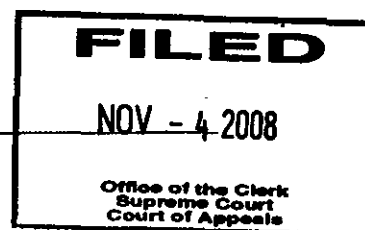


COPY

SUPREME COURT

STATE OF MISSISSIPPI

DOCKET No. 2008-CP-00753
CIVIL CASE



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
PLAINTIFF-APPELLANT
KELLI SLAUGHTER**

ORIGINAL APPELLATE BRIEF ON BEHALF OF

PLAINTIFF—APPELLANT

KELLI SLAUGHTER

STATEMENT OF THE CASE
AND ACTION OF THE TRIAL COURT

On, or about, September _15, 2005, Kelli Slaughter and Tina Florane Pomes entered into a verbal agreement concerning a lease/purchase agreement on a 2002 Clayton Mobile Home, Ser. No. 99471TN. The agreement between the parties was as follows:

1) Tina Florane Pomes took possession of the mobile home on, or about, September 25, 2005, and moved it to where she would reside at in Carrier Mississippi. Ms. Pomes had North shore Mobile (owned and operated by Jeff Miley), to come and move the mobile home.

2) Ms. Pomes verbally agreed to immediately begin the monthly note payments on the mobile home in the amount of \$368.55, payable to Vanderbilt Mortgage and Finance, Inc., to which Mrs. Slaughter agreed to give her the payment book, and Ms. Pomes stated “she just needed the address to the Mortgage Company and she would mail the payments, monthly and on time”.

3) Ms. Pomes was to maintain insurance coverage on the Mobile Home.

4) Ms. Pomes further verbally agreed to secure refinancing of the mobile home within six (6) months from the date of possession.

5) Ms. Slaughter agreed to deliver title to Ms. Pomes at the time of refinancing.

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.

As early as February 2007, Ms. Pomes began to make on sporadic payments of the monthly notes. Ms. Slaughter contacted Ms. Pomes and questioned her as to if she had made the monthly payments on the mobile home. Ms. Pomes always stated "yes, I made the payment and I have the Confirmation number here as to when it was paid". On more than one occasion, Ms. Slaughter was forced to make "catch up" payments; and once even had also go to Ms. Pomes place of employment, which was the United States Post Office in Covington, Louisiana, at the time and get a payment from her, for the mobile home, for she was behind on the note. Ms. Slaughter would contact Ms. Pomes and ask if she was taking care of getting the mobile home put into her name and Ms. Pomes stated on numerous occasions, "I am going to get the trailer, even if I have to put it in my daughter's name or my aunt's name, one, I promise I will get it out of your name as soon as possible. And finally, beginning in, or about May 2007, Ms. Pomes completely suspended payment of the notes. Ms. Slaughter tried contacting Ms. Pomes on her cell phone, to which Ms. Slaughter had spoken to Ms. Pomes on numerous occasions before, and the cell phone number had been disconnected. Ms. Slaughter then pulled the paper work from the insurance Company that Ms. Pomes had given to her right after the original verbal agreement had been made on the mobile home and called the insurance Company to see if they have a physical address on the mobile home. The Insurance

Companies records indicated as to the address of the mobile home as being, 108 Bass Road in Carriere, Mississippi. Ms. Slaughter then went to goggle on the internet and typed in the address and printed a map as to how to get to the mobile home to check its condition. When arriving at the property, no one answered the door and a note was left of the door for Ms. Pomes to please contacted Ms. Slaughter, that it was very important. After (1) one week, and no contact from Ms. Pomes, Ms. Slaughter again returned to the mobile home in hopes to see Ms. Pomes. With no avail, Ms. Slaughter left another note asking Ms. Pomes to contact her. After no contact from Ms. Pomes was made to Ms. Slaughter regarding the late (no payments) on the mobile home, Ms. Slaughter then contacted Pearl River County and they preceded her in the directions to take on the process of how to evict person(s) from a lease/rental property. A Notice of Personal Eviction was sent to Ms. Pomes via U.S. mail and one was also placed on the front door of the mobile home on June 15, 2007, so that the Mobile Home could be returned to Ms. Slaughter's possession. June 21, 2007, Ms. Slaughter arrived at 108 Bass Road Carriere, Mississippi, to see if Ms. Pomes had removed her personal belongings. The doors were locked on the mobile home but Ms. Pomes still had not removed her personal belongings. An ensuring legal action was taken before the Justice Court of Pearl River County, Mississippi, on July 25, 2007, wherein the Justice Court (Honorable James Hal Breland), found for Ms. Slaughter and a Judgment was entered in her favor awarding of \$1,468.96 in damages and warrant of removal with the date of August 1, 2007. Around August 15, 2007, Ms. Slaughter paid NorthShore Mobile to move the mobile home back to her property on Louisiana. When the mobile home movers showed up to get the mobile home they were told kindly to leave by law enforcement that the trailer belonged to Ms.

Pomes and no one had told them any different. After all was settled, Ms. Slaughter had to get NorthShore Mobile to go again and try to get the mobile home. This time with success.

Thereafter, Ms. Pomes filed an appeal with the Circuit Court of Pearl River County, Fifteenth District, and upon consent of both parties, the matter was heard by Special Master Lee Turner on January 25, 2008. During the proceeding, Ms. Slaughter presented her testimony, and offered her check register as proof of her payment on the delinquent notes. The Special Master accepted her evidence as proof of payment. Copies of Ms. Slaughter's bank records are included in the Designation of Records, and the payments to Vanderbilt Mortgage are highlighted and marked with an asterisk.

Special Master Turner entered his recommendation on February 1, 2008. Plaintiff/Appellant did not receive a copy of the recommendation.

Plaintiff/Appellant Slaughter submits that the Special Masters recommendation is vague and unclear. The phraseology in his "remedy" is ambiguous. His recommendation states that "As to the judgment Slaughter received in the Justice Court of Pearl River County, the Undersigned finds that it should be partially set aside. In particular, the Undersigned finds that Slaughter should only be entitled to court costs, some rent, constable fees, and partial removal fees, in light of Pomes payments." As a matter of clarification for this Court, these amounts are the only costs that Ms. Slaughter has previously sought -- simply those costs that she incurred during Ms. Pomes' occupancy of the mobile home, plus court costs and fees paid for the return of the mobile home.

Special Master Turner further stated "that Pomes is entitled to \$1,000.00, reduced by Slaughter's award of \$500.00, leaving a final judgment of \$500.00." Plaintiff/Appellant Slaughter is totally perplexed as to the Special Masters basis for this compilation of figures.

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

Plaintiff/Appellant assigns the following matters as error:

- I. The Special Master committed manifest error in that proper credit was not given to Ms. Slaughter for sums she incurred for payments on the mobile home during Ms. Pomes' occupancy and for costs incurred to regain possession of the mobile home; further error in recommending that Ms. Pomes is entitled to a final judgment of \$500.00, plus interest.
- II. The trial court committed manifest error in finding the Ms. Pomes is entitled to judgment in the amount of \$500.00, plus interest.
- III. The trial court erred as a matter of law in rendering the judgment in favor of Tina Florane Pomes, since the judgment rendered is unsupported by the evidence.

ISSUES PRESENTED FOR REVIEW

- I. Whether the Special Master committed manifest error in that proper credit was not given to Ms. Slaughter for sums she incurred for payments on the mobile home during

Ms. Pomes' occupancy and for costs incurred to regain possession of the mobile home; further error in recommending that Ms. Pomes is entitled to a final judgment of \$500.00, plus interest.

II. Whether the trial court erred as a matter of law in finding the Ms. Pomes is entitled to judgment in the amount of \$500.00, plus interest.

III. Whether the trial court erred as a matter of law in rendering a judgment in favor of Tina Florane Pomes, since the judgment rendered is unsupported by the evidence. .

2008-753

CERTIFICATE OF SERVICE

I, Kelli Slaughter Burch, do hereby certify that I have on this date mailed a true and correct copy of the foregoing Appellant Brief to:

Tina Florane Pomes
Post Office Box 13
St. Bernard, La 70085

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

This 11th ____ day of November, 2008.

Kelli Slaughter Burch
KELLI SLAUGHTER BURCH
53316 Hwy 60
Bogalusa, La. 7027
(985)735-5049