IN THE SUPREME COURT FOR THE STATE OF MISSISSIPPI

LINDA AND HARRY LAFFITTE — APPELLANTS

VS. — CASE NO. 2008-CA-01724

SOUTHERN FINANCIAL SYSTEMS, INC. — APPELLEE

APPEAL FROM THE CIRCUIT COURT OF WAYNE COUNTY

APPELLANTS' REPLY BRIEF

ORAL ARGUMENT REQUESTED

Timothy J. Matusheski ([redacted]
Law Offices of Timothy J. Matusheski, PLLC
PO Box 1421
Waynesboro, Mississippi 39367
phone: (601) 735-5222
fax: (601) 735-5008

Attorney for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE**

STATUTES

OTHER AUTHORITIES

INTRODUCTION

This appeal seeks review of the Circuit Court of Wayne County's ("Circuit Court") refusal to vacate a default judgment entered against Appellants, Harry and Linda Laffitte ("Laffittes"), in Wayne County Justice Court ("Justice Court") and dismissal of their counterclaim. This Reply Brief is filed in response to legal contentions made by Appellee, Southern Financial Systems, Inc.,'s ("Southern"), in Southern's Brief of Appellee.

Southern argues that the Laffittes' failure to appear at the Justice Court on August 15, 2007, completely bars any review of their Motion to Vacate Default Judgment filed in Justice Court on February 19, 2008. Southern argues that the default judgment must stand even if: (1) the Justice Court did not have personal jurisdiction over the Laffittes, (2) the judgment is void, or (3) the Laffittes' constitutionally guaranteed due process right to notice before deprivation of property rights was violated.

Southern argues that the Laffittes waived all defenses for not appearing before a Justice Court Judge on August 15, 2007. However, waiver does not apply to the Laffittes in the case *sub judice*. In order for waiver to apply, two elements must be present: (1) a failure to timely and reasonably raise and pursue the enforcement of any affirmative defense, and (2) the active participation in the litigation process. *Estate of Grimes v. Warrington*, 982 So. 2d 365, 370 (Miss. 2008). Waiver is inapplicable to the Laffittes under the facts of this case because the Laffittes did not participate in litigation during the time period Southern contends they waived any defenses.

Southern further argues that the doctrine of *res judicata* should bar the Laffittes from arguing the default judgment should be set aside. However, *res judicata* only applies to bar re-litigation in a second suit of an issue decided in a first suit. *Franklin Collection Services, Inc., v.*

Stewart, 863 So.2d 925, 929 (Miss. 2003). There is only one suit between the Laffittes and Southern, the one presently before this Court. Since there is no second suit, *res judicata* has no duplicative lawsuit to bar. Accordingly, *res judicata* is inapplicable to the Laffittes under the facts of this case.

Southern argues that default judgments entered in Justice Court cannot be vacated by anyone but a Justice Court Judge, and the Justice Court Judge's decision not to vacate the default judgment is unreviewable on appeal. Southern makes this argument even though Miss. Code Ann § 85-7-265 states that the parties to a Justice Court proceeding "shall have the right of appeal as in other cases." *See also* Mississippi Constitution, Article VI, Section 171 ("In all causes tried in justice court, the right of appeal shall be secured under such rules and regulations as shall be prescribed by law..."). Southern has no legal authority for its proposition.

PROCEDURAL POSTURE

This is an appeal from the Circuit Court's refusal to vacate a default judgment entered in Justice Court against two Mississippi consumers and reinstate their counterclaim for wrongful garnishment. This is not a case where the Laffittes had an opportunity to prepare a response but chose not to appear in court. This is a case where notice was inadequate and good cause exists for this Court to vacate default judgment.

On June 30, 2006, Sheron Cochran of Wayne General Hospital executed an "ASSIGNMENT AND AFFIDAVIT TO ACCOUNT" which purported to assign to Southern "all rights and interest in the certain indebtness/chose in action more particularly described as account #1091672 Linda Marie Laffitte indebtness in the amount of $1809.70". R. at 17. According to the "ASSIGNMENT AND AFFIDAVIT TO ACCOUNT", Southern purchased this lawsuit

against Linda Laffitte for $1.00.[1] On July 11, 2007, Melanie Gowin - a non-attorney - filed an "AFFIDAVIT" in Justice Court swearing under oath that "Linda and Harry Laffittte and/or their dependents" owe Southern $1873.70 and that the documents attached to the "AFFIDAVIT" support the claim. R. at 16. On July 12, 2007, Southern caused the "Justice Court Summons" to be issued without the Justice Court seal. R at 30 and 62. A "Justice Court Summons" was served on Linda Laffitte with no other documents attached. Noone served a "Justice Court Summons" on Harry Laffitte.

On August 15, 2007, an agent of Southern appeared at Justice Court and requested a default judgment be entered against Harry and Linda Laffitte for $1873.70. Jane Hutto signed a "WAYNE COUNTY JUSTICE COURT CIVIL JUDGMENT RECORD". R. at 33. Notably, this document does not order the Laffittes to pay Southern any money.

On September 28, 2007, Melanie Gowin filed a "SUGGESTION FOR GARNISHMENT" with the Justice Court on behalf of Southern requesting the Justice Court issue a Writ of Garnishment for Linda Laffitte's employer, C & C Foods. R. at 35. On October 18, 2007, the Justice Court issued a Writ of Garnishment in Response to Southern's suggestion for same. R. at 34. The Writ of Garnishment demanded a response from C & C Foods by November 19, 2007. Southern did not give the Laffittes notice of the Writ of Garnishment it served on C & C Foods.. R.E. at 28. However, the Writ of Garnishment was received by C&C Foods and it began to withhold money from Linda Laffitte's wages, ultimately withholding a total of $1933.70.

On February 19, 2008, the Laffittes filed their Motion to Vacate Default Judgment and

---

[1]And other good and valuable consideration. Probably an agreement to split the proceeds of any recovery.

Couterclaim against Southern in Justice Court. R. at 58. On March 7, 2008, Melanie Gowin filed a request for the Justice Court to "release the garnishment". R. at 81. In Response to the Laffittes' Motion to Vacate Default Judgment, Paul Amacker - a non-lawyer - filed a response on Southern's behalf in Justice Court arguing that the Laffittes are not entitled to the relief sought for many of same reasons Southern relies upon before this Court.[2] On March 12, 2008, the Justice Court held a hearing on the Laffitte's Motion to Vacate Default Judgment. Southern was represented at the hearing by Paul Amacker, who presented oral arguments on Southern's behalf.[3] The Laffittes were represented by attorney Timothy J. Matusheski. On April 23, 2008, the Justice Court denied the Laffittes' Motion to Vacate and Counterclaim. R. at 77.

On April 29, 2009, the Laffittes filed their Amended Notice of Appeal with the Circuit Court to challenge the Justice Court's April 23, 2008, Order, and paid the Circuit Court its filing fee.[4] R. at 6. On May 23, 2008, the Laffittes filed their Motion to Vacate Default Judgment and Counterclaim in Circuit Court. R. at 8. Thereafter, Southern was no longer represented by Paul Amacker and Melanie Gowin. Southern apparently hired Gulfport attorney William Westbrook, III, to take over representation. On June 16, 2008, William Westbrook filed Southern's "MOTION TO DOCKET AND DISMISS UNTIMELY APPEAL OF DEFAULT JUDGMENT, TO AFFIRM JUSTICE COURT'S ORDER DENYING MOTION TO VACATE DEFAULT JUDGMENT AND MOTION TO DISMISS COUNTERCLAIM". R at 40. The Circuit Court

---

[2]A copy of Southern's Response signed by Paul Amacker was not introduced into the Circuit Court record to avoid any interference with a proceeding before the Mississippi Bar.

[3]The Laffittes, Sim Strain, Timothy J. Matusheski, Jane Hutto, a reprentative of Southern and a Justice Court employee were present during Mr. Amacker's oral arguments.

[4]The Laffittes filed an Amended Notice of Appeal to correct the Certificate of Service in the Notice of Appeal.

conducted a hearing on both motions, and on October 10, 2008, the Circuit Court granted Southern's Motion while denying the Laffittes' Motion. R. at 129, R.E. Tab 2. It is from this Order the Laffittes appeal to this Court.

THE CIRCUIT COURT ERRED IN HOLDING IT DID NOT HAVE JURISDICTION OVER THE LAFFITTES' APPEAL

In its opinion, the Circuit Court simply adopted Southern's arguments and held it did not have jurisdiction over the Laffittes' appeal, and even if it did, the Laffittes were not entitled to relief from the Justice Court default judgment. The Mississippi Court of Appeals recently held that, "[a]n appeal from a judgment in justice or municipal court is taken to the circuit court or to the county court, if the county has one. Once the appeal is perfected, the circuit court has original jurisdiction over the case." *Statham v. Miller*, 988 So.2d 407, 410 (Miss Ct. App. 2008) (emphasis added). In *Statham*, Stathum filed a civil action against Miller for battery in the Oktibbeha County Justice Court, and a judgment was entered against Miller for the jurisdictional limit. Miller filed a notice of appeal to the Circuit Court of Oktibbeha County. Statham filed a Motion to Amend seeking to increase his damages against Miller to $10,000 and requested that he be allowed to include claims for punitive damages and attorney's fees. The circuit court dismissed the appeal and remanded the matter back to Oktibbeha County Justice Court.[5] Thereafter, Statham filed a Motion for Relief from Judgment in circuit court, which was denied.

The Mississippi Court of Appeals reversed the circuit court and remanded the case to circuit court with instructions to reinstate Statham's appeal, permit Statham to amend his complaint pursuant to Miss. R. Civ. P. 15 and mandated that the Mississippi Rules of Civil

---

[5]The Court of Appeals noted the circuit court cited no legal authority to dismiss the appeal or remand the case from circuit court to justice court.

Procedure be followed because the circuit court had original jurisdiction over the case.

Accordingly, the Circuit Court had original jurisdiction over the Laffittes' appeal from Justice Court. When the Laffittes filed their appeal, "the jurisdiction acquired by the circuit court is not in any proper sense appellate" and the case "must be tried anew as if it were originally instituted in the circuit court." *Lucedale Commercial Co. v. Strength*, 141 So. 769 (Miss. 1932).

THE CIRCUIT COURT ERRED IN FAILING TO APPLY THE PROPER LEGAL STANDARD TO THE LAFFITTES' MOTION TO VACATE DEFAULT JUDGMENT

Pursuant to the Miss. R. Civ. P. 60(b), a default judgment can be vacated by the Circuit Court for, *inter alia*, any reason justifying relief from the judgment. There is a three prong balancing test in determining whether to set aside a default judgment pursuant to Miss. R. Civ. P. 60(b). *Stanford v. Parker*, 822 So.2d 886, 887-888 (Miss. 2002). The court must consider: (1) the nature and legitimacy of the defendant's reasons for default; (2) whether the defedant has a coloarable defense to the merits of the claim; and (3) the nature and extent of prejudice which may be suffered by the plaintiff if the judgment is set aside. *Id.* at 843. Where there is reasonable doubt as to whether the default judgment should be set aside, the doubt falls in favor of allowing the case to go forward for a decision on the merits. *Capital One Services, Inc. v. Rawls*, 904 So.2d 1010, 1015 (Miss. 2004). The Mississippi Supreme Court reviews the Circuit Court's denial of the Laffittes' Motion to Vacate a Default Judgment for an abuse of discretion. *Windmon v. Marshall*, 926 So. 2d 867, 870 (Miss. 2006). Since the Circuit Court did not consider the relevant factors before ruling on the Laffittes' Motion to Vacate Default Judgment, the Circuit Court's decision must be reversed.

WAIVER AND *RES JUDICATA* DO NOT APPLY TO THE LAFFITTES' DEFENSES

Southern contends that the Laffittes' waived the following defenses by not appearing at the Justice Court on August 15, 2007: (1) due process, (2) failure to serve process, (3)

insufficiency of process, (4) lack of personal jurisdiction, (5) statute of limitations, (6) failure to state a claim, (7) invalid assignment and (8) void judgment. However, as stated *supra*, waiver does not apply in this case because the Laffittes' did not participate in the Justice Court proceeding until they learned about the default judgment rendered against them in Justice Court.

Southern next contends that *res judicata* bars the Laffittes from raising any defense to Southern's claim in support of their Motion to Vacate Default Judgment.[6] Southern cites *Franklin Collection Service, Inc. v. Stewart*, 863 So.2d 925 (Miss. 2003) in support of this contention. However, *Stewart* does not support Southern's argument. In *Stewart*, Franklin Collection Service, Inc. (Franklin) hired an attorney to file nine separate actions on open account in the Noxubee County Justice Court over a four and ½ year period against consumers to collect medical expenses, attorney's fees and costs. The justice court entered default judgment as to each of Franklin's complaints on various dates from May, 1996, through October, 2000. It was undisputed that each of the consumers was properly served with sufficient notice. On December 18, 2000, the eleven consumers affected by these default judgments filed a civil action against Franklin in Noxubee County Circuit Court alleging, *inter alia*, Fair Debt Collection Practices Act violations that arose from Franklin's conduct in collecting those debts.

In deciding that *res judicata* barred the consumers from arguing Franklin's justice court claims failed to state a claim under the open account statute, this Court held:

> None of the circuit court plaintiffs allege they were improperly served nor do any allege jurisdiction was improper in the justice court. Further, they do not dispute that the debt was actually owed. They did not avail themselves of presenting a defense

---

[6]The doctrine of res judicata reflects the refusal of the law to tolerate a multiplicity of litigation. *Little v. V & G Welding Supply, Inc.*, 704 So.2d 1336, 1337 (Miss. 1997). It is a doctrine of public policy designed to avoid the expense and vexation attending multiple lawsuits, conserve judicial resources, and foster reliance on judicial actions by minimizing the possibilities of inconsistent decisions. *Id.*

> in the justice court to the underlying collection action, and then they neglected to appeal from the default judgment rendered by the justice court.
>
> The plaintiffs are basing their complaints upon the alleged improper collection of attorney's fees in the underling collection actions instituted by Franklin but argue that they do not dispute the original debt. The amount of the debt for which Franklin sued included attorney's fees and court costs, and this is the same amount awarded by the justice court in the default judgments.
>
> The plaintiffs cannot simply fail to defend a suit to collect a debt and fail to appeal the default judgment entered against them and then file suit and argue that the judgment, though not in dispute, was the result of fraud or abuse of process. If they do so, they do so at their own peril, especially in circumstances such as those before this Court, where their allegations of fraud and abuse of process are without merit. The proper avenue available to attack the judgment, the attorney's fees awarded and thee alleged fraud was to defend the action in justice court or to make a timely appeal of the judgment to the circuit court. The plaintiffs are procedurally barred by the doctrine of res judicata from bringing any action concerning the default judgment of the justice court.

Stewart, 863 So.2d at 929-930(emphasis added).

Stewart is readily distinguishable from the instant case. First of all, the plaintiffs in *Stewart* did not defend the justice court proceeding. They simply filed a separate complaint in circuit court attacking the validity of every justice court judgment - admitting the justice court had jurisdiction and that they owed the money demanded by Franklin in each justice court complaint. In addition, Franklin filed its claims against the plaintiff's in justice court through an attorney. In this case, the Laffittes defended the Justice Court proceeding and Southern filed its claim against the Laffittes in Justice Court through non-attorneys. The Laffittes also established before the Circuit and Justice Court that: (1) the Justice Court had no personal jurisdiction to enter the default judgment, and (2) the Laffittes did not ever owe money to Southern.

This Court was very clear in *Stewart* as to the proper avenue for attacking a justice court judgment: defend the action in justice court or make a timely appeal of the judgment to the circuit court. In the case *sub judice*, the Laffittes followed the proper avenue for attacking a

justice court judgment: they defended it in Justice Court. After the Justice Court denied their motion to vacate default judgment, the Laffittes filed a timely appeal in Circuit Court.[7] Unlike *Stewart*, this is not a collateral proceeding; it is the second step of an appeal from the Justice Court's denial of the Laffittes' Motion to Vacate Default Judgment and dismissal of Linda Laffitte's counterclaim.[8]

THE NOTICE RECEIVED BY LINDA LAFFITTE IN THE "JUSTICE COURT SUMMONS" WAS INSUFFICIENT TO ESTABLISH PERSONAL JURISDICTION

Contrary to Southern's argument, the Laffittes did not simply fail to show up at Justice Court on August 15, 2007. Nor do the Laffittes admit they ever owed any debt to Southern. The Laffittes did not appear in Justice Court on August 15, 2007, because they did not receive adequate notice. Even had Harry Laffitte been served with the "Justice Court Summons", the "Justice Court Summons" did not provide the notice required under the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution, and the Laffittes were prejudiced by this failure.[9] R. at 30. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). The "Justice Court Summons" is not reasonably calculated to inform the

---

[7]See the April 29, 2009, Amended Notice of Appeal the Laffittes filed in Circuit Court to appeal the Justice Court. R at 6. See also the October 13, 2008, Notice of Appeal the Laffittes filed to appeal the Circuit Court. R. at 143.

[8]The first step of this appeal arose from the Notice of Appeal the Laffittes filed in Circuit Court for a *de novo* review of the Justice Court's April 23, 2008, Order denying the Laffittes' Motion to Vacate the Justice Court Default Judgment and counterclaim entered on August 15, 2008.

[9]The Fifth and Fourteenth Amendments of the United States Constitution provide that noone shall be deprived of life, liberty, or property, without due process of law.

Laffittes regarding any claim against them by Southern, and acted to deny them an opportunity to present their defense.

The "Justice Court Summons", which Southern does not dispute was the only item served on Linda Laffitte, does not provide the notice contemplated in *Mullane*. The "Justice Court Summons" served on Linda Laffitte failed to provide her notice in, *inter alia*, the following ways:

1. It does not demand money from either Harry or Linda Laffitte.

2. It does not identify where the Laffittes were required to go in response to the "Justice Court Summons".

3. It does not warn the Laffittes that a money judgment can be rendered against them if they do not properly defend the claim.

4. It is unofficial and informal without a seal.[10]

5. It does not identify who is doing the suing.

6. It does not identify why the Laffittes were sued.

7. It does not identify what is wanted from the Laffittes.

8. It does not identify what court the Laffittes must attend to meet with a "Justice Court Judge of said County".

9. It states "[i]f you have any questions about this summons, you must be in court on the date and time listed above." If a Court does not identify itself by full name and address in a summons, it must provide a phone number or email address so the person served can learn where to go in

---

[10] Miss Code Ann. § 13-3-3; *See Burton v. Cramer*, 86 So. 578, 579 (Miss. 1920)("The seal, or an accounting for its absence, was absolutely necessary to warrant a judgment by default.") and *McAllum v. Spinks*, 91 So. 694, 695 (Miss. 1922)(A writ is bad which does not contain the seal of the court, or a statement of the fact if there were no seal, and must be dismissed on direct appeal.)

response to the summons, and/or that they are required to go somewhere in response to the summons.

The due process clause requires this information be formally conveyed to the Laffittes before the Wayne County Justice Court could exercise personal jurisdiction to enter a default judgment for money damages against the Laffittes. All defendants must be furnished "an opportunity . . . granted at a meaningful time and in a meaningful manner," *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965), "for [a] hearing appropriate to the nature of the case," *Mullane*, 339 U.S. at 313. The formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings. That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing before he is deprived of any significant property interest, except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event. In short, "within the limits of practicability," *Id.* at 318, Mississippi courts must afford all individuals a meaningful opportunity to be heard before entering a judgment if it is to fulfill the promise of the Due Process Clause. The notice must be reasonably calculated to notify the Laffittes of the pendency of any claim asserted against them before a judgment could be rendered against them for money damages. The "Justice Court Summons" failed to do so, and this failure prejudiced the Laffittes.

In addition, the "Justice Court Summons" is very confusing. R. at 30. It is directed "TO ANY LAWFUL OFFICER OF WAYNE COUNTY JUSTICE COURT" stating "[t]his is to

command you to summon: Laffitte, Linda."[11] It does not say Linda Laffitte is summoned into court, it says someone referred to as "you" is summoned to command "Laffitte, Linda". The sentence ends with "and have there this writ" which only further adds to the lack of clarity. The "Justice Court Summons" simply does not notify Linda Laffitte that Southern is suing her for money, or what she is supposed to do upon receipt of a "Justice Court Summons". As such, the default judgment entered against the Laffittes is void because the lack of notice violated their right to due process, and deprived the Justice Court of personal jurisdiction over the chose in action Southern sued the Laffittes upon.

THE LAFFITTES' COLORABLE DEFENSES

1. Southern violated Miss. R. Civ. P. 17(a) by failing to file its claim against the Laffittes in the name of Wayne General Hospital.

Southern's default judgment against the Laffittes should be vacated because Southern never had the right to file a claim against the Laffittes in its own name. Southern's claim against the Laffittes had to be filed in the name of Wayne General Hospital, the assignor. Miss Code Ann. 11-7-3. However, the court **"may"** later permit the assignee, Southern, to substitute itself as party plaintiff, "upon his application therefor". *Id.* (emphasis added). *See also Bolivar Compress Co. v. Mallett*, 104 So. 79 (Miss. 1925). Accordingly, this Court should vacate the default judgment due to Southern's violation of Miss. R. Civ. P. 17(a) for bringing suit against the Laffittes in Southern's name instead of Wayne General Hospital's name.

---

[11]It is unclear who "you" refers to in the "Justice Court Summons". In one sentence the pronoun "you" refers to any lawful officer of Wayne County Justice Court, but later in the Summons, "you" refers to Linda Laffitte as Defendant, without stating Linda Laffitte is a Defendant.

2. Southern was not permitted to file suit against the Laffittes through agents that were not authorized to practice law in Mississippi

Southern's default judgment against the Laffittes should be vacated because Southern and Melanie Gowin were not authorized to draft any documents or file the same in Justice Court to support Southern's alleged claims against the Laffittes. Miss. Code Ann. § 73-3-55, states:

> It shall be unlawful for any person to engage in the practice of law in this state who has not been licensed according to law. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished in accordance with the provisions of Section 97-23-43. The practice of law is engaged in when any person shall for direct or indirect promise write or dictate any paper or instrument of writing, to be filed in any cause or proceeding pending, or to be instituted in any court of this state, or give counsel or advice therein.

Id. (Emphasis added). The Mississippi Supreme Court held that a complaint signed only by an attorney not licensed to practice law Mississippi, was properly stricken from the record. *Mitchell v. Progressive Ins. Co.*, 965 So.2d 679, 683 (Miss. 2007). The *Mitchell* court relied upon Miss. R. App. P. 46(b)(11)(I) which states, "Any pleadings or other papers filed [by foreign attorneys] in violation of [the *pro hac vice* and local counsel requirements] shall be stricken from the record upon the motion of any party or by the court ... sua sponte." Southern and Melanie Gowin were not foreign attorneys. However as non-attorneys, they were similarly prohibited from drafting or filing any documents or pleadings in Justice Court on behalf of Southern or Wayne General Hospital pursuant to Miss. Code Ann. § 73-3-55. Accordingly, since the "Affidavits", "Suggestion or Garnishment" and "Responses" drafted for Southern and filed in Justice Court should be stricken, so should the default judgment which arose from those pleadings. *See* Miss. R. Civ. P. 41(b).

3. The Justice Court had no personal jurisdiction to enter default judgment.

The default judgment against the Laffittes should be vacated because the Justice Court

did not have personal jurisdiction to enter the default judgment. Southern never caused any documents to be served upon Harry Laffitte and the "Justice Court Summons" served upon Linda Laffitte deprived her of constitutionally guaranteed notice. A court must have jurisdiction, which is obtained through proper service of process including reasonable notice to the Defendant, in order to enter a default judgment against him. *Mansour v. Charmax Indus., Inc.*, 680 So.2d 852, 854 (Miss. 1996) *and McCain v. Dauzat*, 791 So.2d 839, 842 (Miss. 2001). Otherwise, the default judgment is void. *Id.* If a default judgment is void, the Circuit Court has no discretion and must set the judgment aside. *Id.* Accordingly, the Justice Court default judgment was void and must be vacated.

4. Southern's "Justice Court Summons" did not state a claim against the Laffittes.

This Court should vacate the default judgment for money damages entered against the Laffittes in Justice Court because Southern never filed or served a pleading that stated a cause of action against the Laffittes. The Mississippi Supreme Court has held that no judgment may be rendered against a defendant on a pleading that states no cause of action. *Bryant, Inc. v. Walters*, 493 So.2d 933, 938 (Miss. 1986). Since Southern identifies no document in the record that states a claim against the Laffittes - or even demands money from them - the default judgment must be vacated.

5. Southern's claim against the Laffittes was filed after the statute of limitations expired.

This Court should vacate the default judgment entered against the Laffittes because Southern drafted and filed its "Affidavits" in Justice Court after the three year statute of limitations expired on the chose in action against Linda Laffitte that Southern purchased from Wayne General Hospital. Pursuant to Miss. Code Ann. § 15-1-29, actions on open account are subject to a statute of limitations that expires three years after the claim on open account accrued.

Pursuant to Miss. Code Ann. § 15-1-31, a cause of action on open account accrues on the date the items or services billed on open account became due and owing.

This Court reviews statute of limitations issues under a *de novo* standard. *Marshall v. Kansas City S. Railways Co.*, No. 2006-CT-00519-SCT ¶14 (Miss. March 5, 2009). The application of a statute of limitations is a question of law. *Allstadt v. Baptist Mem'l Hosp.*, 893 So.2d 1083, 1086 (Miss. Ct. App. 2005). Since the Lafffittes raised the three year statute of limitations as a defense to Southern's open account claims, the Laffittes had the burden of proving that Southern's claim accrued more than three years before Southern brought this suit in Justice Court. *Huss v. Gaden*, 991 So.2d 162, 165 (Miss. 2008). Because the documents filed by Southern indicate all assigned claims arose more than three years before Melanie Gowin filed Southern's July 11, 2007, "AFFIDAVIT" in Justice Court, the Laffittes met their burden of proving Southern's claims were barred by the three year statue of limitations applicable to open account claims.

However, Southern has asserted that an exception applies to the three year statute of limitations on open accounts because Southern is a political subdivision of Mississippi and is therefore subject to no statute of limitations pursuant to Miss. Code Ann. 15-1-51. Southern has the burden of proving any exception applies to the three year general statute of limitations. *See e.g. Dew v. Langford*, 666 So.2d 739, 745 (Miss. 2005) (burden on plaintiff to establish exception to statute of frauds defense to enforcement of contract).

To meet this burden, Southern argues that it is a Mississippi subdivision because it allegedly was enforcing claims of Wayne General Hospital. Southern then claims that Wayne

General Hospital is a political subdivision because it was a "community hospital"[12] as defined by Miss. Code Ann. § 41-13-10(c). Southern argues that Southern was assigned Wayne General Hospital's claims against the Laffittes, which, according to Southern, not only permitted Southern to sue the Laffittes in its own name, but also permits Southern to be considered a Mississippi subdivision.

In support of this argument, Southern relies upon Miss. Code Ann. § 15-1-51, which states that the "[s]tatutes of limitations in civil cases shall not run against the state, or any subdivision or municipal corporation thereof ..." Southern then cites a decade old *per curium* opinion from the Fifth Circuit, *Parish v. Frazier*, 195 F.3d 761 (5th Cir. 1999), for the proposition that the statute of limitations does not run against a collection agency if the underlying debt was owed to a community hospital as defined by Miss. Code Ann. § 41-13-10.[13] Southern then contends that Wayne General Hospital is a subdivision of the state of Mississippi pursuant to the Mississippi Tort Claims Act, and that Southern is also a subdivision of Mississippi.

In the case *sub judice*, the Laffittes met their burden of establishing that all of Southern's claims are barred by the three year statue of limitations, and Southern has not met its burden of establishing it is a Mississippi subdivision. Instead of citing evidence, Southern relies upon *Wayne General Hospital v. Hayes*, 868 So.2d 997, 1004-1005 (Miss. 2004) which held the parties in that case did not dispute that in 2001, Wayne General Hospital was a community

---

[12]A "'community hospital' shall mean any hospital ... established and acquired by boards of trustees or by one or more owners which is governed, operated and maintained by a board of trustees."

[13]It should be noted that the collection agency in *Parish* hired an attorney to engage in the practice of law pertaining to the collection of the alleged debt.

hospital. However, *Hayes* did not hold Wayne General Hospital was a community hospital or a Mississippi subdivision.

Southern then argues that *Enroth v. Memorial Hosp. at Gulfport*, 566 So.2d 202, 206 (Miss. 1990) stands for the proposition that all community hospitals are subdivisions of Mississippi. In *Enroth*, Memorial Hospital at Gulfport brought suit against Enroth to recover a judgment lien. This Court in *Enroth* held that the evidence established that Memorial Hospital at Gulfport was subdivision of Mississippi, and since Memorial Hospital brought its claims in its own name, it was not subject to the statute of limitations applicable to all open account claims.

The case *sub judice* is distinguishable from both *Hayes* and *Enroth*. Southern brought suit in its own name against the Laffittes. Southern failed to offer any evidence before the Justice or Circuit Court that Wayne General Hospital was or is a "community hospital". In addition, it was Southern, not any hospital, who sued the Laffittes. Southern is not a subdivision of Mississippi. Southern is nothing more than a privately owned collection agency. Assuming *arguendo* that Wayne General Hospital is a "political subdivision" subject to no statute of limitations, Southern is not a "political subdivision" and is accordingly subject to the three year statue of limitations that applies to all open account claims.

In addition, *Parish* is distinguishable from the case *sub judice*. The Fifth Circuit in *Parish* held that a collection agency was a political subdivision when it is assigned a chose of action by a hospital and sues the consumer in its own because Gulfport Memorial Hospital "clearly retained control and ownership of the debt owed by Parish". *Parish*, 195 F.3d at 765.[14] In this case, there is no evidence that Southern or Wayne General Hospital is a subdivision of

---

[14]This holding in *Parish*, that a collection agency is a Mississippi political subdivision, and that a collection agency can sue consumers on behalf of hospitals in its own name, is wrong, and this Court is not bound to follow it.

Mississippi or that Wayne General Hospital retained any control over Southern's collection of the debt allegedly owed by the Laffittes. Since Southern's claim against the Laffittes is barred by the three year statute of limitations applicable to open account claims, and Southern did not prove it is a political subdivision of Mississippi, this Court should vacate the default judgment entered against the Laffittes.

6. Southern did not meet its burden of proving entitlement to money from the Laffittes.

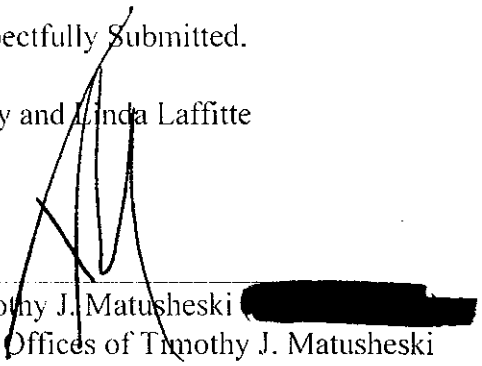
This Court should vacate the default judgment against the Laffittes because Southern failed to meet its burden of proving it was entitled to the damages Southern claimed under the open account statute. *See Natchez Elec. & Supply Co., Inc. v. Johnson*, 968 So.2d 358, 360 (Miss. 2007). *See also State Farm Fire & Cas. Co. v. Wightwick*, 320 So.2d 373, 375 (Miss. 1975)(Default judgment against State Farm on uninsured motorist claim by insured was vacated because insured failed to meet her burden of proving the uninsured motorist was negligent or caused any of her injuries.). Southern made no attempt to establish its claim before the Justice Court or Circuit Court. Therefore, since the default judgment against the Laffittes is unsupported by the record, this Court must vacate the default judgment against the Laffittes.

CONCLUSION

The Circuit Court's denial of the Laffittes' Motion to Vacate Default Judgment and dismissal of Linda Laffitte's counterclaim for wrongful garnishment was an abuse of discretion and must be reversed. The default judgment against the Laffittes should be vacated, the Laffittes' counterclaim against Southern for wrongful garnishment should be reinstated and this matter should be remanded to the Circuit Court which should be directed to apply the Miss. R. Civ. P. in this case and in all future civil appeals from Justice Court.

Respectfully Submitted.

Harry and Linda Laffitte



Timothy J. Matusheski [redacted]
Law Offices of Timothy J. Matusheski
PO Box 1421
Waynesboro, Mississippi, 39367
Phone: 601-735-5222
Fax: 601-735-5008

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I caused a true and correct copy of the above and foregoing to be served upon the following via first class mail, postage prepaid:

William V. Westbrook, III
PO Box 10
Biloxi, Mississippi 39502-0010

Judge Robert W. Bailey
PO Box 1167
Meridian, Mississippi 39302

This is the 9th day of March, 2009.