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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 2008-CA-01937

P. GAYLE MOORMAN

APPELLANT

FILED

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SUPREME COURT
COURT OF APPEALS

VS.

GEORGE T. CROCKER

APPELLEE

APPEAL FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL DISTRICT OF YALOBUSHA COUNTY, MISSISSIPPI

APPELLANT'S CASE IN CHIEF

ORAL ARGUMENT REQUESTED

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IN THE SUPREME COURT OF MISSISSIPPI

P. Gayle Moorman — Appellant

vs. — Cause #2008-CA-01937

George T. Crocker — Appellee

Certificate of Interested Persons

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

Honorable Andrew Baker
Circuit Judge

George T. Crocker, Appellee
Brandon Crocker
Lee Crocker

Thomas Defer, Esq.
Counsel for Appellee

P. Gayle Moorman, Appellant
Courtney Butler
Joshua Butler

R. Stewart Guernsey, Esq.
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STATEMENT OF ISSUES

1. Did the Circuit Court err in denying Plaintiff's Motion to Dismiss or For Summary Judgment on the related bases of:

    a) Res Judicata;

    b) MRCP 13; and

    c) "Claim-splitting?"

2. Did the Circuit Court err in failing to grant Plaintiff a de novo hearing after denying her Motion to Dismiss or For Summary Judgment?

1. Statement of the Case

This is a lawsuit about a failed unilateral romance. Appellant will unapologetically duplicate much of the briefing and argument included in the record.

For some time, Gayle Moorman and George T. Crocker were friends. On information and belief, Crocker's intentions were, for years, romantic. Mrs. Moorman's wishes were initially to be only friends.

On or about January 15, 2006, Mrs. Moorman was told by her husband, Gary Moorman, to leave the marital home and take her belongings. The marriage being at an end, Mrs. Moorman left the home. At the time, show owned a trailer which was rented to a tenant. Therefore, she had nowhere else to go.

When Mr. Crocker offered her shelter, she accepted. For three (3) weeks to a month the two cohabited under his roof. During this period, (indeed on January 16, 2006), Mr. Crocker loaned Ms. Moorman $4,000.00 to buy a car for her daughter.

On or about February 24, 2006, Mrs. Moorman ended her residency with Crocker, no long wanting to have any involvement with him. By this time, Moorman's tenant had moved, so she moved her belongings into her trailer. Crocker resisted her leaving and asked her to stay. She refused. That night while staying at her mother's house, her trailer was burned to the ground with all of her possessions in it. Later phone calls from John Doe indicated a trail back to Crocker, his children and agents as having knowledge of the arson.

For the next several months, Mrs. Moorman borrowed a car from a relative. This of course, created inconvenience for the lender. Thereafter, for approximately three (3) months, Moorman relied on rides from friends, and borrowed cars to get to work.

On or about Aril 15, 2006, Crocker approached Moorman to "help" her again. He offered (and did) lend Moorman Ten Thousand Dollars ($10,000.00) in cash to "put down" on a car for herself. She purchased a 2006 Nissan Altima with Crocker as co-signer and co-title holder. While his name was on the promissory note and title, he had no legal right to possession of the car without prior judicial action.

On or about December 9, 2006, without court order, judicial process or any color of legal right, Crocker took the car from Moorman's driveway before she got out of bed. Mrs. Moorman, not knowing where to look for the car, called the police who found the car at Crocker's and so informed Mrs. Moorman. Since he was on the title, the police declined to arrest him without further authority (as was proper).

Thereafter, Mrs. Moorman's daughter received a call at her home, threatening to burn the new Moorman home down, as well as taunting her about the loss of her mother's car. Although the call was "anonymous", the daughter, Courtney Butler, was able to put the call on speaker phone. The caller was identified by a minor child, a friend of Courtney, who recognized the caller's voice as being that of Brandon Crocker, one of the children of George T. Crocker. This call occurred on or about December 11, 2006. The caller indicated, by his threats, that he "knew who" had burned the trailer

down. In addition, both minor children of George T. Crocker harassed the children of Mrs. Moorman at school by taunting them about their mother's "loss" of the car.

Mrs. Moorman filed a Complaint For Protective Order, Reformation of Chattel Mortgages, Promissory Note and Car Title in the Chancery Court of the Second Judicial District of Yalobusha County, Mississippi. The original Complaint was filed on December 19, 2006, including a prayer that:

"... E) That the [Chancery] Court will find Defendant [Crocker] to be in breach of his contract with Plaintiff [Moorman] and to Cancel the same as to all obligations of Plaintiff [Moorman] to Defendant [Crocker]." (TR. 40).

On December 29, 2006, Mrs. Moorman filed an Amended Complaint, containing the same prayer for relief. (TR. 103).

On January 19, 2007, Crocker filed Defendant's Answer and Affirmative Defenses to Plaintiff's Amended Complaint For Protective Order, Reformation of Chattel Mortgages, Promissory Notes and Car Title and For Additional Relief and Counter-Suit for Damages in the Chancery Action. (TR 42, et seq). As Exhibit "A," Crocker attached what purported to be a memorandum of the "Nissan" loan from Crocker to Moorman. However, the only "Exhibit" is at (TR. 52). There was no signature by Mrs. Moorman on the Exhibit, (TR. 52). See also (TR. 48), referencing Exhibit "A."

In the course of litigating the Chancery case, settlement negotiations began. On December 29, 2006, Crocker rejected an initial offer from Mrs. Moorman. (TR. 111). In a counter-offer, Crocker, by counsel, specifically raised the issue of the earlier car loan for

Mrs. Moorman's daughter. As above, he attached the note on that loan as Exhibit "A" to his counter-suit.

Eventually, settlement was achieved. An Agreed Mutual Protective Order was entered in Chancery on March 20, 2007. (TR. 104-05). The Agreed Order included the following language:

"IT IS, THEREFORE, ORDERED:

1. All contact among and between the parties shall cease forthwith;
2. On pain of contempt, all parties shall return all property belonging to the party opposite except the Nissan Altima...;
3. All Defendants shall cease to telephone, speak to, approach, or in any way try to contact any Plaintiff.... No Defendant shall harass, annoy, disturb, threaten or speak to any Plaintiff by any means." (Id).

The clear meaning of the Order, signed by counsel for both parties and by the Chancellor, was that all matters, (legal matters included), between and among the parties were ended. Communication, by any or all means, was at an end.

Nevertheless, on or about June 1, 2007, Crocker filed in Yalobusha County Justice Court to collect on the loan made in January, 2006, to buy a car for Mrs. Moorman's daughter. Judgment was granted by the Justice Court on July 17, 2007. Moorman appealed the Justice Court Judgment on July 20, 2007, expecting a "trial de novo."

As her first line of defense, Moorman filed a Motion to Dismiss or, In the Alternative, Motion For Summary Judgment, and Motion For Attorney Fees. This

Motion was heard on November 29, 2007, and a denial entered on December 7, 2007. Thereafter, Moorman filed her Motion For Expedited Trial Setting or, in the Alternative, for MRCP Rule 54 (b) Certification. On July 17, 2008, the Circuit Court entered its Rule 54 (b) Order, finding that Moorman was not entitled to a trial de novo, "her terminal motion having failed." (TR. 119). Moorman appealed to this Court on August 12, 2008.

Thereafter, Crocker filed, (in the Circuit Court), a Motion to Dismiss Appeal on the ground of Accord and Satisfaction. (TR. 124). Apparently thinking better of it, Crocker never pursued this ill-advised motion.

2. Summary of the Argument

Appellant Moorman assigns two errors. First, she asserts that the Justice/Circuit Court lawsuit is barred since it was specifically raised by Crocker in settlement discussions in the Chancery Suit. This is true for several reasons: 1) Res Judicata; 2) MRCP 13; and 3) claim-splitting. Appellant acknowledges that her Motion to Dismiss neither mentioned "claim-splitting" nor Rule 13. However, Crocker's Response cited Rule 13 (b) (erroneously), making it an error preserved on appeal. In Channel v. Loyacano, 954 So. 2d 415, 424 (Miss. 2007), the Mississippi Supreme Court identified "claim-splitting" as "[o]ne of the main concerns" to be prevented by the doctrine of RES JUDICATA. Hence, it is implied by law as an appealable issue where res judicata is denied.

Secondly, Moorman appeals the denial of her Motion For Expedited Hearing on the ground that her "terminal motions" were denied. Moorman asserts that she was

entitled to a full trial de novo despite the (erroneous) denial of her Motion to Dismiss, etc. While she will brief this error out of an abundance of caution, Moorman asserts that the first error requires reversal and rendering, making this second error surplus age.

3. Argument

a) The trial court erred by denying Summary Judgment (and attorney fees) on the basis res judicata as to a claim raised in a settlement negotiation in a prior lawsuit.

1) RES ADJUDICATA

Plaintiff's Justice Suit should have been dismissed with prejudice in accordance with the doctrine of res judicata. In Mississippi, res judicata operates to bar all issues, claims and defenses in a subsequent suit involving the same parties where the issues, claims and defenses were either brought or raised or could have been brought or raised in that initial suit. Quinn v. Estate of Jones, 818 So. 2d 1148, 1151(Miss. 2002). The doctrine itself "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). The Mississippi Supreme Court, quoting the United States Supreme Court, has observed that res judicata "is a doctrine of public policy designed to avoid the expense and vexation attending multiple lawsuits, conserve judicial resources, and foster reliance on judicial action by minimizing the possibilities of inconsistent decisions." Id. (quoting Montana v. United States, 440 US 147, 153-54 (1979)).

Mississippi law[1] is clear that for res judicata to apply, four identities must be found:

[1] The Fifth Circuit Court of Appeals has held that in order "to determine the preclusive effect of a prior Louisiana state court judgment, if any, this court must apply Louisiana law." La Frenier Park Found V. Broussard, 221 F. 3d

"(1) identity of the subject matter of action; (2) identity of the cause of action; (3) identity of the parties to the cause of action; and (4) identity of the quality or character of a person against whom the claim is made." Quinn, 818 So. 2d at 1151.

The Mississippi Supreme Court has held that if the four identities can be established, "the parties will be prevented from relitigating all issues tried in the prior lawsuit, as well as all matters which should have been litigated and decided in the prior suit." Id. (quoting Dunaway v. W.H. Hopper & Assocs., Inc., 422 So. 2d 749, 751 (Miss. 1982)).

Likewise, the United States Supreme Court has explained the "[r]es judicata prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding." Brown v. Felsen, 442 US 127, 131 (1979); Estate of Anderson v. Deposit Guar. Nat'l Bank, 674 So. 2d 1254, 1256 (Miss. 1996).

Importantly for the subject case, a party may not seek to avoid an unfavorable judgment simply "by raising a new legal theory." Little, 704 So. 2d at 1338.

The Four Identities

1. Identity of Subject Matter

As is set forth above, the instant Justice Suit and the previously-litigated Chancery Suit arose out of the very same series of events, namely the financial dealing of the parties while, and after they cohabited briefly. Plaintiff has set forth no facts in the present Justice Suit that were not already set out in Plaintiff's Chancery Suit or developed during discovery in that matter. Instead, the sole difference between the two suits is the addition of various agreements which Crocker now claims that defendant breached. Clearly, the identity of

804, 808 (5th Cir. 2000). Similarly, to determine the preclusive effect of a Mississippi state court judgment, this court should look to Mississippi law for guidance.

subject matter is satisfied. This identity is further established by Crocker's raising the agreement contested herein in negotiations during the prior (Chancery) action.

2. Identity of Cause of Action

While Crocker's Justice Suit cites various theories not previously asserted in the Chancery Suit, Plaintiff's Justice Suit must still be dismissed as the second identity "exists when there is a commonality in the underlying facts and circumstances upon which a claim is asserted and relief sought from the two actions." *Little*, 704 So. 2d at 1354. Clearly, Plaintiff's Circuit Suit does not cite verbatim the exact statutes and/or theories of recovery as were asserted in the previously-litigated and adjudicated Chancery Suit, but Mississippi law does not mandate that the competing circuit and chancery court actions be precisely the same. Instead, the determining factor remains whether the claims being brought arise out of the same core of operative facts, which is unmistakably the case herein.

In *Little*, the Mississippi Supreme Court found that the initially-filed federal suit "was labeled a products liability case premised upon a design defect and the instant[state court] suit is deemed a wrongful death action based upon a manufacturing defect," but held that "this distinction does not destroy the second identity" as the two suits both arose from a problem with a machine leading to the death of Plaintiff's decedent. *Little*, 704 So. 2d at 1338. The Court in Little added that "where one has a choice of more than one theory of recovery for a given wrong, the party may not assert them serially in successive actions but must advance all at once on pain of the bar of *res judicata*." *Id.* The Court's decision in Little comports with the Fifth Circuit Court of Appeals' adoption of the "transactional test" under which courts in this Circuit are to "determine whether two claims involve the same cause of action." Assurance Co.

of Amer. V. Kirkland, 312 F. 3d 186, 189 n. 8 (5th Cir. 2002). The Fifth Circuit has expressed that "[i]n evaluating the *res judicata* effect of a prior claim on a subsequent one, the transactional test does not inquire whether the same *evidence* has been presented in support of the two claims, but rather asks *whether the same key facts are at issue in both of them*." *Id.* (emphasis added).

In the instant Justice Suit, Plaintiff cites no facts in his complaint not previously known and asserted in the Chancery Suit or discovered during the course of that action, so the identity of cause of action is satisfied. Plaintiff cannot, as Mississippi courts have declared, simply relitigate what Plaintiff believes to be an unfavorable state court result in another court, regardless of whether Plaintiff has now asserted different statutory violations. Plaintiff's counsel knowingly chose not to pursue this claim he may have had against Defendant by not raising those issues in the Chancery Suit, since he raised them in settlement talks. Plaintiff cannot now simply assert a "new legal theory" which could have been set forth initially and avoid the application of *res judicata.* The Justice action arises from precisely the same facts upon which Plaintiff's Chancery court claims were made and recovery was sought in the Chancery Suit. Crocker is apparently unhappy with the result of the Chancery Suit, as the Court can be assured that there would have been no second cause of action if the Chancery Suit had resulted in the desired result from the plaintiff's perspective. This is the precise rationale for the application of *res judicata* - the avoidance of a multiplicity of suits, the prevention of the potential for inconsistent verdicts, the conservation of resources for both the parties and the judiciary, and to discourage gamesmanship in holding back certain causes of action that test the waters in one form before seeking relief in another one. The second factor is clearly met.

3. Identity of Parties

In both the Justice Suit and the previously-litigated and adjudicated Chancery Suit, the parties were the same. Gail Moorman brought the Protective Order Petition and George Crocker brought the asserted Justice Suit, but in both cases, claims have been bilateral. Therefore, the identity of the parties herein is satisfied as the plaintiff and the defendant are the same parties as in the Chancery Suit. Additionally, Courtney Butler, Moorman's daughter, was a party to the initial Chancery action. Any claims against her "should have been raised" in the Chancery action.

4. Identity of Quality/Character

For the same reasons set forth in conjunction with the identity of the parties, the fourth identity is also satisfied. Mississippi case law mandates that in addition to the other identities, there must be "identity of the quality or character of a person against whom the claim is made. " As is discussed above, defendant Gail Moorman is the same person whom debt claims were filed in the previously-litigated Chancery Suit, which satisfies this fourth factor. Courtney Butler was also a party to the prior lawsuit.

Attorney's Fees

In addition to seeking dismissal or summary judgment, defendant seeks recovery of all attorney's fees incurred in the defense of the instant suit and the present Motion pursuant to MRCP 56. It is clear that Moorman and Courtney Butler, having already litigated this case once, should not be forced to incur attorney's fees to defend it again. This Court has previously found that attorneys fees may be awarded to a defendant in cases such as this when, as is set out in

the instant Motion and accompanying Memorandum Brief, plaintiff's Justice Suit is clearly barred by the doctrine if *res judicata*, and the same should have been readily discernable to plaintiff's counsel prior to filing the Justice Suit. Plaintiff's Justice Suit is nothing more than an impermissible attempt to relitigate what plaintiff considers to be an unfavorable result in the Chancery Suit. Consequently, defendant is entitled to recovery of all attorney fees incurred herein.

The four "identities" required under Mississippi law for application of the doctrine of res judicata are all unmistakably present in the instant Justice Suit and the previously-litigated and adjudicated Chancery Suit. Plaintiff's Justice Suit does nothing more than add various agreements which defendant is alleged to have breached in conjunction with the events raised in the Protective Order Counter- Complaints and in settlement talks, and the subject of an agreed order. As such, plaintiff's Justice Suit is wholly lacking in merit and cannot succeed as a matter of law, and defendant moves for dismissal or summary judgment of plaintiff's action. Additionally, defendant seeks recovery of all attorney fees incurred in connection with the defense of this case pursuant to MRCP 56.

2) MRCP 13

Crocker's protestations to the contrary notwithstanding, MRCP 13 (a) is pertinent to this matter, not MRCP 13 (b). The text of both subsections follows:

//

Rule 13. COUNTER-CLAIM AND CROSS-CLAIM

(a) Compulsory Counter-claims. A pleading shall state as a counter-claim any claim which at the time of serving the pleading the pleader has against any opposing party if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction. But the pleader need not state the claim if:

1) at the time the action was commenced the claim was the subject of another pending action; or

2) the opposing party brought suit upon his claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counter-claim under this Rule 13; or

3) the opposing party's claim is one which an insurer is defending.

In the event an otherwise compulsory counter-claim is not asserted in reliance upon any exception stated in paragraph (a), relitigation of the claim may nevertheless be barred by the doctrines of res judicata or collateral estoppels by judgment in the event certain issues are determined adversely to the party electing not to assert the claim.

b) Permissive Counter-Claims. A pleading may state as a counter-claim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

It is beyond cavil that at the time of being served with the initial and Amended Complaints in Chancery, (note that the Answer was to the Amended Complaint, TR. 42, et seq), Crocker had a claim against either Moorman or her daughter, Ms. Butler, also a party, based on a loan purportedly made on January 16, 2006. The strength of the claim, based on a writing signed by neither Moorman or Courtney Butler, (Ms. Butler was approaching age 18 on January 16, 2006, being born on August 23, 1989), is

questionable. But the initial claim in Chancery sought "to Cancel [Defendant's contract with Plaintiff Moorman] as to all obligations of Plaintiff to Defendant."

Even before answering the Chancery Complaint, Crocker raised the "Butler" claim in a settlement letter to Moorman's counsel. (TR. 111). Thereafter, he filed his Answer, demanding $5,000,000.00 actual and compensatory damages, "from and against the Plaintiffs/Counter-Defendants." Moorman reasonably believed that the letter and the five million dollars counter-claim referenced all obligations of Moorman to Crocker.

Further, the "Butler" claim grew out of the same transaction which was the subject matter of the Chancery suit. For example, Plaintiffs Moorman and Butler in Chancery, set out as Facts (TR. 86, 97) that the relief they sought related to a three week to mon-long cohabitation with Crocker and the events that followed the cohabitation. The cohabitation began on January 15, 2006, one day before the "Butler" loan was made. Further, (TR. 100), both Moorman and Butler sought equitable and injunctive relief under §97-3-7 and under MRCP 65. The thrust of the Chancery lawsuit was to put an end to all relationships between the Moorman/Butler and Crocker families. This included <u>all</u> transactions entered into between and among the parties.

At a minimum, the letter raising the "Butler" claim proved beyond question that: 1) Mr. Crocker had and knew he had an additional claim against Ms. Moorman; 2) it grew out of transactions between Moorman and Crocker during the stated period of time, (January 15, 2006 – April 15, 2006); 3) it did not include any third parties since the

beneficiary of the loan was 18 at the time of filing and service, and was a party plaintiff; 4) there was no other cause of action pending by Moorman/Butler at the time Crocker was served with the Chancery suit; 5) the suit was brought in personam and the Chancery Court had jurisdiction over the parties and the subject matter; and 6) the Moorman/Butler parties had no insurance to cover their litigation costs.

Hence, the "Butler" counter-claim was a compulsory counterclaim. But even should the Court find that the counterclaim was not part of the same transaction, it is still barred by Mississippi law. Under the language of the U. S. Supreme Court in Brown v. Felson, 442 U. S. 127 (1979), "the doctrine of res judicata bars litigation in a second lawsuit on the same cause of action of all grounds for, or defenses to, recovery that were available to the parties [in the first action], regardless of whether they were asserted or determined in the prior proceeding.'"

This standard has been adopted by the Mississippi Supreme Court in Dunaway v. Hopper, 422 So. 2d 749, 751 (Miss. 1982).

Under MRCP 13, Crocker should have been barred from raising this claim in Justice Court. When the Circuit Court "received" the appellate claim, it did so under "original jurisdiction." Statham v. Miller, 988 So. 2d 407, 410 (Miss. C.A. 2008). More will be said about Statham below, but this brief phrase clearly indicates that the Circuit Court properly heard the Motion to Dismiss or for Summary Judgment. The Court erred in refusing to set the case for hearing after denying (erroneously) the motion. The Court also erred in denying Moorman's attorney fees in defending this claim.

3) "CLAIM-SPLITTING"

In the case of Channel v. Loyacono, 954 So. 2d 415, 424 (Miss. 2007), the Mississippi Supreme Court stated:

> Identity of the cause of action
>
> 32. One of the main concerns with this identity is the prevention of "claim-splitting." Pointing out the relationship of this identity with the doctrine of claim preclusion, this Court has stated:
>
> > Where a judgment is rendered, whether in favor of the plaintiff or the defendant, which precludes the plaintiff from thereafter maintaining an action upon the original cause of action, he cannot maintain an action upon any part of the original cause of action, although that part of the cause of action was not litigated in the original action, except... © where the defendant consented to the splitting of the plaintiff's cause of action.
> >
> > Harrison, 891 So. 2d at 233-34 (quoting Alexander v. Elzie, 621 So. 2d 909, 910 (Miss. 1992)). The court went on to say " 'this principle prohibiting [re-litigation] requires that the plaintiff bring in the first forum every point which properly belongs to the subject of litigation, and which the parties, by exercising reasonable diligence, might have brought forward at the time'." Harrison, 891 So. 2d at 234 (quoting Hayes v. Solomon, 597 F.2d 958, 982 (5th Cir. 1979))." [I]n accordance with public policy, partially to conserve the courts' time but probably in the main to prevent the hardship upon [a] defendant of unnecessary piecemeal litigation, a single cause of action cannot be split so as to be properly made the subject of different actions....' " Id.

Crocker knew about the claim. He and his lawyer used it as a negotiating tool. Having so used his claim to his advantage in the Chancery matter, he should not have been permitted

to bring the claim again in a different forum. He could have brought the counterclaim in Chancery. He should have brought the counterclaim in Chancery – (and, in fact, he did "bring" it to get a better deal). He should be barred from bringing it in Justice Court, and Moorman should be made whole for her attorney fees in defending the claim.

B) THE TRIAL COURT ERRED BY DENYING APPELLANT A DE NOVO HEARING ON HER APPEAL FROM JUSTICE COURT.

In his Order Denying Defendant's Motion to Dismiss or In the Alternative Motion For Summary Judgment, (TR. 115-16), the Honorable Andrew Baker found and ordered:

> "That the Plaintiff/Appellee, hereinafter "Plaintiff," obtained a valid judgment against the Defendant in the lower court, the Justice Court of Yalobusha County, Mississippi, Second Judicial District, and therefore this Court does not have any authority or jurisdiction to overturn the lower court judgment." (TR. 115, emphasis added).

However, in Statham v. Miller, op cit, the state Supreme Court disagreed:

> 20. The Rules of Civil Procedure do not apply in justice court. Mississippi Comm'n on Judicial Performance v. Peyton, 812 So. 2d 204, 206 (¶ 5) (Miss. 2002). However, when Miller appealed from the justice court to the circuit court, the circuit court gained original jurisdiction, not appellate jurisdiction, and should therefore follow the Mississippi Rules of Civil Procedure. Under Rule 15, Statham should have been allowed to amend his pleadings.
>
> 21. Under Rule 15, an amendment should only be denied if the amendment would cause actual prejudice to the opposing party. Beverly v. Powers, 666 So. 2d 806, 809 (Miss. 1995); Coleman v. Smith, 841 So. 2d

192, 194-95(¶ 5) (Miss. Ct. App. 2003). Miller would suffer no prejudice here if Statham were to amend his pleadings, especially since it was Miller who chose to appeal to the circuit court and invoke the original jurisdiction of the circuit court.

22. Miller argues that Statham may not increase the amount of damages because that would defeat the justice court's jurisdictional limit of $2,500, which is the ceiling amount on civil claims in Mississippi justice courts. Miss.Code Ann. § 9-11-9 (Rev. 2002).

23. This argument fails. When Miller appealed to the circuit court, the circuit court gained original jurisdiction and the case was to be tried de novo, which means that the case will be tried anew. Strength, 163 Miss. At 353, 141 So. at 769. Since the circuit court has original jurisdiction, the Mississippi Rules of Civil Procedure must be followed.

As in Miller, so in this case. After denying Summary Judgment, (in error), the Circuit Court should have set the case for hearing and given Moorman her trial de novo. The court's failure to do so is plain error, demanding reversal.

4. CONCLUSION

Under the panoply of litigation about res judicata which occurred in the last decade, one thing has become clear. If a party has a claim, he or she has but one "bite at the apple." In this case, Mr. Crocker took his "bite" in his attorney's settlement letter, (TR. 111). He cannot now cross his fingers and make it go away.

Under MRCP 13, the "Butler" claim was a mandatory counterclaim growing out of the cohabitation, relationships, obligations, and disentanglement of George Crocker and P. Gayle Moorman. The claim was raised in the Chancery suit.

Any result but reversal and rendering would justify Crocker's deliberate "claim-splitting" which was definitely not agreed to by Mrs. Moorman. Such a result is contrary to a decade of law – (actually, several decades of law). It cannot be tolerated if we are to continue to adhere to stare decisis. This case cries out for reversal and rendering on the basis of res judicata.

In the alternative, Mrs. Moorman is entitled to her day in Court. While asserting that rendering is the better course, Mrs. Moorman will show that, in the alternative, the matter should be remanded for trial as to both the debt she denies and attorney fees for a claim that she believed to be resolved.

And Appellant prays for general relief.

Respectfully Submitted this 9 day of JUNE, 2009.

P. Gayle Moorman

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CERTIFICATE OF SERVICE

I, Stewart Guernsey, attorney for P. Gayle Moorman, certify that I have this day sent a true copy of the above and foregoing Appellate Brief-in-Chief and Record Excerpts to:

Tommy Defer, Esq.
111 Calhoun Street
Water Valley, MS 38965

This is the 9 day of June, 2009.

Stewart Guernsey

Stewart Guernsey MBA [redacted]
PO Box 167
Water Valley, MS 38965

IN THE SUPREME COURT OF MISSISSIPPI

P. Gayle Moorman — Appellant

v. — Cause No. 2008-CA-01937

George Crocker — Appellee

CERTIFICATE OF SERVICE

I, Stewart Guernsey, attorney for Appellant herein, hereby certify that I have this day, served a true and correct copy of Appellant's Case-in-Chief and Record Excerpts by mailing the same to Hon. Andrew Baker, at his regular mailing address: P.O. Drawer 368, Charleston, MS. 38921.

This is the 16 day of June, 2009.

Stewart Guernsey

Stewart Guernsey

MBA [redacted]