

MISSISSIPPI SUPREME COURT

DOCKET NO. 2008-TS-02156

IN THE MATTER OF THE ESTATE OF HELEN G. VICKERY, DECEASED

GLENDY BURKE "VICK" VICKERY

Appellant

v.

GEORGE W. VICKERY, JR.

Appellee

ON APPEAL FROM A FINAL JUDGMENT OF
THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT
OF HARRISON COUNTY, MISSISSIPPI
IN CAUSE NO. 05-02526(3)

BRIEF OF APPELLANT,
GLENDY BURKE "VICK" VICKERY

PAUL M. NEWTON, JR. (MBN [REDACTED])
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Attorneys for Appellant
Glendy Burke "Vick" Vickery

ORAL ARGUMENT REQUESTED

1. CERTIFICATE OF INTERESTED PARTIES

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.

1. Glendy Burke "Vick" Vickery
Proponent of Will/Appellant
2. Paul M. Newton, Jr
Newton and Hoff, L.L.P.
Attorneys Appellant, Glendy Burke "Vick" Vickery
3. George W. Vickery, Jr.
Objector to Will/Appellee
4. Chester D. Nicholson, Esq.
Gail D. Nicholson, Esq.
Nicholson and Nicholson
Attorneys for Appellee, George W. Vickery, Jr.

2. TABLES
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TABLE OF CASES AND OTHER AUTHORITY

1. CASES

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2. OTHER AUTHORITY

<i>1 Am.Jur.2d</i> Accord and Satisfaction Section 22 (1962)	10
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3. STATEMENT OF ISSUES

The following issues are before this Court:

1. Whether appellee George W. Vickery, Jr. ["George Vickery"] was barred under the doctrine of "accord and satisfaction" from maintaining a will contest due to his acceptance of his total \$30,000 inheritance under the Will which he thereafter challenged;
2. Whether appellee George Vickery was barred under the doctrine of estoppel from maintaining a will contest due to his acceptance of his total \$30,000 inheritance under the Will which he thereafter challenged;
3. If George Vickery's will contest were barred under accord and satisfaction and/or estoppel, whether appellant Glendy Burke "Vick" Vickery [Vick Vickery] waived his right to assert such affirmative defenses.

4. STATEMENT OF THE CASE

The present appeal involves the contest of the Last Will and Testament Helen G. Vickery, deceased, dated October 22, 2004 [Rec. Doc. 5-8; Exhibit "1" hereto], by one of decedent's stepsons, appellee George Vickery.¹ In her contested Will, Helen G. Vickery left \$30,000 to appellee George Vickery and the remainder of her estate to her other stepson, appellant Vick Vickery, the brother of appellee George Vickery. On November 26, 2005, Vick Vickery satisfied the \$30,000 bequest to George Vickery by Hancock Bank check no. 683 [Rec. Doc. 59; copy of front and back of check attached as Exhibit "2" hereto]. Vick Vickery specifically indicated on the check's memorandum line that such \$30,000 payment was "per HGV will," *i.e.*, per Helen G. Vickery's Will. George W. Vickery, Jr. crossed through this language, placed his initials "GWV" by the deletion, and negotiated the tendered \$30,000 check.

¹ No children were born to or adopted by decedent Helen G. Vickery.

Vick Vickery reasserts on appeal that George Vickery's acceptance of his \$30,000 inheritance under Helen G. Vickery's October 22, 2004 Last Will and Testament barred his subsequent contest of such Will. The lower Court denied Vick Vickery's Motion for Summary Judgment based on "accord and satisfaction" on two grounds--first, that accord and satisfaction applies to "satisfaction of a debt between an obligor and an obligee," rather than a will contest, and secondly, that Vick Vickery waived his right to assert such affirmative due to approximate two-and-one-half-year period between filing his initial Answer and Affirmative Defenses raising accord and satisfaction, and filing a Motion for Summary Judgment on such ground. The lower Court denied Vick Vickery's Second Motion for Summary Judgment based on "estoppel," holding that Vick Vickery waived his right to assert such affirmative defense due to failure to bring such defense for the Court's consideration for almost three years from the beginning of this action.²

5. SUMMARY OF THE ARGUMENT

Appellee George W. Vickery, Jr. accepted \$30,000--his complete inheritance under decedent Helen G. Vickery's October 22, 2004 Last Will and Testament--with the admitted understanding that such was in satisfaction of his inheritance under the contested Will. Thereafter, George Vickery initiated litigation contesting the validity of such Will, and refused the subsequent written demand of estate executor Vick Vickery to return such \$30,000 to the estate during the pendency of such litigation. [Rec. Doc. 117-119; Exhibits "3" & "4" hereto]. Appellee George Vickery, by accepting his inheritance under Helen G. Vickery's October 22,

² The lower Court premised its denial solely on waiver, and apparently recognized that the doctrine of estoppel otherwise barred appellee George Vickery's contest of the Will under which he had accepted his inheritance. See Sec. (6) (I) (B), *infra* at 11.

2004 Last Will and Testament, was barred under the doctrines of "accord and satisfaction" and of "estoppel" from thereafter contesting the validity of such Will.

Further, the trial Court's determination that Vick Vickery waived his defenses of accord and satisfaction and of estoppel, due to alleged "delay" in bringing these defenses before the Court for consideration, is incorrect as a matter of law. Unlike *Whitten v. Whitten*, 956 So.2d 1093 (Miss. Ct. App. 2007), upon which the lower Court relied, appellant Vick Vickery was unable to establish his affirmative defenses until obtaining critical deposition admissions from appellee George Vickery and his wife, Carol Vickery. Appellant Vick Vickery's Motions for Summary Judgment were filed promptly after receipt of these critical deposition transcripts; in fact, the first Motion for Summary Judgment was filed only five days (including weekends) after such receipt.

6. ARGUMENT

I. WILL CONTEST BARRED BY AFFIRMATIVE DEFENSES

A. WILL CONTEST BARRED BY ACCORD AND SATISFACTION

1. Accord and Satisfaction Requirements

In *Lovorn v. Iron Woods Products Corp.*, 362 So.2d 196, 197 (Miss. 1978), this Court set forth four requirements for accord and satisfaction; specifically:

- (1) Something of value is offered in full satisfaction of demand;
- (2) The offer is accompanied by acts and declarations as amount to a condition that if the thing offered is accepted, it is accepted in satisfaction;
- (3) The party who offered the thing of value is bound to understand that if he takes it, he takes subject to such conditions; and
- (4) The party actually does accept the item.

In the present case, each prong of the four-part "accord and satisfaction" test is met. Accordingly, George Vickery was barred under accord and satisfaction from challenging the validity of Helen G. Vickery's October 22, 2004 Last Will and Testament

a. Something Of Value Offered In Full Satisfaction

Under the case facts, the first "accord and satisfaction" prong of whether something of value is offered in full satisfaction of the demand is clearly satisfied. Appellant Vick Vickery offered George Vickery a check for \$30,000 [Rec. Doc. 59; Exhibit "2" hereto], which amount constitutes "something of value." George W. Vickery, Jr. in his May 29, 2008 sworn deposition testimony acknowledged that the \$30,000 check was offered in full satisfaction of his inheritance in the following exchange:

NEWTON: Did you think that it [check number 683] was for the \$30,000 that was left under the October 22, 2004, will?

GEORGE W. VICKERY, JR.: Yeah. That's what Vick said. He said, You've been left \$30,000, and I'm going to give this to you, and he wrote out the check.

Deposition of George W. Vickery, Jr., May 29, 2008, at 54 [Rec. Doc. 62; pages 53-55 attached as Exhibit "5" hereto].

As evidenced by George Vickery's deposition testimony, the first prong for "accord and satisfaction"--whether something of value is offered in full satisfaction--is clearly satisfied.

b. Act or Declaration As Condition That
Acceptance Constitutes Satisfaction

The second accord and satisfaction prong is whether the offer is accompanied by an act or declaration amounting to a condition that acceptance of the thing offered is in satisfaction. *Lovorn*, 362 So. 2d at 197. In the present case, the offer of the check was accompanied by two such acts or declarations. First, Vick Vickery indicated on the face of the \$30,000 check offered that the payment offered was "per HGV will." Secondly, Vick Vickery told George Vickery that

the \$30,000 payment was in satisfaction of the \$30,000 bequest under the October 22, 2004 Last Will and Testament. Deposition of George W. Vickery, Jr., May 29, 2008, at 55. [Rec. Doc. 63; Exhibit "5" hereto] The language on the face of the check and the acknowledged verbal statements which accompanied the offer constitute acts or declarations amounting to a condition that acceptance of the \$30,000 constituted full satisfaction of George Vickery inheritance. Thus, the second prong for accord and satisfaction is also met.

c. Understanding That Acceptance Constitutes Satisfaction

The third accord and satisfaction prong is whether the party offered the thing of value--George Vickery--is bound to understand that if he takes the thing of value, he takes subject to the condition that his acceptance is in satisfaction of his inheritance. This prong is met both by the verbal statements of Vick Vickery to George Vickery, and by George Vickery's striking of the condition written on the face of check 683.

As previously stated, George W. Vickery, Jr. wrote his initials "GWV" in close proximity to the language "per HGV will" on the face of Hancock Bank check 683, which language was crossed through on the check. During his May 29, 2008 deposition, George Vickery could not remember whether he personally crossed through the wording "per HWV will," and professed that he had "absolutely no idea" why he wrote his initials in proximity to the deleted language. Deposition of George W. Vickery, Jr., May 29, 2008, at 54. [Rec. Doc. 62; Exhibit "5" hereto]

Fortunately, George Vickery's wife, Carol Vickery, was able to complete the gaps in her husband's memory. Carol Vickery in her deposition offered the following sworn testimony:

NEWTON: Do you have any knowledge as to what that \$30,000 in that check represents?

CAROL VICKERY: Right down there Vick wrote per HGV will.

NEWTON: Okay. Is that your husband's handwriting above that that says GWV?

CAROL VICKERY: He scratched it out and put GWV.

NEWTON: Okay. Do you know why?

CAROL VICKERY: Because George was going to contest the will.

Deposition of Carol Vickery, May 29, 2008, at 39 & 40. [Rec. Doc. 66 & 67; copy of pages 39 & 40 attached as Exhibit "6" hereto] (emphasis added).

In *Dix v. Trigger Contractors, Inc.*, 337 So.2d 694 (Miss. 1976), in which the accepting party struck through restrictive language on a check, this Court held that an accord and satisfaction nonetheless occurred upon the acceptance of the check. The *Dix* Court quoted the following general rule:

It is well established that if a check bearing a notation indicating that it is offered in full payment or settlement of a disputed or unliquidated claim is delivered by the debtor to the creditor, and this is made clear to the creditor, the latter cannot avoid the dilemma of returning the check or keeping it in full satisfaction of the claim by simply erasing, obliterating, or cancelling the words which import such satisfaction.

337 So.2d at 695-96 quoting 1 *Am.Jur.2d* Accord and Satisfaction Section 22 (1962).

Similarly, in *May Brothers v. Doggett*, 124 So. 476, 478 (Miss. 1929), this Court ruled:

[A]ppellee . . .knew that the disputed amount was not . . .included in the check, and that the appellants were contending that the amount of this check covered all the balance due him on that date. . . . Under these circumstances, it was not permissible for the appellee to accept the check so tendered in full settlement, with the mental reservation that he would afterwards assert a claim for additional compensation; and having done so, . . . he is precluded from recovering for transactions antedating this settlement.

In the present case, George Vickery knew that the tendered \$30,000 was offered in full satisfaction of his inheritance under Helen G. Vickery's October 22, 2004 Last Will and Testament. Deposition of George W. Vickery, Jr., May 29, 2008, at 55. [Rec. Doc. 63; Exhibit "5" hereto] George Vickery was required to refuse the tendered check to preserve his ability to contest such Last Will and Testament, since acceptance constitutes accord and satisfaction. *May*

Brothers v. Doggett, 124 So. At 487. Moreover, George Vickery could not preclude accord and satisfaction by striking through the condition on the face of the check, *Dix v. Trigger Contractors, Inc.*, 337 So.2d at 695-96; rather, such underscores George Vickery's understanding that the check was offered and accepted in full satisfaction of his inheritance.

d. Acceptance Of Item

The fourth prong--that the party actually does accept the item--was satisfied by George Vickery admitted negotiation of Hancock Bank check number 683, as reflected by his endorsement of such check [Rec. Doc. 59; Exhibit "2" hereto], and by his deposition testimony. Deposition of George W. Vickery, Jr., May 29, 2008, at 54-56 [Rec. Doc. 62-64; Exhibit "5" hereto], (admitting cashing of check).

2. Application of Accord and Satisfaction to Will Contest

The lower Court did not specifically adjudicate whether the four prongs for "accord and satisfaction" were met in the present case. Instead, the Court noted (and appellant Vick Vickery concedes) that no Mississippi cases are found in which "accord and satisfaction" has been applied to a Will contest. Nonetheless, the four prongs for accord and satisfaction are met in the present case, and no Mississippi cases require that "accord and satisfaction" be limited to a debtor/creditor relationship. Accordingly, appellant Vick Vickery again asserts that the litigation before the lower Court was barred by accord and satisfaction.

B. WILL CONTEST BARRED BY ESTOPPEL

In *West v. West*, 131 Miss. 880, 95 So. 739 (1923), this Court espoused the universal principal that a party who takes an inheritance under a Will may not thereafter challenge such Will, stating:

As to what is the law relating to a party taking the benefit of a provision in his favor under a will, there is really no foundation to dispute the proposition that

he thereby is precluded from, at the same time, attacking the validity of the very instrument under which he receive the benefit.

95 So. at 741, *quoting Utermehle v. Norment*, 197 U. S. 40, 57 (1905) (emphasis added). The *West* Court further noted that the party taking an inheritance under a Will provision is *estopped* from thereafter challenging the validity of the Will. 95 So. at 741.

Similarly, in *Kuhne v. Miller*, 387 So.2d 729 (Miss. 1980), this Court again recognized that the doctrine of estoppel bars a party from accepting benefits under a Will and thereafter contesting the Will's validity, opining:

We conclude, as did the trial court, that . . . they [the appellants] are estopped to contest the will, having received a benefit directly from it.

Id. at 731. The *Kuhne* Court further emphasized that it is irrelevant whether the accepting party would receive the item regardless of the final Judgment, ruling:

It is next argued that the interest received by the contestants did not exceed their intestacy share and by executing the disclaimer and quitclaim deed the widow relinquishes nothing of substantial value. We are not impressed with this contention because the issue presented is not whether the widow deprived herself of something of value, though we think she did, but whether the contestants accepted a devise under the will, thereby acknowledging its authenticity.

Id.

In the present case, George Vickery could preserve his ability to contest the Last Will and Testament only by either refusing the tendered check or by returning such check upon the written demand of executor Vick Vickery. In view of his admitted acceptance of his inheritance under the will in issue, appellee George Vickery was estopped from thereafter challenging such Will. *Kuhne v. Miller*, 387 So.2d at 731; *West v. West*, 95 So. at 741.

II. NO WAIVER OF AFFIRMATIVE DEFENSES

A. FACTORS FOR WAIVER OF AFFIRMATIVE DEFENSE

The lower Court relied on *Whitten v. Whitten*, 956 So.2d 1093 (Miss. Ct. App. 2007) in two Orders holding that appellant Vick Vickery waived his right to assert either accord and satisfaction or estoppel due to his purported "delay" in bringing such affirmative defenses for the Court's consideration. Order Denying Motion for Summary Judgment and Motion for Continuance entered June 25, 2008 [Rec. Doc. 92 & 93] and Order Denying Motion for Summary Judgment and Motion for Continuance entered December 1, 2008 [Rec. Doc. 153 & 154] Significantly, *Whitten* involved a party's prolonged failure, while actively participating in litigation, to bring the defenses of insufficiency of service and insufficiency of process before the Court for consideration, although the facts to maintain such defenses successfully were established. Accord, *East Mississippi State Hospital v. Adams*, 947 So.2d 887, 891 (Miss. 2007) (waiver of defenses of insufficiency of service and insufficiency of process, due to prolonged failure during litigation to present such then-established defense for Court's consideration); cf. *Mississippi Credit Center, Inc. v. Horton*, 926 So.2d 167 (Miss. 2006) (waiver of right to require arbitration, due to prolonged failure during litigation to present then-established right for adjudication).

The underlying premise of *Whitten*, *East Mississippi*, and *Horton* is that an affirmative defense may be waived if a party actively participates in litigation while failing to bring a defense in which the facts are established before the Court for consideration. This Court has carefully noted that the mere passage of time is not determinative as to whether waiver occurred, *Mississippi Credit Center, Inc. v. Horton*, 926 So.2d at 180 (neither delay nor participation in the judicial process standing alone will ordinarily constitute a waiver); rather, the issue is whether

such delay is "substantial and unreasonable." *Id.* Stated conversely, an affirmative defense may be waived unless the party asserting such defense "reasonably pursues the enforcement" of such defense. *Id.*

B. NO WAIVER UNDER CASE FACTS

Unlike *Whitten*, *East Mississippi*, and *Horton*, the facts necessary for appellant Vick Vickery to file a meritorious Motion for Summary Judgment based on either accord and satisfaction or estoppel were not conclusively established until the May 29, 2008 depositions of appellee George Vickery and his wife Carol Vickery. This factual distinction is *critical* in determining whether appellant Vick Vickery waived his rights in the present case.

Undersigned counsel drafted a Motion for Summary Judgment and supporting Memorandum based on accord and satisfaction in 2007, but concluded that additional proof might be necessary to prevail on such motion--specifically, proof establishing that appellee George Vickery understood that the check for \$30,000 he accepted constituted his inheritance under the subsequently challenged Will. In February 2008, undersigned counsel requested dates for the depositions of George W. Vickery, Jr. and wife Carol Vickery from opposing counsel, and was informed that such depositions could not be taken until May 29, 2008 due to such individuals' personal commitments. After obtaining the critical admissions in depositions, undersigned counsel requested expedited transcripts, and completed his first Motion for Summary Judgment and Memorandum in Support on June 9, 2008—eleven days after completion of the depositions and only *five days* (including weekends) after receipt of the deposition transcripts.

Shortly after the lower Court's denial of his Motion for Summary Judgment, appellant Vick Vickery filed a Second Motion for Summary Judgment, based on the application of

"estoppel" to the case facts. Once again, the Second Motion for Summary Judgment could not be confidently filed until after appellant George Vickery confessed in deposition his understanding that a tendered check for \$30,000 constituted his inheritance under the Will that he subsequently challenged. Further, appellant Vick Vickery's Second Motion for Summary Judgment was filed within a reasonable period after receipt of the critical deposition transcripts.

Appellant Vick Vickery acknowledges, and the record reflects, that he participated in the discovery process during this litigation. Significantly, the *only* manner in which appellant Vick Vickery could obtain the admissions necessary to establish his affirmative defenses was by actively participating in the litigation process, including the use of our discovery procedures, and appellant Vick Vickery filed his Motion for Summary Judgment based on accord and satisfaction *at the earliest time after obtaining the facts and admissions to support such Motion*. Clearly, our jurisprudence does not hold that a party litigant, by participating in the litigation and discovery process to obtain admissions for use in a Motion for Summary Judgment based on an affirmative defense, somehow waives such affirmative defense. Thus, the facts of the present case differ dramatically from *Whitten*, *East Mississippi*, and *Horton*, in which the affirmative defense could have been successfully brought before the Court at any time.

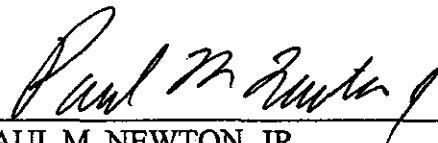
7. CONCLUSION

Appellee George Vickery's will contest, filed after his acceptance of his entire inheritance under the subsequently challenged Will, is barred both under accord and satisfaction and under estoppel. Further, appellant Vick Vickery filed his two Motions for Summary Judgment promptly after obtaining the necessary deposition testimony to establish such affirmative defenses. Although appellant Vick Vickery was unable to obtain the admissions necessary for such Motions until May 29, 2008, such certainly does not mandate that Vick Vickery somehow

waived the very defenses which he was seeking to establish through discovery--those of accord and satisfaction and/or estoppel.

For the reasons herein stated, this Court on appeal should hold that the litigation before the lower Court was barred by the affirmative defenses of accord and satisfaction and/or estoppel, and the jury verdict in the lower Court holding Helen G. Vickery's Last Will and Testament invalid should be reversed, and judgment rendered in favor of appellant Vick Vickery.

Respectfully submitted,



PAUL M. NEWTON, JR.

Attorneys for Glendy Burke "Vick" Vickery

PAUL M. NEWTON, JR. (Bar No. [REDACTED])

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Attorneys for Proponent/Appellant Glendy Burke "Vick" Vickery

CERTIFICATE OF SERVICE

I, Paul M. Newton, Jr., Newton and Hoff, L.L.P., Attorneys at Law, attorney for Appellant Glendy Burke "Vick" Vickery, certify that I have this day filed this Brief of Appellant with the Clerk of this Court, and have served a copy of this Brief of Appellant by United States mail with postage prepaid on the following persons at the following address:

Honorable Sanford R. Steckler
Chancery Court of Harrison County
P. O. Box 659
Gulfport, Mississippi 39502

and

Chester D. Nicholson, Esq.
Gail D. Nicholson, Esq.
Nicholson and Nicholson
Post Office Box 162
Gulfport, Mississippi 39502

This the 20th day of May, 2009.



Paul M. Newton, Jr.

STATE OF MISSISSIPPI

COUNTY OF HARRISON

LAST WILL AND TESTAMENT OF HELEN G. VICKERY

I, HELEN G. VICKERY, an resident citizen of Gulfport, Harrison County, Mississippi, being of sound and disposing mind and memory, and not acting under any duress, menace, fraud, or undue influence of any person whomsoever, do hereby make this my Last Will and Testament and hereby revoke any and all wills and codicils thereto previously made by me.

I declare that I am a widow, having been predeceased by my husband, George W. Vickery; that my husband had two sons, namely, Glendy Burke Vickery and George Willis Vickery, Jr., both of whom I consider to be my sons and who are referred to herein as my sons. There were no other children either born or adopted by me and that both of said persons are alive and fully competent on the date of the execution of this will.

Article I

I appoint and nominate my son, Glendy Burke Vickery, as the executor of my estate. If, however, he should predecease me or after my death he should die, resign, become incapacitated, or otherwise unable or unwilling to serve or to continue to serve, then in such event, I appoint and nominate Karen P. Vickery, to serve in his place and stead. I hereby appoint Alfred R. Koenenn as the attorney for the Executor.

To the full extent allowed by law, I direct that no person or institution serving as executor or executrix, or in any other similar fiduciary capacity, shall be required to give any bond or other security, or be required to file any inventories, appraisals, accountings or periodic reports with any court of judge, and I hereby waive the necessity of the appraisement of my estate.

For Identification H.G.V.

GLT
AKK

Article II

I direct that all of my debts, funeral expenses, and testamentary charges, the cost of administration expenses, attorney fees and executor's commissions, as well as all inheritance and estate taxes shall be paid as soon as possible after my death as may be conveniently done. I further direct that all estate taxes shall be equitably apportioned as provided in the Mississippi Uniform Estate Tax Apportionment Act (Section 27-10-1 through Section 27-10-15 of the Mississippi Code, of 1972, as amended).

Article III

I hereby make the following specific bequest:

To George Willis Vickery, Jr., I devise and bequeath the sum of \$30,000.00. In regard to this bequest, please be advised that it is not through oversight that I have limited this bequest to \$30,000.00. This bequest is limited to \$30,000.00 for the reason that I have previously provided for George Willis Vickery, Jr. through inter vivos gifts.

Article V

I give, devise and bequeath all of the rest, residue and remainder of my estate, whether real, personal or mixed, of whatsoever kind and wheresoever located, unto my son, Glendy Burke Vickery, in full and complete ownership and with full seizin. If, however, should Glendy Burke Vickery predecease me, I give, devise and bequeath Glendy's share to his wife, Karen P. Vickery, in full and complete ownership and with full seizin.

Article VI

In the administration of my estate, I hereby give and grant unto my executor, including any

For Identification H. G. V.

QAT
BLK

successors and substitutes (it being understood that the masculine pronoun is used herein for convenience only), the full and plenary power to do and perform, in a fiduciary capacity, any and all acts and deeds in connection with the management of my estate, and with all or any part of its properties, which the executor deems to be in the best interest of the estate and of the beneficiaries hereunder, even though they would not be authorized or appropriate for fiduciaries but for this power under any statute or rule of law, to the same extent as if the executor were the absolute owner thereof in fee simple, and he may perform any act and deed and exercise this or any other power without resort to any person or court for further authority. Included in this grant, but without impairing its generality, all of the powers contained in the "Uniform Trustees' Powers Law" (Section 91-9-101 through 91-9-119 of the Mississippi Code of 1972, as amended) as well as all other inherent, implied or statutory powers that executors or trustees generally may now have or hereafter acquire.

IN WITNESS WHEREOF, I sign, seal, publish and declare this instrument to be my Last Will and Testament on this the 22nd day of October, 2004, at Gulfport, Mississippi.

Helen G. Vickery
HELEN G. VICKERY

For Identification H.G.V.

JLT
ARK

ATTESTATION CLAUSE

The foregoing instrument, consisting of this and Three (3) proceeding typewritten pages, signed, seal, and published and declared by HELEN G. VICKERY, the testatrix, to be her Last Will and Testament, in our presence, and we, at her request and in her presence and in the presence of each other, have hereunto subscribed our names as witnesses this the 22 day of October, 2004 at Gulfport, Mississippi.

G. L. L. L.
Witness

19724 Champion Circle
Address
Gulfport, MS 39503

Jenny Taylor
Witness

313 Pine Crest Blvd.
Address
Long Beach, MS 39560

For Identification H.G.V.

on
9/17

Current Date: January 09, 2006
Account Number: 14019237
Capture Date: December 19, 2005
Item Number: 430000251090
Posted Date: December 19, 2005
Amount: \$30,000.00
Record Type: Debit

MRS HELEN VICKERY OR
G B VICKERY
1512 E BEACH BLVD
GULFPORT MS 39501

MRS. HELEN VICKERY 01-83 683
OR G. B. VICKERY
1512 EAST BEACH
GULFPORT, MS 39501
DATE 11/26/05 88-388/865 12

PAY TO THE ORDER OF George W. Vickery, Jr. \$ 30,000⁰⁰
Thirty Thousand & ~~00~~ /100 DOLLARS

HANCOCK BANK
P.O. Box 4019 Gulfport, MS 39502
Member FDIC

FOR per HGV George W. Vickery, Jr.

⑆065503681⑆0683 01 4019237⑆ ⑆0003000000⑆

065503681 PAID
12/19/05

0113705205

ANSOUTH BANK 12/16/05
E3385 SS 0004133221-10
⑆062000019⑆
5000519786

George W. Vickery Jr.

EXHIBIT "2"

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228-868-6007

E-MAIL ADDRESS
attorney@newtonhoff.com

February 14, 2006

BY FAX AND U.S. MAIL
FAX NO. (228) 863-1818

Mr. Chester D. Nicholson
Nicholson and Nicholson
Post Office Box 162
Gulfport, Mississippi 39502

Re: Estate of Helen G. Vickery, Deceased

Dear Chet:

This correspondence is sent on behalf of Mr. Glendy Burke "Vick" Vickery, as executor of the above-referenced estate.

On November 26, 2005, Mr. Vickery as executor caused the estate to issue a check for \$30,000 to your client, George W. Vickery, Jr. This disbursement was in accordance with Article III of the Last Will and Testament of Helen G. Vickery dated October 22, 2005, which Will is presently being probated in the Chancery Court of Harrison County, MS.

On January 6, 2006, your client filed an Objection to Petition to Probate Will, which challenges the continued validity of the Last Will and testament dated October 22, 2005. This Objection necessarily calls the propriety of the \$30,000 distribution into issue.

To avoid unnecessary complications, the estate executor hereby demands that Mr. George W. Vickery, Jr. refund the \$30,000 distribution to the estate. This amount will be placed into an estate account and held until further order of the Court. Please ensure that this amount is received in my office prior to the close of business on Friday, February 17, 2006.


EXHIBIT "3"

Mr. Chester D. Nicholson
February 14, 2006
Page 2

Please contact me if you have any comments or questions. As always, best regards.

Sincerely,

NEWTON AND HOFF, L.L.P.


Paul M. Newton, Jr.

PNJ/yll
Enclosure

NICHOLSON and NICHOLSON

Lawyers
Downtown Post Office Building
Suite 209
P.O. Box 162
Gulfport, Mississippi 39502

Gail D. Nicholson
Chester D. Nicholson

February 14, 2006

(228) 864-9484
(228) 868-3288
Fax (228) 863-1818

Via Fax: (228) 868-6007

Paul M. Newton, Jr., Esquire
NEWTON AND HOFF, L.L.P.
P. O. Box 910
Gulfport, MS 39502

Re: Estate of Helen Vickery, Deceased

Dear Paul:

I am in receipt of your letter of today regarding the aforesayed matter, and I thank you for forwarding it to me.

I will not instruct Mr. Vickery to return any of the \$30,000.00. If his objection to the probate of the will is not sustained, he will be entitled to the money. If the objection is sustained, he will be entitled to the money. Either way, he will receive at least that amount. Therefore, I see no useful purpose to be served by returning the money.

I will be issuing subpoenas for bank records very shortly, and I want to depose your client. I would like to take your client's deposition and the deposition of his wife Karen and son Troy Burke Vickery as well. I am available on April 5th, 11th and 12th. I would like to depose them in that order beginning at 9:30 a.m. in your office. Absent an objection and alternate date within a reasonable time served within five business days of the date of this letter, I intend to notice the deposition for April 11th. The depositions will be noticed in connection with Rule 34 Requests for Documents in the case of your client; and subpoenas duces tecums where the non-party witnesses are involved. Let me tell you at the outset that I think there may be serious impropriety here, and it is my intention to pursue your client and others who may have participated with him as vigorously as the facts and the law permit.

Thanking you for your usual courtesies, I am

Sincerely yours,


CHESTER D. NICHOLSON

CDN/ls

cc: George Vickery

EXHIBIT "4"

1 IN THE CHANCERY COURT OF HARRISON COUNTY, MISSISSIPPI
2 FIRST JUDICIAL DISTRICT

3 IN THE MATTER OF THE ESTATE OF
4 HELEN G. VICKERY, DECEASED CAUSE NO. 05-02526(3)

5 -----
6 DEPOSITION OF GEORGE W. VICKERY, JR.
7 -----

8 Taken at Nicholson & Nicholson, Downtown Post
9 Office Building, Suite 209, Gulfport,
10 Mississippi, Thursday, May 29, 2008, beginning
11 at 9:34 a.m.

12 **REPRESENTING GEORGE W. VICKERY, JR.:**

13 CHESTER D. NICHOLSON, ESQUIRE
14 Nicholson & Nicholson
15 Downtown Post Office Building, Suite 209
16 Gulfport, Mississippi 39501

17 **REPRESENTING GLENDY BURKE VICKERY:**

18 PAUL M. NEWTON, JR., ESQUIRE
19 Newton & Hoff, LLP
20 2019 23rd Avenue
21 Gulfport, Mississippi 39501

22 **ALSO PRESENT:**

23 GLENDY BURKE VICKERY
24
25

REPORTED BY:

26 JENNIFER RAY, RPR, CSR 1419
27 Registered Professional Reporter
28 2100 18th Street
29 Gulfport, Mississippi 39501
30 (228) 863-4455

EXHIBIT "5"

1 read it?

2 A. No. I'd never seen it before.

3 Q. No. I mean, when he gave it to you,
4 you had the opportunity to read it?

5 A. Yes.

6 Q. I've got this document here. Do you
7 recognize that check?

8 A. Yeah.

9 Q. And who's signature is that on the
10 check?

11 A. Vick's.

12 Q. It's G.B. Vickery, but that's Vick
13 Vickery?

14 A. Yeah.

15 Q. And the check is dated November 26,
16 2005?

17 A. Yes.

18 Q. And that's after you had seen the will
19 dated October 22, 2004, correct?

20 A. Yeah. Immediately after.

21 Q. And there's an indication on the
22 bottom -- what does that say in the for line?

23 A. In the what?

24 Q. In the last -- that says for, it looks
25 like it says per HGV will?

1 A. Yeah. Helen Gary Vickery will, and I
2 initialed above that.

3 Q. The amount that it's made out for is
4 \$30,000?

5 A. Correct.

6 Q. And that's the amount that you were
7 left in the October 22, 2004, will, correct?

8 A. Uh-huh (affirmative).

9 Q. And it looks like it's scratched
10 through. Is that your scratch-through?

11 A. I have no idea. That's my initial
12 above it.

13 Q. Okay. Why did you initial above that?

14 A. I have absolutely no idea.

15 Q. Okay.

16 A. I mean, I would think he would have
17 asked me to or something. I don't know.

18 Q. Well, the mere fact of endorsing it
19 would -- well, you don't know why you initialed
20 above that?

21 A. Nuh-uh (negative).

22 Q. What did you think this check was for?

23 A. Apparently -- I've cashed this, and so
24 this is a copy that Vick had --

25 Q. Correct.

1 A. -- from the bank. Okay. I don't
2 know. I don't have any idea.

3 Q. Did you think that it was for the
4 \$30,000 that was left under the October 22,
5 2004, will?

6 A. Yeah. That's what Vick said. He
7 said, You've been left \$30,000, and I'm going
8 to give this to you, and he wrote out the
9 check.

10 Q. Okay. All right. And the little GVV
11 that's in the for line --

12 A. It's GWV.

13 Q. I'm sorry. GWV.

14 A. That's how I initial documents.

15 Q. Are those your initials?

16 A. Yes.

17 Q. Is that your handwriting?

18 A. Correct.

19 Q. Okay. Look again at that for line.
20 Is that a cross-through, or can you tell? It
21 looks like it's the same handwriting as the
22 GWV. I mean, I'm just asking.

23 MR. NICHOLSON:

24 Wait a minute. Wait a minute.

25 MR. NEWTON:

1 I'm just asking.

2 MR. NICHOLSON:

3 How is a horizontal line an example of
4 handwriting for Pete's sake?

5 MR. NEWTON:

6 Q. Well, does that appear to be a
7 cross-through?

8 MR. NICHOLSON:

9 He's already said he didn't know.

10 A. That's crossed through, and I don't
11 know what the point of -- the point of the
12 thing is anyway. I mean, I cashed the check
13 that Vick gave to me that he said Helen
14 intended me to have for my portion of her
15 estate, period. I mean, that's all there was.

16 MR. NEWTON:

17 Okay. All right. One second.
18 Actually, I would like to have that marked as
19 an exhibit, please.

20 (Exhibit No. 1 was marked.)

21 MR. NEWTON:

22 I tender the witness.

23 MR. NICHOLSON:

24 No questions.

25 MR. NEWTON:

1 IN THE CHANCERY COURT OF HARRISON COUNTY, MISSISSIPPI
2 FIRST JUDICIAL DISTRICT

3 IN THE MATTER OF THE ESTATE OF
4 HELEN G. VICKERY, DECEASED CAUSE NO. 05-02526(3)

5 -----
6 DEPOSITION OF CAROL VICKERY
7 -----

8 Taken at Nicholson & Nicholson, Downtown Post
9 Office Building, Suite 209, Gulfport,
10 Mississippi, Thursday, May 29, 2008, beginning
11 at 10:48 a.m.

12 **REPRESENTING GEORGE W. VICKERY, JR.:**

13 CHESTER D. NICHOLSON, ESQUIRE
14 Nicholson & Nicholson
15 Downtown Post Office Building, Suite 209
16 Gulfport, Mississippi 39501

17 **REPRESENTING GLENDY BURKE VICKERY:**

18 PAUL M. NEWTON, JR., ESQUIRE
19 Newton & Hoff, LLP
20 2019 23rd Avenue
21 Gulfport, Mississippi 39501

22 **ALSO PRESENT:**

23 GEORGE W. VICKERY, JR.
24 GLENDY BURKE VICKERY
25

26 **REPORTED BY:**

27 JENNIFER RAY, RPR, CSR 1419
28 Registered Professional Reporter
29 2100 18th Street
30 Gulfport, Mississippi 39501
31 (228) 863-4455

EXHIBIT "6"

1 her some attention and some care and help take
2 care of her, and I also think she did it
3 because Vick bullied her.

4 Q. Okay. And the bullying being the
5 things that we described earlier?

6 A. That information is correct.

7 Q. Okay. I'm going to show you -- this
8 is a copy of a check. Have you ever seen that
9 check?

10 A. I saw this check. Sure did.

11 Q. When did you see this check?

12 A. George showed it to me when we were in
13 the car on our way back from Gulfport after
14 Helen's funeral.

15 Q. Okay. And by that time, by the time
16 that you saw that check, had you also seen the
17 October 22, 2004, will?

18 A. I never saw the October 22, 2004, will
19 until it was admitted as evidence in this case,
20 and I was able to look at it. Vick didn't give
21 George a copy of that will that day.

22 Q. Okay. Did you and George have any
23 discussions -- Excuse me. That's an incorrect
24 question. I apologize. Do you have any
25 knowledge as to what that \$30,000 in that check

1 represents?

2 A. Right down there Vick wrote per HGV
3 will.

4 Q. Okay. Is that your husband's
5 handwriting above that that says GWV?

6 A. He scratched it out and put GWV.

7 Q. Okay. Do you know why?

8 A. Because George was going to contest
9 the will. His aunt told him to contest the
10 will and not to let Vick probate it.

11 Q. Okay. Do you recognize the signature
12 on that check?

13 A. George endorsed the back of this check
14 at the direction of his attorney, Chet
15 Nicholson.

16 Q. Actually, the signature at the bottom
17 of the check, who signed the check itself?

18 A. G.W. Vick -- G.B. Vickery.

19 Q. That being Vick Vickery?

20 A. Glendy Burke Vickery.

21 MR. NEWTON:

22 Okay. That's fine. Let's mark that
23 as exhibit -- whatever the next exhibit is,
24 please.

25 (Exhibit No. 3 was marked.)