

IN THE SUPREME COURT OF MISSISSIPPI

**BLUE WATER LOGISTICS, LLC, BLUEWATER
BAY, LLC, PATRICIA L. MOSSER, MARQUETTA
SMITH, AND MICHAEL J. FLOYD**

APPELLANTS

VERSUS

CAUSE NO 2008-TS-00250

JAMES STEWART WILLIFORD, JR.

APPELLEE

**ON APPEAL FROM THE CHANCERY COURT
OF FORREST COUNTY, MISSISSIPPI**

BRIEF OF APPELLANTS

ATTORNEY FOR THE APPELLANTS:

**Robert R. Marshall [REDACTED]
525 Corinne Street
Hattiesburg, Mississippi 39401
601-582-5015
601-582-5046 FAX**

ORAL ARGUMENT NOT REQUESTED

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STATEMENT OF THE ISSUES

I.

THE CHANCELLOR WAS MANIFESTLY WRONG, ABUSED HIS DISCRETION AND APPLIED AN ERRONEOUS LEGAL STANDARD IN RENDERING HIS FINAL JUDGMENT ENTERED IN THIS CAUSE ON JULY 17, 2007, AND THE FINAL JUDGMENT AS AMENDED WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER GRANTING IN PART AND OVERRULING IN PART, DEFENDANTS MOTION OF JULY 30, 2007, ENTERED IN THIS CAUSE ON JANUARY 8, 2008.

II.

BECAUSE THE CHANCELLOR ADOPTED THE APPELLEES' FINDINGS OF CASE FACT VERBATIM, THE DEFERENCE NORMALLY AFFORDED THE CHANCELLOR'S FINDINGS OF FACT IS LESSEND AND THE APPELLATE COURT MUST REVIEW THE RECORD AS A WHOLE WITH A MORE CRITICAL EYE TO INSURE THAT THE TRIAL COURT HAS ADEQUATELY PERFORMED ITS JUDICIAL FUNCTION.

III.

THE SOLE LEGAL REMEDIES OF A MINORITY SHAREHOLDER IN AN LLC IS SET FORTH IN THE MISSISSIPPI LIMITED LIABILITY COMPANY ACT (SECTIONS 79-29-1-1 ET SEC) AND THE RELIEF GRANTED OF AWARDDING A MINORITY SHAREHOLDER A JUDGMENT FOR THE VALUE OF THE MINORITY SHAREHOLDER'S STOCK AGAINST THE LLC AND THE OTHER SHAREHOLDERS INDIVIDUALLY IS NOT RELIEF AVAILABLE IN LAW OR EQUITY, AS EQUITY FOLLOWS THE LAW AND THE APPLICABLE LAW IS CLEAR, AND THE CHANCELLOR ERRED IN GRANTING SUCH RELIEF AND IN FAILING TO CORRECT HIS ERROR BASED ON THE APPELLANTS POST TRIAL MOTIONS.

IV.

THE COURT WS IN ERROR IN GRANTING A JUDGMENT OUTSIDE THE SCOPE OF THE PLEADING OVER THE OBJECTION OF THE APPELLANTS AGAINST THE LLC AND THE OTHER SHAREHOLD3RS IN THE LLC. RELIEF NOT PLED CANNOT BE GRANTED.

V.

ABSENT ANY PROOF AT TRIAL THE COURT ERRED IN GRANTING MONETARY RELIEF AGAINST THE LLC AND THE OTHER STOCKHOLDERS OF THE LLC. NO RELIEF CAN BE GRANTED IF NO EVIDENCES IS PRESENTED AT

TRIAL TO JUSTIFY SUCH RELIEF AND PLEADINGS HAVE NO PROBATIVE VALE, ONLY EVIDENCE OFFERED AT TRIAL IN OPEN COURT HAVING ANY PROBATIVE VALUE. THE LOWER COURT HAD NO AUTHORITY TO GRANT A MONEY JUDGMENT BASED ON THE EVIDENCE AT TRIAL. HAVING NOT ASKED FOR THE RELIEF THE COURT GRANTED, THE COURT IS IN ERROR IN GRANTING SUCH RELIEF TO THE APPELLEE.

VI.

THE LOWER COURT ERRED IN NOT ACCEPTING THE FACT THAT AN ATTORNEY CAN AND DOES ACT ON BEHALF OF THE ATTORNEY'S CLIENTS IN LITIGATION.

VII.

THE LOWER COURT ERRED IN NOT GRANTING THE APPELLANTS'S MOTION TO DISMISS AND THIS COURT SHOULD RECTIFY THE LOWER COURT'S ERROR.

VIII.

THE LOWER COURT ERRED IN DETERMINING THAT THE PLEADINGS REQUEST THE RELIEF GRANTED BY THE COURT, AND ERRED IN DETERMINING THAT ANY LAW JUSTIFIES THE RELIEF GRANTED BY THE COURT, AND FURTHER ERRED IN DETERMINING THAT THE EVIDENCE PRESENTED AT THE TRIAL ESTABLISHED A SUFFICIENT BASIS FOR GRANTING THE RELIEF GRANTED BY THE LOWER COURT.

STATEMENT OF THE CASE

On January 31, 2006, three of the four representing 75% of the voting shares of BLUEWATER LOGISTICS, LLC, a Mississippi Limited Liability Corporation in good standing met and voted pursuant to the provisions of the **FIRST AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF BLUEWATER LOGISTICS, LLC**, to oust the fourth member of the LLC and owner of the remaining 25% of the Stock, James Stewart Williford, as a member by purchasing his stock for the fair market value of the stock.

On February 10, 2006, James Stewart Williford filed his Complaint for PRELIMINARY INJUNCTION AND DAMAGES against the appellants, alleging various tort claims and asking for a permanent injunction ordering that James Stewart Williford remain a member of BLUEWATER LOGISTICS LLC, and BLUEWATER BAY LLC. In his prayer for relief he stated: Plaintiff seeks a preliminary injunction against the Defendant's which enjoins the defendants from any further attempts to oust him as a member, determines that the Plaintiff remains a member of the company.

This is the pleading on which the Plaintiff went to trial on July 18, 2007. The relief requested was that Williford retain his 25% of the stock and remain a member.

By letter dated August 21, 2006, from counsel for the Appellants advised that the offer to purchase Mr. Williford's stocks was withdrawn. Mr. Williford could keep his 25% of the stock and remain a member. Mr. Hick's acknowledged receipt of this letter from Mr. Marshall in a pleading filed on August 23, 2006. The attorney for the Appellants repeatedly advised Clark Hicks, the attorney for Mr. Williford, up until the date of the trial on July 18, 2007, that Mr. Williford could remain a member of the LLC and retain ownership of the 25% of the stock. This information was imparted in written communication, discovery and written pleadings.

In spite of the fact that the relief Williford had been confessed repeatedly, Clark Hicks proceeded to trial over repeated objections by Appellants attorney.

The only proof offered at the trial was purported proof concerning the value of the 25% of the stock of the corporation.

In spite of having the fact that the relief granted was not pled, the Court entered a money Judgment against the LLC and the 3 other individual members.

In spite of having the many errors pointed out, the Court refused to correct the Court's errors, in any respect.

The Appellants perfected an appeal from the judgments and the overruling of the post trial motions.

STATEMENT OF THE FACTS

("R" equals "Transcript")

On February 10, 2006, James Stewart Williford, Jr., hereafter Stewart, filed a COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION AND DAMAGES against Bluewater Logistics, LLC, Bluewater Bay LLC, Patricia L. Mosser, Marquette Smith and Michael J. Floyd, hereafter Defendants.(R10-33).

The Complaint set forth that the individual defendants were members of the limited liability companies Bluewater Logistics LLC and Bluewater Bay LLC, that the LLC's were doing business in Mississippi and were in good standing.(R10)

The Complaint goes on to recite that Stewart and the three individual defendant each had an equal twenty five percent (25%) interest in Bluewater Logistics, LLC, and attached a copy of the FIRST AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT as Exhibit 1.(R11).

The Complaint alleged that the three individual members “secretly met” on January 31, 2006, and voted to remove Williford as a member of the LLC’s. The three individual members also executed a document styled “Action by Unanimous Consent by Members of Bluewater Logistics, LLC (See exhibits 2 & 3 to Complaint) (R12).

The Complaint then sets forth under the heading “ DAMAGES AND RELIEF SOUGHT” (R16,17,18) the following:

“1. Upon the giving of proper security as the Court deems fit, the plaintiff seeks a preliminary and then permanent injunction against the defendants which enjoins the defendants from the proposed action taken and orders that plaintiff is and remains a member of Bluewater Logistics, LLC and Bluewater Bay, LLC with all concomitant rights established by the Agreement, statutes, and other applicable laws. There is a likelihood of success on the merits,...”(R16,17)

After “WHEREFORE, for the reasons stated.... Williford reiterated **“Plaintiff seeks a preliminary and permanent injunction against the defendants which enjoins the defendants from any further attempts to oust(R17) him as a member, determines that the plaintiff remains a member of the company...”** and went on to restate the items listed under “DAMAGES AND RELIEF SOUGHT”

On February 13, 2006, Williford filed a MOTION FOR PRELIMINARY AND PERMANENT INJUNCTION AND NOTICE OF HEARING (R32,33). In this pleading Williford requests that the Court order:...**2. “ Orders that Plaintiff remains a member of the Bluewater LLC’s; 3. Orders that Defendants are to cease from attempts to freeze out Plaintiff as a member;...”**

The introduction to the Brief in support of Plaintiff's motion again sets forth that **"Plaintiff seeks an injunction from this Court ordering continuation of plaintiff's salary and other benefits, ordering that he remains a member of the LLC and orders defendants to refrain from further attempts to squeeze plaintiff out as a member. See Complaint, Exhibit 'A" (R34)**

In the **CONCLUSION**, Stewart against requests that **"An injunction should be granted ... ordering that the plaintiff remains a member of the LLCs and order the defendants to cease and desist from any efforts to terminate him as a member...."**(R36)

**TRANSCRIPT OF PROCEEDINGS OF FEBRUARY 15, 2006
VOLUME I, PAGES 1-118**

("T" equals "Transcript")

On February 15, 2006 , a hearing was held before Chancellor Johnny Williams.

MR. MARSHALL:

Mr. Marshall(T4) and pointed out **"There are two other problems that Mr. Williford has. One, he's an employee of this company and, two, he's a minority stockholder.(T4)... The company cannot operate with him as an employee."**

He went on to state that he(Williford) was going to get his share of the corporation **"They fired him and they don't want him back....Employment law in Mississippi gives anybody the right to do that. Clark wants us to totally ignore the fact that these other three people sitting over here have the right to fire him.**

"The other thing that Clark wants us to do is completely abrogate any rules of the corporate operation that have ever existed. The 75 %(T5) ownership can stop his salary. They can stop his benefits....In this particular case, they have terminated his

employment....Now he is still a member of the corporation. He's got 25% of it, and he's entitled to the benefits of 25% until such time as the closing....They have fired him. They don't want him working there...."(T6)

TESTIMONY OF JAMES STEWART WILLIFORD, JR.

DIRECT EXAMINATION BY MR. HICKS:(T12-36)

My name is James Stewart Williford Jr.

Patricia Mosser, Michael Floyd , Marquetta Smith and "myself" formed Bluewater Logistics to bid on government contracts.(T13)

The company was formed as a limited liability company-an LLC.(T15)

Each of the four members had 25%, a quarter ownership apiece.(T15)

The First Amended and Restated Limited Liability Company Agreement of Bluewater Logistics, LLC was introduced into evidence as Exhibit 1.(T16)

The document was signed by me and the other three members.(T16)

Mr. Hicks introduced as Exhibit 2 and Exhibit 3 Written Notice.(T27)

"The company served me with written notice on February 2 (day of the Super Bowl)"(T28)

BY MR. HICKS: "...are you a member still today of Bluewater Logistics?"

BY MR. MARSHALL: "We'll stipulate he's still a member today."(T31)

"I WANT TO REMAIN A PART OF BLUEWATER LOGISTICS"(T32)(Emphasis added)

CROSS EXAMINATION BY MR. MARSHALL (T36-60)

The company was formed in the summer of 2004.

The contract does not say "in those words" that the (members) have to give me a specific

list of reasons of what they say I did.(T42)

The other members and I have had disagreements about the way things need to run.(T43)

Our accountant has been John Harvard(T50), who is working on a fair market value of Bluewater(T51)

I expect to be offered 25% of the value of the company(T51)

BY MR. HICKS: "Your honor, at this time that's all I would have in support of our injunctive request."(T68)

DISCUSSION AND ARGUMENT AMONG COUNSEL AND THE COURT

BY MR. HICKS: Mr. Marshall has stated on the record that Mr. Williford remains a member(T68)

BY MR. MARSHALL: If this corporation is going to continue to do business then Mr. Williford cannot be there. We want him to stay away from the premises....(T69) We don't mind a restriction that says if they get some(money) he gets some "That's what they've been doing, and if they make a draw, then he gets an equal draw, just like they've been doing."(T70)

There is no money to pay him a salary, they aren't getting a salary. There is no money coming in to pay him a regular monthly payment(T71)

BY THE COURT: Mr. Hicks, what relief are you asking for today?

BY MR. HICKS: Number one, that as stipulated, apparently by Mr. Marshall, that Mr. Williford is and remains a member(T72)

DIRECT EXAMINATION OF MARQUETTA ANNETTE SMITH BY MR. MARSHALL(T73-T84)

My name is Marquetta Annette Smith (T73)

I am 36 years old and I am one of the 25% owners of the corporate defendant in this cause.(T74).

He(Williford) would be a disrupting influence to this corporation...and I'm asking this Court to preclude him from going onto the business premises.(T75)

Three times he was reprimanded for his lack of performance and work ethic in Harahan on the first contract we got.(T79) The incident on January 31st was the final straw.(T79)

We do not and have not drawn a salary of \$20,000 per month.(T81)

We are not going to take a draw unless he(Williford) gets one and whatever this Court sees fit to do to protect Mr. Williford's rights is fine.(T83)

We are able to function effectively without Stewart and if he come back it will affect our ability to function as a company.

CROSS EXAMINATION OF MARQUETTA SMITH BY MR. HICKS (T84-109)

Stewart is a partner until the closing of this business(T85) He is a partner until this matter is brought to a close.(T85)

We have invoked our rights under paragraph 13 by a 75%(T86) super majority to redeem his stock.(T87)

We followed that agreement. We took a vote. We invoked our rights.(T87)

The selling member would receive his payment at closing. (T88)

The right of redemption clause says that by a 75% super majority and what jeopardized our company's status as a government contractor give us the right to redeem.(T90)

It does not say anywhere in our operating agreement that we have to give him reasons.(T90)

He has -as a member-he has as much access to our accountant who keeps our books off site as we do.(T93)

Bluewater Logistics doesn't have a president. We're a limited liability company. We are

all equal members. There is no president, vice president, etc .(T99)

We covered paragraph 13 and are not required by paragraph 13 to give him a list of reasons in writing.(T101)

We took written action.(T101)

BOTH SIDES RESTED

BY THE COURT:

The parties have announced through their lawyers they rest on whether or not this Court should issue a preliminary injunction.

“THE COURT VIEWS THIS PARTNERSHIP AGREEMENT SORT OF LIKE IT WOULD A MARRIAGE , AND ANYTIME THERE IS A (T109) BREAKUP OF A MARRIAGE, A FALLING OUT BETWEEN PARTNERS, SOMETIMES IT’S DIFFICULT TO MAINTAIN THE NORMAL OPERATIONS OF THE BUSINESS. Also, as in the case of a marriage, it’s hard for two people to live in a home sometimes where they have fallen out.”

Mr. Marshall stated there was not a problem with Williford having access to the accountant but nobody in any pleading before the Court has asked anybody to basically appoint a receiver to operate this business and there’s no necessity to do so. All he (Williford) needs to know is that the bills are being paid and there’s no money going out unless he gets some of it.(T111)

BY THE COURT: We’re going to ask the current CPA to sign off on regular expenditures.(T112)

The Court is going to take other requests under advisement and the Court also wants a restriction at this time on distributions and salaries that are not court approved.

In other words, if these parties are going to make some distributions to themselves, they need to come back and get Court approval for it.(T114)

BY MR. HICKS:

I JUST WANT TO MAKE SURE FOR THE RECORD THAT WE'RE OBVIOUSLY RESERVING THE RIGHT TO PURSUE THE REMAINDER OF THE RELIEF WITHIN OUR COMPLAINT AT A TRIAL ON THE MERITS, IF NECESSARY.(T117)

BY THE COURT: You may know enough when you leave here to find a way to resolve everything.(T117)

FEBRUARY 15, 2006 HEARING CONCLUDED

On February 27, 2006, an ORDER GRANTING PRELIMINARY INJUNCTION, IN PART was filed. (R64-66)

The order provided that a preliminary injunction was granted on the following specific terms, in pertinent part:

“...2The LLCs may make ordinary payments for normal and routine operations of the business..THE DEFENDANTS MAY CONTINUE WITH THE NORMAL OPERATION OF BUSINESS AND PAYMENT OF EXPENSES IN THE ORDINARY COURSE OF BUSINESS SO LONG AS THE CPA IS AWARE OF AND APPROVES OF THE REGULAR OPERATING EXPENSES BY SIGNATURE.(R65)

“3. No member of the LLC’s may pay themselves salaries, distributions, draws, expense reimbursement or any other funds or income of any kind without Court approval. Any account or other income currently possessed by the LLCs may be used for payment of owed expenses.”

“8. The parties are instructed, through counsel, to met with the CPA and make reasonable attempts to resolve this dispute, and, if they are unable to do so, the parties through counsel, are ordered to set this case for a full trial on the merits as soon as reasonably possible...”(R66) :

“10. All other relief requested by the plaintiff is denied pending a full hearing on the merits.”(R66)

ANSWER TO COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION AND

DAMAGES AND COUNTER COMPLAINT

On March 10, 2006 an ANSWER TO COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION AND DAMAGES AND COUNTER COMPLAINT was filed.

(R61-71) This pleadings set forth, in pertinent part, as affirmative defenses:

FIFTH AFFIRMATIVE DEFENSE: Mississippi is an employment at will state and therefore the Plaintiff could be terminated as an employee of the LLC at any time,..(R68).

This pleading went on to deny the factual allegations of the Complaint(R68,69)

Further, this pleading set forth in the COUNTER COMPLAINT, again in pertinent part: "Paragraph 2: The Plaintiff was terminated as an employee of the business by a Majority vote of (R69)the members. At the same time it was decided that he would be removed as a member..."(R70).

On April 10, 2006, the PLAINTIFF'S RESPONSE TO DEFENDANTS' COUNTER COMPLAINT (R72-74) was filed, setting forth in pertinent part:

SECOND DEFENSE "As Williford remains a member of Bluewater Logistics, LLC, as admitted at the preliminary hearing,..."(R72).

On August 23, 2006, Mr. Hicks filed a pleading styled PLAINTIFF'S MOTION FOR AN ORDER COMPELLING DISCOVERY et al(R90-122).

In paragraph 8 of this pleading, Mr. Hicks stated:

Paragraph 8... "In response, counsel(Mr. Marshall) faxed a letter dated August 21, 2006, attached as Exhibit '7". In this letter, counsel states that an evaluation by Carpenter is 'unnecessary, useless, and irrelevant.' Counsel goes on the state that the defendants will not pay the plaintiff his twenty five (25%) ownership...."(R92)

EXHIBIT 7, THE LETTER DATED AUGUST 21, 2006,(R113) from Robert R.

Marshall counsel for the defendants, states, again in pertinent part:

“ I met with the three stockholders in Bluewater last week. Based on that meeting, let me reiterate what I had already told you: THE OFFER TO PURCHASE MR. WILLIFORD’S STOCK IS WITHDRAWN. HIS FIRING AS AN EMPLOYEE IS AFFIRMED AND CONFIRMED.

Since there is no offer to purchase his stock and since there is no requirement that the stock be purchased, an evaluation of the LLC is irrelevant and here is no necessity for Nancy to evaluate anything...because the offer to purchase Mr. Williford’s stock is withdrawn.

We will see you in Court on September 13th.(R113)

Exhibit 8 to this same pleading is a copy of the RESPONSE TO PLAINTIFF’S FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS.

In pertinent part, this exhibit sets forth:

“RESPONSE NO. 8: THE OFFER TO PURCHASE HAVING BEEN REJECTED, BLUEWATER NO LONGER WISHES TO REDEEM JAMES STEWART WILLIFORD, JR.’S SHARES.(R116)”

“RESPONSE NO. 11: As in set forth in ‘exhibit 8” Bluewater no longer wishes to redeem Williford’s shares. Insofar as why Williford is no longer an employee, he was terminated for poor job performance and no work ethic.”(R117)

“INTERROGATORY NO. 14: PLEASE STATE WHY YOU CHANGED THE LOCKS AND BARRED WILLIFORD FROM THE PREMISES.”...

RESPONSE NO. 14: We fired him for lack of job performance.(R118)

“INTERROGATORY NO 15: Please state whether Williford remains a member of Bluewater Logistics. If no, state why:

RESPONSE NO. 15: Williford is a minority stockholder in Bluewater. He is not an employee because of poor job performance and no work ethic.”(R118)

INTERROGATORY NO 16; Please identify why you did not allow Williford to remain part of the business until payment of his interest at closing:

RESPONSE NO. 16: He got fired because he is lazy,(R118) inefficient, failed to perform, never at work,, late and failed to complete tasks. As far as 'remaining part of the business', he wasn't working anyhow. He still owns his stock."(R119)

**MOTION TO DISSOLVE ORDER GRANTING PRELIMINARY IN
JUNCTION IN PART**

On August 28, 2006, the Defendants Bluewater Logistics, LLC, Bluewater Bay LLC, Patricia L. Mosser, Marquette Smith and Michael J. Floyd filed a MOTION TO DISSOLVE ORDER GRANTING PRELIMINARY INJUNCTION, IN PART, (R125-134)

This pleading set forth in pertinent part:

"1. On February 10, 2006, James Stewart Williford filed a COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION AND DAMAGES against Defendants...

"2. The relief sought in the COMPLAINT was premised on the position by Williford that he wished to remain a member of Bluewater and did not wish to sell his stock...

"4. On February 27, 2006, an ORDER GRANTING PRELIMINARY INJUNCTION, IN PART was entered, the order being premised on Williford's opposition to the purchase of Williford's stock by Bluewater....

"6. As is set forth in Marshall's letter attached as Exhibit 1, Bluewater no longer wishes to purchase Mr. Williford's stock. This decision and position was reiterated in Marshall's letter(R126) dated August 21, 2006, a copy of which is attached hereto as

Exhibit 3 and included herein by reference.(R127)

EXHIBIT 1, A LETTER TO CLARK HICKS FROM Robert R. Marshall dated June 13, 2006,(R132) states in pertinent part:

“I am meeting with my clients later this week and we will determine all the issues then, but in the meantime for your information, I am informed that they no longer wish to purchase Mr. Williford’s shares. Both you and I know that there is no requirement that minority shares be purchased and no authority for the actions taken by Chancellor Williams concerning the operation of the business. We are going to try this matter and if I am unable to convince Chancellor Williams of the applicable law, perhaps the appellate courts will be more receptive.(R132)

Exhibit 2 a letter dated June 16, 2006, a response from Clark Hicks,(R133) provides in pertinent part:

“Thank you for your letter of June 13....

“I must provide your letter to the Court as you have informed that the other shareholders”...no longer wish to purchase Mr. Williford’s shares. If I am reading your letter correctly, this means that they will not offer any money for his shares contrary to statements they have made to him in writing and statements you made to the Court. If I am not reading this sentence correctly, please advise what you mean.”(R133)

This letter reflects a copy to “Honorable Johnny L. Williams.(R133)

EXHIBIT 3 is a copy of the letter of August 21, 2006, the contents of which have already been summarized, but which concludes with the statement ...”an evaluation by Nancy is unnecessary , useless, and irrelevant because the offer purchase Mr. Williford’s stock is withdrawn.”(R134)

Paragraph 7. Set forth that since there is no offer to purchase and no statutory or case authority for forcing majority shareholders to purchase the interest of minority stockholder, the issue of evaluation is moot.(R127)

Paragraph 8 sets forth in part. “Since the entire COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION AND DAMAGES is premised on the offer to purchase Williford’s stock ...and since there is no longer any offer to purchase Williford’s stock then the Chancery action itself is without any factual basis ...Williford can remain a member

and minority stockholder as he has elected to do, with all the rights and obligations of a member.(R127)

Paragraph 9 sets forth in pertinent part,: “No part of the COMPLAINT is based on Williford’s firing as an employee, which firing as an employee occurred concurrently with the offer to purchase Williford’s interest in Bluewater....(R127)

ON AUGUST 28, 2008, THIS MOTION WAS NOTICED FOR HEARING BEFORE CHANCELLOR JOHNNY WILLIAMS ON WEDNESDAY SEPTEMBER 7, 2006, IN POPLARVILLE MISSISSIPPI.(R130)

AMENDED ANSWER TO COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION AND DAMAGES

On August 31, 2006, the Defendants, BlueWater Logistics, LLC, Bluewater Bay, LLC, Patricia filed their **AMENDED ANSWER TO COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION AND DAMAGES (R137-143).**

This pleading denied that Williford was entitled to any relief, set forth affirmative defenses, and set forth in pertinent part:

- In paragraph 8 of this pleading, the following affirmative defense appears: “The allegations of Paragraph Eight are denied. **AFFIRMATIVELY, THE DEFENDANTS WOULD SHOW THAT MEMBERS REPRESENTING SEVENTY-FIVE PERCENT (75%) OF THE VOTING SHARES MET AND MADE THE DECISION TO FIRE WILLIFORD WHICH WAS DONE, AND FURTHER MADE THE DECISION TO OFFER TO PURCHASE WILLIFORD’S STOCK. THE DECISION TO PURCHASE WILLIFORD’S STOCK HAS BEEN RESCINDED.”(R141)**

• In paragraph 9 we find the following quote: “What paragraph 9 Management by Members actually says is:’The management of the Company’s business shall be vested in the members. A decision made by the written approval of, OR THE AFFIRMATIVE VOTE BY, MEMBERS HOLDING A MAJORITY OF THE INTEREST SHALL BE THE DECISION OF THE COMPANY.” (R142)

PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION TO DISSOLVE ORDER GRANTING PRELIMINARY INJUNCTION, IN PART

On September 1, 2006, James Stewart Williford, Jr. Filed his **PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION TO DISSOLVE ORDER GRANTING PRELIMINARY INJUNCTION, IN PART**(R149-171)

In this pleading, Mr. Williford states through his counsel: Clark Hicks... “**YET IN THE DEFENDANTS’ CURRENT MOTION, DEFENSE COUNSEL MAKES A PUZZLING STATEMENT THAT ‘WILLIFORD CAN REMAIN A MEMBER AND MINORITY STOCKHOLDER AS HE HAS ELECTED TO DO, WITH ALL THE RIGHTS AND OBLIGATIONS OF A MEMBER.’”(R154)**

On September 5, 2006, Bluewater Logistics LLC, Bluewater Bay LLC, Patricia L. Mosser, Marquetta smith and Michael J. Floyd filed the defendants **DEFENSES AND ANSWER TO PLAINTIFFS’S MOTION FOR AN ORDER COMPELLING DISCOVERY, FOR AN ORDER HOLDING DEFENDANTS IN CONTEMPT OF COURT, FOR APPROPRIATE SANCTIONS AND FOR AN ORDER TO STAY FURTHER PROCEEDINGS** (R172-182).

UNDER” II. SECOND DEFENSES- RESPONSE (R174-180) the defendants set forth:

“2. Defendants admits that the three majority shareholders voted to remove Williford as a shareholder and pay him twenty five (25%) of the fair market value of

Bluewater....Affirmatively, Defendants would show that concurrently with making the decision to offer to purchase plaintiffs stock, the decision was made to fire Williford as an employee, which was done. Though no reason was or is needed to fire an employee in Mississippi, in this case Williford was fired because he is lazy and for poor work performance, as has been repeatedly explained...(R175)

In paragraph 4, the Defendants set forth:

"4. Affirmatively, Defendants would show that repeated attempts to meet with the plaintiff to resolve the valuation matter have been rebuffed and defendants then elected to withdraw the offer to purchase plaintiffs stock. Williford sued to retain his membership and his stock in Bluewater and now has what he wants, rendering the litigation over the value of the LLC and the value of the stock moot.

" Further affirmatively Defendants would show this Court that the portion of the transcript attached as an exhibit also distinguishes between Williford's status as an employee and member and states that Williford was fired as an employee, which(R175) he was"(R176)

In paragraph 7, the Defendants set forth affirmatively:

"...that no Order was ever entered granting Nancy the right or duty to value the business, and that during this period of time it was becoming apparent that Williford was not interested in being paid for his stock, prompting the Defendants to withdraw their offer to purchase Williford's stock. With no offer to purchase outstanding and no right to force purchase of a (R176) minority shareholders stock, a valuation of the business is moot...."(R177)

Exhibit 2 to this Motion is a copy of counsel for the Defendant's letter dated August 21, 2006, (R182) which provides in pertinent part:

"I met with the three stockholders in Bluewater last week. Based on that meeting, let me reiterate what I had already told you: THE OFFER TO PURCHASE MR. WILLIFORD'S STOCK IS WITHDRAWN. HIS FIRING AS AN EMPLOYEE IS AFFIRMED AND CONFIRMED.(R182)

Since there is no offer to purchase his stock and since there is no requirement that the stock be purchased, an evaluation of the LLC is irrelevant and there is no necessity for Nancy to evaluate anything...AN EVALUATION BY NANCY IS UNNECESSARY, USELESS, AND IRRELEVANT BECAUSE THE OFFER TO PURCHASE MR. WILLIFORD'S STOCK IS WITHDRAWN...."(R182)

THE PARTIES AND COUNSEL APPEARED AS NOTICED ON SEPTEMBER 7, 2006, CONFERRED WITH THE Court, and agreed on the provisions of an order.

On September 11, 2006, an **AGREED ORDER TEMPORARILY STAYING ALL PROCEEDINGS, CONTINUING THE TRIAL DATE, AND PROVIDING FOR INDEPENDENT APPRAISAL** was entered.(R183-185)

This Order provided for preparation of an appraisal by Nancy Carpenter and set forth in paragraph 5:

“5. Upon completion of the report by Carpenter, the parties are instructed to attempt resolution of all claims pending. If the parties are unable to reach final resolution, **they are to advise the Court and agree on date for hearing the pending motions and a trial date.**”(R184)**RECALL: One of the pending motions referred to in this order was the defendants MOTION TO DISSOLVE PRELIMINARY INJUNCTION filed on August 28, 2006, to which Clark Hicks filed a response on September 1, 2006 (R149-171)**

A **NOTICE OF TRIAL SETTING** was filed on May 7, 2008, setting the matter on July 18, 2007, at 9 o'clock AM for the first day of a two day trial.(R248)

THE TRIAL

THE MATTER CAME ON FOR TRIAL AT 9 O'CLOCK AM ON JULY 18, 2007, IN PERRY COUNTY, MISSISSIPPI. THE FOLLOWING IS A SUMMARY OF THE TRANSCRIPT OF THE TRIAL (VOLUME II, PAGE 177 THROUGH VOLUME III, PAGE 330. (“T” equals Transcript)

By way of opening statement, Mr. Marshall made the following statement:

“I was curious to see whether he(Clark-attorney for the plaintiff) would represent to the Court that they are here asking for an amount of money for Mr. Williford to buy his stock out **because they haven't pled it...**They started off asking this Court for an injunction....

“Well about two or three weeks after this case started, I advised Mr. Hicks-and there's a pleading in the file with the copies of the letters that there was no outstanding offer to purchase Mr. Williford's stock, and in fact, Bluewater and these members confessed that Mr. Williford could remain a member. That's what he asked for, and that's what he got...”

"There's not a pleading in here that says, Give us the money or our stock. There are pleadings that say the offer is withdrawn. He wants to stay a member he can stay a member. He can be a member as long as Bluewater is there. He's not entitled to an order from this Court ordering an amount of money to purchase his stock. This Court, unless this Court elects to change however many years we've had corporate law in the State of Mississippi, doesn't have the authority to order a payment of money to a minority stockholder for stock."

"...There is no authority to order payment of money to a minority stockholder in the State of Mississippi, even if you asked for it, and they didn't. If you look at that pleading, they want to enjoin these people from ousting his as a member and they said, Okay. We'll keep him as a member."

We confessed that relief a long time ago. ...I have told him (Clark-attorney for the plaintiff) on two or three occasions, one time in this very courtroom, when he says this case needs to be settled, I said, We're not settling it. He's a member. There's no reason to settle it, and as a corollary, there's also no reason for any appraisal of the value of the business because it's irrelevant,(T187) teetotally irrelevant....(T188)

" This complaint was filed on February 10th and Clark runs over here and says, "We can win", and I said, "Okay, you can win it. We want out. We'll leave him a member". And that was done within a month of the entry of the first order in this matter. **THE RELIEF THEY SOUGHT WAS ENJOIN THE DEFENDANTS FROM THE PROPOSED ACTION TAKEN AND ORDER THAT THE PLAINTIFF REMAINS A MEMBER OF BLUEWATER.**"(T188)

BY THE COURT: "How can you fire an owner or a stockholder?"(T188)

BY MR.. MARSHALL: " "It's easy , Judge. He's an employee to get paid. Just because he's a stockholder doesn't entitle him to receive salaries. ..."(T189)

MR.. MARSHALL WENT ON TO STATE "There's a pleading filed which is also before this Court today on August 28th,2006...There's a motion to dissolve the order granting preliminary injunction in part...It sets forth that-as is set forth in Exhibit 1, Bluewater no loner wishes to purchase Mr. Williford's stock. The decision and position was reiterated in Marshall's letter dated August 21st of 2006. Since there's no offer to purchase and no statutory or case authority for forcing majority shareholders of purchase the interest of minority shareholders, the interest evaluation is moot..."(T190)

BY THE COURT:(Addressed to Mr. Hicks)" What's your response to their motion?(T190)

BY MR. HICKS: **There is no motion pending your honor.**(T190)

BY THE COURT: He says there's a motion pending.(T190)

BY MR. HICKS: If there was a motion pending I would have had it noticed and been told about it. I have no idea what he's talking about. We're here to (T190) try the lawsuit.(T191)

BY MR. MARSHALL: No, we're here for trial on the pleadings....It was all set at one

time.”(T191)

BY MR. HICKS: “ I have no idea what he’s talking about...

BY THE COURT: Mr. Marshall why didn’t you set that motion for hearing?”(T191)

BY MR. MARSHALL: I didn’t have to set it specifically. **The Court set it....” The motion is for today.** This Court set the issues for trial and this is one of them. It’s a pending motion in this case and it set forth the facts that they knew and they have known for months-for a year that there’s no pending offer to buy his stock. They know what the law is. They know that there’s no law that allows this purchase of the stock....”(T192)He hasn’t asked for any relief, Judge....”(T193)

BY THE COURT: “I MEAN, WHAT HE’S TRYING TO DO, THEY’RE TRYING TO WITHDRAW THEIR MAJORITY VOTE TO TERMINATE HIS STOCKHOLDER’S INTEREST IN THE COMPANY. They’re trying to withdraw it, and what I’m asking you is for your response to that argument.(T193)

BY MR. HICKS: ‘Well, first of all, I’ve received nothing in writing....There’s been no written action taken.(T193)

BY THE COURT: “No written action taken...”(T193)

BY MR. HICKS: No , sir.(T193)

BY THE COURT: —on their part?(T193)

BY THE COURT: “This is just something he’s verbalizing?(T193)

BY MR. HICKS: “Yes sir.(T193)

BY THE COURT: “ You haven’t had any written notice?(T193)

BY MR. HICKS: “ No. Sir.”(T193)

BY THE COURT: Mr. Marshall, is this something you’re just verbalizing?...”(T193)

BY MR. MARSHALL: Judge on June 13, 2006, I wrote Mr. Hicks. I wrote him on August 21,2006. He can’t stand there and say he didn’t know the offer had been withdrawn,...We confessed his position...”(T194)

BY THE COURT: Did you file anything in Court?”(T194)

BY MR. MARSHALL: Yes...And it’s attached to a motion filed in this Court, Judge. **They haven’t pled for any money...”(T194)**

BY THE COURT; Well, what I'm going to do for the record overrule your motion, Mr. Marshall, and I want it in the record, and I want it in whatever order as it's drafted.(T194)

BY MR. MARSHALL: "They haven't pled for the relief they're going to seek, and I object to any testimony concerning any valuation or any effort by Mr. Wiliford to say they owe him some money. The corporate law is clear. This Court doesn't have the authority to order them to pay....We want him to say a member, and we confessed it and he knows it. (T195)

BY THE COURT: "Overruled. You may proceed."(T195)

TESTIMONY OF NANCY CARPENTER; (T 195-245; 258-270)

Direct examination by Mr. Hicks(T195-245)

My name is Nancy Carpenter. I have been a certified public accountant since 1984.(T195)

The Court's instruction to me was to determine a value of the Bluewater entities, and I have done so.(T197)

I have completed my report of the fair market value of the Bluewater entities as of January 31, 2006(T198)

BY MR. MARSHALL: "To which I object on the grounds of relevance because he has not pled for any monetary relief..."(T198)

BY THE COURT. "Overruled. You may continue."(T198)

BY MR. HICKS: "...IS THIS A CORRECT AND COMPLETE COPY OF YOUR REPORT?" (T206)

BY MR. MARSHALL: "And I again object, Your Honor. This report is irrelevant to the issues before this Court. They have asked that this man be allowed to remain as a member, and we have confessed it. We are now talking about a valuation of this business for the purposes of awarding money, and they haven't asked for any money, and I object to an further testimony concerning how much a business is worth or (T206) how she arrived at it."(T207).

BY THE COURT: "...So I think that motion doesn't have any merit to it so I overrule as I did previously. You may continue...."(T207)

BY MR. HICKS: At this time, Your Honor, we would like to offer that exhibit into evidence,..."(T207)

BY MR. MARSHALL: And I object to its introduction."(T207)

BY THE COURT: Overruled. Overruled."(T207)

TESTIMONY OF NANCY CARPENTER CONTINUES:

That makes the fair market value of the company of the of January date \$1,267,073.01.(T235)

TESTIMONY OF JOHN HARVARD(T245-T258)

Direct examination by Mr. Hicks

My name is John Havard and I am a certified public accountant practicing in Hattiesburg.(T245)

As of January 31, 2006, my estimation of the fair market value of the members interests was one million to 1.2 million dollars.(T248)

EXAMINATION OF NANCY CARPENTER RESUMES:

I found no salary checks written after the date of the original order.(T 267,268)

EXAMINATION OF NANCY CARPENTER CONCLUDED(T270)

TESTIMONY OF MICHAEL FLOYD CALLED AS AN ADVERSE WITNESS(T270-

EXAMINATION BY MR. HICKS (T270-277)

My name is Michael Floyd and I am a member of Bluewater Logistics, LLC(T270)

I was a member of Bluewater Logistics on February 2, 2006(T271)

I am familiar with the provisions of Exhibit 3(T271)

EXAMINATION BY MR. MARSHALL (T277- 283)

There has been no closing date set because we were under the impression the last time we were in court that we were supposed to try to settle the matter outside of court. We made three offers but received no response.(T278)

The first time we could have set any closing was when we received Nancy's appraisal-last Monday.(T278)

We had a subsequent meeting concerning buying Mr. Williford's shares of stock at the fair market value and decided not to and decided to withdraw our offer and allow him to remain a member. The three stockholders voted for that and we had you (Mr. Marshall) write a letter to Mr. Clark Hicks expressing that the offer to purchase Mr. Williford's stock is withdrawn. (T279)

This is a copy of that letter.(T279)

THE LETTER WRITTEN TO MR. HICKS AND WITHDRAWING THE OFFER TO PURCHASE WILLIFORD'S STOCK AND ALLOW HIM TO REMAIN A MEMBER WAS INTRODUCED INTO EVIDENCE AS EXHIBIT 8(T279)

THE LETTER IS DATED AUGUST 31 , 2006, AND STATES IN PERTINENT PART:

"I met with the three stockholders in Bluewater last week. Based on that meeting, let me reiterate what I had already told you: The offer to purchase Mr. Williford's stock is withdrawn. His firing as an employee is affirmed and confirmed.

"Since there is no offer to purchase his stock and since there is no requirement that the stock be purchased, an evaluation of the LLC is irrelevant and there is no necessity for Nancy to evaluate anything....an evaluation by Nancy is unnecessary, useless, and irrelevant because the offer to purchase Mr. Williford's stock is withdrawn...."(T279)

TESTIMONY OF MICHAEL FLOYD CONTINUING:

As early as August of 2006 I informed Mr. Williford that he had won; that he could stay a member.(T280)

He kept on with this litigation and now he is here wanting us to pay him some money for

the shares of stock.(T280)

We are not willing to do that now (purchase his stock).(T280)

He has known for almost a year that the offer was withdrawn and that the action by the Board had been rescinded.(T280,281)

EXAMINATION OF MICHAEL FLOYD CONCLUDED(T285)

**TESTIMONY OF MARQUETTA SMITH, CALLED AS AN ADVERSE WITNESS(T285-
CROSS EXAMINATION BY MR. HICKS(T285-T291)**

**DIRECT EXAMINATION OF MARQUETTA SMITH BY MR.
MARSHALL.(T291)**

Subsequent to our signing the exhibit saying we wanted to terminate Mr. Williford as a member of this limited liability corporation and pay him for his shares of stock he sued us.(T291)

He said in the suit he didn't want to be terminated and wanted to remain a member so we had another meeting and rescinded the offer and caused (Mr. Marshall) to transmit that information to Mr. Hicks saying he can remain a member.(T292)

That was a year ago and we're still here today and he can remain a member.(T292)

We did fire him and he stays fired.(T292)

We haven't drawn any salaries since the Court told us not to.(T293)

Mr. Williford is still a member of the association.(T293)

DIRECT EXAMINATION BY MR. MARSHALL CONCLUDED(T294)

FURTHER CROSS EXAMINATION BY MR. HICKS:(T294-301)

I talked about the letter we had our lawyer write and I testified that our decision (to purchase Williford's stock) had been rescinded. (T294)

We have not asked him to come back because there's a difference between a member and an employee. I no longer have keys to the office because there's a difference between a partner and an employee.(T294)

Mr. Williford has no involvement with our company. We have not denied him access to the books at any time(T295)

As a partner he's a member in the LLC. He owns stock just like I do, but I have no day to day input in the business at this point either. I'm not an active partner, ad I do not have a key to the business.(T295)

The other two members are not going to buy me out because I have no desire to be bought out.(T299)

I consider myself a member who's not active and I am not getting paid.(T299)

I'm a member of the LLC. That's all I am at this point is a member of the LLC. I own stock in the LLC.(T299)

EXAMINATION OF MARQUETTA SMITH CONCLUDED(T301)

EXAMINATION OF PATRICIA MOSSER, CALLED AS AN ADVERSE WITNESS(T301)

CROSS EXAMINATION BY MR. HICKS:(T301-306)

That is my signature appearing on Exhibit 3. Exhibit 3 is a written action taken by our company on February 2d of 2006-the company of which I am a member.(T302)

Marquetta is not an active member in the company now. Michael Floyd and I are the only active members(T306)

DIRECT EXAMINATION BY MR. MARSHALL(T306)

The other members and I had a meeting when the determination was made that we were

going to purchase Mr. Williford's shares and we followed the (T306)bylaws(T307).

We told him were going to exercise the corporate rights to purchase his 25% of the stock at fair market value. (T307)

We got Nancy's estimate of the value so there could not have been an closing set until yesterday(T307)

After we tried to arrive at a value and tried to pay Mr. Williford we had another meeting and elected to withdraw the offer and to allow Mr. Williford to remain a member.(T308)

We caused you to write the letter stating we had already told them based on the actions of the members of the corporation he could remain a member and keep his 25% stock(T308)

That was a year ago and he kept right on suing us and **what he sued us for was to prevent his being ousted as a member.**(T308)

We had agreed that he could remain a member and keep his 25% just like Marquette can.(T309)

We don't want to pay him any money for his stock and he can keep it(T309)

Being a member of 25% doesn't entitle him to work in the business but he is come to keep his 25% of the stock(T309)

**DIRECT EXAMINATION OF PATRICIA MOSSER BY MR. MARSHALL
CONCLUDED(T313)**

FURTHER CROSS EXAMINATION BY MR. WILLIFORD.(T313)

As far as I'm concerned Stewart is still a member of this company (T314)

THE TRIAL WAS CONCLUDED AND MR. HICKS RESTED FOR THE PLAINTIFF

MOTION TO DISMISS BY MR. MARSHALL(T315-321)

BY MR. MARSHALL:

Mr. Hicks has put on testimony concerning the fair market value of a 25% interest in Bluewater Logistics.(T315)

I have previously stated my position concerning the fact that absent the shareholders exercising their rights under the agreement to redeem his shares for the fair market value, that there's no(T315)authority for this Court to order payment to Mr. Williford and I reiterate that argument.(T316)

I also reiterate the argument that the offer was withdrawn and Mr. Hicks has known about it at least since August of 2006.(T316)

I'm saying that he keeps his 25%(of the stock) and we all go home.(T317)

He pled that he did not want to be ousted. They came to this Court, and they asked this Court for an injunction.(T317).

The bottom line is that they haven't pled the relief they're wanting this Court to grant them. They didn't ask for it. They got what they wanted. ...We confessed he can stay a member, ..."(T319)

The remaining portion of my motion(T319)is for a dismissal of any and all elements of this Chancery action...against the purported defendants other than Bluewater Logistics. ...They've put on no proof that anybody owes anything, Judge, except this statement that the LLC is going to pay him his fair share of the money, and I don't think that's even in there.

BY THE COURT; "It's overruled. Your motion is overruled."(T320)

THE TRIAL CONTINUED AND PATRICIA MOSSER WAS RECALLED.

REDIRECT EXAMINATION OF PATRICIA MOSSER BY MR. MARSHALL(T321-326)

Stewart Williford did not testify here today.(T321)

We had a meeting and decided to terminate him because a member can be ousted...We

exercised that right as a super majority..."(T322)

BY THE COURT: "...I do not see how this testimony is going to impact on his share or his interest in the corporation. It does impact on the firing. I understand that..."(T322)

Patricia Mosser continuing:

Stewart was not pulling his weight with this LLC and we fired him and elected to offer to purchase his shares of the 25% of the LLC.(T323)

We withdrew the offer.(T323)

When he sued me he came into this Court and represented to the Court that he could prove everything he said on the trial of this matter and he asked that he not be ousted as a member of this LLC.(T323)

We subsequently informed his lawyer by letter that the offer to buy his stock had been withdrawn and he could remain a member of the LLC. That is still our position."(T323)

I am speaking for the members. The three members have made that decision and he can keep his stock and at some point in time when the corporation is dissolved he can realize whatever interest the stock is worth, just like me.(T324)

He was fired and the firing sticks.(T324)

Four of us own 25% each of the stock in the LLC.(T324)

Michael and I are the only two stockholders who work there. Marquetta and Stewart have gone elsewhere to work and we do not want him(Stewart) back as an employee.(T325)

BY THE COURT: Ya'll fired him....You fired him.(T326)

BY MR. MARSHALL; We fired him, ..." (T326)

BOTH SIDES RESTED AND THE TRIAL CONCLUDED (T327)

BENCH RULING BY THE COURT(T327-330)

The case really turns on two issues: number one would be what would be the value of Mr. Williford's interest in the company; and number two is whether or not the "partners" withdrew their termination notice and reinstated Mr. Williford as a ...shareholder.

The Court is going to adopt the lower estimate of the value of the company of \$1,267,073.31 and the Court is going to set Mr. Williford's share at \$316,768.25 on January 31, 2006. The Court determines that Mr. Williford is entitled to receive his share taxed at an interest rate of 5% from January 31, 2006.(T328)

"As to the attorney's fee request, the Court does not know of any authority that the Court has to authorize attorney's fees, so the Court does not approve attorney's fees for Mr. Williford.(T328)

Include in the judgment all other relief not granted by the Court is hereby denied and the counterclaim would be denied.(T329)

FINAL JUDGMENT

The FINAL JUDGMENT was entered in this cause on July 19, 2007, (R297-298)

The Judgment provided that James Stewart Williford, Jr. is entitled to compensation for his one quarter interest as of January 31, 2006, and entered judgement in favor of Williford in the amount of \$316,768.25.(R297)

The Court determined that the argument that the Bluewater members withdrew their written decision to remove Williford as a "partner" unmeritorious" "for the reasons

set forth by the Court from the Bench.”(R298)

POST TRIAL MOTION (JULY 30, 2007)

On July 30, 2007, the defendants filed their **MOTION(JULY 30, 2007)(R299-302)** seeking post trial relief under the provisions of Rule 52(a) &(b) of the Mississippi Rules of Civil Procedure; Rule 59(a) &(e) of the Mississippi Rules of Civil Procedure; and Rule 60(b)(6) of the Mississippi Rules of Civil Procedure.

The partial list of the reasons the Court was in error were included in the body of the **MOTION(July 30, 2007)** and included: 1. There was no pleading before the Court that would allow the Court to grant the relief granted; 2. There is no legal basis for the judgment and should the judgment stand then the entire body of commercial and corporate law would be changed because the Court allowed a minority shareholder to demand and be awarded the purported value of the shareholders stock; 3. There was insufficient factual and no legal basis for the Court’s determination of a money judgement; 4. There is no request for the relief granted pending before this Court in any form; and 5. there is no legal or factual basis for any judgment against the individual defendants in this cause nor any testimony at the trial on which such a judgment could be granted. (R301)

A BRIEF IN SUPPORT OF MOTION (JULY 30, 2007) was filed on October 2, 2007.(R304-314)

This BRIEF recited the facts and set forth the defendant’s arguments, partially set forth hereafter and fully set forth in the Argument portion of this brief:

- **On February 10, 2006,Williford’s Complaint set forth that he sought a preliminary and permanent injunction which enjoined the dependants to oust him as a member and determined that he remain a member of the company(R304)**
- **On August 16, 2006, the defendants set forth in the response to Interrogatory #8 that “the offer to purchase having been rejected, Bluewater no longer wishes to**

redeem James Steward Williford's shares..."in the response to Interrogatory #11 "...Bluewater no longer wishes to redeem Williford's shares. Insofar as why Williford is no longer an employee, he was terminated for poor job performance and no work ethic..." the defendant's set forth in the response to Interrogatory # 15 "...Williford is a minority stockholder in Bluewater. He is not an employee because of poor job performance.(R306,R307)

The Brief went on to list the pleadings and recite the request for relief in each and the fact that Williford had REPEATEDLY been told through his attorney that he could retain his stock and the offer to purchase his stock had been withdrawn but he remained fired an employee.(R309-314)

In the ARGUMENT portion of the Brief, the defendants recite, in part:

- **The Court should set forth specifically each and every relevant fact on which the Court's opinion is based (R310)**
- **There is no law which allows a finding of "inequity" or "not being fair" as a basis for a money judgment (R310)**
- **Courts of equity are bound by express rules of law and the Court should set forth the specific statutory and case law on which the court relied (R310)**
- **The statute in question is the MISSISSIPPI LIMITED LIABILITY COMPANY ACT, section 79-29-101 et sec which is complete in itself and which does not authorize or provide the relief granted by the court . There is no provision nor has there ever been any provision for a minority shareholder to purchase his interest in a corporation. Minority shareholders have only the rights granted in the statutes. The Court is attempting to alter the entire field of commercial law because not to do so would not be "fair"(R310)**
- **The third area of law on which the Court was in error was GRANTING A JUDGMENT OUTSIDE THE SCOPE OF THE PLEADINGS. THE SOLE RELEVANT RELIEF REQUESTED BY WILLIFORD WAS AN INJUNCTION PREVENTING BLUEWATER FROM OUSTING HIM AS A MEMBER. Over strenuous objection at the trial, the Court went outside the scope of he pleadings, allowed testimony concerning the value of the LLC, and entered a judgment for Williford for 1/4 of the value of the LLC. THIS RELIEF WAS NOT PLED AND NOT AUTHORIZED BY LAW.(R311)**
- **Over strenuous objection, the money judgment entered was entered jointly and severally against the three other members as well as the LLC. There is no authority for the court to enter a judgment against the other three shareholders, there are no facts on which to base such a decision, and the Court was and remains in error to do so.(R311)**
- **The only relief the Court could grant based on the pleadings was to allow Mr. Williford to retain his 25% ownership in the LLC, which the LLC had already**

confessed. The Court should set aside the Judgment and enter the only proper Judgment: That Mr. Williford retains his ownership of 25% of Bluewater LLC stock and remains a member. Williford could have amended his pleadings and chose not to do so.(R312)

- Mr. Williford chose not to testify at trial and the allegations of a complaint must be proved and he proved nothing and didn't ever ask for money.(R312-313)
- Mississippi is a right to work state and an employee has no right to guaranteed employment. There is no authority for the Court's position that he viewed "differently" a situation such as Mr. Williford's.(R313-314)

**ON OCTOBER 3, 2008, A HEARING WAS HELD
ON DEFENDANT'S POST TRIAL MOTIONS
("T" =TRANSCRIPT)**

MR. MARSHALL POINTED OUT IN ARGUMENT IN OPEN COURT:

- The complaint on which we went to trial was a request for an injunction ordering Defendant remain a member of the LLC and ordering the defendant to cease and desist from any efforts to terminate him as a member. "Those are the pleadings we went to trial on. There was no other relief asked for as far as Bluewater was concerned except that he remain a member of the LLC"(T323)
- On August 16, 2006, discovery was filed reciting that Bluewater no longer wished to purchase Mr. Williford's stock(R334)
- On August 21, 2006, Mr. Williford's attorney Clark Hicks was advised by letter which is an exhibit Bluewater no longer wishes to purchase Williford's stock and Williford could remain a member(T335)
- On August 28, 2006, Bluewater filed a MOTION TO DISSOLVE THE ORDER GRANTING PRELIMINARY INJUNCTION which recited in the pleadings that Bluewater no longer wished to purchase Williford's stock and which attached Exhibits previous communications relaying that information.(R336)
- MR. MARSHALL WENT ON TO ARGUE ALL THE REASONS THE JUDGMENT SHOULD BE SET ASIDE HE HAD INCORPORATED IN HIS BRIEF THAT HAVE ALREADY BEEN DELINEATED.(T337-351)

At the conclusion of the hearing, the following dialogue occurred;(T352)

BY THE COURT: "Okay. Mr. Marshall, give me your proposed findings of fact and conclusions of law, and, Mr. Hicks, you do likewise, but Mr. Hicks, you give me yours first".(T352)

BY MR. HICKS: "Yes, sir."(T352)

BY THE COURT: 'You're the Plaintiff. You give me yours, and can you have them ready in about 15 days?(T352)

BY MR. HICKS: "Yes, sir."(T352)

BY THE COURT: All right. Mr. Marshall, after you receive them, you've got another 15 days, and then if you want to rebut, Mr. Hicks, you've got another 5 days."(T352)

BY MR. HICKS: "Yes sir."(T352)

COURT WAS ADJOURNED

On January 8, 2008, Clark Hicks presented to the Court a FINAL JUDGMENT AS AMENDED WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER GRANTING, IN PART, AND OVERRULING, IN PART DEFENDANTS' MOTION OF JULY 30,2007, which was signed and filed with the Clerk the same day.(R308-316) This document was not written by the Court but SOLELY by Mr. Hicks.

On January 14, 2008, the Defendants filed a MOTION TO SET ASIDE FINAL JUDGMENT AS AMENDED WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND ORDER GRANTING, IN PART, AND OVERRULING, IN PART, DEFENDANTS MOTION OF JULY 30,2007 (R328-330)

This pleading set forth in pertinent part that the Court had given the defendant's 15 days to respond to the plaintiff's proposed findings and conclusions and requested the January 8, 2008, be set aside and the defendant's offering considered.

ON JANUARY 22, 2008, WITHIN THE TIME ORDERED BY THE COURT, THE DEFENDANT'S FILED WITH THE COURT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND SUPPLIED A COPY TO THE CHANCELLOR PURSUANT TO THE COURT'S INSTRUCTIONS(R331-335)A copy of the transmittal letter conveying the defendant's proposal to the Court and dated January 22, 2008, is found at R357.

This proposal set forth the same proposed facts and legal conclusions as the Defendants have included in their argument to comply with the requirement that the Court cannot be held in error for an issue not presented to the Court for determination." "A lower Court must be allowed to address the Court's' errors before the Appellate Court will address those errors" A letter setting forth this purpose appears at page 348 of the

Record.(R348)

The Court took on no action and allowed Mr. Hicks Judgment to Stand.

**ON FEBRUARY 6, 2008, THE NOTICE OF APPEAL IN THE INSTANT CAUSE
WAS FILED.(R358,359)**

**ON FEBRUARY 15, 2008, JAMES STEWART WILLIFORD FILED HIS NOTICE
OF CROSS APPEAL(R371,372)**

SUMMARY OF THE ARGUMENT

An affirmance of the judgment of the Chancery Court of Forrest County in this matter will dramatically alter litigation between corporations and shareholders, rather than following the Statutes, all a disaffected minority shareholder would have to do in the future would be to go to Chancery Court and allege that his treatment was not "FAIR" or was "INEQUITABLE" in order for the Court to grant monetary relief. This Court should not condone this results.

From the very beginning, the Chancellor in this matter misapprehended the nature of the litigation and treated this matter as a marriage rather than a dispute between shareholders in a Mississippi Limited liability Corporation and so stated. The Chancellor apparently believed he has unlimited discretion rather than being required to follow the law. Appellants believe and assert this to be clearly erroneous and believe that the Chancellor was manifestly wrong, applied an erroneous legal standard and abused his discretion in rendering a monetary judgment in this proceeding either against the LLC and certainly against the other stockholders in the LLC.

The only relief available to Mr. Williford, the minority stockholder, is found within the MISSISSIPPI LIMITED LIABILITY COMPANY ACT and strict compliance with the statutory relief is required.

The Chancery Court granted relief outside the scope of the pleadings over the repeated objections of the defendants. No relief can be granted that is not pled. Since Mr. Williford did not request the relief granted by the Court in his pleadings, the lower Court is without the authority to grant such relief. The only relief requested was that Mr. Williford remain a member of the LLC and retain his stock, which relief had been confessed by the Appellants long before trial.

Mr. Williford failed to testify at the trial and the only proof offered was of the purported value of the LLC. This testimony was also over the objections of the appellants because the value of the stock in the corporation was not an issue at the time of the trial. Pleadings have no probative value and this Court had no authority or basis on which to grant a money judgment based on the evidence and proof at the trial

Clark Hicks, Mr. Williford's attorney, represented to the lower Court on the record that he had never seen the MOTION TO DISSOLVE ORDER GRANTING PRELIMINARY INJUNCTION, IN PART filed by the Appellants on August 28, 2006, when in fact he had filed on September 1, 2006, his PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISSOLVE ORDER GRANTING PRELIMINARY INJUNCTION, IN PART .

In this pleading, Clark Hicks acknowledges that he had, in fact received written notice in the body of the MOTION that the relief he had requested of Mr. Williford remaining a member and minority stockholder had been confessed and the offer to purchase Williford's stock withdrawn, which is one of the several times the receipt of this information in writing or in response to discovery or pleadings or motions was acknowledged by him. Several other times are pointed out in the body of the brief, which makes incomprehensible Clark Hick's statement to the Chancellor on the record on the date of trial that he had never received written notice that the

offer to purchase the stock had been withdrawn. What effect these statements had or may have had on the Chancellor's decision is for this Court to decide.

In any event, the Chancellor was manifestly wrong, abused his discretion and applied an erroneous legal standard in rendering the judgment and, when given the opportunity to rectify his errors by post trial motions, refused to do so.

This Court should reverse and render the Judgment of the Chancery Court of Forrest County, Mississippi.

STANDARD OF REVIEW

This Court will reverse only where shown the lower Court is manifestly wrong or clearly erroneous, or it is shown the chancellor applied an erroneous legal standard. The Chancellor's decision must be supported by the record of this case. **ALDERSON V. ALDERSON**, 200-CA-01437-COA (12 March 2002).

We will not hesitate to reverse should we find that a chancery Court was manifestly wrong, abused its discretion or applied erroneous legal standard. **BROWN V. BROWN**, 2001-CA-0211-COA (5 March 02).

The standard of review is limited in that the Chancellor must commit a manifestly wrong act in a way that is clearly erroneous, or apply an erroneous legal standard before this Court can reverse. **FORD V. FORD**, 2000-CA-00392-COA (1 September 2001).

Manifestly wrong means that manifest, as defined in this context means "unmistakable, clear, plain or indisputable." **CLARK V. CLARK**, 1998-CA-00404-SCT (4 November 1999)

Rulings of law are subject to *de novo consideration*. **HOWELL V DORR**, 1999-CA-01123-COA (3 April 2001).

Where the Chancellor adopts verbatim findings of fact and conclusion of law prepared by a party to the litigation the Appellate Court analyzes such findings with greater care, and the endeavor is subject to heightened scrutiny. WILSON V. WILSON, 1999 CA-00888-COA (6 Feb 01).

Although the Court's determination is entitled to deference, the defense is necessarily lessened in such cases ... the Chancellor's decision will be upheld only if there is substantial creditable evidence to support the findings. STARK V. STARK, 97-CA-00117-COA (17 Aug 1999).

See also CHAMBLEE V. CHAMBLEE, 92-01252-MS Supreme Court (2 June 1994) and BROOKS v. BROOKS, 92-01197-MS Supreme Court (30 March 1995) where the Court held that the Chancellor erred by applying an incorrect legal standard and also by adopting a litigant's findings of fact and conclusion of law " Hence, we do not give deference to the findings of fact and conclusions of law of the lower Court. Instead we review the record *de novo*."

ARGUMENT

1. "On February 10, 2006, James Stewart Williford, hereafter Williford, filed his COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION AND DAMAGES against BLUEWATER. This complaint requested in pertinent part that "**...the plaintiff seeks a preliminary and then permanent injunction against the defendants which enjoins the defendants from the proposed action taken and order that plaintiff is and remains a member of Bluewater Logistics, LLC and Bluewater Bay, LLC with all concomitant rights established by the Agreement, statutes and other applicable laws. There is a likelihood of success on the merits...**" and , after WHEREFORE,"...for the reasons stated, plaintiff seeks a

preliminary and permanent injunction against the defendants **which enjoins the defendants from any further attempts to oust him as a member, and determines that plaintiff remains a member of the company..."**

THIS IS THE UNAMENDED PLEADING ON WHICH WILLIFORD WENT TO TRIAL

2. On February 13, 2006, Williford filed a MOTION FOR PRELIMINARY AND PERMANENT INJUNCTION AND NOTICE OF HEARING, again seeking an order that "Plaintiff remains a member of the Bluewater LLC's..."

3. On February 14, 2006, Williford filed a BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY AND PERMANENT INJUNCTION, which states in the INTRODUCTION: "...Plaintiff seeks an injunction from this Court ...ordering that he remains a member of the LLC and orders defendants to refrain from further attempts to squeeze plaintiff out as a member. See complaint, Exhibit A.'..."

The CONCLUSION of this Brief states, in part: "An injunction should be granted ORDERING THAT THE PLAINTIFF REMAINS A MEMBER OF THE LLC'S AND ORDERING THE DEFENDANTS TO CEASE AND DESIST FROM ANY EFFORTS TO TERMINATE HIM AS A MEMBER..."(Emphasis added).

4. On February 15, 2006, a hearing was held, at which time the Court denied BLUEWATER'S MOTION TO DISMISS and granted Williford's request for a preliminary injunction, in part. On February 27, 2006, an ORDER GRANTING PRELIMINARY INJUNCTION, IN PART was filed with the Clerk.

Paragraph 8 of the Order provides that "The parties are instructed , through counsel, to meet with the CPA and make reasonable attempts to resolve this dispute; and, if they are unable to do so, the parties, through counsel, are ordered to set this case for a full trial on the merits as soon as reasonably possible...."

5. Various Motions for contempt, to compel and for other relief were filed as well as discovery.

6. The parties were unable to reach a settlement.

7. On August 16, 2006, BLUEWATER'S NOTICE OF SERVICE OF PLEADINGS was filed in the Court file setting forth that the response to the discovery propounded by Williford had been filed. See Exhibit 8 to PLAINTIFF'S MOTION FOR AN ORDER COMPELLING DISCOVERY, FOR AN ORDER HOLDING DEFENDANTS IN CONTEMPT OF COURT, OR APPROPRIATE SANCTIONS AND FOR AN ORDER TO STAY FURTHER PROCEEDINGS.(R116)

The response to INTERROGATORY NUMBER 8 recites, in part, "...the offer to purchase having been rejected, Bluewater no longer wishes to redeem James Stewart Williford's shares...." The response to INTERROGATORY NUMBER 11 states, in part:"...As in set forth in "Exhibit 8" Bluewater no longer wishes to redeem Williford's shares. .(R116)

The response to INTERROGATORY NO. 14, states that "We fired him(Williford) for lack of job performance."(R118)

The response to INTERROGATORY NUMBER 15, states :... "Williford is a minority stockholder in Bluewater. He is not an employee because of poor job performance and no work ethic...."(R118)

The Response to INTERROGATORY NUMBER 16 states "...He got fired because he is lazy, inefficient, failed to perform, never at work late, and failed to complete tasks. He still owns his stock...."(R119)

11. Exhibit 7 to the same pleading is a letter from BLUEWATER'S attorney to Clark Hicks dated August 21, 2007, which was also trial exhibit #8. This letter includes the provision: **"...Based on that meeting, let me reiterate what I had already told you: the offer to purchase Mr. Williford's stock is withdrawn His firing as an employee is affirmed and**

confirmed....Since there is no offer to purchase his stock and since there is no requirement that the stock be purchased, an evaluations of the LLC is irrelevant and there is no necessity for Nancy to evaluate anything...".(R113)

12. On August 28, 2006, BLUEWATER'S MOTION TO DISSOLVE ORDER GRANTING PRELIMINARY INJUNCTION , IN PART was filed with the Clerk and NOTICED FOR HEARING ON SEPTEMBER 7, 2006, with a certificate of service on Williford's attorney.

This Motion points out that the relief sought in Williford's original complaint was that he did not want to sell his stock and wished to remain a member of Bluewater. The motion goes onto point out that BLUEWATER no longer wished to purchase Williford's shares and that he could remain a member and points out that the pending action was moot. Three letters were attached as Exhibits 1 through 3:

"Exhibit 1", letter dated June 13, 2006 informed Williford's attorney that the offer to purchase Mr. Williford's shares was withdrawn..(R132)

"Exhibit 2" was a letter dated June 16, 2006, from Clark Hicks acknowledging that Bluewater no longer wished to purchase Williford's shares..(R133)

"Exhibit 3" dated August 21, 2006, reiterated there is no offer to purchase Williford's stock and that the offer to purchase Mr. Willifords stock is withdrawn..(R134)

12. On September 1, 2006, Williford filed his PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISSOLVE ORDER GRANTING PRELIMINARY INJUNCTION, IN PART. (R149-171)

13. On September 5, 2006, Bluewater filed DEFENSES AND ANSWER TO PLAINTIFFS MOTION FOR AN ORDER COMPELLING DISCOVERY, FOR AN ORDER HOLDING DEFENDANTS IN CONTEMPT OF COURT, FOR APPROPRIATE SANCTIONS AND FOR AN ORDER TO STAY FURTHER PROCEEDINGS.

On page 3 of this pleading, Bluewater set forth "...Plaintiff has pled he wants to keep his

stock, defendants have agreed that he can keep his stock, and therefore no issue remain to be tried concerning the stock....".(R174)

On page 4, BLUEWATER set forth that "...Williford sued to retain his membership and his stock in Bluewater and now has what he wants, rendering the litigation over the value of the LLC and the value of the stock moot..(R175)

On page 5 "...prompting the Defendants to withdraw their *offer* to purchase stock. With no offer to purchase outstanding and no right to force purchase of a minority shareholders stock, a valuation of this business in moot..."(R176-177)

14. On the trial date of September 7, 2006, an agreement to continue was reached styled AGREED ORDER TEMPORARILY STAYING ALL PROCEEDINGS, CONTINUING THE TRIAL DATE AND PROVIDING FOR INDEPENDENT APPRAISAL.

This Order contained the provision in paragraph 2 that "The motion hearing date of September 7, 2006, and the trial date of September 13, 2006, are continued to a later date to be agreed upon by the parties if this case is not resolved...." and in Paragraph 5 "Upon completion of the report by Carpenter, the parties are instructed to attempt resolution of all claims pending. If the parties are unable to reach final resolution, they are to advise the Court and agree on date for hearing the **pending motions and a trial date....**"(R207)

15. This matter came on for trial on July 18, 2007, at Perry County Courthouse in New Augusta, Mississippi. No amendment was ever filed or proposed. The matter proceeded to trial on the original complaint and the request for relief in the original Complaint as follows:

- **Plaintiff seeks a preliminary and permanent injunction against the defendant which enjoins the defendant from any further attempts to oust him as a member**
- **...determines that the plaintiff (Williford)) remain a member of the company**

What is not pled and has never been pled is any request that James Stewart Williford Jr. be awarded the value of his 25% of the stock.

What is not pled and has never been pled is that the three individual defendants should be jointly and severally liable for the valued of 25% of the stock.

At trial before any testimony was taken timely objection was made to testimony concerning value of the corporate stock as irrelevant because there was no issue pled concerning the value of the stock. Further, objection was made concerning any testimony outside the scope of the pleadings.

The plaintiff did not testify at trial.

The only testimony offered was testimony concerning the value of the corporation and by extrapolation the value of 25% of the shares of stock.

The plaintiff did not ask for any relief through his counsel other than the value of 25% of the value of the stock, which was over strenuous objection because the relief had not been pled.

17. On July 19, 2007, a FINAL JUDGMENT was filed with the clerk, granting a money judgment against all defendants.

18. A post trial motion styled MOTION (JULY 30, 2007) was timely filed on July 30, 2007 asking for relief under Rule 52(a)&(b); 59(e); and 60(b)(6) and noticed for hearing on October 3, 2007 in Forrest County, Mississippi.

19. A hearing was held on the post trial motions on October 3, 2007, at the conclusion of which the Court instructed the parties to file proposed findings of fact and conclusions of law. Counsel for Williford was given fifteen (15) days from the date the transcript was prepared to file his proposal, counsel for Bluewater was given fifteen (15) days from the day Williford's

proposal was filed, and counsel for Williford was given five (5) days to rebut, should he desire to do so. The Court announced that after all the proposals were filed, the Court would render a decision.

20. Pursuant to the provisions of Rule 52(a) of the Mississippi Rules of Civil Procedure the Court shall upon the request of any party to the suit find the facts specially and state separately its conclusion of law thereon.

This provision requires specific facts and conclusions of law based on statutes and on case law, not simply the decision at which the Court arrived and general statements. Mr. Williford was ordered to provide the specific legal authorities on which he bases his proposition that the judgment entered in this cause is legally and factually justified. He has failed to provide any such law or facts.

The proposed FINAL JUDGMENT AS AMENDED WITH FINDINGS OF FACT AND CONCLUSION OF LAW AND ORDER GRANTING, IN PART, AND OVERRULING, IN PART, DEFENDANTS' MOTION OF JULY 30, 2007, prepared solely by Mr. Hick's, once again seeks to escape the obligation to specifically delineate the facts on which a judgment is based and seeks to evade the requisite conclusions of law by setting forth conclusions but not conclusions based on the law, which requires citation to statutory authority and to case law, and the Court did not do so.

As far as conclusions of law is concerned, there is NO law which allows for a finding of "inequity" or not being "fair" as a basis for a money judgment, as occurred in the awarding of this judgment.

As *GRIFFITH* points out in Section 40, " Courts of Equity are now as much bound by express rules of law concerning property and its interests as are court of law,... "The maxim that

equity follows the law is especially applied in the construction as to the effect of statutes....equity follows and applies the legal rules....”

“Under the equitable doctrine that equity follows the law, courts of equity cannot modify or ignore an unambiguous statutory principle in an effort to shape relief.” **In re Estate of Smith**, 891 So 2d 811 (Miss 2005)

“That aside, courts have consistently held that under the equitable doctrine ‘equity follows the law’ courts of equity cannot modify or ignore an unambiguous statutory principle in an effort to shape relief. **In re Estate of Miller**, 840 So 2d 703 (Miss 2003)

The principal statute in question is the MISSISSIPPI LIMITED LIABILITY COMPANY ACT, sections 79-29-101 et seq, which is complete in itself and which does not authorize or provide the relief granted by this Court. There is NO provisions nor has there ever been any **provision for a minority shareholder to force the majority shareholder to purchase his** interest in a corporation. Minority shareholders have only the rights granted in the statute. If the minority shareholder wanted money without the agreement of the majority shareholders, he should have filed a derivative action or some other action than that which he did file or a pleading based on dissolution. The sole relief for a minority stock holder is found within the statute itself. See section 79-29-802 and section 79-29-1101 Mississippi Code of 1972.

There is no provision nor has there ever been for other shareholders or members to become automatically liable for the debt of the LLC to an individual member.

This court is attempting to alter the entire field of commercial law because not to do so would not be "fair". This court is totally without authority to ignore the applicable law. No authority exists allowing this Court to order payment of a minority shareholder absent an agreement to do so by the majority, which is absent here, nor does any authority exist to extrapolate or make a quantum leap from an alleged debt of the LLC to hold the individual shareholders liable for the debt of an LLC to a minority shareholder, who is also a member.

Counsel for Williford has been given an opportunity to provide this Court with legal authority for this proposition and has failed to do so, and this Court is unable to find such authority and had provided none.

The Court granted a judgment in this cause on July 19, 2007. The Court was in error in the granting of a judgment outside the scope of the pleadings. Mr. Williford asked for a received a preliminary injunction, though BLUEWATER believes wrongfully. The basis of a preliminary injunction -or a major basis-is that the moving party will prevail at trial. THE SOLE RELEVANT RELIEF REQUESTED BY WILLIFORD WAS AN INJUNCTION PREVENTING BLUEWATER FROM OUSTING HIM AS A MEMBER. The defendants subsequently clearly and repeatedly advised counsel for Williford that the offer to purchase his stock had been withdrawn and that he could retain his stock, and subsequently amended defendant's pleadings to so provide. Over strenuous objection at the trial, the Court went outside the scope of the pleadings, allowed testimony concerning the value of the LLC, and entered a judgment for Williford for 1/4 th of the value of the LLC. This relief was not pled and is not authorized by law. The judgment constitutes a departure from Mississippi Law not authorized nor justified by the law and the facts. This Judgment constitutes an error this Court must correct.

Counsel for Williford had ample opportunity to amend his pleadings to reflect the relief sought prior to trial and failed or refused to do so. At the conclusion of the trial counsel for Williford could have moved to amend the pleadings to conform to the proof and failed to do so. This Court cannot justify allowing the current judgment to stand.

“Evidence pertaining to issues not contained in pleadings generally may not be presented at trial, nor may trial courts award relief on points not pleaded..” Lee v. Stewart, 724 So 2d 1093 (Miss 1998)

“Where party offers proof on issue not pleaded, opponent upon timely and proper objection may of right demand that evidence be excluded.” **MRCP Rule 15(b). Queen v. Queen, 551 So 2d 197(Miss 1989)**

“A party in preparation for trial...is entitled to proceed on the basis that the dispute will be resolved on the issues raised by the pleadings.” **Brown v. Akin, 790 So 2d 893(Miss 2001)**

Further, this Court recognizes that the pleadings themselves have no probative value. Proof and evidence at trial is necessary for this Court to grant a judgment. Mr. Williford failed at trial to take the stand and even tell this Court what he wanted. He now wants this court by extrapolation and quantum leap from testimony concerning the value of the LLC to his being entitled to receive 25% of the value from not only the LLC but also the other three shareholders in the LLC with absolutely no facts and no law to support his position. He did not ask for the relief this Court granted, and the Court was in error granting the relief. This Court now should rectify the trial Court’s error.

“Allegations in pleadings have no probative value but must be supported by proof.” **Fisher v. Crane, 289 So 2d 921(Miss 1974)** Williford did not even testify at the trial.

Over the strenuous objections of BLUEWATER the money judgment entered was entered jointly and severally against the three other members as well as the LLC defendants. Again, this Court has been presented with no authority for this Court to enter a judgment against the three other shareholders, there are no facts on which to base such a decision, and the Court was and remains in error to do so. Only the LLC was alleged to be liable for the value of the stock, and no proof of any damages caused by the other shareholders was offered at trial.

Williford would have us believe that because an *offer* was made to buy his stock that this Court has the authority to order money paid for the stock. The problem with this approach lies in basic contract law. True, the offer was made. Just as true is the fact that for some reason

unknown to the Court because no testimony was ever elicited(facts), Williford rejected the offer. He filed the pleading on which this trial was ultimately based that rejected the *offer* and sought to enjoin the other members from ousting him from his membership. THERE WAS NO OFFER AND ACCEPTANCE. All Williford had to do was to file a pleading and state that he accepted the offer and that the Court should value his interest in the LLC and the matter would have been rapidly resolved, or at least resolved though probably not rapidly because no company value was available until the day of trial. Had this occurred the Court would have had the authority to grant a money judgment. Since this did not occur, the Court has and had no authority to grant a money judgment. The offer was subsequently withdrawn by notification to Williford's counsel on numerous occasions as is set forth in this brief. Williford's counsel chose to ignore the withdrawal of the offer, though by Williford's rejections there was no contract, and proceed to trial on his pleadings. THE ONLY RELIEF THIS COURT COULD GRANT BASED ON THE PLEADINGS WAS TO ALLOW MR. WILLIFORD TO RETAIN HIS 25% OWNERSHIP IN THE LLC, WHICH THE LLC HAD ALREADY CONFESSED.

A trial requires evidence. Williford at trial chose not to testify concerning what he wanted or to ask the Court to grant him relief other than that pled. He had known for approximately a year that there was no outstanding offer to purchase his stock. Had he wanted additional information concerning this matter he could have asked, because the information appeared in the responses to interrogatories, or he could have amended his pleadings in order to place the defendants on notice as is required of what he intended to prove at trial. He did not do so. Even for an injunction, which is all that was asked in this cause, testimony is required at trial. The allegations of the complaint must be proved. Williford proved nothing, and certainly did not

prove he was entitled to money. He didn't even ask for money.

At trial the Court queried Mr. Hicks, Williford's attorney concerning the withdrawal of the supermajority vote to terminate Williford's stockholder interest

Mr. Hicks stated: "Well, first of all I've received nothing in writing. There has been no written action taken."(T193)

In response to the Court's query "You haven't had any written notice?" Mr. Hicks replied: "No, Sir."(T193)

As has previously been set forth in the findings of fact, Mr. Williford had repeatedly been advised in writing and in pleadings that the offer to purchase Mr. Williford's stock had been withdrawn and that Mr. Williford could remain a member.

By letter dated June 13, 2006, Mr. Hicks was advised that the offer had been withdrawn. By his letter of June 16, 2006, he acknowledged that he had been advised that Bluewater no longer wished to purchase Williford's stock. By letter of August 21, 2006, the fact was reiterated:"...**Let me reiterate what I have already told you: The offer to purchase Mr.**

Williford's stock is withdrawn. His firing as an employee is affirmed and confirmed..."

These letters were filed in the Court file as an exhibit to the Motion To Dissolve Order Granting Preliminary Injunction In Part which was filed on August 28, 2006.**(NOTE: THE August 21, 2006, letter also became trial exhibit #8.)**

Mr. Hicks, on behalf of his client, responded to this motion, again acknowledging receipt of written notification of the majority shareholders action, in his pleading styled PLAINTIFF'S OPPOSITION TO DEFENDANTS MOTION TO DISSOLVE ORDER GRANTING PRELIMINARY INJUNCTION IN PART filed on September 1, 2006.(R149-R171).**(NOTE: At**

the trial Mr. Hick's STATED:

MR. HICK'S: There is no Motion pending (T190)

THE COURT: He Says there's a Motion pending(T190)

Mr. HICKS: If there was a Motion pending I would have noticed it and been told about it I have no idea what he is talking about...(T190) (See also pages T191-T193)

This same information, that is, that the LLC no longer wished to purchase Mr. Williford's shares of stock was set forth in the responses to the interrogatories and discovery filed in this cause on August 16, 2006.(R116, 117) Mr. Williford is now representing to the Court that he never read the responses to the discovery.

Of even more relevance is the fact that the same statement was set forth in the Amended Answer to Complaint for Preliminary and Permanent Injunction And Damages filed on August 31, 2006.(R137-143) Paragraph 8 of this pleadings set forth affirmatively: "The decision to purchase Williford's stock has been rescinded."

There is no question that Mr. Hicks had received written notice of the decision of the other shareholders for the LLC not to purchase Mr. Williford's stock on numerous occasions, despite his denial.

All three of the other shareholders called adversely by Mr. Hicks also testified that the decision to purchase Mr. Williford's stock had been rescinded and that Mr. Marshall as counsel for Bluewater had been instructed to so advise Clark Hicks, counsel for Williford, which was done.

Mr. Hicks would have this Court ignore the law concerning the fact that Bluewater's attorney-AND ANY OTHER ATTORNEY FOR THAT MATTER-has he right to act for his

clients, and the clients are bound by the attorney's actions.

“Authority of attorney employed to prosecute or defend litigation embraces all matters of procedure and right to act relative thereto is absolute.” **B.F. Goodrich Rubber Co. V.**

Holland,131 So. 882(Miss 1931)

“The acts of an attorney, so far as the procedure in a case is concerned, are always binding on his client.”**Scarborough v. Harrison**, 52 So 143 (Miss 1910)

“Attorney employed for purposes of litigation has the general implied or apparent authority to enter into such stipulations or agreements in connection with the conduct of litigation as appear to be necessary or expedient for the advancement of the client's interest or to accomplishment of the purpose for which the attorney was employed.” **Sears Roebuck & Co v.**

Devers, 405 So. 2d 898(Miss 1991)

“It is presumed that attorney who has represented party is authorized to take all action necessary to conduct litigation.”**Terrain Enterprises Inc. V. Western Casualty**, 774 Fed 2d 1320, rehearing denied 778 Fed 2d 790, cert denied 106 S. Ct 1639(CA 5 Miss 1985)

“Attorney has charge of client's case and ordinarily attorney's acts in respect thereto bind client.”**Fairchild v. GMAC**, 179 So 2d 185 (Miss 1965).

This Court should conclude that there was no pending offer to purchase Mr. Williford's 25% of the stock in Bluewater as of the date of the trial. Since no such offer was pending and since no relief other than Williford retaining ownership of his stock has been pled or even attempted to be proved, and as Mr. Williford himself elected not to testify and tell this Court what relief he wanted, there is no basis for this Court to grant any relief to Mr. Williford.

CONCLUSION

For the numerous reasons set forth in this Brief, the determination of the Chancellor was clearly erroneous and the Court applied an erroneous legal standard. This Court should reverse and render.

CERTIFICATE OF SERVICE AND FILING

I, Robert R. Marshall, Attorney for the Appellant, certify that I have this date mailed by United State Mail, postage prepaid, a true and correct copy of the Brief of Appellant to the following persons at their usual mailing addresses:


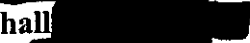


L. Clark Hicks, Esquire
Post Office Box 18350
Hattiesburg, MS 39404-8350

Chancellor Johnny L. Williams
Tenth District, Place Three
Post Office Box 1664
Hattiesburg, Mississippi 39403-1664

I, Robert R. Marshall, Attorney for the Appellant, hereby certify that I have actually mailed this date the original and three (3) copies of the Brief of Appellant to the Mississippi Court of Appeals.

Dated, this the 15th day of October, 2008.


ROBERT R. MARSHALL

ERIK M. LOWREY, P.A.
Attorneys at Law
Erik M. Lowrey 
Robert R. Marshall 
David A. Pumford 
Richard A. Filce 
525 Corinne Street
Hattiesburg, MS 39401
601.582.5015
601.582.5046 (Fax)