IN THE SUPREME COURT OF MISSISSIPPI

NO. 2008-CA-01335

JEFFERY A. STALLWORTH,

Appellant

v.

TELAYA V. BROWN, TGIS INC. AND
NEW YORK LIFE INSURANCE COMPANY,

Appellees

APPEALED FROM THE
CIRCUIT COURT OF THE
FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

BRIEF AND ARGUMENT OF APPELLEE NEW YORK LIFE INSURANCE COMPANY

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to M.R.A.P. 28(a)(1), the undersigned counsel of record certify 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 the judges of the Court of Appeals may evaluate possible disqualification or recusal:

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STATEMENT OF THE ISSUE

The sole issue with respect to Appellee New York Life Insurance Company ("New York Life") is whether the trial court erred in granting summary judgment in favor of New York Life.

STATEMENT OF THE CASE

On August 9, 2002, Telaya Brown ("Brown") filed a civil suit in the Circuit Court of the First Judicial District of Hinds County against Jeffery Stallworth ("Stallworth") alleging assault and battery, false imprisonment, intentional infliction of emotional distress, and intrusion into seclusion arising out of Stallworth's criminal sexual assault against her. Brown also asserted claims against the United Methodist Conference and Anderson United Method Church alleging negligent retention and negligent supervision of Stallworth.

On September 19, 2002, Stallworth filed a counterclaim against Brown, TGIS Inc. and New York Life alleging fraudulent inducement. (R. 1298-1304). In his Counterclaim, Stallworth alleged that "what he believed to be intimate conversations and shared personal moments was merely a ruse carried out by Brown for the exclusive purpose of selling policies of insurance brokered by New York Life." (R. 1300). Stallworth further alleged that "after the sale of these policies did not materialize as Brown had hoped, and the relationship had gone farther than she contemplated, Brown set out to exact revenge upon . . . Stallworth by accusing him of rape," which "subsequently led to [Stallworth entering] a guilty plea of engaging in unwarranted touching," causing him to sustain damage to his professional career. (R. 1300).

New York Life filed its Answer to Stallworth's Counterclaim on January 27, 2003, asserting among other defenses, that the alleged injuries to Stallworth were not proximately caused by any acts or omissions of New York Life.

After extensive discovery had been conducted, New York Life filed a motion for summary judgment (R. 38-49), the Affidavit of Randy Cox (R. 1132-1134), and a supporting memorandum of law on June 20, 2007. Stallworth filed his Opposition to New York Life's

motion for summary judgment on August 20, 2007. New York Life filed its Reply to Stallworth's Opposition on August 27, 2007.

On January 30, 2008, the Honorable Bobby DeLaughter issued a Memorandum Opinion and Order granting summary judgment in favor of New York Life (R. 1218-1227); and granting Brown's motion to dismiss Stallworth's Counterclaim against her. (R. 1228-1235).

Stallworth's Motion for Reconsideration was denied by the trial court on May 6, 2008.

On March 3, 2008, Stallworth filed his notice of appeal to this court.[1]

On June 10, 2008, the trial court entered final summary judgment in favor of New York Life in accordance with M.R.C.P. 54(b). The trial court entered final judgment dismissing all claims against Brown and TGIS Inc. on June 14, 2008. (R. 12).

Stallworth filed his amended notice of appeal to this Court on June 26, 2008.

[1] This is Stallworth's second appeal to this Court raising issues stemming from his voluntary guilty plea to a fourth-degree sexual offense against Brown. *See Stallworth v. Mississippi Department of Public Safety,* 986 So.2d 259 (Miss. 2008).

STATEMENT OF FACTS

In April 2000, Brown began working as a "contracted staff member" with New York Life. (R. 257-258, 368, 386, 1100). Brown's contract with New York Life allowed her to sell New York Life products as well as the insurance products of other carriers. (R. 386-387, 1102). Brown was also the owner and sole proprietor of Talec Group Insurance Services which she operated from a suite of offices she rented in Washington, D.C., as well as from her home in Maryland. (R. 59, 67, 72-73, 279, 386).

Brown's primary contact at New York Life was Randy Cox. (R. 258, 387). Cox had recruited Brown in 2000 to sell individual life insurance policies to her clients that wanted it. (R. 363). Brown sold group insurance policies through her company, the Talec Group, and sold individual insurance policies through New York Life. (R. 369, 387).

B. BROWN'S SOCIAL VISIT TO JACKSON, MISSISSIPPI

In August 2001, Brown traveled to Jackson, Mississippi to attend a family reunion, the purpose of which was "strictly social in nature." (R. 352). Cox was unaware that Brown was going to Mississippi, and Brown did not tell Cox about her trip when she returned. (R. 1108).

Prior to Brown's August 2001 trip to Mississippi, Brown had never done any insurance business in Mississippi; she was not licensed to sell insurance in Mississippi at the time of her family reunion; and she did not make the trip for the purpose of selling insurance. (R. 352-353).

During her stay in Mississippi, Brown was introduced to Stallworth by her cousin, Bennie Page at Page's home. (R. 87, 352). Stallworth was the pastor of the church attended by Page, and was Page's friend. (R. 127). Page had planned to introduce Brown to Stallworth while Brown was in town because he thought Stallworth "was a nice guy – that he could show [Brown] around the city." (R. 264). After the introductions were made, Stallworth was invited

to the family reunion picnic that was held at a state park, and Brown rode with Stallworth in his car. (R. 353-355). Brown considered Stallworth's invitation to the picnic to be a social invitation. (R. 354). When the picnic ended several hours later, Brown and Stallworth drove to Stallworth's church which he had offered to Brown's family as a place for them to perform the family reunion talent show. (R. 268, 353, 356).

After the talent show, Stallworth drove Brown around Jackson on a tour of the city, then took her to see his home and a day care center that he had purchased, and late into the evening returned Brown to her cousin, Bennie Page's home (R. 88-92, 269-273). In Brown's mind, the events of that evening were clearly social in nature. (R. 356-357).

At some point during that evening, Brown informed Stallworth that she was in the insurance business and that she planned to purchase a larger insurance firm and expand her business; Stallworth informed Brown of his plan to provide a life insurance policy to every child in his church under the age of one. (R. 93-95, 274, 354-355). Brown advised Stallworth that she could offer that service through her insurance business, but that in order to discuss the cost of the insurance, she would need to run rate illustrations for him once she returned to Maryland. (R. 94-95, 278, 355). Stallworth and Brown did not discuss New York Life. (R. 915). It was Brown's decision to discuss writing individual policies for the children of Stallworth's church, not a decision of New York Life. (R. 388).

Also during their first evening, Stallworth inquired whether Brown was "accepting applications for a husband." (R. 129, 754-755). Brown responded that she was not, but that at some point she would like to get married and have children. (R. 274-275). Brown and Stallworth discussed what they would name their children if they had any. (R. 275).

Brown and Stallworth also discussed Stallworth coming to Maryland because he had never been there. (R. 277-278, 290-291). Brown gave Stallworth her business card and printed her home phone number on the back of the card. (R. 97).

The following morning, Brown attended Stallworth's church service, during which Stallworth acknowledged the Brown-Page family reunion. (R. 357-358). Stallworth also announced to the church his intention to purchase a life insurance policy for every child in the church under the age of one. (R. 93, 357, 737-738). Stallworth announced that he planned to purchase the policies with the money the church was giving him as an anniversary gift. (R. 738).

C. STALLWORTH'S VISIT TO BROWN IN MARYLAND

On August 5, 2001, at the conclusion of the service, Brown returned to her home in Maryland. (R. 358, 360). Over the course of the next week, Brown and Stallworth engaged in numerous daily telephone conversations that varied from a few minutes to an hour. (R. 278-282, 360-361, 747). During at least one of these conversations, Stallworth and Brown discussed Stallworth's plan to purchase policies for the children in his church. (R. 361, 767-768). Stallworth had been interested in obtaining "infant policies" for years. (R. 933).

Brown and Stallworth also discussed personal matters such as whether Brown would be willing to relocate if she got married again, and the fact that Brown had been celibate for several months. (R. 280, 299-300, 916, 918). Stallworth asked Brown to mail him a photograph of her; Brown mailed two photographs to Stallworth (R. 283-285), along with a note that said, "I hope you like" – with a smiley face, and "Just thinking about you." (R. 288-289).

On Monday, August 13, 2001, Brown booked Stallworth an airline reservation to Maryland using his personal credit card number that Stallworth had given her. (R. 291, 294, 360, 771, 777). When Stallworth arrived on the evening of August 13, 2001, Brown picked him

up at the airport. (R. 294). After some discussion, Brown agreed that Stallworth could stay at her townhouse in her guest room. (R. 124-125, 129-130, 781-782). In Brown's mind this was a social invitation. (R. 390).

D. THE VISIT TO NEW YORK LIFE

On Tuesday, August 14, 2001, Brown drove Stallworth to meet Randy Cox at New York Life's office in Fairfax, Virginia. (R. 131, 133). Brown had called Cox the day before to set up the meeting; Cox was not aware until Stallworth arrived in Maryland that Stallworth was making the trip. (R. 1108). Because Cox was not ready to meet with them when they arrived, Brown and Stallworth went to lunch in the building's cafeteria. (R. 134, 947). After their lunch, Brown took Stallworth to meet with Cox; the purpose of the meeting was for Cox to go through a "fact finder" process which is used to "make sure that any recommendations that are made actually are appropriate for the client, i.e., fair." (R. 1104-1105, 1108). Brown asked Cox to meet with Stallworth because "she wanted to make sure that if there was anything that came up that was maybe a little bit more complex and outside of her normal purview that we could handle it." (R. 1119). Cox was not aware that Stallworth was staying at Brown's townhouse, nor did Cox know how long Stallworth planned to be in town. (R. 1110).

Cox outlined the products and services that New York Life offers as a full service firm such as stocks, bonds, mutual funds, and annuities, and then discussed with Stallworth what he might be interested in. (R. 1109). Stallworth expressed an interest in purchasing life insurance policies for 70 of the children in his church. (R. 803, 958, 1109). Stallworth called his church from Cox's office to verify the number of children who would be receiving policies. (R. 966). Cox then illustrated for Stallworth on Cox's computer the premium costs for $10,000 worth of

whole life insurance for a one-year-old, a two-year-old, a three-year-old, and so forth, and the cash accumulation of the policy in each example. (R. 309-310, 1109).

In addition to discussing life insurance policies for the children of the church, Cox inquired whether Stallworth felt he had sufficient personal coverage; Cox showed Stallworth an illustration for a million dollar policy on his computer; but Stallworth informed Cox that he was not interested in purchasing any individual insurance. (R. 312-314, 793-794, 956-958, 972, 1110). Cox had never discussed Stallworth's personal insurance with Brown prior to that meeting. (R. 1119).

At the conclusion of the meeting, Stallworth informed Brown and Cox that he was prepared to write a $4,000 check for the premiums on the children's policies. (R. 140, 795-796, 971-972, 993). Brown explained that would not be necessary as she would first need to re-apply for a Mississippi license; that she had previously been licensed in Mississippi, but had not maintained it as she was not doing a lot of business outside of the area; that it would take her approximately 30 days, and that Stallworth would have to wait until that had been completed. (R. 138-139, 310). Brown discussed with Stallworth the "semantics" of coming to Mississippi to explain the concept to the parents of the children, and what benefits the parents would have in the event of their child's death. (R. 139).

Cox had never met Stallworth before their meeting on August 14, 2001, and he never saw or talked to Stallworth again afterwards. (R. 802-803, 846, 914, 974, 1110).

E. FURTHER SOCIAL VISIT AND NONCONSENSUAL SEXUAL TOUCHING

After the meeting at New York Life ended, Brown drove Stallworth to the offices of the Talec Group, Brown's Washington, D.C. insurance business, and introduced him to some of the staff members. (R. 141). Brown then drove Stallworth to Georgetown for dinner. (R. 141-142).

After dinner, Brown explained to Stallworth that she needed to pick up her aunt and a business associate at Dulles Airport, and that because the passengers would need quite a bit of space for their luggage, Brown needed to take Stallworth back to her townhouse before going to the airport. (R. 146).

When Brown returned to her townhouse after dropping off her aunt and the aunt's business associate at their hotel, it was close to midnight. (R. 154-155). Stallworth was making phone calls in Brown's home office. (R. 155). Brown informed Stallworth that she was turning in for the night because she had an early morning appointment the next day (R. 157, 164). Brown changed into her pajamas in the bathroom of the master bedroom, turned out the light, cracked the door, got in bed, and went to sleep. (R. 164-165).

In the early hours of Wednesday, August 15, 2001, Brown was awakened when Stallworth entered her bed and, according to Brown, sexually assaulted her. (R. 167-169). Brown ordered Stallworth out of her bedroom, and told him that she wanted him to leave her house. (R. 169). When it was daylight, and after getting dressed for her early morning appointment, Brown discovered that Stallworth was waiting downstairs with his luggage. (R. 172). Because Brown did not want to leave him there, nor did she want to return from her appointment and Stallworth still be there, Brown drove him to the airport. (R. 173).

F. SUBSEQUENT EVENTS AND GUILTY PLEA

Before Brown drove away from the airport, Stallworth inquired about the insurance for the children; Brown stated that she would let him know. (R. 175). In Stallworth's mind, the possibility of purchasing the insurance was still open; after his return to Mississippi, he continued working on the list of children who would be insured. (R. 740-741, 976-978). In fact, Betty Simpson, who "worked with the insurance for the church," telephoned Brown after

Stallworth returned to Mississippi to "inquire where [they] were in that process with the insurance." (R. 201, 361-362).

Brown decided to report the sexual assault, and Stallworth was subsequently indicted on five separate sex offenses in Prince George's County, Maryland, one count of which was second-degree rape.[2] On March 4, 2002, Stallworth entered a guilty plea to a fourth-degree sexual offense of nonconsensual touching. (R. 376, 852, 870, 1000-1001, 1305-1313).

Brown indicated that because she was upset about having been sexually assaulted, she decided not to pursue selling Stallworth the insurance; she made no attempt to contact Stallworth to conclude the insurance deal; and she had no further conversations with Stallworth about insurance after driving him to the airport. (R. 339-340, 985, 993, 1110-1111). Consequently, Stallworth never received further communication from Brown about insurance, never purchased any insurance from New York Life and paid no money to New York Life. (R. 979, 985, 992, 1023).

[2] *See Stallworth v. Mississippi Department of Public Safety,* 986 So.2d 259, 260 (Miss. 2008).

SUMMARY OF THE ARGUMENT

In Stallworth's counterclaim for fraudulent inducement, he alleged that he was induced by Brown to travel to Maryland "for the purpose of spending what . . . Stallworth believed to be personal time with Brown," but that "all Brown desired was to sell [Stallworth] a number of insurance policies brokered by New York Life. . ." (R. 1300-01). Stallworth further alleged that New York Life was vicariously liable for the fraudulent actions of Brown. (R. 1302).

Under Mississippi law, fraud in the inducement arises when a party to a contract makes a fraudulent misrepresentation for the purpose of inducing the innocent party to enter into a contract. *Lacy v. Morrison,* 906 So.2d 126, 129 (Miss. Ct. App. 2004). In order to prevail on a claim for fraudulent inducement, the plaintiff must prove by clear and convincing evidence, among other things, that he suffered a "consequent and proximate injury" as a result of the alleged misrepresentation. *Id.* at 129.

It is axiomatic that a claim for fraudulent inducement to enter into a contract fails as a matter of law where no contract was ever consummated. Under Mississippi law, where a party opposes summary judgment on a claim as to which that party bears the burden of proof at trial, and the movant shows there is a complete failure of proof on an essential element of the claim, then all other issues become immaterial and the moving party is entitled to summary judgment as a matter of law. *Grisham v. John Q. Long V.F.W. Post No. 4057, Inc.,* 519 So.2d 413, 416 (Miss. 1988). Thus, the trial court correctly granted summary judgment in favor of New York Life because it was undisputed that Stallworth never purchased any insurance from New York Life, and Stallworth did not pay New York Life any money.

Further, the trial court correctly found that even if Stallworth's claim that his trip to Maryland was fraudulently induced, the damages he allegedly suffered to his career and reputation were not, as a matter of law, proximately caused by the trip. Instead, ruled the trial court, Stallworth's voluntary guilty plea to a fourth-degree sexual offense against Brown constituted an intervening cause of his alleged injury. The issue of proximate cause is "generally a matter of law which should be left in the hands of the court," *Owens Corning v. R.J. Reynolds Tobacco Co.*, 868 So.2d 331, 341 (Miss. 2004), and the trial court's decision is due to be affirmed.

Finally, Stallworth argues that the alleged injury he suffered to his reputation and career proximately resulted from Brown's "false accusations" against him. As the trial court properly determined, by entering a voluntary guilty plea to a fourth-degree sexual offense against Brown, Stallworth is judicially estopped from asserting that Brown's criminal charges against him were untrue. The trial court's entry of summary judgment in favor of New York Life is due to be affirmed.

ARGUMENT

Standard of Review.

This Court employs a *de novo* review of a trial court's decision to grant summary judgment. *Franklin County Memorial Hospital v. Miss. Farm Bureau Mut. Ins. Co.*, 975 So.2d 872, 874 (Miss. 2008); *Callicutt v. Professional Servs. of Potts Camp, Inc.*, 974 So.2d 216, 219 (Miss. 2007). "The evidence must be viewed in the light most favorable to the non-moving party and if, in this view, the moving party is entitled to a judgment as a matter of law, then summary judgment should be granted in his favor." *Holland v. Peoples Bank & Trust Co.*, 2008 Miss. LEXIS 596, *9, 3 So.3d 94 (Miss. 2008), citing *Palmer v. Anderson Infirmary Benevolent Ass'n*, 656 So.2d 790, 794 (Miss. 1995).

Mississippi Rule of Civil Procedure 56(c) provides in pertinent part:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the 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.

Id. A fact is material if it "tends to resolve any of the issues properly raised by the parties." *Simpson v. Boyd*, 880 So.2d 1047, 1050 (Miss. 2004), quoting *Palmer v. Anderson Infirmary*, 656 So.2d at 794. As this Court explained in *Vickers v. First Mississippi Nat'l Bank*, 458 So.2d 1055 (Miss. 1984):

> Not all disputed issues of fact may be sufficient to defeat a motion for summary judgment or to require trial on the merits; only *material* issues of fact. Put another way, if, viewing the evidence in the light most favorable to the party against whom the motion has been made, that party's claim or defense still fails as a matter of law, summary judgment generally ought to be granted, even though there may be hot disputes regarding non-material facts.

Vickers, 458 So.2d at 1061 (emphasis in original). *See also Summers v. St. Andrew's Episcopal School, Inc.,* 759 So.2d 1203, 1208 (Miss. 2000) ("Numerous, immaterial facts may be controverted, but only those that 'affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.'"), quoting *Sherrod v. U.S. Fidelity & Guar. Co.,* 518 So.2d 640, 642 (Miss. 1987).

Further, as this Court has held, when the moving party can show "a complete failure of proof on an essential element of the claim," of which the non-moving party bears the burden of proof at trial, "then all other issues become immaterial, and the moving party is entitled to judgment as a matter of law." *Grisham v. John Q. Long V.F.W. Post No. 4057, Inc.,* 519 So.2d 413, 416 (Miss. 1988). *See also Brinkley v. United States,* 2006 U.S. Dist. LEXIS 43193, *4 (S.D. Miss. 2006) (Where "the summary judgment evidence establishes that one of the essential elements of the plaintiff's cause of action does not exist as a matter of law, . . . all other contested issues of fact are rendered immaterial.").

I. The Trial Court Correctly Found that Stallworth's Claim Against New York Life for Fraudulent Inducement Failed as a Matter of Law Because No Contract with New York Life was Ever Consummated.

In his counterclaim, Stallworth alleged that Brown fraudulently induced Stallworth to travel to the State of Maryland "for the purpose of spending what . . . Stallworth believed to be personal time with Brown," but that "all Brown desired was to sell [Stallworth] a number of insurance policies brokered by New York Life. . ." (R. 1300-01).

Stallworth further alleged in his counterclaim that New York Life was vicariously liable for the fraudulent acts of Brown. (R. 1302).

Under Mississippi law, "[f]raud in the inducement arises when a party to a contract makes a fraudulent misrepresentation, i.e., by asserting information he knows to be untrue, for

the purpose of inducing the innocent party to enter into a contract." *Davis v. Paepke,* 2009 Miss. App. LEXIS 44, *16, 3 So.3d 131 (Miss Ct. App. 2009), quoting *Lacy v. Morrison,* 906 So.2d 126, 129 (Miss. Ct. App. 2004).

In order to prevail on a claim of fraudulent inducement:

> [T]he innocent party must first establish the presence of the misrepresentation or fraud alleged, which requires proving, by clear and convincing evidence, the following elements:
>
> (1) A representation; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) his intent that it should be acted on by the person and in the matter reasonably contemplated; (6) the hearer's ignorance of its falsity; (7) his reliance upon its truth; (8) his right to rely thereon; (9) his consequent and proximate injury.

Lacy, 906 So.2d at 129, citing *Great Southern Nat'l Bank v. McCullough Environmental Services, Inc.*, 595 So.2d 1282, 1289 (Miss. 1992).

In its Memorandum Opinion and Order granting summary judgment in favor of New York Life, the trial court set out the above elements of fraudulent inducement, upon which Stallworth bore the burden of proof at trial. Weighing the facts in favor of Stallworth as it was required to do, the trial court correctly found that Stallworth's counterclaim for fraudulent inducement could not stand, even assuming all other elements of proof could be met by Stallworth, because there was no proof that Stallworth suffered an injury resulting from an inducement by Brown to purchase insurance from New York Life. The trial court held:

> Moreover, the Court agrees with NY Life that it did not derive any economic benefit from Stallworth, due to no contract being entered into. Consequently, a claim for fraudulent inducement cannot stand The facts demonstrate that Stallworth did not purchase any insurance from NY Life or pay NY Life any money. Thus, NY Life did not experience an economic benefit from any such interaction with Stallworth. A claim for fraudulent inducement to enter into a contract cannot stand where, as here, no contract was

> ever consummated. Rhetorically put, how may one be fraudulently induced to enter a contract that never came into existence?

(R. 1226).

The trial court's entry of summary judgment based on the lack of proof of an essential element of a claim for fraudulent inducement is soundly supported by Mississippi law. For example, in *Lacy v. Morrison,* 906 So.2d 126, 130 (Miss. Ct. App. 2004), Lacy brought suit alleging that he had been fraudulently induced to purchase a truck that Morrison stated was a 1989 model, when in fact it was a 1986 model. In affirming summary judgment in favor of Morrison, the Mississippi Court of Civil Appeals stressed that while Lacy may have demonstrated his belief that the truck was a 1989 model, there were "fatal defects" because Lacy failed to establish that it was his reliance that induced him to consummate the purchase; and there was no evidence "establishing a relationship between the injury and the fraud alleged." *Lacy,* 906 So.2d at 129-30. The Mississippi Court of Civil Appeals concluded that, "based on the lack of clear and convincing evidence establishing each individual element of Lacy's fraud in the inducement claim, summary judgment was proper." *Lacy,* 906 So.2d at 130.

Likewise in *McGee v. Swarek,* 733 So.2d 308 (Miss. Ct. App. 1998), McGee alleged that he was fraudulently induced to settle his personal injury claim in an amount substantially less than the claim's worth in reliance on Swarek's representations regarding McGee's ability to bring a contractual interference suit against State Farm that could be proved through Swarek's testimony. Because there was no evidence that McGee had been induced to settle his personal injury claim because of statements made by Swarek, the Mississippi Court of Civil Appeals affirmed summary judgment in favor of Swarek, explaining that where there is "no credible

evidence to establish one or more of the essential elements of the plaintiff's claim, the plaintiff may not simply rely on pleadings to the contrary." *McGee,* 733 So.2d at 311-313.

Similarly, in *Braidfoot v. William Carey College,* 793 So.2d 642 (Miss Ct. App. 2000), when relations between the college's Board of Trustees and Braidfoot deteriorated over his allegations of intentional misstatements in a federal grant application, Braidfoot's employment as provost of the college was terminated. Within one week of signing a settlement agreement with the college regarding his termination, Braidfoot filed suit against the college and the Mississippi Baptist Convention alleging that he had been fraudulently induced to sign the settlement agreement by misrepresentations of the Board of Trustees relating to their investigation of the alleged misstatements on the college's grant application. The trial court granted summary judgment, determining there were no genuine issues of material fact that would "allow [Braidfoot] to be excused from the consequences of his execution of the release." *Braidfoot,* 793 So.2d at 647. The Court of Civil Appeals concluded that even if it assumed that the representations regarding the investigation were material and false, and that they were made intentionally to induce Braidfoot into signing the agreement, Braidfoot had completely failed in his burden of proving that he had been injured because of his reliance. *Braidfoot,* 793 So.2d at 654.

Mississippi law is clear that where a party opposes summary judgment on a claim as to which that party will bear the burden of proof at trial, and when the moving party can show a complete failure of proof on an essential element of the claim, then all other issues become immaterial and the moving party is entitled to judgment as a matter of law. *Grisham v. John Q. Long V.F.W. Post,* 519 So.2d 413, 416 (Miss. 1988). *See also Brinkley v. United States,* 2006 U.S. Dist. LEXIS 43193, *4 (S.D. Miss. 2006) ("Where the summary judgment evidence

establishes that one of the essential elements of the plaintiff's cause of action does not exist as a matter of law, . . . all other contested issues of fact are rendered immaterial.").

In granting summary judgment in favor of New York Life, the trial court found that New York Life did not entice or fraudulently induce Stallworth to enter into a contract with New York Life or to take any action to his detriment, and that New York Life derived no economic benefit from Stallworth. Stallworth did not purchase any insurance from New York Life, and he did not pay any money to New York Life. Stallworth admitted as much at his deposition. Because there was a complete failure of proof on this essential element of Stallworth's claim for fraudulent inducement, the trial court's entry of summary judgment in favor of New York Life was correct.

II. The Trial Court Correctly Found that the Alleged Injury Sustained by Stallworth to His Reputation and Career Proximately Resulted from Stallworth's Guilty Plea to Sexual Assault.

In his counterclaim, Stallworth alleged that Brown's accusation of rape "subsequently led to a guilty plea of engaging in an 'unwarranted touching'" which caused Stallworth to sustain damage to his professional career. (R. 1300, ¶ 11).

In its Memorandum Opinion and Order granting summary judgment in favor of New York Life, the trial court correctly held that "Stallworth's decision to plead guilty to the charge of sexual assault constitutes an intervening cause of the damages that Stallworth claims to have suffered as a matter of law." Further, in dismissing Stallworth's counterclaim against Brown and TGIS Inc., the trial court found:

> [T]he damages allegedly experienced by Mr. Stallworth, even if his claims of fraudulent inducement of his trip to Maryland are true, were not, as a matter of law, proximately caused by the trip. Instead, the damages bear a relationship to the entrance of his guilty plea to a charge of sexual assault.

(R. 1233).

Mississippi law defines the proximate cause of an injury as "that cause which in natural and continuous sequence unbroken by any efficient intervening cause produces the injury and without which the result would not have occurred." *Gulledge v. Shaw,* 880 So.2d 288, 293 (Miss. 2004), citing *Delahoussaye v. Mary Mahoney's, Inc.,* 783 So.2d 666, 671 (Miss. 2001). "Recovery is not permitted if the proximate cause of the monetary loss is other than the fraud alleged." *Russell v. Southern National Foods, Inc.,* 754 So.2d 1246, 1256 (Miss. 2000).

As this Court has explained, the issue of proximate causation "is generally a matter of law, which should be left in the hands of the court." *Owens Corning v. R.J. Reynolds Tobacco Co.,* 868 So.2d 331, 341 (Miss. 2004).

In this appeal, Stallworth argues that the trial court erroneously determined that "the proximate cause of any damages was the negotiated plea arrangement rather than the underlying false charge of sexual assault which precipitated the plea." (Brief of Appellant at 3). Stallworth submits that "the damages sustained by [him] were the proximate result of Brown's false accusations."[3] (Brief of Appellant at 7).

Stallworth argues further that "[a]t the time of the plea, the prosecution advanced the claim that Stallworth had touched Brown's vagina without consent," but that he "never stated that his sexual contact with Brown was without her consent." (Brief of Appellant at 2, n. 4).

This precise argument was rejected by this Court in *Stallworth v. Mississippi Dept. of Public Safety,* 986 So.2d 259 (Miss. 2008). As a result of the Maryland court's subsequent modification to Stallworth's sentence by vacating the guilty verdict, Stallworth appealed the trial

[3] As will be discussed *infra,* the trial court held that Stallworth was judicially estopped by his guilty plea to sexual assault from asserting that Brown's criminal charges against him were "untrue." (R. 1235).

court's requirement that he continue to register in Mississippi as a sex offender. In affirming the trial court, this Court, sitting *en banc*, noted that *Maryland Code Annotated, Criminal Law Section* 3-308(b)(1), the offense to which Stallworth pleaded guilty, provides that "a person is guilty of sexual offense in the fourth degree if that person engages in 'sexual contact with another **without the consent of the other**.'" *Stallworth,* 986 So.2d at 260.

In Stallworth's previous appeal, this Court considered the transcript of the plea proceeding in Maryland which reflects the following:

THE COURT:	Your attorneys indicate you wish to enter a plea of guilty to the third count of the indictment, which charges on or about the 15th of August in the year 2001 you committed a sexual offense, fourth degree sexual offense on Telaya Brown. How do you plead to that?
STALLWORTH:	Guilty.
THE COURT:	Do you fully understand the charge of fourth degree sexual offense?
THE DEFENDANT:	Yes.
. . . .	
THE COURT:	Before I can accept your plea of guilty to the third count, fourth degree sexual offense, I need to hear the factual basis of it. I will ask the State to recite the evidence.
MS. MASON:	Thank you, Your Honor. Had the State gone to trial, the State would have proven beyond a reasonable doubt that on or about August 15, 2001, that the defendant, Jeffery A. Stallworth, seated before Your Honor today, had sexual contact with the victim, Ms. Telaya Brown, who is present in the courtroom; that the sexual contact was made without the consent and against the will of

Telaya Brown; and those events occurred in Prince George's County, Maryland.

THE COURT: Specifically what sexual contact?

MS. MASON: He did place his hands on her vaginal area.

. . . .

THE COURT: Are you pleading guilty to fourth degree sexual offense because you are in fact guilty of that and for no other reason?

THE DEFENDANT: Yes, sir.

THE COURT: The court finds that there is a sufficient factual basis for your plea of guilty, and is satisfied that your plea of guilty is fully, freely and voluntarily made, and the court accepts your plea of guilty to the third count of fourth degree sexual offense.

(R. 1307, 1310-1311). This Court concluded that by entering a guilty plea to the charge of fourth-degree sexual offense, Stallworth admitted that his sexual contact with Brown was without her consent. Stallworth, 986 So.2d at 264.[4]

[4] This Court also found Stallworth's sworn deposition testimony taken in this related civil proceeding on February 5 and 6, 2003 to be "compelling evidence" which could not be ignored. At his deposition in this civil litigation, Stallworth testified:

ATTORNEY: Had [the victim] asked you to come into the bed?

STALLWORTH: She had not . . . . I put my hands in her pajamas and I started to – I guess massaging her clitoris. . . .

. . . .

STALLWORTH: And I just turned over and laid on the bed and she pulled the cover and said, "What was that? What were you doing?" And she said, "That was not consensual. . . ."

(*Stallworth,* 986 So.2d at 264; R. 823, 829-830).

In dismissing Stallworth's counterclaim for fraudulent inducement asserted against Brown, and vicariously against New York Life, the trial court held that Stallworth was judicially estopped by the entry of his guilty plea from claiming that Brown's criminal charges against him were "untrue." Undeterred by that ruling, Stallworth continues to assert in this appeal that the alleged damage to his reputation and career proximately resulted from Brown's "false" accusations against him, creating a triable issue of material fact.

Judicial estoppel applies "where there is multiple litigation between the same parties and one party knowingly asserts a position inconsistent with the position in the prior litigation." *Rankin v. American General Finance, Inc.*, 912 So.2d 725, 728 (Miss. 2005), citing *In re Enlargement & Extension of Mun. Boundaries v. City of Southaven*, 864 So.2d 912, 918 (Miss. 2003).

Because Stallworth entered a guilty plea to the criminal charge of nonconsensual sexual contact, and because of his sworn deposition testimony in the related civil proceeding, Stallworth is judicially estopped from asserting that he "never stated that his sexual contact with Brown was without her consent." As the trial court aptly observed:

> For Mr. Stallworth to now claim these accusations [were] unwarranted creates an air of playing with the court system and maneuvering it to best suit his situation. The doctrine of judicial estoppel is in place to prevent such a situation from occurring. Thus, this Court finds that Stallworth is judicially estopped from contending that plaintiff's filing of criminal charges against him were untrue.

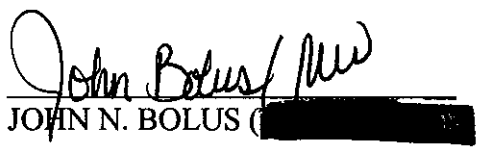
(R. 1235).

Thus, the trial court was eminently correct in determining that Stallworth's guilty plea was an intervening cause of the alleged injury he has suffered as a matter of law, and the summary judgment entered in favor of New York Life is due to be affirmed by this Court.

CONCLUSION

For the foregoing reasons, New York Life respectfully requests that the trial court's entry of final summary judgment in its favor be affirmed.

Respectfully submitted,



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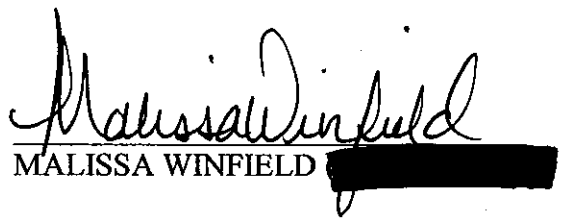

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CERTIFICATE OF FILING

I, Malissa Winfield, certify that I have had hand-delivered the original and three copies of the Brief of Appellee New York Life Insurance Company, and an electronic diskette containing same on April 28 2009, addressed to Ms. Betty W. Sephton, Clerk, Supreme Court of Mississippi, 450 High Street, Jackson, Mississippi 39201.

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