorneys fees, where a statute permits, or where punitive damages

are appropriate. *Hearn v. Autumn Woods Office Park Property Owners Ass'n*, 757 So.2d 155, 164(¶¶ 49) (Miss.1999). In this case, the Court indicated that it was awarding the fees due to the punitive issue and the open account issue. (Transcript at Page 228.) He is right on both accounts.

The statutory basis for the imposition of attorneys fees is found at **Miss. Code §11-53-81** which in pertinent part provides:

When any person fails to pay an open account within thirty (30) days after receipt of written demand therefor correctly setting forth the amount owed and an itemized statement of the account in support thereof, that person shall be liable for reasonable attorney's fees to be set by the judge for the prosecution and collection of such claim when judgment on the claim is rendered in favor of the plaintiff.

Exhibit 5 was the §11-53-81 letter sent to Mr. Puckett by registered mail on July 14, 2006 and signed for by Harvey Smith, Mr. Puckett's employee and agent. No issue was ever made as to whether the account was an open account. There is a firm legal basis for awarding attorneys fees both as part of the punitive award and pursuant to statute.

Since fees were awarded at the trial level, it is appropriate to award Mr. Gordon fees of 50% of the amount awarded at trial as attorneys fees for handling this appeal. The Supreme Court has generally awarded attorney's fees on appeal in the amount of one-half of what was awarded in the lower court. See *Grant v. Grant*, 765 So.2d 1263 (Miss., 2000.)

## **II. Appellant Puckett is estopped from denying payment to Gordon**

Puckett retained Gordon to do valuable work requiring a certain degree of skill and some hard work. Puckett couldn't physically do this work. He promised to pay him. This was just after Hurricane Katrina and there was a lot of work that a roofer could be doing, but for some six months, Gordon was almost exclusively tied up on Mr. Puckett's project. Mr. Gordon procured a

settlement of \$118,300.00 for Puckett to pay for the repairs. But after paying the general contractor in full, Puckett decided not to pay Gordon. This refusal was initially based on an assertion that work done earlier by Gordon was unsatisfactory and Puckett wanted to wait until there was a driving rain. The refusal to pay was at the point of a gun. Yet even after several months of driving rain, there was no payment. By the time of the trial, Mr. Puckett concocted another excuse. He felt that even though he had the benefit of the work and had money from the insurance company to pay, he didn't have to pay because Gordon was not licensed as a general contractor.

The Mississippi Supreme Court recently addressed estoppel in the case of *Windham v. Latco of Mississippi, Inc.* 972 So.2d 608 (Miss., 2008). where it was held:

[e]quitable estoppel is "defined generally as the principle by which a party is precluded from denying any material fact, induced by his words or conduct upon which a person relied, whereby the person changed his position in such a way that injury would be suffered if such denial or contrary assertion would be suffered if such denial or contrary assertion was allowed."

To establish equitable estoppel, which "should only be used in exceptional circumstances and must be based on public policy, fair dealing, good faith, and reasonableness [,]" there must be (1) belief and reliance on some representation; (2) a change of position as a result thereof; and (3) detriment or prejudice caused by the change of position."(Citations omitted)

This has long been the rule in this jurisdiction and it absolutely applies to this case.

Puckett had an emergency situation and needed help managing the situation. Gordon says Puckett called him and Puckett says Gordon was the one who called. But nobody disputes that Puckett needed Gordon's help and that he got it on his express promise to pay. Puckett used Gordon to negotiate a settlement with Lloyd's of London that paid him \$118,300.00 after holding the deductible of \$1,000.00. This figure included, among other things, the cost for Gordon's



services. Puckett did not have to pay for anything. Lloyd's paid Puckett who just pocketed Gordon's pay. Now Puckett wants this Court to validate his reprehensible conduct. Puckett requested Gordon's help. Gordon spent almost six months working on Puckett's house giving up other work during that Post-Katrina period. Puckett had promised to pay him from the insurance proceeds, but when it came time to pay, Mr. Puckett threatened Gordon with a gun and refused payment.

*There must be (1) belief and reliance on some representation.* Gordon testified that Puckett asked Gordon to help him remove the tree, negotiate with the insurance representatives, secure a general contractor and other craftsmen and promised to pay him. The trial court accepted Gordon's version of events and even Puckett never said that Gordon was a volunteer. In fact, Puckett paid Gordon's first invoice.

*There must be (2) a change of position as a result thereof.* Gordon spent money on subcontractors, labored long and hard, and passed up other work after Hurricane Katrina. He helped Puckett secure \$118,300.00. He basically gave up six months of his life to work on this difficult project which was to preserve a historically relevant million dollar home.

*There must be (3) detriment or prejudice caused by the change of position.* Gordon never got paid. He was threatened with being shot and assaulted by Puckett. At the time he was working for Puckett, Gordon was precluded from taking other work which was plentiful after Katrina. Gordon paid subcontractors from his own money and spent weeks working on Puckett's house which, according to Puckett, was worth over a million dollars.

***PMZ Oil Co. v. Lucroy*, 449 So.2d 201 (Miss.,1984)** is a leading case on the equitable

estoppel issue and contains a very clear explanation as to why Puckett can't get by with his effort at involuntary servitude:

We are concerned here with a doctrine which has its roots in the morals and ethics of our society. Fundamental notions of justice and fair dealings provide its undergirding. Whenever in equity and good conscience persons ought to behave ethically toward one another the seeds for a successful employment of equitable estoppel have been sown.

...

Adding flesh to the idea, the courts of this state have always, in proper cases, been prepared to "hold a person to a representation made or a position assumed where otherwise inequitable consequences would result to another who, having the right to do so under all of the circumstances of the case, has in good faith relied thereon and been misled to his injury."

...

A party asserting equitable estoppel must show (1) that he has changed his position in reliance upon the conduct of another and (2) that he has suffered detriment caused by his change of his position in reliance upon such conduct.

...

The better view is that an equitable estoppel may be enforced in those cases in which it would be substantially unfair to allow a party to deny what he has previously induced another to believe and take action on. Our early case of *Staton v. Bryant*, 55 Miss. 261, 273 (Miss.1877) suggests that one such as PMZ may not "change his attitude" to the substantial detriment of another and avoid an estoppel on grounds that at the outset his heart was pure. It is sufficient if the acts of the party sought to be estopped, although made without subjective intent to mislead, were, objectively speaking, calculated to mislead, and did mislead.

...

Fraudulent intent to mislead or deceive where present may often, when relied upon, produce inequity and hence an estoppel. This does not mean that no estoppel may be enforced absent such intent *ab initio*. For there are cases, of which this is one, where there has resulted substantial inequity produced by a change of attitude *sans* original subjective fraudulent intent. Substantial inequity is our touchstone.

(Some citations omitted)

All of the elements of equitable estoppel are present and justify affirmance of the judgment. To do otherwise would create the anomalous situation of Puckett having received Gordon's pay from Lloyd's of London and keeping it and getting the full benefit of Gordon's

work on his house.

### **III. The Circuit Court properly affirmed the County Court's judgment.**

The Circuit Court entered its judgment affirming the County Court on June 3, 2008. It held as follows:

This Court has reviewed the briefs and excerpts of Records presented, along with other portions of the Record, and is of the opinion that the Findings of Fact entered by the Warren County Court are clearly supported by substantial, credible and reasonable evidence and that they are not manifestly erroneous. The Court further is of the opinion that the County Court Judge correctly applied the law applicable to this case. . . . [T]he Final Judgment entered by the Warren County Court Judge along with the Findings of Fact are hereby affirmed.

The above and foregoing argument is essentially the same argument as to the merits of the case as was made on appeal to the Circuit Court. There is nothing new or different in Appellant's brief, thus Gordon has not expanded his approach in this appeal. It is submitted that Appellant has simply not met his burden of showing to this Court that the County Court or the Circuit Court were manifestly wrong, clearly erroneous, or that an erroneous legal standard was applied.

### **CONCLUSION**


There is neither justification for Puckett's actions nor corroboration of his version of events. No one came before the trial court and testified to support Puckett's story. The only witness to the gun incident sided with Gordon. The trial Court's finding of fact was entirely supported by the record and disputed facts were resolved in favor of Gordon. Since Puckett's insurance company paid in full for the repairs performed by Gordon, it would be a travesty to not compensate Gordon. Plus Puckett is lucky that all he was stuck with for the assault was nominal damages. Punitive damages of \$2,500.00 are inconsequential for an acknowledged millionaire

living on his investments. There should be no other result but the entry of a judgment affirming the Circuit Court judgment affirming the County Court judgment. In addition the Appeals Court should award interest on the original judgment plus attorneys fees of 50% of the County Court attorney fee award.

RESPECTFULLY SUBMITTED  
ROBERT N. GORDON, III  
D/B/A TREY GORDON ROOFING

BY:   
HIS ATTORNEY

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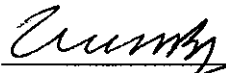
CERTIFICATE OF SERVICE

I, William M. Bost, Jr., do hereby certify that I have this date mailed, by U. S. Mail, postage prepaid, a true and correct copy of the above and foregoing Appellee's Brief to the following:

Hon. Thomas P. Setser  
914 Grove Street  
Vicksburg, MS 39183

Hon. John Price  
County Judge  
P. O. Box 351  
Vicksburg, MS 39181

Dated: **11-5-08**

  
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WILLIAM M. BOST, JR.