CASE NO. 2009-CA-00305

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CYNTHIA STEWART, P.A.
APPELLANT

VS.

BRIDGE PROPERTIES OF JACKSON, LLC
APPELLEE

ON APPEAL FROM THE
CIRCUIT COURT OF THE FIRST JUDICAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI

BRIEF OF APPELLEE

William S. Kellum (MS BAR #[redacted]
Attorney at Law
P.O. Box 4318
Jackson, Mississippi 39296
Telephone: (601) 212-0499
Facsimile: (601) 969-2709
Attorney for Appellee

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons hve an interest in the outcome of this case. These representations are made in order that the Justices of this Court may evaluate possible disqualifications or recusal.

1. State of Mississippi
2. Cynthia A. Stewart, P.A.
3. Honorable W. Swan Yerger, Circuit Court Judge
4. Honorable John Price
5. Mrs. Cynthia Stewart
6. Bridge Properties of Jackson, LLC
7. Mr. Tyson Bridge
8. Judson M. Lee
9. Ms. Cynthia H. Speetjens

This the 15th day of December, 2009

Respectfully Submitted,

WILLIAM S. KELLUM, III

COUNSEL FOR APPELLEE

William S. Kellum (MBN[redacted]
Attorney at Law
P.O. Box 4318
Jackson, Mississippi 39296
Telephone: (601) 212-0499
Facsimile: (601) 969-2709

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BRIEF OF APPELLEE

STATEMENT OF THE ISSUES

The issues on appeal before this Court are:

I. WHETHER THE APPELANT HAS PROVEN BY A PREPONDERANCE OF THE EVIDENCE THAT THE SUBJECT PREMISES WERE UNINHABITABLE.

II. WHETHER THE APPELLANT HAS PROVEN BY A PREPONDERENCE OF THE EVIDENCE THE AFFIRMATIVE DEFENSE OF ACCORD AND SATISFACTION

III. WHETHER THE APPELLANT PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT THE APPELLEE FAILED TO MITIGATE HIS DAMGES

IV. WHETHER THE APPELLANT CAN ARGUE ON APPEAL THE VALIDITY OF THE SUBJECT LEASE IF THE ISSUE WAS NOT RAISED AT TRIAL AND/OR DID THE APPELLANT PROVE THE ALLEGED INVALIDTY

V. WHETHER THE APPLANT HAS PROVEN BY PREPONDERNCE OF THE EVIDENCE THAT SHE SUFFERED DAMAGES AS A RESULT OF THE ALLEGED ACTIONS OR INACTIONS BY THE APPELLEE

STATEMENT OF THE CASE

1. ORDER OF PROCEEDINGS AND DISPOSITION

Appellant filed its Complaint against Appellant for breach of lease and prayed for past due amounts owed plus the balance owed on the Lease. Appellant requested and was granted recusals from all three Hinds County Court Judges. Appellant then filed her Answer and Counter-Claim and shortly thereafter, a Motion for Summary Judgment and For Sanctions Against Plaintiff. The Appellant's Motion for Summary Judgment was correctly denied by Warren County Court Judge John Price who had been assigned to the case. Several months later, Appellant retained the Honorable Mr. Edwin Woods, also of Warren County to represent her in this matter.

Prior to the retention of Mr. Woods, Appellee was forced to file two (2) Motions to Compel Discovery against Appellant. As a result of Appellant's failure to comply with Appellee's discovery request, Judge Price ordered the parties to appear in person for a status conference. The Appellant failed to appear as ordered by the Court. Judge Price ordered the Appellant to comply with Appellee's discovery request and then set the matter for trial. Afterwards, Appellee was forced to file a third Motion to Compel against Appellant before finally receiving her responses.

At trial, Judge Price heard testimony from the parties and their respective witnesses. After examining the law, the evidence and the testimony of the witnesses, Judge Price correctly determined that Appellant had breached the Lease and that her Counter-Claim was without merit. A judgment was then entered for the Appellee in the amount of $35,263.40. The Appellant subsequently filed her Notice of Appeal with the Circuit Court. After careful review of the brief's submitted by the parties, the Circuit

Court correctly confirmed the lower court's ruling on or about February 10, 2009. (R.E. 6) The Appellee duly appealed. (R.E. 7)

2. STATEMENT OF RELEVANT FACTS

On October 28, 2003, the Appellant entered into a valid written Lease Agreement (R.E 1) with the Appellee to lease office space located at 222 North President Street, Suite 302, Jackson, Mississippi 39201 for a period of three (3) and a half years. In consideration of this Lease, the Appellant agreed to pay the Appellee sixty-two thousand fifty dollars ($62,050.00) payable in monthly installments of one thousand seven hundred dollars ($1,700.00). The Appellant, her law partners and staff then occupied the subject premises from October 28, 2003 until July 31, 2005.

Sometime in October of 2004, the Appellant requested and was granted an additional two-thousand five hundred square feet (2,500 sq ft). The parties negotiated a rent increase in the amount of two-thousand five hundred dollars ($2,500.00) per month. The Appellant went on to occupy the premises until July 31, 2005.

On July 31, 2005, Appellant deserted the premises without any prior written notice to the Plaintiff and without surrendering the premises in writing as required by Paragraph 18 of the Lease. Additionally, the Appellant had failed to pay rent for the months of May, June and July. These actions and inactions on the part of the Appellee constituted a clear breach of the Lease.

SUMMARY OF THE ARGUMENT

I. Proposition I.

The Trial Court was demonstrably correct in finding that the Appellant had failed to prove by a preponderance of the evidence that the subject premises were uninhabitable, that an accord and satisfaction was reached by the parties, that Appellant did mitigate its damages, and that Appellant had failed to prove she had suffered damages as a result of the alleged un-inhabitability.

II. Proposition II.

The Appellant is barred from arguing the validity of Lease on appeal because she failed to raise the issue at trial. Appellee will also argue that even if the issue of validity is not barred, that the Lease is valid and enforceable.

ARGUMENT

STANDARD OF REVIEW

The standard of review in this case is that found in *G.B. "Boots" Smith Corp. v. Cobb* where the Court stated that, "We will not interfere with or disturb a chancellor's findings of fact unless those findings are manifestly wrong, clearly erroneous, or an erroneous legal standard was applied". 860 So.2d 774, 776 (¶6) (Miss.2003).

I. APPELLANT FAILED TO PROVE THE PREMISES WERE UNINHABITABLE

Appellant failed to provide the trial court with any documentary or photographic evidence to support her claim of un-inhabitability. The sole evidence offered by the Appellant was the biased, highly contradictory testimony of witnesses who shared an interest in a favorable ruling for the Appellant. Witnesses for the Appellant consisted of two attorneys who were essentially her law partners, Wayne Humphreys, a polygraph examiner and former District Attorney Ed Peters. Ms. Speetjens, one of Appelant's law partners and witnesses, was Mr. Peters' Assistant District Attorney for "12 to 13 years". (T.R. 183) Mr. Peters continued to collaborate with the Appellant on other legal matters. All of these individuals either derived work from her practice or worked on cases with that practice. The Appellant failed to produce any unbiased, third party witnesses to corroborate her claims.

The Appellant's brief states that the "roof leaked in several places" on the subject premises. Appellee acknowledged that the roof had leaked on one occasion and was repaired by Travis Grace, Vice-President of Operations for the Plaintiff. Travis Grace himself offered convincing testimony corroborating that this repair took place. (T.R 27 to 37) Appellant alleges that the leak caused "unsightly brown stains on the floors and

walls". At trial, the Appellant offered no photographic or documentary evidence to support her claim. Again, the only evidence offered was the biased, inconsistent testimony of witnesses who shared an interest in a favorable ruling for the Appellant.

Appellant alleges that the office space's electrical system frequently mal-functioned causing extended losses of power. Travis Grace testified that the electrical system was supported by a 20 amp breaker which was more than adequate. Mr. Grace also testified that the reason for the power outages, which took place primarily in the break room, was that the office workers were overloading the circuit by using hair dryers and other appliances. Mr. Tyson Bridge, President and CEO of BPJ, testified that he himself had repeatedly explained to the Appellant what was contributing to the electrical issue. (T.R 47) Mr. Grace went on to testify that in the case of a power outage, all that was required to regain power was to simply unplug the appliances and throw the tripped breaker. (T.R 27 to 37). Again, Appellant offered no evidence other than the testimony of her own witnesses who offered varying accounts of how often and when these alleged power outages took place.

Appellant alleges that the heating and cooling system frequently malfunctioned causing the premises to become "intolerably hot". The brief fails to mention that Appellant had testified that these alleged problems did not begin until April of 2005. The brief also fails to mention the inconvenient fact that the Appellee's office, which was adjacent to the Appellant's, was serviced by the same air conditioning unit. Appellee and Appellee's witnesses testified convincingly that had the problem been as "intolerable" as Appellant alleges, they would have suffered the same conditions in the Appellee's office. (T.R 5 to 25) Appellant provides quotes from Wayne Humphrey's testimony relative to

the condition of the premises. On cross-examination, Mr. Humphreys admitted to having been at the premises on only one occasion when the temperature was "hot". (T.R. 156). This can hardly be considered strong evidence of un-inhabitability.

The most compelling testimony concerning the heating and cooling system came from Mr. Jim Peters, an employee/consultant of the Appellee. Mr. Peters, a chemical salesman and building repair consultant of over forty-five (45) years experience, testified that he turned the air conditioning on at 4:30 every weekday morning and was responsible for the maintenance of the unit. Mr. Peters testified that the Appellant, whom he has known personally for many years prior to her occupying subject premises, knew his cell phone number for the purpose of contacting him in the event of a problem with the office. Mr. Peters testified that he never received a call from the Appellant or anyone else in her office regarding any problems with the air conditioning. He did however testify that there were some routine maintenance issues but that they were always addressed in a timely manner. (T.R 5-25)

Mr. Peters and Mr. Grace both testified that they made regular visits to the Appellant's office and never noticed any problems with the air conditioning. This testimony is highly credible due to the close proximity between the Appellee's and Appellant's offices. Both Mr. Peters and Mr. Grace passed by the Appellant's office four or five times daily, and visited her offices frequently. This testimony was not refuted by the Appellant or any of her witnesses. (T.R 27-37)

The Appellant offered no evidentiary correspondence to the Appellee relative to the allegations mentioned above. It is also worth noting that the Appellant failed to produce any photographic or other documentary evidence at trial. This is rather

surprising given the fact that the Appellant and her law partners have over 56 years of collective legal experience.

Appellee adhered to its responsibilities under the Lease Agreement and those outlined under Section 89-8-23 of the Miss. Code Ann. The subject premises were at all times inhabitable and all repair requests were responded to in a timely manner.

The trial court was correct in its determination that "as a matter of fact, the Appellant's complaints, whether taken individually or cumulatively, do not warrant or justify the cancellation of the lease agreement or rise anywhere close to a level that would render the demised premises uninhabitable for their intended purposes." The Circuit Court was also correct in finding that "the decision of the County Court of the First Judicial District of Hinds County is supported by substantial evidence and is not manifestly wrong and should be AFFIRMED. (R.E. 6)

II. APPELLANT FAILED TO PROVE THE AFFIRMATIVE DEFENSE OF ACCORD AND SATISFACTION

The Appellant offered no evidence at trial to establish that the Appellee and Appellant entered into an accord and satisfaction such that would relieve the Appellant of her obligations under the Lease. The four elements of accord and satisfaction are: 1. something of value offered in full satisfaction of demand; 2. accompanied by acts and declaration as amount to a condition that if the thing offered is accepted, it is accepted in satisfaction; 3. the party offering the thing of value is bound to understand that if he takes it, he takes subject to such conditions; and 4. the party actually does accept the item. *Austin v. Padgett,* 678 So.2d 1002; (1996).

The Appellant has testified that she met with the Appellee two weeks prior to moving to inform him of her intention of vacating the premises. This notification is not

in writing (as required by Paragraph 18 of the Lease) and there are no witnesses to this meeting. Appellee specifically denies this meeting ever took place or that any notification was given. (T.R 187)

The Appellant offered no evidence other than a check (R.E. 3) which contained no language on the front or back that it was intended for the purpose of an accord and satisfaction and there is no writing or any other evidence whatsoever to support Appellant's contention.

While the Appellee admits accepting a check in the amount of $7,500.00 as payment for 3 months back rent, he strongly denied accepting it as satisfaction. Appellee has testified that it was not his understanding that by accepting the check he was relieving the Appellant of her obligations under the Lease. (T.R 40) "A creditor's (Appellee in this case) retention of a check may not support an accord and satisfaction where the debtor (Appellant in this case) fails to *unambiguously* (emphasis added) condition the tendered check as payment in full of the underlying obligation." *id at 1003.*

Appellant's brief contains twenty (20) pages of the testimony of her witness who tendered the check to Appellee. Such heavy reliance on this particular witness is curious considering he failed to provide any definitive proof of an accord and satisfaction. Appellant's witness, who was not a party to the Lease Agreement, testified that there was very little dialogue between him and the Appellee. (T.R 141) In fact, he testified that he could not remember exactly what that dialogue consisted of. (T.R 145) He did however describe a highly charged, somewhat chaotic atmosphere in which he offered the Appellee a check in exchange for a new key to the Appellant's law office. (T.R 139-145)

Appellant's witness testifies that Appellee then told him to slide the key under the Appellee's door when he was done. There were no witnesses to this exchange between Appellee and Appellant's witness and Appellee strongly denied that he asked that the key be returned and that he never received the key. (T.R 189)

Appellee also testified that he gave the key to Appellant, not the Appellant's witness because the Appellant was the actual Lessee. (T.R 189) When cross-examined, Appellant's witness was unable to testify with certainty whether or not everything belonging to the law practice had been removed from the premises on July 22, 2005. (T.R. 149) This strongly suggests that the Appellant had continued access to the premises beyond July 22, 2005.

Appellee notes the trial court's acknowledgment that some of Appellant's witness testimony was "very believable" and "corroborates everything your client is saying *up to that point"* (emphasis added). The "point" the trial court is referring to concerns ***when*** the events in question took place, not ***what*** transpired on that date. Appellant's strained effort to lend credibility to the testimony of her witness is egregiously misleading. Had the Court found the Appellant's witness to be credible, then it would no doubt have reached a different ruling.

Appellant cites *Cook v. Bowie,* 448 So.2d 286 (Miss. 1984), quoting *Roberts v. Finger,* 227 Miss. 671, 677-78, 86 So.2d 463, 465 (1956) in support of her contention that an accord and satisfaction was established between the parties. Appellant places heavy emphasis upon *Cook,* quoting that an accord and satisfaction "'must have all the essentials of a contract and maybe expressed, **or implied from the circumstances.'"**. Unfortunately for the Appellant, *Cook's* primary view of an accord and satisfaction was

the essential element of a "meeting of the minds". *Id.* at 287. In the case at hand there was neither a "meeting of the minds" nor could an accord and satisfaction be "implied from the circumstances".

The Appellant's own witnesses describe the intensity of the exchanges between the parties and the highly volatile atmosphere in which the Appellant alleges an accord and satisfaction took place. It is difficult to imagine that a clear understanding between the parties could be established under such conditions. A highly charged, chaotic atmosphere is hardly conducive to accomplishing the kind of negotiated settlement alleged by the Appellant. Moreover, the Appellant's witness who tendered the check, was not a party to the Lease and therefore was in no position to negotiate an accord and satisfaction. The Appellant and the Appellee, the only parties to the Lease, had no direct communications with regards to any accord and satisfaction.

Leaving aside the issue of accord and satisfaction, Paragraph 18 of the Lease addresses the issue of the surrender of premises. It states as follows: "No action of the landlord or its agents during the term hereby granted shall be deemed an acceptance of a surrender of the Demised Premises, and no agreement to accept a surrender of the Demised Premises shall be valid unless the same be in writing and subscribed to by the Landlord." Paragraph 18 precludes the Appellee from accepting a surrender of the premises unless there was a written agreement to do so. The Appellant offers no evidence to show that Appellee accepted a surrender of the premises pursuant to the Lease agreement.

One wonders why the Appellant and her law partners, who together have over 56 years of collective legal experience failed in taking protective measures such as placing

language on the check indicating an accord and satisfaction. One would think that these highly skilled, deeply experienced attorneys would have the foresight to send correspondence to the Appellee notifying him of their intentions of moving and the reasons behind the move. They failed to do so and have offered no proof of an accord and satisfaction. The trial court was correct in its determination that Defendant has failed to prove the affirmative defense of accord and satisfaction by the preponderance of the evidence.

III. APPELLANT IS BARRED FROM RAISING THE ISSUE OF FRAUD AND INVALIDITY OF THE LEASE ON APPEAL

At trial, Appellant failed to raise the defense of Fraud or that the Lease was invalid. This Court has held that issues not raised at trial may not be raised on appeal. In *Mississippi Pub. Serv. Comm'n v. Merch. Truck Line, Inc.* this Court stated that "We agree with the Company that Mr. Baker did not raise the issue of collateral estoppel at the trial court level, and thus he cannot raise it before this Court". 598 So.2d 778, 780 (Miss.1992)

Appellant's counsel took no testimony from any of the parties or the parties' witnesses relative to Fraud or the invalidity of the Lease. Appellant failed to produce any evidence at trial that would substantiate her claim that the Lease is invalid or that Fraud had been committed by Appellee. Furthermore, Appellant's counsel made no objection to the Lease being admitted as evidence. (T.R. 42)

IV. APPELLANT FAILED TO APPEAL TRIAL COURT'S DENIAL OF HER MOTION FOR SUMMARY JUDGMENT AND FOR SANCTIONS AGAINST PLAINTFF

Appellant's brief re-argues her Motion for Summary Judgment and for Sanctions against the Plaintiff which was correctly denied by the trial court in January of 2007. Appellant had 21 days to appeal the trial court's denial but failed to do so and is now time barred from raising it in her appeal. Under Rule 4.06 of the Uniform Circuit and County Court Rules, an appeal from an interlocutory order in county court may be sought in the Supreme Court as provided in Rule 5 of the Mississippi Rules of Appellate Procedure. (R.E 5)

Rule 5(a) of the Mississippi Rules of Appellate Procedure states as follows:

(a) Petition for Permission to Appeal. An appeal from an interlocutory order may be sought if a substantial basis exists for a difference of opinion on a question of law as to which appellate resolution may:

(1) Materially advance the termination of the litigation and avoid exceptional expense to the parties; or

(2) Protect a party from substantial and irreparable injury; or

(3) Resolve an issue of general importance in the administration of justice.

Appeal from such an order may be sought by filing a petition for permission to appeal with the clerk of the Supreme Court **within 21 days** after the entry of such order in the trial court with proof of service on the trial judge and all other parties to the action in the trial court. *Mississippi Rules of Appelate Procedure.*

The Appellant's Motion for Summary Judgment was properly denied by the trial court. Appellant had 21 days to appeal this denial but failed to do so. In view of the Rules regarding appeals, the issues raised in Appellant's Motion for Summary Judgment should be stricken from consideration. However, without waiving its argument against

consideration of the issues contained in Appellant's Motion, Appellee will address the same.

Appellant alleges in her Motion that the Lease was invalid due to a deficiency in the property description and so therefore there were no genuine issues of material fact. The Motion also alleged that Appellee had altered the description of the Lease and had perpetrated fraud upon the Court.

The alleged "alteration" referred to by Appellant was in actuality a modification done so at the request of Appellant. Shortly after executing the lease in October of 2003, Appellant noticed that the address on the first page described a different property owned by Appellee. At Appellant's request, and with her consent, Appellee modified the address to reflect the property that the parties had agreed Appellee would occupy. Unbeknownst to Appellee, copies of the original, unmodified Lease (R.E. 2) were made and later misfiled during Appellant's relocation to a different office location. It was one of these copies that had been mistakenly attached to the Complaint. Appellee then filed its Response to Defendant's Motion for Summary Judgment and for Sanctions Against Plaintiff with the correct (modified) Lease (R.E. 7) attached.

Prior to filing her Motion Appellant sent correspondence to Appellee's counsel notifying him of the discrepancy between the Lease attached to the Complaint and the Lease submitted in response to Appellant's discovery request. Appellee's counsel investigated the matter and discovered that due to the clerical error just mentioned, a copy of the unmodified Lease (R.E. 2) was attached to the Complaint. The correct (modified) copy was submitted in discovery.

In Appellee's Response to Defendant's Motion for Summary Judgment and For Sanctions against Plaintiff, Appellee cited case law[1] in support of its argument that the Lease was valid, and explained that the discrepancy was a result of clerical error and not fraud as claimed by the Appellant. Appellee also noted that the correct (modified) Lease (R.E. 1) submitted in discovery had been corrected at the request and the consent of the Appellant shortly after Appellant occupied the premises.

Appellant alleges that in correspondence to Appellee's counsel, "Counsel for the Plaintiff ***stated*** he did not wish to withdraw his continued efforts to harass Stewart with altered evidence" (Appellant's Memorandum in Support of Appeal paragraph 2 page 3). This is a complete fabrication on the part of Appellant. Counsel for Appellee made no such statement verbally or in his correspondence to Appellant. (R.E. 4).

Which ever copy of the Lease the Court considers, the correct description can be found in three different locations within and attached to the Lease. On page eight (8) of either copy a correct description of the subject premises is located under paragraph 27(b) in the Appellant's own handwriting. On page nine (9) of both copies a correct description of the subject premises is located on the signature page over the Appellant's signature in the Appellant's own handwriting. On page ten (10) of either copy a correct

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[1] In the case of *St. Louis Fire and Marine Insurance Company v. S.W. Lewis*, the Court held that the "modification of an existing contract may be done by subsequent oral agreement provided that such modification can be established by satisfactory evidence." 230 So 2nd 580 (Miss. 1970).

When determining the validity of contracts, particularly with respect to modifications, the Court looks to the pattern or course of conduct of the parties. In *Eastline Corporation v. Marion Apartments, Ltd and Dwayne Sharp* the Court held that when determining matters of contract modification, the "question must be determined upon the facts and upon the parties 'pattern of conduct'". 524 So2n 582 (Miss. 1988).

The Court also reviews any extrinsic evidence that may be available. In *Kight Jr. vs. Sheppard Building Supply,* the Court stated that "where the written contract is ambiguous, courts are obligated to pursue the intent of the parties by resort to parol evidence." 537 So.2nd 1358 The Court when on to add that " the construction which the parties have placed upon the contract, or what the parties to the contract do thereunder, is relevant extrinsic evidence, and often the best evidence, of what the contract requires them to do. *Id.1358 (citing Delta Wildlife and Forestry, Inc. v. Bear Kelso Plant., Inc.,* 281 So.2nd 683, 686, (Miss. 1987)

description is located under the Appellant's signature in her own handwriting under the Guaranty Agreement.

Appellant's arguments of invalidity and fraud are without merit. Correct descriptions of the subject premises can be found in three different locations in the unmodified Lease (R.E. 2) and if the corrected (modified) Lease (R.E. 1) is considered, four locations. The discrepancy between the two Leases was the result of clerical error on the part of Appellee's staff and the Appellant has offered no evidence to the contrary. Additionally, Appellant did take possession of the subject premises and continued to maintain her office there from October of 2003 until July of 2005. Appellant made monthly rental payments until April of 2005, made improvements to the suite and conducted a vibrant law practice there. Appellant's Motion for Summary Judgment arguing fraud and the invalidity of the Lease was correctly denied by the trial court and no appeal was filed by the Appellant.

V. APPELLEE PROVED MITIGATION OF DAMAGES

Appellee attempted to mitigate damages by placing a sign on the side of the building advertising Lease space for rent. Appellee had listed the office space on-line and had alerted real estate brokers in the downtown area of this availability. Appellee had prospective Lessees visit the office space but was unable to lease the space prior to selling the building.

VI. APPELLANT FAILED TO PRESENT EVIDENCE IN SUPPORT OF COUNTER-CLAIM

Appellant attempted to present highly suspect evidence to the court to which Appellee objected and the trial court sustained. The evidence consisted of print outs from

Appellant's Quickbooks program (R.E. 5). Appellant argued that these printouts were evidence of the cost she incurred as a result of relocating from the subject premises to her new location. A Quickbooks program is a form of computer software used by small businesses and law firms to keep track of expenses. The program also monitors the business and/or law firm's account balance. The printouts produced by the Appellant indicate several alleged transactions but on each print out the observer can clearly see there is no change in the account balance. This strongly suggests that the program had been manipulated to show expenses that were never incurred.

When asked by the trial court why the Appellant could not produce monthly bank statements as evidence, she responded by stating that it would have, in the Appellant's testimony "cost in excess over one-thousand dollars to retrieve those cancelled checks from the bank". (T.R 109-110). It was noted by Appellee's counsel that Appellee had retrieved a copy of the canceled check (R.E. 3) tendered to Appellee for free. The trial court concurred with the Appellee that the evidence was inadmissible and sustained the Appellee's objection. The Appellant has produced no admissible evidence that she sustained any damages as a result of Plaintiff's actions or inactions.

CONCLUSION

The Appellant has failed to prove by a preponderance of the evidence that the subject premises were uninhabitable, that there was an accord and satisfaction, that the Appellee failed to mitigate damages, that the Lease was invalid or that she sustained damages as a result of any actions or inactions by the Appellee. The Appellant relies solely on the biased, contradictory testimony of her witnesses. The Appellant and her

law partners, trial attorneys with over 56 years of collective legal experience, failed to produce any documentary or photographic evidence to support the Appellant's claims.

The Appellant's claim that the Lease is invalid and that the Appellee has perpetrated Fraud should not be considered by this Court. Appellant has attempted to re-argue the claims outlined in her Motion for Summary Judgment. This Motion was properly denied and was not appealed by the Appellant. Additionally, the Appellant failed to properly raise the defense of fraud and the invalidity of the Lease at trial. Appellant's counsel took no testimony regarding the validity of the Lease nor was there any evidence offered to support a claim of fraud or invalidity. These inactions of the Appellant bar any consideration of those issues by this Court.

For these reasons, the Appellee respectfully requests that this Court uphold the Circuit Court's Order Affirming the County Court and dismiss Appellant's appeal with prejudice. The Appellee requests that additional attorney's fees be awarded to cover the costs incurred during the Appeals process. The Appellee also prays for any such other relief as this Court may deem just.

This the 15th day of December, 2009.

Respectfully submitted,

Bridge Properties of Jackson, LLC

BY: _____

William S. Kellum
Attorney for Appellee

Of Counsel:
William S. Kellum, III (MBN# [redacted]
Attorney at Law
P.O. Box 4318
Jackson, Mississippi 39296
Telephone: (601) 212-0499
Facsimile: (601) 969-2709

CERTIFICATE OF SERVICE

I, the undersigned Plaintiff herein, do hereby certify that the above and foregoing document was delivered by facsimile, and mailed, by first class mail, postage prepaid, to the following:

Honorable John S. Price, Jr.
P. O. Box 351
Vicksburg, Mississippi 39181-0351

Honorable W. Swan Yerger
P. O. Box 22711
Jackson, Mississippi 39225-2711

Cynthia Stewart
2088 Main Street, Suite A
Madison, Mississippi 39110

This the 15th day of December 2009

William S. Kellum