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TABLE OF AUTHORITIES

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INTRODUCTION

It is challenging to respond to the Appellee's Brief in this matter, as the specific arguments that were addressed in O.W.O.'s Appellant's Brief are not specifically addressed. It should also be pointed out the Appellee's Brief purports to speak on behalf of Stone Investment, yet this Court granted only John Diamond additional time within to respond. It is acknowledged that John Diamond is not a party on this appeal, as no appeal was perfected as to Diamond and he was voluntarily dismissed in the trial below. Nevertheless, it appears that the gist of the Appellee's response is two-fold:

1. O.W.O. never showed up at the closing table and therefore is not entitled to recover damages from the breach and malfeasance of the Defendants below; and
2. That when the title was examined it was clear that Stone Investment owned a portion of the property that Diamond had contracted to sell and that therefore no fraud could have been perpetrated.

O.W.O. will attempt to address these issues which it assumes are the ones Stone Investments was attempting to raise and/or argue in its brief.

ARGUMENT

1. **O.W.O. never showed up at the closing table and therefore is not entitled to recover damages from the breach and malfeasance of the Defendants below.**

O.W.O.'S refusal to come to the closing table does not prevent it from pursuing this action for breach and fraud as to both Diamond and Stone Investment.

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Stone Investment ("Stone") states in the Appellee's Brief at p. 5 the following:

The central issue herein lies in the fact that O.W.O. Investments, Inc., never elected to purchase the property in question.

Id. at p. 5.

It is respectfully submitted that Stone's reliance upon this concept and the Hamilton case is misplaced at best. O.W.O.'s contract was with Diamond, not with Stone. Despite repeated attempts to obtain some form of binding agreement between Stone and Diamond that would enable Diamond to be able to deliver on the full property which he had fraudulently asserted to own, there was absolutely no point nor would the title company insure title or issue a title binder to the property in question.

The Affidavit of Robert T. Windham [R. 496] at Exhibit 3 [R. 529] provides an unrebutted evidentiary basis in the form of the correspondence from David Wheeler showing that no closing was possible so long as either title to the 40.5 acres remained in Stone Investment, or that there was any binding contractual obligation for Stone Investment to close. Several avenues were suggested for resolving this issue (including that Stone Investment convey the property to John Diamond and retain a deed of trust for whatever sum Stone Investment imagined it was owed by Diamond, or in the alternative, a contractual obligation from Stone to convey the property directly to O.W.O.), but neither of these was forthcoming from Stone Investment.

A closing was impossible. John Diamond did not have title to the land described in the contract. The title company would insure nothing less. It was not necessary for O.W.O. to either tender performance in the face of impossibility of performance by John Diamond.

The non-refundable earnest money had already been given to Diamond before the true state of the title was discovered. This money was paid based upon John Diamond's misrepresentations and Stone's fraudulent concealment.

2. That when the title was examined it was clear that Stone Investment owned a portion of the property that Diamond had contracted to sell and that therefore no fraud could have been perpetrated.

It is interesting to note that Stone now says that O.W.O. knew of the status of the title when it entered into the contract and that therefore, no fraud was perpetrated.

It is respectfully submitted that it is clear from the Affidavit of Robert T. Windham that there was no knowledge as to the state of the title at the time the \$50,000.00 was paid to John Diamond. See Affidavit of Robert T. Windham at R.496.

It equally significant to note that Stone placed absolutely no sworn evidence into trial to oppose Windham's claim of fraud on the part of Stone Investment through its agent, Jack Parsons. It is respectfully submitted that the Affidavit of Robert T. Windham clearly places Stone Investment's fraud into issue, thereby rendering summary judgment inappropriate.

Finally, it should be noted that the tortious interference with contract grounds set forth in the Appellant's Brief have never been addressed by either Stone Investment nor the Court below. As a result, it is respectfully submitted that the trial court below should be reversed and that this matter should be remanded for a full-blown evidentiary trial as to the matters set forth herein.

CONCLUSION

O.W.O. was denied a trial on the merits by the Court below. O.W.O. has dismissed John Diamond. He received his \$50,000.00 and has undoubtedly frittered it away. The true culprit in this matter was Stone Investment Company who, through the actions, representations and misrepresentations of its agent, Jack Parsons, made material representations of fact concerning what John Diamond had the power to deliver. When the falsity of those representations was discovered, it was too late. John diamond had the \$50,000.00 and there was no getting it back. In spite of the valiant efforts of O.W.O. to mitigate its damages and to find a way to close on the sale, O.W.O. was unable to close. This series of events was a direct proximate result of the fraudulent representations of Stone Investment Company and of the tortious interference by Stone Investment Company through Jack Parsons with O.W.O.'s contract with John Diamond as shown through the letters of David Wheeler.

It is respectfully requested that this Court enter its Order reversing the decision of the trial court below and remanding the case for a full-blown evidentiary trial.

Respectfully submitted, this the 20 day of July, 2009.

BY: O.W.O. INVESTMENTS, INC.

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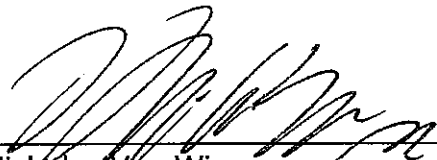
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CERTIFICATE OF SERVICE

I, Nicholas Van Wiser, counsel of record for Appellant, do hereby certify that I have delivered, via U. S. Mail, postage pre-paid, the above and foregoing to Hon. D. Neil Harris, Chancery Court Judge, Post Office Box 993, Pascagoula, Mississippi 39568, and to Jack Parsons, Esq., at his usual address of Parsons Law Office, Post Office Drawer 6, Wiggins, Mississippi 39577.

THIS the 20 day of July, 2009.



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