

COPY

SUPREME COURT

STATE OF MISSISSIPPI

DOCKET NO. 2008-CP-00753
CIVIL CASE

FILED

MAR - 2 2009

Office of the Clerk
Supreme Court
Court of Appeals

KELLI SLAUGHTER

Plaintiff-Appellant

VERSUS

TINA FLORANE POMES

Defendant-Appellee

ON APPEAL FROM THE CIRCUIT COURT
OF PEARL RIVER COUNTY, MISSISSIPPI
FIFTEENTH DISTRICT
CASE NUMBER 2007 - 0365P

JAMES HAL BRELAND, JUSTICE COURT JUDGE,
PRESIDING

ORIGINAL APPELLATE BRIEF ON BEHALF OF
DEFENDANT - APPELLEE
TINA FLORANE POMES

ORIGINAL APPELLATE BRIEF ON BEHALF OF

DEFENDANT ---- APPELLEE

TINA FLORANE POMES

STATEMENT OF THE CASE
AND ACTION OF THE TRIAL COURT

On or about September 15, 2005, Tina Florane Pomes and Kelli Slaughter entered into a verbal agreement concerning the purchase of a 2002 Clayton Mobile Home, Ser.No. 99471TN. The agreement between the parties was as follows:

1.) On or about September 15, 2005, Kelli Slaughter and Tina Florane Pomes agreed to a purchase sale on said mobile home for the sum of thirty thousand dollars (\$30,000.00) with agreement to surrender the payment book. Ms. Pomes went to retrieve the payment book from Mrs. Slaughter at her address, 53316 Highway 60, Bogalusa, Louisiana and it was not available. Mrs. Slaughter gave Ms. Pomes her entire portfolio of documentation for the mobile home which included all original information, addresses and account number for Vanderbuilt Mortgage and Finance, Inc.

2.) Tina Florane Pomes to make monthly payments beginning on or about October 2005. It was agreed between both parties that the mobile home would be stationary at Kelli Slaughter's property located at 14603 Wilson Magee Road, Bogalusa, Louisiana 70427., until Ms. Pomes could clear (raw) undeveloped land in Carriere, Mississippi.

3.) Ms. Pomes made approximately four (4) of the monthly payments (\$368.55 mo.) for the months of October, November, and December 2005, and January 2006. A total of \$1,274.20 payable to Vanderbuilt Mortgage and Financing Inc. Approximately January 2006,

Ms. Pomes completed the development of her property at 108 and 112 Bass Road, Carriere, Mississippi.

4.) Kelli Slaughter verbally agreed to keep the mobile home in her name until financing became available for Ms. Pomes with no mention of a definite date. Both parties agreed to have Attorney Kenny Matthews of Covington, Louisiana contracted for the legal documentation for the sale/purchase of the mobile home.

5.) Ms. Pomes to maintain insurance coverage on the mobile home.

6.) Mrs. Slaughter agreed to deliver title to Ms. Pomes at the time of the last/final payment and/or refinancing

7.) Both parties agreed to have Jeff Miley of Northshore Mobile Home Movers to transfer the mobile home to Ms. Pomes' property in Carriere, Mississippi as referred by Mrs. Slaughter.

The terms of the verbal agreement as outlined above have been stipulated upon, between the parties as can be noted in the contents of documents previously submitted, and by the Judgment in the Court of Appeal.

From the beginning date of September 15, 2005, Kelli Slaughter offered to Ms. Pomes the Sale of the said Mobile Home with the understanding that Ms. Pomes was a victim of Hurricane Katrina from St. Bernard Parish, Louisiana living with her sister in Bogalusa, Louisiana. Ms. Pomes began working again for the United States Post Office in Covington, Louisiana. Later to move to the Chalmette, Louisiana office. Mrs. Slaughter stated "I'll give you the money to help you pay for the trailer to be moved off of my family's property." This money being the Insurance Claim that Mrs. Slaughter made on the mobile home for damages due to Hurricane Katrina. Ms. Pomes accepted the offer but has never received any sum of payment for the

removal of mobile home. Ms. Pomes did not receive the payment book, instead given the original portfolio of documentation by Mrs. Slaughter voluntarily. Ms. Pomes began her monthly payments as agreed during October 2005 continuing to pay the next three (3) consecutive months. Ms. Pomes did not take possession of the said mobile home on September 25, 2005 as stated by Mrs. Slaughter. Ms. Pomes' raw land in Carriere, Mississippi was not cleared of its trees (\$800.00), sewerage system with piping and septic tank (\$2,715.00), two (2) electricity poles, add meters, boxes, panels and electric wiring (\$1,500.00), water well with drilling (\$5,436.67) and included the cost of (\$1,975.00) that Ms. Pomes paid to Jeff Miley for transference of the said mobile home to the now developed land on or about February 2006. The total of \$12,426.67 was the cost that Ms. Pomes paid out of pocket. Mr. and Mrs. Slaughter and Ms. Pomes worked together contractually to develop Ms. Pomes' land in Carriere, Mississippi with the fact in mind that this is clearly a sale not a lease purchase agreement. Mrs. Slaughter father was onsite to view the removal of mobile home from their family owned land at 14603 Wilson Magee Road, Bogalusa, Louisiana 70427. On November 5, 2005, Mr. Slaughter was paid the sum of \$300.00 by Ms. Pomes in the form of a personal check (#544 Hibernia Bank) for clearance of the land by tractor/bush hog which was cashed by Mr. Slaughter on November 7, 2005. Ms. Pomes did as agreed on or about January 31, 2006 to secure and maintain Insurance Coverage on said Mobile Home. The Insurance Policy by Robert Lawry Carr c/o Carr Realty and Insurance Agency 601 Highway 11 North Suite G, Picayune, Mississippi 39466. Policy No. 1. 103-0664478452-06 policy period 01/31/06 to 01/31/07. in the amount of \$1,591.00 and Policy No. 2. 103-0664478452-07 policy period 01/31/07 to 01/31/08 in the amount of \$1,640.00. Ms. Pomes paid the first insurance policy in full and hand delivered a personal copy of Policy No. #1. to Mrs. Slaughter at her residence. Mrs. Slaughter gave Vanderbilt Mortgage authority to

discuss any and all matters concerning the Transfer of Equity and Refinancing to Ms. Pomes.

The fact that Mrs. Slaughter stated Ms. Pomes made sporadic payments of monthly notes in February 2007, is due to the fact that Mrs. Slaughter nor Vanderbuilt Mortgage had a copy of the new Insurance Policy (No. 2. Policy). At this time, Vanderbuilt added the entire year of the insurance policy amount to the mobile home on monthly notes because they did not have a copy of Ms. Pomes' new insurance policy which had been renewed on 01/31/07. Because of work scheduling between both parties, attorney Kenny Matthews was unable to be legally contracted for the legal documentation process. Mrs. Slaughter was never forced to make "catch up" payments. This was a misunderstanding on part of Mrs. Slaughter and Vanderbuilt. The payments in question were the partial insurance payments added to the monthly note because neither party had a copy of the renewed insurance. Mrs. Slaughter never came to Ms. Pomes' place of employment. Ms. Pomes was not working at the Covington Post Office in February 2007. Ms. Pomes was employed in St. Bernard Parish in 2007. Ms. Pomes did state she was trying to get the mobile home refinanced and Mrs. Slaughter stated "I am going through a Divorce and I need to get the truck out of my Husband's name so that I can get the truck in the Community Property Settlement." On or about May 2007, Ms. Pomes began receiving harassing and threatening telephone calls from Mrs. Slaughter. Mrs. Slaughter stated "I am going to bring people to look at the trailer, or pick the trailer up off of your property." Mrs. Slaughter stated "I need to get the trailer out of my name right now because I need to get the truck refinanced and out of my husband's name into my name only!" She stated "If you don't get the trailer in your name now, I am going to come pick it up immediately!" At this time Ms. Pomes stopped paying the monthly mortgage due to the threats. Mrs. Slaughter had all information needed regarding the whereabouts of the mobile home previously given by Ms. Pomes on the first insurance policy.

Ms. Pomes at that time had been traveling from the State of Mississippi to the State of Louisiana twice daily and began having difficulties with her back injury. Ms. Pomes' treating physician imposed limitations on her travel distance which would only allow her to drive half the distance as normally traveled. Ms. Pomes had to make arrangements to stay in Chalmette for weeks at a time in order to keep her job. During this time she was not aware of Mrs. Slaughter leaving any messages on her cell phone nor on the door. Ms. Pomes returned to Bass Road in Mississippi and found a Personal Eviction Notice on her door and attempted to contact Mrs. Slaughter to no avail. Ms. Pomes received an Affidavit to Remove Tenant that Mrs. Slaughter filed with Pearl River County Justice Court. In this document Mrs. Slaughter claims to be the Landlord and Ms. Pomes the Tenant. In actuality, Mrs. Slaughter is the Owner and Ms. Pomes the Buyer.

On or about July 25, 2007, parties appeared before Judge Breland, Justice Court. Judgment was not rendered in court that day. Judge Breland rendered his decision after review via mail.

Judgment in favor of Mrs. Slaughter awarding \$1,468.96 in damages and Warrant of Removal dated August 1, 2007. Ms. Pomes immediately filed for Appeal with the Circuit Court of Pearl River County in Mississippi. During this time, Mrs. Slaughter went onto Ms. Pomes' property illegally and carelessly disconnecting all utilities, cutting the telephone/alarm system disconnecting the sewerage and water lines, severing the electric wiring from the mobile home to the electric pole and pulling the meter from the panel. This was done without Ms. Pomes' knowledge. The proper utility companies were not notified, this all done by Mrs. Slaughter's personal hires. Mrs. Slaughter's moving company was unable to move the mobile home that same date and left all doors open to the trailer with all Ms. Pomes' personal belongings exposed. All refrigerator and freezer items ruined and damages to the outside porch/lawn and garden fixtures. On or about August 25, 2007, Northshore Mobile Home Movers returned to Ms. Pomes'

property in Mississippi where they were met by Ms. Pomes and Law Enforcement. Northshore Movers were advised to leave the property the mobile home belonged to Ms. Pomes and no one told them any different. At this time Ms. Pomes removed her belongings due to the fact that everything was violently and maliciously disconnected and feared that her belongings would be stolen. On or about January 25, 2008 Special Master Lee Turner of Circuit Court of Pearl River County, Fifteenth District ruled in favor of Ms. Pomes after reviewing all evidence submitted on behalf of Ms. Pomes being copies of all check payments made to **Vanderbuilt Mortgage** (\$7,371.00), payment of **insurance purchases** (\$3,231.00), all check payments to **land developers** (\$12,726.67) for a **grand total of \$23,328.67**. It is clearly a purchase between parties with no misunderstandings. Mrs. Slaughter was aware of all contained in this verbal agreement as well as Ms. Pomes payments out of pocket for the purchase.

Upon recommendation by the Special Master, a judgment was rendered on March 3, 2008, awarding unto Ms. Pomes the sum of \$500.00, with 8% interest per annum.

ASSIGNMENT OF ERRORS

Defendant/Appellee assigns the following matters as error:

- I. The Special Master committed manifest error in that the proper credit was not given to Ms. Pomes for the sums incurred for payments on the mobile home during the 19 months; further error in not recommending that Mrs. Slaughter be liable for sums incurred for damages she caused by illegally severing all utilities from the mobile home.
- II. Justice Court of Pearl River manifest error in that Mrs. Slaughter should be entitled to court cost, some rent, constable fees and partial removal fees in light of Ms. Pomes payments.
- III. Pearl River County Justice Court of Mississippi/Deputy Clerk manifest error in that improper documents were deliberately and knowingly falsified being Affidavit to Remove Tenant

and Personal Eviction by Mrs. Slaughter.

ISSUES PRESENTED FOR REVIEW

I. Whether the Special Master committed manifest error in that proper credit was not given to Ms. Pomes for sums incurred for damages on Ms. Pomes' property during the removal of mobile home and costs to repair Ms. Pomes' property for unlawful and careless removal of mobile home.

II. Whether the Justice Court of Pearl River manifest error in that the proper sanctions should be imposed on Mrs. Slaughter for damages due to unlawfully and carelessly removing the mobile home and the destruction of Ms. Pomes property and it's additions.

III. Whether Justice Court of Pearl River manifest error in that Mrs. Slaughter should be entitled to court cost, some rent, constable fees and partial removal fees in light of Ms. Pomes' payments when in fact Mrs. Slaughter failed to pay to have the mobile home transferred from the beginning.

IV. Whether the Pearl River County Mississippi Justice Court Deputy Clerk manifest error in that Mrs. Slaughter filed with the court improper legal documentation alleging Ms. Pomes was a tenant not declared a buyer.

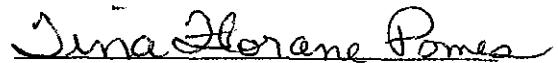
CERTIFICATE OF SERVICE

I, Tina Florane Pomes, do hereby certify that I have on this date mailed a true and correct copy of the foregoing Appellant Brief to:

Kelli Slaughter Burch
53316 Hwy 60
Bogalusa, La. 70427

Court of Appeals of the State of Mississippi
Post Office Bos 249
Jackson, Mississippi 39205-0249

This 25th day of February, 2009.


TINA FLORANE POMES
P.O. Box 13
St. Bernard, La. 70085