

**IN THE SUPREME COURT OF MISSISSIPPI**

**REGIONS BANK AND J. CLIFFORD HARRISON,  
TRUSTEE**

**APPELLANTS**

**V.**

**CAUSE NO. 2008-CA-02067**

**MISSISSIPPI TRANSPORTATION COMMISSION**

**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 this Court may evaluate possible disqualifications or recusal.

1. Regions Bank, Appellant
2. Jeffrey D. Rawlings, Attorney for Appellant
3. Rawlings & MacInnis, P.A., Attorneys for Appellant
4. J. Clifford Harrison, Trustee, Appellant
5. Mississippi Transportation Commission, Appellee

## TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS.....	xi
TABLE OF CONTENTS.....	ii
TABLE OF CASES AND AUTHORITIES .....	iii
STATEMENT OF THE ISSUES .....	1
STATEMENT OF THE CASE.....	1
STATEMENT OF THE FACTS.....	5
ARGUMENT .....	8
I. WHETHER THE TRIAL COURT ERRED IN ENTERING A JUDGMENT AGAINST BANK AND TRUSTEE WHO WERE NOT PARTIES TO THE REMOVAL OF FUNDS DEPOSITED BY MTC WITH THE COURT AND WHERE THE PARTIES WERE NOT PROPERLY NOTIFIED .....	8
II. WHETHER THE TRIAL COURT LACKED STATUTORY AND/OR JURISDICTIONAL AUTHORITY TO ENTER A MONEY JUDGMENT AGAINST BANK AND TRUSTEE UNDER THE EMINENT DOMAIN “QUICKTAKE” PROVISIONS .....	10
II. WHETHER THE TRIAL COURT LACKED JURISDICTION TO ENTER A PERSONAL JUDGMENT AGAINST BANK AND TRUSTEE IN LIGHT OF RULE 8 AND RULE 54 OF THE MISSISSIPPI RULES OF CIVIL PROCEDURE.....	13
CONCLUSION .....	13
CERTIFICATE OF SERVICE.....	14

## TABLE OF STATUTES AND CASES

<u>Statutory Authority</u>	<u>Page</u>
Sections 11-27-81 through 11-27-89 of the Mississippi Code of 1972.....	1, 5-7, 10-11
 <u>Mississippi Rules of Civil Procedure</u>	
MRCP 5.....	10
MRCP 8.....	13
MRCP 54.....	9, 13
MRCP 59.....	4, 6, 8-9
MRCP 60.....	4, 6, 8-9
 <u>State Cases</u>	
<u>Bang v. Pittman,</u> 749 So.2d 47, 52 (Miss. 1999).....	8
<u>Bryant, Inc. v. Walters,</u> 493 So.2d 933, 939 (Miss.1986).....	9
<u>Cox v. Miss. State Highway Comm.,</u> 386 So.2d 1107 (Miss. 1980).....	12
<u>Mississippi State Highway Commission v. Prescott,</u> 346 So.2d 924 (Miss. 1977).....	11
<u>Parson v. Mississippi State Port Authority,</u> 996 So. 2 <sup>nd</sup> 165, 167-68 (Miss. 2008) .....	12
<u>Telephone Man, Inc. v. Hinds County,</u> 791 So. 2d 208, 210 (Miss. 2001).....	8

### **STATEMENT OF THE ISSUES**

- I. **WHETHER THE TRIAL COURT ERRED IN ENTERING A JUDGMENT AGAINST BANK AND TRUSTEE WHO WERE NOT PARTIES TO THE REMOVAL OF FUNDS DEPOSITED BY MTC WITH THE COURT AND WHERE THE PARTIES WERE NOT PROPERLY NOTIFIED.**
- II. **WHETHER THE TRIAL COURT LACKED STATUTORY AND/OR JURISDICTIONAL AUTHORITY TO ENTER A MONEY JUDGMENT AGAINST BANK AND TRUSTEE UNDER THE EMINENT DOMAIN “QUICKTAKE” PROVISIONS.**
- III. **WHETHER THE TRIAL COURT LACKED JURISDICTION TO ENTER A PERSONAL JUDGMENT AGAINST BANK AND TRUSTEE IN LIGHT OF RULE 8 AND RULE 54 OF THE MISSISSIPPI RULES OF CIVIL PROCEDURE**

### **STATEMENT OF THE CASE**

This is an appeal of a Judgment entered on June 23, 2008 in favor of Mississippi Transportation Commission against Regions Bank f/k/a AmSouth Bank and successor in interest to Deposit Guaranty National Bank (“Bank”) and J. Clifford Harrison, Trustee (“the Trustee”) in the amount of \$42,950.00 apparently based on a *Complaint Eminent Domain Action* filed on October 20, 1998 pursuant to the “quicktake” provisions of Sections 11-27-81 through 11-27-89 of the Mississippi Code of 1972. Bank also appeals an *Order Denying Motion to Amend Judgment or Alternatively for Relief from Judgment* entered on September 2, 2008.

#### **Course of Proceedings and Disposition in the Court Below**

Appellee, Mississippi Transportation Commission (“MTC”) filed its *Complaint Eminent Domain Action* on October 20, 1998 and a *Second Amended Complaint* sometime in October of 2001. (R. 1 and R. 153-56). Bank and the Trustee were named due to certain Deeds of Trust on the property at issue, dated January 10, 1997, April 1, 1997, and September 30, 1997, respectively recorded at Books 164, 165, and 168 at Pages 26, 115, and 140. (R. 153). The

Deeds of Trust secured an indebtedness owed to Bank by the landowner defendant Sherry Belinda Mann ("Mann").

On October 20, 1998, a *Statement of Value* was filed by MTC. The *Statement of Value* was signed by an employer with the Mississippi Department of Transportation who valued the compensation for taking the subject property at \$14,450.00. (R. 14). The amount of \$14,450.00 was deposited with the Court. (R. 15).

On August 11, 1999, the Special Court of Eminent Domain, Webster County, Mississippi (hereinafter referred to as the "Eminent Domain Court") entered an *Order Appointing Appraiser* wherein Andy Johnson was named as the duly appointed appraiser. (R. 67). Andy Johnson's fifteen-page appraisal, filed on September 16, 1999, appraised the compensation due to the owner for taking the subject property at \$57,400.00. (R. 81). On September 23, 1999, the Eminent Domain Court entered an *Amended Order Granting Plaintiff Right of Immediate Title and Possession* and setting forth that MTC would be entitled to immediate title and possession upon depositing the amount of \$57,400.00 minus the amount already deposited by MTC. (R. 98).

A *Motion to Continue Trial* was filed by MTC on October 22, 1999. (R. 104). An Order was entered on October 27, 1999 directing that the sum of \$57,400.00 on deposit with the Court be released to the defendants. (R. 108). On November 2, 1999 a check was made payable to "Sherry Belinda Mann a/k/a Sherry Mann, Ben F. Hilbun, Jr., Atty., Deposit Guaranty National Bank, Beneficiary, and J. L. Clifford Harrison, Trustee" in the sum of \$57,400.00. (R. 109). As set forth by the clerk's docket, the check in the amount of \$57,400.00 was delivered to and removed by Attorney Ben Hilbun. (R. Page 4 of Clerk's Docket).

On January 24, 1999, MTC filed a *Motion to Continue Trial* along with a *Motion to Amend the Amended Complaint* and a *Second Amended Complaint*. (R. 120, 123 and 125). On January 27, 2000, the Eminent Domain Court granted MTC leave to file the *Second Amended Complaint* (R. 133) which was amended to include new landowners. Bank served an *Answer and Statement of Values* on February 2, 2000. (R. 135). Apparently, the *Second Amended Complaint* was not filed until October of 2001. (R. 135 and R. 156). The property was apparently conveyed at some point by Mann to her parents Peggy Man and husband Wayne Mann (the "Manns") who were named in the *Second Amended Complaint*. MTC filed a *Statement of Values* on February 16, 2000 stating the sum for compensation to be \$14,450.00 (R. 137). An *Agreed Order of Continuance* signed by MTC and the attorney for the Manns. was entered on May 7, 2002. (R. 165). This Agreed Order was not presented to Bank or the Trustee for approval. Thereafter, the Eminent Domain Court set the trial date by Order dated February 18, 2004. (R. 169). MTC's *Notice of the Trial Date* was not served upon the Bank's attorney of record. (R. 167). On June 15, 2004, the Eminent Domain Court entered an *Agreed Order of Continuance* that was signed by the Manns' attorney and MTC's attorney. (R. 177). Again, this Agreed Order was not presented to Bank or the Trustee for approval. On February 12, 2007, MTC filed a *Motion for Trial Setting* and failed to notice Bank and the Trustee. (R. 193-94). Thereafter, the Manns obtained new counsel again. (R. 198). Bank and the Trustee were not noticed or privy to the change of Manns' counsel. On August 30, 2007, the matter was finally set for a firm trial date. (R. 199). A review of the record reveals that Bank and the Trustee were not noticed on many of the pleadings of record and were not privy to or properly notified of matters throughout the pending action. There is no record of a filed notice of the final trial setting. The trial was conducted on June 17, 2008 and the jury returned a verdict simply finding

that Defendants would be damaged by the acquisition of their property for public use, in the sum of \$14,450.00. (R. 204).

On or about June 23, 2007 the Eminent Domain Court entered its Judgment, presented by MTC, finding in part that Bank and the Trustee shall immediately pay \$42,950.00 to the circuit clerk for disbursement to MTC. (R. 205). This Judgment was not presented to Bank or the Trustee for approval. On July 7, 2008, Bank and the Trustee filed their *Motion to Amend Judgment or Alternatively for Relief from Judgment* pursuant to Mississippi Rules of Civil Procedure 59 and 60. (R. 237). On July 11, 2008, MTC filed its response and on August 5, 2008, MTC filed a separate motion to dismiss and to strike the Bank and the Trustee's motion to amend. (R. 245 & 257). On or about August 4, 2008, Bank and the Trustee served and filed their response to MTC's motion to dismiss and/or strike. (R. 277). MTC filed its rebuttal on August 14, 2008. (R. 279).

On September 3, 2008, the Eminent Domain Court entered its *Order Denying Motion to Amend Judgment or Alternatively for Relief From Judgment* finding that Bank and the Trustee chose not to appear and defend their interests and stating that the back of the check was endorsed by Bank and the Trustee. (R. 285). Notwithstanding the Eminent Domain Court's statement, the Trustee never endorsed the check. (R. 284). As indicated on the back of the check, Mann presented the check to one of the Bank's branches for payment to be applied to indebtedness owed by Mann. Neither the Trustee, Bank (in its capacity as a party in this action) nor its counsel were ever involved in the check process in any form or fashion.

On November 5, 2008, Bank and the Trustee filed a *Motion to Reopen Time for Appeal* after receiving constructive notice by letter dated October 28, 2008 that an *Order Denying Motion to Amend Judgment or Alternatively for Relief from Judgment* had been entered against

Bank and the Trustee (R. 288). MTC filed a response to Bank and the Trustee's motion to reopen the appeal time (R. 295) and Bank and the Trustee filed a reply to MTC's response (R. 298). On November 24, 2008, the Eminent Domain Court entered an *Order Reopening Time for Appeal* (R. 304) and Bank and the Trustee properly and timely filed their *Notice of Appeal*. (R. 305).

### **Statement of the Facts**

The June 23, 2008 Judgment entered by the Eminent Domain Court improperly awarded a Judgment against Bank and the Trustee in the sum of \$42,950.00. This matter involved a "quick take" eminent domain proceeding pursuant to Sections 11-27-81 through 11-27-89 of the Mississippi Code of 1972 which took place on or about October 20, 1998. Approximately ten (10) years after the "quick-take," MTC was allowed to have a jury trial to determine compensation to the landowners. The only explanation for the delay that was offered to the jury by the Eminent Domain Court was that the court "was not sure why it took so long to get to trial" and that "neither side chose to seek a trial until now". See Trial Transcript at Page 4, Line 29 and Page 5, Lines 1-7. Bank and the Trustee were not present at the trial because there were no allegations or claims for relief as to Bank and the Trustee that would put them on proper notice that MTC sought to obtain a money judgment against Bank and the Trustee. At all times, Bank and the Trustee were nominal parties, named only due to a lien Bank possessed on the property at issue.

There is no record on file that Bank and the Trustee were properly notified of the trial date. The Trustee did not receive notice of the trial setting and the Bank, although it admits to receiving notice before the trial, was ill-informed and misled by MTC because it had no notice of MTC's intention to present an ex-parte Judgment following trial for apparent relief against the

Bank and the Trustee that was never requested before trial or even at trial. While this case sat dormant for 9 years, Bank's lien was satisfied and it no longer had any interest in this matter.

The relief sought by MTC was pursuant to Sections 11-27-81 through 11-27-89 of the Mississippi Code of 1972 of the Mississippi Code of 1972. MTC requested:

...that all funds deposited by Plaintiff as compensation for immediate title and possession be transferred, or that Plaintiff be allowed credit for said funds if heretofore disbursed to Defendants; and, that upon a final hearing hereof, a determination be made as to the amount Plaintiff shall pay the Defendants as due compensation.

(R. 156).

The Judgment entered by the Court as to Bank and the Trustee is not consistent with the allegations in MTC's amended complaint or the jury's verdict. The jury received no instructions and was never informed that MTC had deposited a total amount of \$57,400.00 as of September 28, 1999 and that those amounts were handed over to Mann and her attorney. The jury was never instructed that its decision could result in a money judgment against the landowner, the Bank and the Trustee. Except for the style of the case called by the Eminent Domain Court and the Jury's verdict awarding compensation, there was no mention of the Bank and the Trustee at trial, including the voir dire examination. See Trial Transcript at Page 3-25. The *Second Amended Complaint* does not contain any "plain" allegations consistent with the result MTC obtained in the Judgment. The jury merely found that the Defendants, including the Bank and the Trustee, "will be damaged by the acquisition of their property for public use, in the sum of \$14,450.00".

The Bank and the Trustee's requested relief under Rule 59 and 60 of the Mississippi Rules of Civil Procedure was denied without hearing. The *Order Denying Motion to Amend Judgment or Alternatively for Relief from Judgment* states that "Bank and Harrison were proper parties to this action and chose not to appear and defend their interest." (R. 285). The Eminent

Domain Court erroneously made a finding that Bank and the Trustee “were in fact parties to the removal of funds”. (R. 285). The Judgment is void or voidable as to Bank and the Trustee. The check issued by the circuit clerk for removal of the funds from the registry of the special court of eminent domain was never presented to or endorsed by the Trustee. Moreover, there were no pleadings before the Eminent Domain Court or served upon Bank or the Trustee seeking relief in the form of an award or judgment for any amount of money in the eminent domain action. In its *Second Amended Complaint*, MTC’s requested relief was simply “that Plaintiff be allowed credit for said funds if heretofore disbursed to Defendants; and, that upon a final hearing hereof, a determination be made as to the amount Plaintiff shall pay the Defendants as due compensation.” (R. 156).

Based on the allegations presented by MTC in its complaint and because Bank was a nominal interested party because of its lien which it no longer had, Bank had no reason to appear and defend. To ensure Bank had no reason to appear, Bank contacted MTC’s attorney the day before the trial and discussed whether Bank’s absence would create any problems. Based on representations of MTC, Bank had good reason to be confident that there was no need to appear at trial. (R. 302-03).

MTC misrepresented to the Eminent Domain Court that the check was endorsed by all defendants. (R. at 296). The Trustee did not endorse the check. Also, MTC misrepresented that the Bank and the Trustee removed funds from the court registry and took part in dividing the funds. (R. 296).

MTC relies on Miss. Code Ann. § 11-27-87 for its position that MTC is entitled to a judgment for excess funds against the Bank. However, that statute applies to owners of the property, not to lienholders with satisfied liens or to trustees.

## ARGUMENT

### Standard of Review

Bank and the Trustee challenge the Eminent Domain Court's Judgment as to the Bank and Trustee on direct appeal. In addition, a trial judge's refusal to grant relief under Rules 59(e) and/or Rule 60(b) under the Mississippi Rules of Civil Procedure is an abuse of discretion standard. Telephone Man, Inc. v. Hinds County, 791 So. 2d 208, 210 (Miss. 2001); Bang v. Pittman, 749 So.2d 47, 52 (Miss. 1999). A party may seek to amend a judgment under Rule 59(e) where there is a need to correct a clear error of law or prevent manifest injustice. See Pittman, 749 So.2d at 53.

#### **I. WHETHER THE TRIAL COURT ERRED IN ENTERING A JUDGMENT AGAINST BANK AND TRUSTEE WHO WERE NOT PARTIES TO THE REMOVAL OF FUNDS DEPOSITED BY MTC WITH THE COURT AND WHERE THE PARTIES WERE NOT PROPERLY NOTIFIED.**

Bank and Trustee did not take part in the removal of funds deposited by MTC with the Eminent Domain Court. On November 2, 1999, the check was made payable to Mann, the Trustee, and the Bank in the sum of \$57,400.00. (R. 109). The check was delivered to and removed by Attorney Ben Hilbun. (R. Page 4 of Clerk's Docket). Thereafter, Mann endorsed the check and apparently presented the check to a teller at the Deposit Guaranty National Bank in Eupora, Mississippi. Mann had the check applied toward payment of indebtedness owed to the Bank. (R. 244). The Trustee did not endorse the check. The Eminent Domain Court abused its discretion by entering a Judgment against Bank and the Trustee that was not supported by the record and not supported by the jury's verdict.

In addition, the Eminent Domain Court erred in denying Bank and the Trustee's motion for Rule 59 and Rule 60 relief by overlooking evidence presented to the Eminent Domain Court

that set forth that Bank and the Trustee were not a parties to the removal of funds from the clerk's office. Bank and the Trustee never received the funds removed from the registry of the Court. Moreover, no monetary relief was ever pled against Bank or the Trustee. See Rule MRCP 54 stating that a "final judgment shall not be entered for a monetary amount greater than that demanded in the pleadings or amended pleadings."

Based on the foregoing facts, Bank's and the Trustee's request for relief under MRCP Rule 59 is applicable to prevent manifest injustice. Further, under MRCP Rule 60(b) the Eminent Domain Court had the authority to vacate the Judgment as to Bank and the Trustee based on evidence which clearly supported that the Bank and the Trustee took no part in the removal of funds from the registry of the court.

Sufficient evidence was presented to show that provisions of Rule 60(b) applied (in particular, Rule 60(b)(6)), because the Judgment obtained by MTC against Bank and the Trustee is severely prejudicial, unconscionable, and unfair. MTC obtained a money judgment based on a check delivered to parties other than the Bank almost nine years prior to the Eminent Domain Court's Judgment. There were no written pleadings or other documentation to support that MTC intended to seek a money judgment against Bank and the Trustee under a ten (10) year old Eminent Domain Action where Bank was a nominal lien holder party and where Bank's lien had long since been satisfied. Under Rule 60(b)(6), the Eminent Domain Court possesses a "grand reservoir of equitable power to do justice in a particular case when relief is not warranted by the preceding clauses, or when it is uncertain that one or more of the preceding clauses afford relief." Bryant, Inc. v. Walters, 493 So.2d 933, 939 (Miss.1986). While no hearing was held on this matter before the Eminent Domain Court entered its order denying the Bank and the Trustee's requested relief from the Judgment, Bank and the Trustee presented sufficient evidence to the

Eminent Domain Court to show that Bank and the Trustee were not parties to the withdrawal of funds deposited by MTC almost nine years earlier. The Eminent Domain Court committed error by apparently overlooking the fact that the check was not endorsed by the Trustee and not appropriately presented or endorsed by the Bank.

In addition, the Eminent Domain Court's order states that the Bank and the Trustee were parties and chose not to appear. As set forth above, there is no record on file that Bank and the Trustee were properly notified of the trial date. As set forth above, Bank and the Trustee were not noticed on many of the pleadings of record and were not privy to or properly notified of matters throughout the pending action. All pleadings, orders, and papers are required to be filed and served to all parties and where "a party ... is represented by an attorney of record in the proceedings, the service shall be made upon such attorney". See Rule 5(a), (b) and (d) of the Mississippi Rules of Civil Procedure. The Trustee did not receive notice of the trial setting and the Bank, although it admits to receiving notice before the trial, was ill-informed and misled by MTC because it had no notice of MTC's intention to present an ex-parte Judgment following trial for apparent relief against the Bank and the Trustee that was never requested before trial or even at trial. Further, it was manifestly unjust for the Eminent Domain Court to enter a Judgment awarding monetary relief against the Bank and the Trustee over eight years after the check was presented by Mann to the Bank for payment on indebtedness.

## **II. WHETHER THE TRIAL COURT LACKED STATUTORY AND/OR JURISDICTIONAL AUTHORITY TO ENTER A MONEY JUDGMENT AGAINST BANK AND TRUSTEE UNDER THE EMINENT DOMAIN "QUICKTAKE" PROVISIONS.**

Pursuant to § 11-27-87 of the Mississippi Code of 1972, upon final disposition of a case, the plaintiff may be entitled to a personal judgment "against the *owner* for the amount of the

difference.” (emphasis supplied). MTC obtained a Judgment against the owners as well as the Bank and the Trustee. The text of the statute does not allow for a personal judgment against named defendants other than the owners. The Bank and the Trustee were named defendants in the eminent domain action; however, there were no allegations against the Bank or the Trustee giving them sufficient due process or notice that MTC would seek to obtain a Judgment against Bank and the Trustee.

In Mississippi State Highway Commission v. Prescott, 346 So.2d 924 (Miss. 1977), this Court considered § 11-27-87 in an appeal filed by the Commission who sought to enroll a judgment against Prescott for the difference in the deposit and the jury verdict, after the eminent domain proceeding was concluded. This Court affirmed the special court of eminent domain’s denial in Prescott because: 1) Prescott was not the only party to whom the deposit was disbursed; 2) there was no judgment to enroll, and 3) the special court of eminent domain lacked jurisdiction after a final judgment was entered. In a concurring opinion, Justice Robertson wrote that the “superimposed” quick-take statute and “patchwork quilt of eminent domain law [was] not quite clear”; however, he opined that the Legislature clearly intended that it would be the “landowner’s responsibility, as the case may be, to pay over ... the difference between the 85% deposit and the jury verdict where the jury verdict is for less than the amount of the deposit. Justice Roberts cites to 11-27-27, 11-27-29, and section 11-27-87. However, the Court in Prescott did not consider whether a Judgment obtained pursuant to the quick-take provisions could include relief for the difference from a party named due to its interest as a lienholder.

The quick-take provisions are later enacted provisions to the eminent domain statutes. Had the legislature intended for the Commission to be able to obtain a personal judgment against parties other than the landowners in a quick-take proceeding, it would have expressly provided

that a personal judgment could be taken against other interested parties. See Parson v. Mississippi State Port Authority, 996 So. 2<sup>nd</sup> 165, 167-68 (Miss. 2008) (the last expression of the Legislature must prevail over the former and the actual text of the statutes is the best evidence of the Legislature's intent). Interpreting the quick-take provisions which allow for a personal judgment against the owners to also be effective against the lienholder renders the statute unconstitutional for failure to provide due process and/or notice that lienholders could be subject to such a judgment.

Before moving to amend its complaint, MTC was aware that amounts were deposited and allowed to be withdrawn from the circuit clerk's office. MTC failed to plead or request a personal judgment against the defendants for the difference. In Cox v. Miss. State Highway Comm., 386 So.2d 1107 (Miss. 1980), the State Highway Commission filed a cross-appeal requesting the Court to find that the trial court erred in failing to award a judgment in favor of the Commission against the landowner for the difference where the jury verdict was less than the amount disbursed to the landowner. The Court in Cox noted that the Commission made an oral motion at trial and that "when requested by the Commission, the trial court should have entered judgment in behalf of the Commission ... and the rights of both parties should have been adjudicated in that proceeding." In the instant case, no request was made before MTC unilaterally presented a Judgment to the Court. Moreover, Cox and Prescott are distinguished from the present case as set forth above. Bank and the Trustee were denied the opportunity to address these issues because they were not afforded due process. Had Bank and the Trustee known that MTC sought personal monetary relief against them, obviously they would have contested that MTC was entitled to any relief as to Bank and the Trustee. Bank and the Trustee never received notice that MTC sought relief against them.

### **III. WHETHER THE TRIAL COURT LACKED JURISDICTION TO ENTER A PERSONAL JUDGMENT AGAINST BANK AND TRUSTEE IN LIGHT OF RULE 8 AND RULE 54 OF THE MISSISSIPPI RULES OF CIVIL PROCEDURE**

Pursuant to Rule 8 of the Mississippi Rules of Civil Procedure, pleadings shall set forth a “plain” (not hidden) statement of the relief sought, shall contain a demand for relief to which the pleader deems himself entitled and shall be construed to do substantial justice. See MRCP Rule 8(a)(1-2) and 8(f). A demand for judgment should give the named parties fair notice of the relief it seeks. See Comments to MRCP Rule 8. Under Rule 54 of the Mississippi Rules of Civil Procedure, a final judgment shall not be entered for a monetary amount greater than the pleader request in the pleadings or amended pleadings. At all times in MTC’s pleadings and amended pleadings it was not plainly stated that MTC sought relief against Bank and Harrison in the form of a personal judgment. Based on the content of MTC’s pleadings, Bank and Harrison were not afforded fair notice. Bank and the Trustee were blindsided by the Judgment that MTC obtained against them. MTC never indicated in its pleadings that it sought to obtain the difference between its deposits and any lesser amount awarded to the owners by the jury several years after the Bank’s lien was extinguished. MTC only requested that it be provided a credit toward any amounts it had already deposited and disbursed to Defendants. The Judgment and Order of the Eminent Domain Court must be reversed and set aside as to Bank and the Trustee for all those reasons set forth above.

### **CONCLUSION**

Bank and the Trustee respectfully request that this Court reverse the Judgment of the

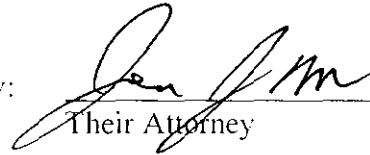
Eminent Domain Court with instructions to vacate the Judgment as to the Bank and the Trustee.

This the 17<sup>th</sup> day of April, 2009.

Respectfully submitted,

**REGIONS BANK AND J. CLIFFORD  
HARRISON, TRUSTEE**

By:

  
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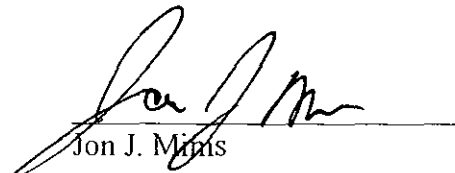
**CERTIFICATE OF SERVICE**

I do hereby certify that I have this date mailed a true and correct copy of the above and foregoing *Brief of Appellants* to the following:

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This the 17<sup>th</sup> day of April, 2009.

  
Jon J. Mims