

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 2008-TS-01800

DARRELL KING AND MARY KING

APPELLANTS

VS.

**CHARLES E. BUNTON III
MISSISSIPPI HOUSING AUTHORITIES
RISK MANAGEMENT, INC,; and
HOUSING AUTHORITY OF THE CITY OF VICKSBURG**

APPELLEES

BRIEF OF APPELLANTS

ORAL ARGUMENTS REQUESTED

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CERTIFICATE OF INTERESTED PERSON

The undersigned counsel of record certifies that the following 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:

- A. Darrell King, Appellant
- B. Mary King, Appellant
- C. Charles Bunton, III, Appellee
- D. Mississippi Housing Authorities Risk Management, Inc.
- E. Adam K. Draney , Esq. Counsel for the City of Vicksburg
- F. Steven L. Lacey and David A. Barfield, Barfield & Associates, Attorneys at law, P.A., Counsel for Appellants
- G. Isadore W. Patrick, Circuit Judge, Warren County, Mississippi
- H. Housing Authority of the City of Vicksburg, Appellee
- I. T. Jackson Lyons, Esq., Counsel for Appellants in Cause No. 2007-IA-00621-SCT
- J. Raju Aundre' Branson, Schwartz and Associates, counsel for Appellants

Respectfully submitted, this the 21st day of June, 2009.


Raju Aundre' Branson

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STATEMENT REGARDING ORAL ARGUMENT

Appellants believe oral arguments would be helpful to this Court in this appeal.

STATEMENT OF THE ISSUES

- I. Whether the trial Court erred in dismissing the Mississippi Housing Authorities Risk Management from the Complaint before any substantive discovery was obtained from the identified parties?
- II. Whether Estoppel applies to the Mississippi Torts Claims Act defenses put forth by the Appellees in this case?
- III. Whether the trial Court erred in setting aside the entry of Defaults against the Defendants Charles Bunton and Mississippi Housing Authorities Risk Management?

STATEMENT OF THE CASE

This case arises out of a car accident where Plaintiffs, Darrell and Mary King, were passengers involved in a motor vehicle accident involving Charles Bunton which occurred on August 26, 2004. On August 15, 2005, Plaintiffs sent a Mississippi Torts Claims Act Notice of Claims letter to the Mississippi Housing Authorities Risk Management, the Executive Director of the Housing Authority of the City of Vicksburg, the City of Vicksburg, Mississippi's Attorney General, Mississippi Department of Housing and Urban Development and the United States Department of Housing and Urban Development. (RV 4 at p. 425-445)(RE 2). On August 22, 2005, Plaintiffs filed a civil complaint against Charles Bunton, Mississippi Housing Authorities Risk Management and the City of Vicksburg incorrectly named as the "Housing Authority of the City of Vicksburg" in the Complaint. (RV 1 at p. 6-10)(RE 3). On April 19, 2006, Defendant Charles Bunton filed a motion to dismiss based on the failure to comply with the 90 day waiting period of the Mississippi Torts Claims Act. (RV 1 at page 17)(RE 4). On August 31, 2006, the Circuit Court Judge Isador Patrick granted Plaintiff's request for leave to file an Amended Complaint to add the Housing Authority of the City of Vicksburg as a party to the complaint. (RV 3 at p. 341)(RE 5). The Court dismissed the City of Vicksburg as a party. (RV 3 at p. 341)(RE 5). On January 3, 2007, Plaintiffs filed a Motion to Compel discovery for all Defendants. (RV 3 at p. 362)(RE 6). On January 5, 2007, Defendants filed a second Motion to Dismiss based upon the MTCA ninety-day notice requirement and in the alternative the statute of limitations. (RV 3 at p. 388)(RE 7). On April 5, 2007, the Circuit court Ordered that the

Vicksburg Housing Authority was a proper defendant and dismissed the Mississippi Housing Authorities Risk Management. (RV 4 at p. 476)(RE 8) The Circuit Court further ordered that the Amended Complaint related back to the date of the original complaint after the 90 day waiting period of the MTCA. (RV 4 at p. 476)(RE 8) Defendants filed a Petition for Permission to Appeal that this Court granted on June 14, 2007. On September 25, 2008, this Court ordered that the Circuit Court's order be reversed. (RV 4 at p. 489-495)(RE 9). On October 1, 2008, the Circuit Court of Warren County entered an order dismissing the Plaintiffs suit. (RV 4 at p. 496)(RE 10) On October 30, 2008, the Plaintiffs filed this direct appeal. (RV 4 at p. 497)(RE 11).

STATEMENT OF FACTS

On August 26, 2004, Mary and Darrell King, Plaintiffs, were in a motor vehicle accident with Charles Bunton. The accident report for the accident lists Charles Bunton as driving a vehicle owned by Mississippi Housing Authorities Risk Management. (RV 1 at p. 47)(RE 12).

On October 19, 2004, counsel for Plaintiff forwarded an affidavit and notification letter to the Mississippi Housing Authority P.O. Box 865 Vicksburg, MS 39180 in regards to the August 26, 2004 accident. (RV 1 at p. 63)(RE 13). Plaintiffs were subsequently contacted by Gallagher Bassett Services, Inc. as representatives for their client Mississippi Housing Authorities. Negotiations occurred between Plaintiffs and Gallagher Bassett from 2004 to August 12, 2005 in regards to the accident. (RV 1 at p. 48)(RE 14) All correspondence from Gallagher Bassett lists their clients in regards to the accident that occurred on August 26, 2004 as "Mississippi Housing Authority." (RV 1 at p. 48)(RE 14) Mississippi Housing Authorities Risk Management is not subject to the provisions of the Mississippi Torts Claims Act (MTCA). (Trial Transcript p. 80)(RE 15).

On August 15, 2005, Plaintiffs sent a Mississippi Torts Claims Act Notice of Claims letter to the Mississippi Housing Authorities Risk Management, the Executive Director of the Housing Authority of the City of Vicksburg, the City of Vicksburg, Mississippi's Attorney General, Mississippi Department of Housing and Urban Development and the United States Department of Housing and Urban Development. (RV 4 at p. 425-445)(RE 2). These notices of claims letters were sent to all entities out of an abundance of caution to give additional notice of

this claim.

On August 22, 2005, Plaintiff's filed a Complaint against Charles Bunton, Mississippi Housing Authorities Risk Management and the City of Vicksburg improperly named in the complaint as the Housing Authority of the City of Vicksburg. (RV 1 at p. 6-10)(RE 3). The Housing Authority of Vicksburg was not sued in the August 22, 2005 Complaint. The style of the original complaint improperly lists "The Housing Authority of the City of Vicksburg" as a party, but the actual party in that original Complaint was the City of Vicksburg as listed in the "parties" section of the Complaint. (RV 1 at p. 7)(RE 3).

On December 16, 2005 , Defendant Charles Bunton was served with a copy of the summons and complaint. On December 19, 2005, Plaintiffs made a motion for additional time to serve the Defendant Mississippi Housing Authorities Risk Management. (RV 1 at p. 14)(RE 16). On December 21, 2005, the Circuit Court granted an extension of 120 additional days to serve all remaining defendants. (RV 1 at p. 16)((RE 17)

On February 28, 2006, a copy of the Complaint and Summons was sent to Gallagher Bassett Services, Inc.

On April 19, 2006, Defendant Charles Bunton filed a motion to dismiss based on the failure to comply with the Mississippi Torts Claims Act. (RV 1 at p. 17)(RE 4). The Defendant's Motion to Dismiss improperly stated that Charles Bunton was an employee of the City of Vicksburg. (RV 1 at p. 20)(RE 4). Accordingly on April 21, 2006, the City of Vicksburg improperly named in the suit as the "Housing Authority of the City of Vicksburg" was served with the Summons and Complaint. On April 20th, 2006, Thomas Robinson accepted service of process of the Summons and Complaint for the Mississippi Housing Authority Risk

Management.

On May 1, 2006, a clerk's Entry of Default was entered against Charles Bunton for failure to answer or respond to the Complaint within 30 days pursuant to Rule 55(a) of the Mississippi Rules of Civil Procedure.

On May 24, 2006, a clerk's Entry of Default was entered against the Mississippi Housing Authorities for failure to answer or respond to the Complaint within 30 days pursuant to Rule 55(a) of the Mississippi Rules of Civil Procedure.

On August 31, 2006, the Circuit Court granted Defendant's motions to set aside the Clerk's entry of Default and leave to File an Answer to Amended Complaint. Also, the court granted Plaintiff's Motion to Amend Complaint to include the Housing Authority of the City of Vicksburg as party and dismissed the City of Vicksburg improperly sued as the "Housing Authority of the City of Vicksburg." (RV 3 at p. 341,342)(RE 5).

On October 2, 2006, Defendants filed its Answers and Defenses to the Amended Complaint (RV 3 at p. 350)(RE 18). On October 9, 2006, Plaintiffs submitted Discovery request to all Defendants via Defense counsel for Defendants. (RV 3 at p. 360)(RE 19)

On January 3, 2007, Plaintiffs filed a Motion to Compel Discovery responses for all Defendants (RV 3 at p. 362)(RE 6).

On January 5, 2007, Defendants filed a Motion to Dismiss the Amended Complaint for failure to comply with the MTCA.

On April 5, 2007, the Circuit Court dismissed the Mississippi Housing Authorities Risk Management and denied the Defendant's Motion to Dismiss.

The Supreme Court granted the Defendants' motion for interlocutory appeal. On

September 25, 2008, the Supreme Court reversed and remanded the Circuit Court's order denying the Motion to dismiss.

On September 30, 2008, the Circuit Court granted the Defendant's Motion to Dismiss and dismissed the cause without prejudice pursuant to the Supreme Court's order. This order was filed on October 1, 2008.

SUMMARY OF ARGUMENT

I.

The Mississippi Housing Authority Risk Management should not have been dismissed from this case. There is conflicting evidence supporting that they are a proper party in this suit. There has been no substantial discovery in this matter because of the successive filings of Defendant's Motions to Dismiss. There have been no depositions taken in this matter of any party or witness. The true actions of Charles Bunton have not been revealed or disclosed by him personally in these proceedings. Full discovery should have occurred before Mississippi Housing Authority Risk Management was dismissed from this suit in accordance with *Selmon v. Braden*, 765 So.2d 546 (Miss 2000) and *Owens v. Thomae*, 759 So.2d 1117 (Miss. 1999). The order of the trial court should be reversed.

II.

Because of the representations put forth by representatives of the Vicksburg Housing Authority, estoppel should apply to the defense of notice requirement and waiting period of the MTCA in accordance with *Trosclair v. Mississippi Department of Transportation*, 757 So.2d 178 (Miss. 2000), *Smith County School District v. Mcneil*, 743 So.2d 376 (Miss. 1999) and *Ferrer v. Jackson County Board of Supervisors*, 741 So.2d 216 (Miss. 1999). Charles Bunton and the representative at Gallagher Basset Services represented that the appropriate party here was the Mississippi Housing Authority. (RV 1 at p. 47)(RE 12)(RV 1 at p. 48)(RE 14). This entity is not subject to the MTCA. Accordingly, suit against them was proper after the

inapplicable notice of claims letters were sent. Gallagher Basset Services, Inc. on behalf of the Housing Authority of Vicksburg, responded to Plaintiffs after a notification letter was sent to Mississippi Housing Authority. Here, the original complaint was filed against the Mississippi Housing Authority Risk Management based on those representations from the Housing Authority of Vicksburg's representatives. Estoppel should apply here to the MTCA defenses for the Housing Authority of Vicksburg because of Plaintiffs' reliance on those representations to Plaintiffs detriment.

III.

The trial court erred in setting aside the Clerk's Entry of Default against Charles Bunton and the Mississippi Housing Authorities Risk Management. The Summons is clear that failure to respond within 30 days would cause for a judgement to be held against them. Both parties were aware of this suit. Moreover, the delay in responding to the Complaint resulted in an undue prejudice and unjust results to the Plaintiffs.

ARGUMENT

I.

The Mississippi Housing Authorities Risk Management Should Not Have been Dismissed as a Party

The accident report for the accident that is subject to this appeal lists Mississippi Housing Authorities Risk management as the owner of the vehicle being driven by Charles Bunton. (RV 1 at p. 47)(RE 12). The information in regards to the vehicle being driven by Charles Bunton arguably came from the defendant Charles Bunton himself. Moreover, the Gallagher Bassett Services representative for Vicksburg Housing Authority lists in its correspondence that the “Mississippi Housing Authority” is its client in regards to the August 24, 2007 accident. (RV 1 at p. 48) (RE 14)

The lack of discovery in this case has not allowed plaintiffs to obtain the necessary answers. Defendant Charles Bunton has never been made available for discovery. In fact, the Court granted the Plaintiff’s motion to compel to produce discovery from Charles Bunton (RV 4 at p. 479)(RE 20). Similarly, a motion to compel was filed to produce Discovery from all Defendants. (RV 3 at p. 362) (RE 6) There have been no depositions taken by any party or witness in this matter. Defendants’ counsel represented that Charles Bunton could not be found. (Trial Transcript at p. 68 and 91)(RE 21). However, Plaintiffs found Defendant when he was served the Summons, Complaint and Discovery Requests on December 16, 2005.

In *Selmon*, the Court held that the trial courts’ grant of Summary Judgment dismissing a party was premature absent the completion of discovery. *Selmon v. Braden*, 765 So.2d 546, 556

(Miss. 2000). In *Selmon*, the trial court granted Defendant Braden's Motion to Dismiss pursuant to the Mississippi Torts Claims Act § 11-46-11(3) claiming to be an employee of the State *Id.* at 550. There the lower court allowed limited discovery to determine the Defendants' true employer, but did not allow depositions or full discovery. *Id.* Plaintiffs submitted discovery requests to the Defendants, requested full discovery responses and depositions. *Selmon v. Braden*, 765 So.2d 546, 554. Plaintiffs' requests were denied and Motion for Summary Judgment was granted dismissing Defendant Braden. There, this Court held that Plaintiffs demonstrated in detail their need for discovery and reversed the trial court's Summary Judgment for further Discovery. *Id.* at 560. Accordingly, this court reversed the trial court's order dismissing the Defendant. *Id.*

Similarly in *Owens*, this Court reversed a trial court's order granting summary judgment because discovery was not completed. *Owens v. Thomae*, 759 So.2d 1117 (Miss. 1999). In *Owens*, Plaintiffs requested discovery in regards to the employment status of the defendant Thomae. *Id.* at 1120. This Court held that, "Contested status issues invariably require discovery." *Owens v. Thomae*, 759 So.2d 1117, 1122 (Miss. 1999). Plaintiffs did not take any depositions of the parties. There, because there was no discovery in regards to the employment status of the Defendant Dr. Thomae, the Court reversed the lower court's Summary Judgment and ordered that further discovery should have been permitted. *Id.*

In this case, the court should not have dismissed the Mississippi Housing Authorities Risk Management without full discovery. Here, Plaintiff's served defendant Mississippi Housing Authorities Risk Management and Charles Bunton with interrogatories and Request for productions. There was no response to those discovery requests by Charles Bunton (Trial

Transcript at p. 91). (RE 21) Moreover, no depositions have been taken in regards to any parties or witnesses. Plaintiffs have diligently attempted to get discovery in this case. In fact, the Court granted the Plaintiff's motion to compel to produce discovery from Charles Bunton (RV 4 at p. 479)(RE 20). "No damage can be done to either party or to the law by allowing as full and complete a development of the actual facts of this case that skillful attorneys may accomplish. This ultimately works to the benefit of everyone." *Smith County School District v. McNeil*, 743 So.2d 376, 379 (Miss. 1999).

In accordance with this Court's precedents in regards to dismissing a party without full discovery, the trial court's order to dismiss Mississippi Housing Authorities Risk Management should be reversed and full discovery should be obtained from the appropriate parties including Charles Bunton, Mississippi Housing Authorities and the Housing Authority of Vicksburg.

II.

Estoppel Should Be Applied to the MTCA Defenses Put Forward by Appellees

Substantial Compliance With the Notice Requirement Warrants Estoppel Here

This Court affirmed that the actions of the [insurance] carrier may be sufficient to estop the defendant from asserting lack of actual notice for the Mississippi Torts Claims Act. *Smith County School District v. McNeil*, 743 So.2d 376, 379 (Miss. 1999). In *Smith County School District*, the Defendant raised the defense of failure to comply with the notice provisions of § 11-46-11(1) of the MTCA. *Id.* at 377. There, this Court noted that there were negotiations between the insurance carrier for the Defendant and the Plaintiff before suit was filed. *Id.* at 379. This Court stated as follows:

There was a letter sent from the insurance carrier to McNeil, confirming a previous

conversation between McNeil and the carrier, initiated by the carrier, which indicates evidence that the carrier was notified of the claim by someone from the school district. This warrants further discovery as to how the carrier became to be notified of the accident, especially in light of the fact that it made the initial contact with McNeil.

Smith County School District v. McNeil, 743 So.2d 376, 379 (Miss. 1999).

This Court remanded the case to the trial court to determine if the actions of the carrier were sufficient to estop the defendant from asserting lack of actual notice of the claim. ***Id.***

Also, this Court has held that “prolonged, continuous and extensive” communication between plaintiff and the Board, substantially complied with the notice requirement of the MTCA and constituted waiver and estopped the defense of the notice requirement of the MTCA. ***Ferrer v. Jackson County Board of Supervisors***, 741 So.2d 216, 218 (Miss. 1999).

Here, a letter was sent to the Mississippi Housing Authorities on October 19, 2004. (RV 1 at p. 63)(RE 13). There was a response from Gallagher Basset Service, Inc. On behalf of their client Mississippi Housing Authority. Negotiations occurred with Gallagher Bassett Services, Inc. from 2004 until August 12, 2005. (RV at p. 48)(RE 14). The carrier, Gallagher Basset Services, Inc., actively administered this claim for more than eight months. The carrier for the Defendant had actual notice of the parties involved and a demand for damages including a request by an interested party to be reimbursed.

Because of the Gallagher Bassett Services, Inc. actions in administering this claim for Mississippi Housing Authorities and/or Housing Authority of Vicksburg for more than eight months before suit was filed, the Appellees should be estopped from presenting the defense of failure to comply with the MTCA 90 day waiting period before suit was filed.

***Appellees Should Be Equitably Estopped Because of its Misrepresentations
Relied Upon by Plaintiff***

Counsel for Appellees has admitted that Mississippi Housing Authority Risk Management is not a Mississippi Tort Claims Act entity. (Trial Transcript at p. 80)(RE 15). However, the record reflects that representatives for Housing Authority of Vicksburg put forth representations that the “Mississippi Housing Authority” is the entity involved in the underlying accident. (RV 1 at p. 47)(RE 12). (RV 1 at p. 48)(RE 12) As a result of these representations, Plaintiffs filed suit against Mississippi Housing Authority Risk Management, a non MTCA entity. In *Trosclair v. Mississippi Dept. of Transp.*, 757 So.2d 178,181 (Miss. 2000), a unanimous Court held that a person who has relied to the person’s detriment on another party’s representation may invoke the power of equity to estop a party from claiming the benefits of the provisions of the MTCA.

Trosclair was a MTCA case in which a representative of the State Department of transportation (MDOT) told the plaintiff’s lawyer that the person potentially responsible for the defective road work having caused the accident was a private contractor not MDOT. The trial court granted the MDOT’s motion for summary judgment because of the failure to comply with the notice requirement. *Id.* at 180. There, this court held that equitable estoppel applied to the notice requirement and the statute of limitations of the MTCA. *Id.* at 181. This Court said that “While there is no Mississippi precedent applying the equitable estoppel doctrine to the statute of limitations under the Torts Claims Act, logic and case law suggests that where there is inequitable conduct, in order to avoid serious injustice, equitable estoppel should be applied.”*Id.*

This Court held that “ the issue becomes a question for the trier of fact when there is evidence to support a finding that plaintiff reasonably relied on the actions of the defendant to his detriment.” *Id.*, quoting *Mississippi Dep’t of Transp.v. Stringer*, 748 So.2d 662, 668(Miss. 1999)

In this case, Mississippi Housing Authority Risk Management is not subject to the MTCA. The accident report lists Charles Bunton as operating a vehicle owned by Mississippi Housing Authority Risk Management.(RV 1 at p. 47)(RE 12). Moreover, all correspondence with Gallagher Bassett Services, Inc. lists its client as “Mississippi Housing Authority.” (RV at p. 48)(RE 14). The Housing Authority of Vicksburg through its representatives represented that it was the Mississippi Housing Authorities and Mississippi Housing Authorities Risk Management which is not subject to the MTCA.(RV 1 at p. 47)(RV 1 at p. 48) Plaintiffs filed suit against the Mississippi Housing Authority Risk Management to its detriment in reliance of those representations. (RV 1 at p. 6 -10)(RE 3) Subsequently, the Housing Authority of Vicksburg filed its motion to dismiss for Plaintiffs failure to comply with the 90 waiting period of the MTCA which the Court granted on September 30,2008. This court has unanimously held that this type of misrepresentation when relied upon by plaintiff, prevents a party from claiming the defenses of the notice requirement and statute of limitations of the MTCA. *Trosclair v. Mississippi Dept. of Transp.*, 757 So.2d at 181 (Miss. 2000).

“Subjective intent to mislead is unnecessary, so long as the acts of the party sought to be estopped, viewed objectively, were calculated to and did mislead the other party.” *Christian Methodist Episcopal Church v. S & S Constr. Co., Inc.*, 615 So.2d 568, 571 (Miss. 1993).

This Court has long stated that equitable estoppel is available for individuals against

governmental entities. *Westbrook v. City of Jackson*, 665 So.2d 833, 839 (Miss. 1995), citing *Witherspoon v. City of Meridian*, 13 So. 843, 844 (Miss. 1891). On other occasions, this Court applied the doctrine of estoppel to hold that governmental bodies in Tort Claims Acts cases were estopped by their actions from raising non-compliance with the pre-suit notice of claim requirement of *Miss. Code Ann. § 11-46-11* (Supp. 1998). *Ferrer v. Jackson County Board of Supervisors*, 741 So.2d 216,219 (Miss. 1999); *Carr v. Town of Shubuta*, 733 So.2d 261, 265 (Miss. 1999); see also *Mississippi Dept. Of Public Safety v. Stringer*, 748 So.2d 662 (Miss. 1999).

In accordance with this Court's unanimous holding, the Defendant should be equitably estopped from raising the defense of the MTCA and this matter should be remanded to the trial court for further proceedings.

III.

The Trial Court Erred in Setting Aside the Entry of Default Against the Defendants Charles Bunton and Mississippi Housing Authorities Risk Management

Defendants Charles Bunton and Mississippi Housing Authorities Risk Management did not Answer the Complaint or otherwise respond in accordance with Rule 55(a). *Miss Rules of Civ. Procedure Rule 55*. Rule 55 (c) provides relief from an entry of default entered by the clerk. *Miss Rules of Civ. Procedure Rule 55. Pointer v. Huffman*, 509 So.2d 870,875 (Miss. 1987) The Court may set aside an entry of default for good cause. *Id.* "Good cause shown requires the moving party to provide an explanation for the default or give reasons why vacation of the default would serve the interests of Justice. *Windmon v. Marshall*, 926 So.2d 867, 872 (Miss. 2006); *Allstate Ins. Co. v. Green*, 794 So.2d 170,179 (Miss. 2001)(Waller, J. Concurring).

Here, Defendants did not show good cause why there was no answer to the Complaint in the time required by the Mississippi Rules of Civil Procedure.

On December 16, 2005, Defendant Charles Bunton was served with a copy of the summons and complaint that stated he must Answer or otherwise defend within 30 days. On April 19, 2006, Defendant Charles Bunton filed a motion to dismiss based on the failure to comply with the Mississippi Torts Claims Act. (RV1 at p.17)(RE 4). This is more than 120 days after the Defendant Charles Bunton was served with the Complaint. On May 1, 2006, a clerk's Entry of Default was entered against Charles Bunton for failure to answer or respond to the Complaint within 30 days pursuant to Rule 55(a) of the Mississippi Rules of Civil Procedure. (RV 1 at p.30-32)(RE 22).

Similarly, On April 20th, 2006, Thomas Robinson accepted service of process of the Summons and Complaint for the Mississippi Housing Authority Risk Management which stated that there must be an Answer or otherwise defense within 30 days. On May 24, 2006, a clerk's Entry of Default was entered against the Mississippi Housing Authorities for failure to answer or respond to the Complaint within 30 days pursuant to Rule 55(a) of the Mississippi Rules of Civil Procedure. (RV 1 at p. 105-107)(RE 23).

On August 31, 2006, the Circuit court granted Defendants motion to set aside entry of default and be allowed to Answer the Complaint. (RV 3 at p. 341)(RE 5). The trial court erred in allowing the Defendants to Answer or Defend the complaint after failing to answer or respond in accordance time designated in the Rules of Civil Procedure.

In *Guaranty National Insurance Company*, this court held that the duty to answer a complaint must be taken seriously. *Guaranty National Insurance Company v. Pittman*, 501

So.2d 377, 388 (Miss. 1987). The Court held that while a defaulted party may have been confused, it was no excuse for the fact that he had been sued and should respond. This Court has further upheld default judgments involving experienced persons that deal with insurance claims and litigation. *Pointer v. Huffman*, 509 So.2d at 876.

Also, this Court noted that the failure to grant a default judgment may prejudice the Plaintiffs. "It requires no great insight to know that a year's postponement of a trial which will turn on a witness's memories regarding the split second event - a motor vehicle accident - will often substantially prejudice one or both of the parties in terms of the common human phenomenon of loss of memory of specific events over time, not to mention the fact that the injured plaintiff is without a resolution to her claim for that period." *Guaranty National Insurance Company v. Pittman*, 501 So. 2d. at 388.

Here, plaintiffs have been prejudiced by the Defendant being allowed to Answer and respond to complaint that was served on at least one defendant more than 120 days before any response was made. This delay is even more prejudicial to the Plaintiffs in light of the suggested MTCA defenses presented. If Defendant Charles Bunton had answered the complaint or otherwise responded within 30 days of being served on December 16, 2005 in accordance with the Rules of Civil Procedure, then the appellate issues now and previously presented to this Court would have been moot as Plaintiff could have corrected any deficiencies noted by a timely filed response from the Defendant. Accordingly, the trial court erred in setting aside the Clerk's entry of default.

The trial court's order setting aside the entry of defaults against the defendants should be reversed and this case should be remanded back to the Circuit Court of Warren County.

CONCLUSION

Here, the trial court erred in dismissing the defendant Mississippi Housing Authorities Risk Management without any discovery or depositions. There is conflicting evidence showing the true status of Charles Bunton. Moreover, full discovery should occur in this case to allow fair responses from all parties in regards to the unanswered discrepancies in this case. Also, because of the actions of the defendants, through its representatives, the Defendants should be estopped from claiming the notice requirement or the 90 day waiting period defenses of the MTCA. Finally, in light of the time that has passed in regards to the Defendants responding to the Complaint and the undue prejudice it has caused the Plaintiffs, the trial Court's order setting aside the entry's of Default should be reversed and this matter should be remanded to the Circuit Court of Warren County for hearings on damages alone.

CERTIFICATE OF SERVICE

I, Raju Aundre' Branson, attorney for Appellants, Darrell and Mary King, do hereby
certify that I have this day caused a true and correct copy of the foregoing document to be mailed
via United States mail to the following:

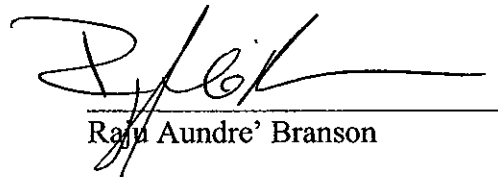
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CIRCUIT COURT JUDGE

SO CERTIFIED, this the 22nd day of June, 2009.



Raju Aundre' Branson