

IN THE SUPREME COURT OF MISSISSIPPI

CYNTHIA STEWART

APPELLANT

V.

CASE NO.: 2009-CA-00305

BRIDGE PROPERTIES OF JACKSON, LLC

APPELLEE

**APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI**

BRIEF OF APPELLANT

COUNSEL FOR APPELLANT

**CYNTHIA A. STEWART, P.A. (MBN [REDACTED])
2088 Main Street., Suite A.
P.O. Box 2629
Madison, Mississippi 39130-2629
T (601) 856-0515
F (601) 856-0514**

CERTIFICATE OF INTERESTED PERSONS

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

1. State of Mississippi
2. William S. Kellum, Esq.
3. Honorable W. Swan Yerger, Circuit Court Judge
4. Judson M. Lee, Esq.
5. Cynthia H. Speetjens
6. Mr. Tyson Bridge
7. Bridge Properties of Jackson, LLC
8. Jack Price, Esq.

This the 11 day of December, 2009.

Respectfully Submitted,

CYNTHIA A. STEWART, P.A.

BY: 

CYNTHIA A. STEWART

COUNSEL FOR APPELLANT


CYNTHIA A. STEWART, P.A. (MBN 
2088 Main Street., Suite A.
P.O. Box 2629
Madison, Mississippi 39130-2629
T (601) 856-0515
F (601) 856-0514

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BRIEF OF APPELLANT

STATEMENT OF ISSUES

1. THE TRIAL COURT ERRED IN NOT FINDING THAT THE JUDGMENT WAS CONTRARY TO THE DOCTRINE OF ACCORDANCE AND SATISFACTION.
2. THE TRIAL COURT ERRED IN FINDING THAT THERE WAS VIABLE LEASE.
3. THE TRIAL COURT ERRED IN FINDING THAT THE PREMISES WERE UNINHABITABLE.
4. THE TRIAL COURT ERRED IN ITS FAILURE TO MAKE FINDINGS REGARDING THE LESSOR'S DUTY TO MITIGATE DAMAGES.
5. THE TRIAL COURT ERRED IN NOT ASSESSING EXPENSES AGAINST BRIDGE PROPERTIES OF JACKSON, LLC CAUSED BY THE FAILURE OF BRIDGE PROPERTIES OF JACKSON, LLS TO PROPERLY MAINTAIN THE PREMISES.

The Appellant, Cynthia A. Stewart, respectfully submits this her brief in support of her appeal.

STATEMENT OF THE CASE

This case is before this Court on appeal from the bench trial in the County Court of the First Judicial District of Hinds County, Mississippi. The County Court entered judgment for the Appellee in the amount of \$35,263.40 on or about January 28, 2008 (R.E. 2) The Appellant filed a Motion for Reconsideration and/or New Trial. (R.E. 3) The County Court overruled the Motion for Reconsideration and/or New Trial on or about February 21, 2008. (R.E. 4 and 5) The Circuit Court entered an order confirming the County Court opinion on or about February 10, 2009. (R.E. 6) The Appellee duly appealed. (R.E. 7)

SUMMARY OF THE ARGUMENT

Cynthia Stewart, joined by Cynthia Speetjens and Judson Lee, paid rent on the premises located 222 North President Street, Suite 302, Jackson, Mississippi 39202. There was no viable lease since the only applicable lease referred to a completely different premises. In addition, the original space was expanded to include offices to accommodate Cynthia Speetjens and Judson Lee. Therefore, at most, the parties were on a month to month tenancy. During the course of occupancy, the premises became completely uninhabitable due to the landlord, Bridge Properties of Jackson, LLC's complete failure to maintain both the physical property and the security of the property. There were numerous leaks resulting in stains and necessity of buckets being placed on an almost constant basis in certain offices, including the office of Cynthia Speetjens. There were homeless people taking up residence in the parking lot and in the front door and urinating during and after office hours. The principal officer of Bridge Properties of Jackson, LLC, Mr. Tyson Bridge, behaved in a manner personally disruptive to the operation of a professional law

office in that he engaged in screaming matches with his wife, who also occupied the premises, and on at least one occasion, was arrested. In addition, the air conditioning system did not operate, causing it to be impossible to conduct business. The landlord, Bridge Properties of Jackson, LLC, did nothing to mitigate those damages. As a result, Cynthia Stewart, Cynthia Speetjens and Judson Lee were forced to vacate the premises. At the time they vacated the premises, Tyson Bridge, as agent of Bridge Properties of Jackson, LLC, changed the locks and refused to allow the parties to have entrance to the premises. He permitted access only upon a complete payment of all back due rent. That was tendered to him by Judson Lee. This was done on the agreement that when the move was complete, the key would be returned to Tyson Bridge and the parties would have no further access to the premises in question.

Cynthia Stewart, Cynthia Speetjens and Judson Lee incurred certain expenses in the necessity of relocating. The trial Court erred in awarding those expenses to the parties.

ARGUMENT

The Appellant leased office space from the Plaintiff at 222 N. President Street, Suite 302, Jackson, Mississippi 39202. While occupying the space, the Appellant noticed numerous deficiencies in the condition of the premises. Namely, the roof leaked in several places causing unsightly brown stains on the floors and walls which rendered the premises unfit for a professional office. Also, the office space's electrical system frequently malfunctioned causing extended losses of power. Finally, the heating and cooling system frequently malfunctioned causing the premises to become intolerably hot and uncomfortable which was not conducive to a professional office.

The Court considered the testimony and actually made certain findings regarding credibility at the time of the hearing of this matter. The Court indicated that the pertinent fact

was when the move took place and despite Tyson Bridge's contention took place in the cloak of darkness, it actually took place on July 22, 2005, when the check was written. He found that "Mr. Lee was very believable and it corroborates everything your client is saying up to that point." (Tr. 195) He further found that Tyson Bridge admitted on the morning of July 22, 2005 that he had the locks changed and that he did not grant access to the premises until he received the money. Furthermore, as he said, the testimony of Judson Lee was believable on the point that further access to the premises was denied. Accordingly, Mr. Lee returned the key later that day after the move was complete. (Tr. 143) The parties had no further access to the premises. The Mississippi Supreme Court has specifically noted that accord and satisfaction "'must have all the essentials of a contract and maybe expressed, **or implied from the circumstances.**" *Cook v. Bowie*, 448 So.2d 286 (Miss. 1984), quoting *Roberts v. Finger*, 227 Miss. 671, 677-78, 86 So.2d 463, 465 (1956).

On November 21, 2005, the Appellee filed this case in an attempt to collect rent from the Appellant after she was forced to leave the premises. Attached to the Appellee's Complaint was a purported lease which referenced a premises completely different from 222 N. President Street, Suite 302, Jackson, Mississippi 39202. A copy of that lease is included in the record excerpts. (R.E. 8)

In the Answer and Counterclaim, Appellant notified counsel opposite of the deficiency of this lease and requested this Complaint be dismissed for failure to produce an applicable lease. In response, the Appellee produced a completely altered copy of the document originally attached to the Complaint in which the entire first paragraph of the lease was crossed out. (R.E. 9) At no point in this altered document had Appellant initialed the alteration or otherwise

indicated that she agreed to any redaction. Indeed, the specific language of the original purported lease clearly stated that...

[This lease may not be altered, changed, or amended, except by instrument in writing signed by both parties hereto.]

This document constituted a fraud on Appellee and on the Court. In addition, it fails to support a claim in which relief can be granted. The redaction did not pertain merely to the location of the premises leased, but crossed out the entire first paragraph which relates to consideration. Even if this document did not constitute a fraud, it did not support a claim for an action on the lease.

On or about May 22, 2006, Appellant filed her Motion for Summary Judgment and for Sanctions Against Plaintiff and Counsel. Pursuant to Mississippi law, “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.” *Dixie South Industrial Coating, Inc. v. Mississippi Power Co.*, 872 So.2d 769, 772 (Miss. 2004) quoting Miss. R. Civ. P. 56; see also *Roussel v. Robbins*, 688 So.2d 714, 725 (Miss. 1996). The mere presence of fact issues “does not *per se* entitle a party to avoid summary judgment.” *Simmons v. Thompson Machinery of Mississippi*, 631 So.2d 798, 801 (Miss. 1994). Rather, “the court must be convinced that the factual issue is a *material* one, one that matters in an outcome determinative sense” or it should grant summary judgment. *Id.* (emphasis added).

As set forth above, there was no dispute of material facts. That is, there was no argument that any other document other than the two purported leases supported the Appellant’s claim for relief. As shown above, the first lease is inapplicable to 222 N. President Street, Suite 302,

Jackson, Mississippi 39202 and the second lease had been altered unilaterally since this civil action was initiated. Neither of these two documents supported the Appellee's allegations.

Prior to filing the Motion for Summary Judgment and for Sanctions Against Plaintiff and Counsel, Appellant gave the Appellee, Bridge Properties and its counsel, William S. Kellum, Esq., a full and fair opportunity to dismiss the Complaint in light of the noted fraud. Counsel for Appellee stated that he did not wish to withdraw his continued efforts to harass Stewart with altered evidence.

At the trial in this matter, the facts and circumstances of the deficiencies of the premises and the accord and satisfaction of the parties was set out. In particular, Judson M. Lee, who occupied the premises with the Appellant, testified as follows:

DIRECT EXAMINATION BY MR WOODS:

Q. Would you state your name, please?

A. Judson Lee.

Q. I believe you are familiar with the circumstances surrounding Bridge Properties and Cynthia Stewart matters; is that correct?

A. I'm familiar with them somewhat, yes.

Q. And the property that I'm specifically referring to is the property that was on North President Street, 222; is that correct?

A. That's correct.

Q. And I believe that you had an office in that vicinity as well in 2005?

A. I did. I shared space back there, an office room.

- Q. The questions I'm going to ask you generally will be from the time period of about April or the spring of 2005 and continuing until the end of July, 2005, just to give you a frame of reference.
- A. Okay.
- Q. During that time frame, did you ever have an occasion to notice any problems with the office space, Cynthia Stewart's office space?
- A. Well, yes. The answer is yes, I did. One of the problems I noticed was there was a leak. There were several leaks on the roof, the ceiling of the space. I can think of three places that the ceiling leaked. There was one in the hallway. There was one in the office that I sued. There were two in Cynthia Speetjens' office.
- Q. Can you describe - - was anything being done about the leaks?
- A. Not that I was aware of. I'm not sure what it was. It was a brown sort of sludgy water looking thing. It looked like it came from the roof probably, from the buildup on the roof. On a heavy rain or just a general rain, if it built up enough, it would start to drip in the offices and usually stain the walls.
- Q. Would it run down in and pool on the floor or was it being caught by something?
- A. In Cynthia Speetjens' office, I know she had to have a bucket. Once it started, she kept a bucket in there to catch it. In the hallway it would drip onto the floor, and we would try to put a bucket out there when we could when it started to drip, but it would leave a stain in the carpet. Then when

it would drip in the hallway, it would splash onto the doors. In the office that I used, the leak was in the window, and so it ran down the window frame and casing. On one particular instance, it ran and spilled onto a file of mine, which I had to have recopied.

Q. During this time frame when you observed these leaks, did you take any action in regards to them? Did you notify anyone?

A. I would tell Cynthia Stewart about the leaks. With regard to the incident in which it leaked on my file, I took that up with Mr. Bridge, and he paid for the cost of reproducing the file, copying the file.

Q. Were there any other instances where you had that kind of problem that you took up directly with Mr. Bridge? Was that the only one you recall?

A. I don't recall taking up any other issues with him directly.

Q. So there were leaks during that time. Did you ever observe Mr. Bridge or anyone on his behalf doing anything in response to those leaks?

A. No. I know that the cleaning crew when they would come in would try to clean it off the doors to the extent that they could. Like I said, it would sort of stain the walls, and it was not the easiest thing. I tried on a couple of occasions myself to get it off with like some 409 or something, but I don't recall any efforts. Like I said, it seemed to me that the thing came from the top of the actual ceiling of the building, the roof of the building.

Q. Were you aware of any problems with the heating and cooling system?

A. It was difficult to stay even. It usually ran hot in the building, in the suite space that I was in.

- Q. Was that something that just happened on an occasion or two, or how frequently did you observe that?
- A. It was regular. It was a regular occurrence. It seems like once a week it would be - - I would hear some complaints. I got hot myself being in the back. I was in the very back of the suite. Cynthia Stewart's office was at the very front.
- Q. Did you ever have occasion to observe any homeless people hanging out or anything like that? Did you notice anything like that?
- A. One incident that sticks out in my mind that I do remember is during one lunchtime. Cynthia Stewart and I were in the break room and looked out the window in the parking area of the building, and there was who looked to be a vagrant urinating in the parking lot. It was about 11:30. I didn't observe anything, but the paralegal at the time told me that she was concerned when she got to the office about somebody that was hanging around the front door. That made me a little concerned, so I usually tried to stay later than everybody else at night if they needed me to walk him or her out.
- Q. Were there any other problems in the office space that you observed during your time there?
- A. The things that stick out the most were the stain, the leaking with the building, and the temperature was up and down. On several occasions the suite would lose power. I don't know if the rest of the floor lost power,

but our office would lose power. It would shut off, and the breaker would have to be flipped back on. I never actually flipped it on, though.

Q. How frequently did that occur, if you recall?

A. Seems like about once a week.

Q. Do you know who repaired it or who flipped the breaker or whatever?

A. I'm trying to recall. It seemed at one time maybe Cynthia Stewart employed a girl who would take a flashlight out to the break room and have to do the switch.

Q. Let me direct your attention to July 22, 2005. There's been offered into evidence an exhibit of a check, it is Exhibit 4, in the amount of \$7,500 that you had written to Mr. Bridge. Do you recall doing that?

A. I do.

Q. Do you recall the events of that day?

A. I do.

Q. Let me ask you this. Do you happen to recall what day of the week it was? Was it a work day, a Saturday, or a Sunday?

A. It was a work day, Monday through Friday. It was one of those days.

Q. Do you recall about when you first arrived on the property and why you were there?

A. It was sometime between 7:00 and 7:30.

Q. In the morning?

A. Yes.

Q. For what purpose were you going there that day?

- A. To move out.
- Q. Was anyone with you?
- A. At the time I was going down there, no. I arrived by myself.
- Q. Was that a day you had set aside to move out?
- A. Yes, it was.
- Q. You had planned to:
- A. We had planned to move out that day.
- Q. Did you have someone with you? Well, were you just going to move yourself, or did you have movers, or what?
- A. No, we had contracted with a moving service. I know it as Ed the Mover. He's the principal, but I think his business is Mississippi Relocation Services, something to that effect. MRS is in the title. When I arrived, they were in the lobby waiting, as was our runner at the time, Matt Maddox.
- Q. So the movers were there when you got there?
- A. Yes.
- Q. Did you have a problem getting into the office space?
- A. We couldn't get in.
- Q. Why not?
- A. The locks had been changed.
- Q. Were you the person that attempted to get in?
- A. No. Well, I did, but I wasn't the first. On my way down to the office, and it was probably, like I said, somewhere between 7:00 and 7:30 - - I

would usually leave my home at that time, about 7:15 or so. And our runner, Matt Maddox, called me on my cell phone. And he said, "We have a problem. I said, "What's that?" And he said, "The locks have been changed, and I can't get in." At that point it just kind of threw a big kink into the whole day we had planned with the movers coming, we were going to move out, and now we have to figure out what's going on with this. So when I showed up, Matt was there, and the guys from the relocation service were in the lobby and had their dollies and their trucks. The way they move an office is they take what looks like cardboard sheets and blankets and things that they lay down throughout the office to protect the integrity of the office, and they had everything stacked up just waiting. They were just kind of there sitting around and waiting to get in.

Q. How did you get into the office area?

A. Well, it was probably about 15 minutes after I arrived there that Cynthia Stewart and Cynthia Speetjens arrived. And not long after that, Mr. Bridge arrived, and shortly after that we got into the office suite.

Q. What did Mr. Bridge do? Did he let you in or how did that happen?

A. The situation - - the lobby - - when you get off the elevator, there's the lobby, and on your right is one side of the building, and on the other side is another suite of offices. We were there waiting, and Mr. Bridge got off - - I think he got off the elevator. I can't remember if he did or if he came from the direction of the stairs. But it was a tense moment. It was tense because Mr. Bridge was demanding money, rent, and if I recall correctly,

what Cynthia Stewart said was, "I can't pay you unless you let us get in, unless you open the door." So for that purpose he opened the door, and Cynthia Speetjens, Cynthia Stewart, myself, and Mr. Bridge went inside while she tried to find her checks.

Q. Your recollection is that Mr. Bridge opened the door. Did he give you a key?

A. Not at that time, no. No, he opened the door. He held the key. There were two doors to enter the suite. The main door as you get off the elevator was a glass door at that time. And then at the very back of the suite by my office there was another door, which is also in the back by his office. If I recall correctly, there was a lock on the door by my office, something like you could see that child-proofs something, and you have to undo a lock to open that up to free up the door handle. So you couldn't go in that one for sure, but then the front door, the lock had been changed and our keys didn't work.

Q. So you got into your office of Mr. Bridge let y'all into the office suite area at that point?

A. Yes.

Q. And then what happened after that?

A. Could you repeat the question?

Q. After Mr. Bridge let you into the office area, what transpired after that?

A. There was a lot of back and forth between Mr. Bridge and Cynthia Stewart and Cynthia Speetjens. I kept quiet at this point, kind of seeing what was

unfolding. A lot was going back and forth about the rent. At the time both Cynthia Stewart and Cynthia Speetjens did not directly handle their checks and their books. The paralegal did that. So the paralegal kept the checkbooks, and I assume it was in a locked file cabinet. But what happened was there was a lot of back and forth, and what I recall is that Cynthia could not get to her checks. The paralegal had not come in that morning. Everybody in the office was going to help move. We understood we were taking off the day to move. So you kind of dressed down in casual clothes. But the paralegal had not come in yet, so we couldn't get the check. And like I said, there was a lot of back and forth going on. So finally what I said was, I asked Mr. Bridge, "Would you take a check from me?" And he said, "Yes." And I kept my checks in my office separate because I did my own books. So I wrote a check.

Q. And that check - - I hand you what's been marked Exhibit 4. Is that the check you are referring to?

A. It is.

Q. So you asked Mr. Bridge, "Will you take a check from me," and he said, "Yes." So you wrote the check and handed it out to him basically; is that right?

A. Yes sir.

Q. Was there any dialogue or conversation between you and Mr. Bridge about what the check was for, or why you were giving him \$7,500, or anything like that? Or how did that happen?

A. There wasn't a lot of dialogue between he and I over the check. What it basically boiled down to is that we were moving out that day. We had a crew in the lobby ready to move. We had our staff showing up that was going to help to get out, and by that point in time, the paralegal was out there waiting, and we needed to get going. We needed to get moving. With the relocations service out there, time was money, and they were sitting in the lobby waiting with the dollies and trucks and things like that. But we couldn't do that as long as Mr. Bridge had the key to the office suite. This was not a move that you could do at one time. We didn't have enough manpower or trucks to do that.

So we were going to have to during the day go back and forth moving things in and out. So I gave him the check. And when I gave him the check, he gave me his key to the suite. I don't recall what he said at that point in time, but I sort of got the sense from him that he was giving me the key on loan, so to speak. I was, for a lack of a better word, the keeper of the key. I had given him the check. What he did tell me was to turn it back in to him when we were done that day. If he was not there, to slide the key under the door of his office, which is what I ended up doing later that evening. His office was next to mine outside of the suite.

Q. So you recall him specifically telling you, "Here's the key; give it back when you are finished"?

A. Yes.

- Q. How long did it take you all to move the office? You said you knew you were going to have to make several trips. Did you make those trips that day?
- A. We did. We made a lot of trips that day. I don't recall the exact time that I returned the key, but he was not there. It was after he had left. I would estimate that it was sometime between 5:30 and 7:00.
- Q. So that is when you got the last load from the office there?
- A. I did a last walk-through myself to make sure all of the rooms had been emptied and we'd gotten all of our office furniture and things out. And when I was satisfied that we had done that, I locked the suite up. And if I recall, I had an envelope that I put the key in and slid it under his door.
- Q. But that would have been on the same - - you put the key under the door on that same day, July 22, 2005?
- A. Yes.
- Q. At any time during that day did you ever see Mr. Bridge hand a key to Cynthia Stewart?
- A. No.
- Q. Other than him handing you the key, did you see Mr. Bridge hand a key to anybody else on that day?
- A. No. I got the distinct impression that when I paid him the check, I don't want to use trust as the word, but that is what it appeared, that he gave me the key. I had given him the money. And he said to the effect, he didn't

say this, but tot the effect, "I'm going to trust you with the key; return it when you are done."

Q. After you turned the key in later that day, did you ever go back on the premises anymore?

A. It seems like I might have one time, because when we moved out, there was a notice that we put on the door. I didn't put it on there. But somebody from our office had put a notice on the old door that said, "We've Moved and We've Relocated". It was for deliveries, Fed Ex, UPS, and things like that. For some reason or another, I think I stopped by there maybe a couple of days, two or three days later, because I had heard that the sign was not up, and we wanted to make sure we were keeping current with Fed Ex and UPS while we changed over all the contact information.

Q. Did you ever in fact observe a sign of that nature on the premises?

A. Yes.

Q. It was there when you went back, as far as you recall?

A. As far as I recall, it was there when I went back. I believe it was there the day I returned the key. I feel certain that it was there that evening.

Q. To the best of your knowledge, did Cynthia Stewart ever go back to the premises after July 22nd?

A. No, not that I'm aware of.

MR. WOODS: I tender the witness.

CROSS EXAMINATION BY MR. KELLUM:

Q. Mr. Lee, Ms. Stewart has said that you are the one who drafted her answer and counterclaim; is that correct?

A. Yes, I helped with it.

Q. In your sixth defense, you state that there was an accord and satisfaction on or about July 30, 2005. Do you still stand by that?

A. I don't recall. I haven't looked at the answer.

Q. Would you like to read it?

A. Okay.

Q. In this defense you are saying that Mr. Bridge accepted a check in the amount of \$7,500 in full accord and satisfaction, and that once you handed that check to him, that no further access to the premises was granted. Is that still your contention?

A. No. He gave us the key that day and allowed us to move out. So when I have him the check, we were in and out that day moving out.

Q. So you did have access to the premises?

A. That day.

Q. So you did not come back into the suite at any time after July 22, 2005?

A. I don't recall going back in. I didn't have access with a key, and I didn't ask Mr. Bridge to let me in.

Q. When you handed Mr. Bridge the check, you say that there was no dialogue between you two?

A. There was dialogue. I don't recall what it was, but it was more to the effect of - - there was a lot of back and forth about him being paid. They

couldn't get their checks. And I said, "Will you take a check from me?" I'd never paid him any money before. So my basic question was, "Am I good with you to give you a check?" And to which he said, "Yes."

Q. It sounds like there was a lot of activity going on?

A. There was a lot of - - I wouldn't say activity.

Q. People running around and a lot of verbiage going on?

A. Yes, there was a lot of back and forth.

Q. And you are an attorney, correct?

A. Yes.

Q. With all of this activity going on and very little dialogue between you and Mr. Bridge, was there ever an accord and satisfaction verbal between you and Mr. Bridge when you handed him that check?

MR. WOODS: Your Honor, I object. I understand the witness is a lawyer, and I'm sure he's quite competent to answer that. But I think in the context of this case, that is for the Court to decide.

THE COURT: I understand, but he's the one that is tendering the check, and that was the consideration for the accord. So the objection is overruled.

MR. WOODS: Your Honor, he is asking was there an accord and satisfaction. Did I hear him wrong? Did he say was there an accord and satisfaction? That's the ultimate question.

THE COURT: Well, I guess technically that is correct. Mr. Kellum, ask him if he reached an agreement, a specific agreement that he considered to be an

accord and satisfaction with Mr. Bridge at the time he tendered the check.

In fact, that is the question.

Q. (By Mr. Kellum): Mr. Lee, was there a specific verbal exchange between you and Mr. Bridge that indicated an accord and satisfaction.

A. In my mind, yes. He took the check, and he told me to return the key when we were finished.

THE COURT: Is that the total and full extent of the conversation?

A. Yes. He said, "Make sure you return the key when y'all finish moving out" or "moving" or "using this place today."

Q. (By Mr. Kellum): And, Mr. Lee, you are not a party to the lease, correct?

A. Correct.

Q. I just want to ask you some questions about the air-conditioning. Ms. Stewart has testified that it was unbearable, basically that it was just hot all of the time. That does not seem to be your testimony. So you have a different recollection of how often or what the conditions were?

A. Well, hot all the time, I use a different term. I would say that it was regular. But hot all of the time to me implies 24 hours a day, 7 days a week. I wasn't there all of the time. But it was regularly. It was a weekly occurrence.

Q. I think Mr. Woods may have covered this. Did you ever make a verbal request for repair work or anything like that?

- A. I don't recall. If I did, it was in connection with the file that I had that was stained by the leaks, and I would have asked him at that time to fix whatever was leaking in my office.
- Q. And Mr. Bridge I believe - - did he recopy those for you or something like that?
- A. He did.
- Q. With the leaks, were they continuous or just whenever it was raining? What was your testimony on that?
- A. Well, it would start it seem - - like I said, I never went to the roof to inspect anything. All I saw was inside the office. It would seem to occur either during a heavy rain or when there had been enough rain in recent days to build up on the top. And it would just slowly - - what I imagined from looking at the type of stuff that it was, is this came very near the roof and filtered down through the different ceiling layers. So sometimes if it was a heavy rain, it would leak that day. If it had been raining enough over a couple of days, then it would build up and drip.
- Q. But you can't say with complete certainty that there was no repair work done to the leaks, correct?
- A. I can't.
- Q. So you are saying that the leaks were not a daily occurrence?
- A. They were not a daily occurrence, but the stains the left were. It was very regular.

- Q. On the 22nd when y'all moved out, Ms. Stewart has said y'all needed a storage space from some of the furniture that was in the suite.
- A. Yes.
- Q. What as the necessity of that storage space if ya'll had a new office to move to?
- A. There wasn't enough space in the new office, as I recall. There was more space at North President Street than where we were.
- Q. Did Ms. Stewart leave any furniture? Was everything moved out on the 22nd?
- A. Yes, to the best of my knowledge. If anything was left, and I don't know this for certain, it may have been something like a plant or something. I don't recall any major furniture being left, certainly not from my or Ms. Speetjens' half of the suite.
- Q. So you and Ms. Speetjens were completely out of there on the 22nd?
- A. I can't say for certain with her if she was complete. I don't recall any furniture in her area. I'm certain about myself. I'm reasonably certain that everything was out. If anything was left, it may have been, like I said, a potted plant or something.
- Q. But you can't say with certainty that Ms. Stewart had completed her move?
- A. Again, I can't say with complete certainty. I feel reasonably certain because I did the walk-through, and I don't recall anything being in there at that point in time.

MR. KELLUM: Nothing further. Thank you.

THE COURT: Mr. Lee, let me ask you one or two questions. Y'all were on the third floor of this building?

A. It was the third floor, yes, sir.

THE COURT: And the way I understand it there is no fourth floor?

A. Not to my knowledge, unless there was some attic area. There wasn't a usable fourth floor.

THE COURT: Do you recall in Ms. Speetjens' room the leak being fixed?

A. I don't know that I recall it being fixed. I recall her having a bucket out there, and it dripped or stained regularly.

THE COURT: When did you move in with Ms. Stewart at that office?

A. That was sometime in mid to late November of 2004.

THE COURT: So would have come in at about the same time as Ms. Speetjens?

A. I was just one or two months behind her.

THE COURT: How did the circumstances arrive that y'all all showed up on the 22nd with work clothes on and a moving company? Had y'all had an office meeting or something?

A. To the extent that we had a formal office meeting, yes. We had located space in Madison, and we had planned it on this day. Their schedules were busier at the time than mine, and that was the most convenient time that we could get everybody to move.

THE COURT: But as a group, and y'all all had an interest in this, as a group y'all had planned before the 22nd that "on this day we are loading up and we are out of here."

A. Yes sir.

THE COURT: How far in advance of the 22nd did y'all come to that conclusion that you needed to move?

A. That we needed to move?

THE COURT: Or that you were going to move? Surely you had not done that the day before an arranged moving van?

A. No, your Honor. It took us a long time to find some space, so it was a couple of months that we made the decision to move. And then when we found some space, it had to be renovated. So it took a couple of weeks. As far as when we made the decision to move on the 22nd, I don't recall. That would have been within the two or three weeks prior.

THE COURT: As a group y'all had made the decision "we are going to move," and y'all were out looking for space?

A. Yes.

THE COURT: And the very little I know about Jackson - - are you from Jackson or the Jackson area?

A. Yes, sir.

THE COURT: The very little I know about the Jackson area, I know I read in the Clarion Ledger every day that businesses are leaving Jackson in droves and going to Madison and Ridgeland and so forth.

A. I read that too.

THE COURT: Are you telling me that this was not just a routine move to Madison, that y'all moved because of these deficiencies in the building?

A. Yes, and the surroundings of that building itself. I did not feel that it was conducive to maintain a professional office with people hanging around in the lobby that were undesirable for my paralegal to want to be around and people that would urinate in the parking lot. But even inside I didn't feel that it was, and I thought that - -

THE COURT: How long have you been practicing law?

A. Five years.

THE COURT: Well, I can remember when I was going to law school over here a long time ago that Smith Park was a deplorable area of Jackson even then. Why would you have moved in with these people at that location knowing of the existence of the vagrant population in that area?

A. I didn't have any other place to go. I had recently left - - Cynthia Speetjens and I practiced at a larger firm in Jackson that dissolved.

THE COURT: I see.

A. She left a month before I did, and then I left, and then three weeks later it dissolved. I then went to work on a political campaign. When that was done, I didn't have a lot of options. At that point I was literally using my laptop out of my home and needed some sort of office space. Cynthia Speetjens had some work that she needed help with, and so it was a

natural fit for me to go and try to work on these cases with her. I didn't have any other option.

THE COURT: Did you have any additional questions, Mr. Woods?

MR. WOODS: No, sir.

THE COURT: Mr. Kellum?

MR. KELLUM: No, Your Honor.

THE COURT: Mr. Lee, thank you very much.

(Tr. 131-153)

All other witnesses confirmed that the parties had no further access to the premises. In addition, all other witnesses confirmed the lack of habitability due to lack of security, leaks, lack of air conditioning and electrical outlets.

Other witnesses including Wayne Humphries, with the security department of Trustmark National Bank, testified that the lack of air conditioning during business hours and the leaks necessitating the constant use of buckets, as well as staining of the rug, rendered the premises unbearable. Homeless people slept in the doorway and urinated in the parking area.

**THE JUDGMENT WAS CONTRARY TO THE
DOCTRINE OF ACCORDANCE AND SATISFACTION**

The Appellant's evidence at trial established that the Appellee and Appellant entered into an accord and satisfaction such that any obligation or duty owed to the Appellee by the Appellant was discharged at the time the Appellant vacated the premises. As is set forth in *Channel v. Loyacono*, 954 So.2d 415, 426 (Miss. 2007), the elements of accord and satisfaction under Mississippi law are that (1) something of value is offered in full satisfaction of a demand; (2) acts and declarations amounting to a condition that if the accepting party takes it, he takes it subject to the condition; (3) the accepting party understands that he takes it subject to the

condition; and (4) the accepting party accepts the thing of value. The Appellant's undisputed evidence at trial is that the Appellee took and cashed a check for \$7,500 under circumstances that he knew or should have known constituted a full satisfaction of any duties/obligations remaining on the part of the Appellant. Further, the Appellee restricted the Appellant's further access to the office space to only the day the Appellee accepted the check to allow the Appellant to move. This action evidences the Appellee's understanding that, by accepting the Appellant's check, he was relinquishing any right to future payment.

The Court considered the testimony and actually made certain findings regarding credibility at the time of the hearing of this matter. The Court indicated that the pertinent fact was when the move took place and despite Tyson Bridge's contention took place in the cloak of darkness, it actually took place on July 22, 2005, when the check was written. He found that "Mr. Lee was very believable and it corroborates everything your client is saying up to that point." (Tr. 195) He further found that Tyson Bridge admitted on the morning of July 22, 2005 that he had the locks changed and that he did not grant access to the premises until he received the money. Furthermore, as he said, the testimony of Judson Lee was believable on the point that further access to the premises was denied. Accordingly, Mr. Lee returned the key later that day after the move was complete. (Tr. 143) The parties had no further access to the premises. The Mississippi Supreme Court has specifically noted that accord and satisfaction "'must have all the essentials of a contract and maybe expressed, **or implied from the circumstances.**" *Cook v. Bowie*, 448 So.2d 286 (Miss. 1984), quoting *Roberts v. Finger*, 227 Miss. 671, 677-78, 86 So.2d 463, 465 (1956).

LACK OF EXISTENCE OF VIABLE LEASE

The Appellant filed a Motion for Summary Judgment asserting that Appellee failed to properly and specifically plead his claims for relief. The lease the Appellee attached to his Complaint failed to support his claims for relief. Specifically, the lease *did not describe* the subject premises for which the Complaint seeks relief.¹ The Appellant raised this issue with Appellee's counsel who, after several weeks, responded that the lease attached to the Complaint was the result of a "clerical error" and then produced an altered copy of the subject lease. The lease must describe the premises. See *Trotter v. Gaddis and McLaurin, Inc.*, 452 So.2d 453 (Miss. 1984).

Although the Appellee's Complaint made no mention whatsoever of an "oral modification" to the lease, the Appellee asked the Court to believe that the Appellee and Appellant "orally agreed" to modify the lease in October 2003 to reflect the correct address of the subject property. That is impossible - - parties to a contract cannot have an oral agreement in writing; a modification is either oral or written, but not both.

On one hand, the Appellee urged this Court to believe that the parties orally agreed to modify the lease, yet on the other hand, the Appellee wanted to pass off a written modification to the lease. The Appellee cannot have it both ways – either the parties had an oral agreement (which by definition means there is no written agreement) or the parties agreed to modify the lease by crossing out the incorrect address and writing in another (hence, a written

¹ The lease attached to the Appellee's Complaint is indisputably contrary to the allegations of the Complaint which stat, "*Said lease described the premises leased*, provided for the amount of rent and established the length of the lease." (See Complaint at ¶ 3) (emphasis added).

modification).² The problem for the Appellee, however, is that the *Appellant never signed or initialed the purported written modification.*³ Furthermore, the purported written modification does not support a claim for relief. Not only is it unsigned by the Appellant, but it excludes the entire essential consideration paragraph, thus removing a fundamental element necessary to have a valid contract.

It is noteworthy that the Appellee *never* alleged that a modification, oral or written, every existed, nor did the Appellee ever produce the altered lease until *after* the Appellant called his hand on this matter. Contrary to the Appellee's assertions, the Appellant *never* orally agreed to modify any purported lease with the Appellee in or around October 2003. Moreover, the Appellant *never* requested a written modification of the purported lease.

The evident truth is that the Appellee altered the purported lease attached to his Complaint after he realized that the document would not support his claims for relief. Then the Appellee concocted his story about the parties "orally agreeing" to a "written modification" of the purported lease. In sum, the Appellee has perpetrated a fraud upon this Court. For these reasons, this Court should dismiss the Appellee's Complaint with prejudice.

The documents the Appellee puts before the Court are not ambiguous; they are fraudulent. The document the Appellee attached to his Complaint does not support his claims for relief; that fact alone necessitates dismissal. The document the Appellee produced in discovery

² The Appellee asserts that he made this written modification pursuant to Appellant's request shortly after the lease was executed. If the parties truly did agree to modify the lease in October 2003, then it would have been unnecessary for the Appellee to keep the original, unaltered document that he attached to his Complaint because by modifying that document he acknowledged that it was unenforceable in its original, unaltered form. Had the Appellee altered the lease in October 2003 as he swears he did, then he never would have had the unaltered version that he attached to his Complaint - - he would have altered the original.

³ That is because the document was not altered until *after* the Appellant notified the Appellee of the problems with the version attached to the Complaint which was well after the Complaint was filed.

was unilaterally altered by the Appellee and unsigned by the Appellant, thus it is unenforceable against the Appellant. And the Appellee's affidavit to support the existence of an oral agreement cannot be considered because the Appellee has offered the altered document as a written version of that oral agreement.

THE PREMISES BECAME UNINHABITABLE

Section 89-8-23 of the Miss. Code Ann. provides as follows:

The Appellant established that the demised premises was uninhabitable and therefore the Appellant was justified in leaving the premises due to faulty electrical circuits in the building which prohibited the proper use of the premises; improperly functioning **air conditioning system** which substantially interfered with the Appellant's business operations; leaking roof/ceiling which caused a brown sludge to ooze into the premises occupied by the Appellant which caused an odor and was unsightly; and that the Appellee's principal officer, Mr. Tyson Bridge was personally disruptive to the Appellant's operations due to personal problems.

Section 89-8-13 of the Miss. Code Ann. provides that the non-breaching party **may** deliver a written notice to party in breach. The statute contemplates that the landlord shall be put on notice of the habitability problems. That was unquestionably done in this case based on the testimony of Cynthia Stewart, Cynthia Speetjens and Judson Lee. Little or no effort was made by Tyson Bridge to correct the problem despite some small efforts to correct the air conditioning problem, it was not corrected and it interfered with the ability of three professional lawyers to conduct business. This is evidenced by the testimony of Wayne Humphries who now works for the State Auditor's Office. At the time, he worked for the Security Department of Trustmark National Bank. He conducted polygraph examinations for the lawyers upon occasions. This was done basically during regular business hours. He testified that the heat and the lack of air conditioning interfered with the ability to conduct any sort of polygraph examination. Other witnesses testified that settlement conferences were significantly impeded by the lack of air

conditioning. Mr. Humphries testified that the office looked like "an office under construction". "It had dilapidated paint." It was too hot due to the lack of air conditioning to properly conduct a polygraph examination. (Tr. 155-156)

Section 89-8-15 of the Miss. Code Ann. contemplates circumstances under which the tenants may perform repairs themselves. In this case, Cynthia Stewart, Cynthia Speetjens and Judson Lee made every effort to not only make repairs, but to improve the quality of the premises by spending significant amounts of money to repaint, not only the office, but the foyer to give it a professional appearance appropriate to the law offices operated by Cynthia Stewart, Cynthia Speetjens and Judson Lee. (Tr. 159)

In spite of these efforts, the premises were unusable as a professional law office. As Cynthia Speetjens testified, as a result of the lack of air conditioning, the lawyers would have to go home to work. (Tr. 159) The power went out frequently (Tr. 159, 162) The roof leaked constantly, causing a rust colored gunk to spill out of the ceiling. (Tr. 158) In a three month period, there was no door knob on one side of the front door. (Tr. 161) Homeless people lurked around the building urinating right outside the building. (Tr. 163) On numerous occasions, you could hear Mr. Bridge and his estranged wife yelling through the wall. (Tr. 162)

As Cynthia Stewart testified, the heat prevented her from using a polygraph examiner, Wayne Humphries because it was too hot to conduct the test. This was a routine part of her business practice. (Tr. 84-88) Mr. Bridge purported to install an alarm system, but it was clear that the code did not work and the system was a sham. (Tr. 87) The lights went out on an almost daily basis. (Tr. 88) The roof was still leaking into buckets at the time Cynthia Stewart, Cynthia Speetjens and Judson Lee moved out. (Tr. 91)

None of the lawyers, however, were able to take on the task of repairing either the air conditioning or the leaks which resulted in a flow of smelly brown sludge in the hallway and in the office of Cynthia Speetjens. Despite repeated complaints, all the landlord and Appellee ever did was to reimburse Judson Lee for the cost of one file. This did not address the ongoing problem and appearance which was detrimental to the professional practice of law.

LESSOR FAILED TO MITIGATION DAMAGES

The Plaintiff failed to adequately mitigate his damages in that the proof he offered at trial in support thereof was insufficient and was not a reasonable, good faith effort to mitigate his damages.

THE DEFENDANT PRESENTED SUFFICIENT EVIDENCE TO SUPPORT HER COUNTERCLAIM

Counterclaim of Defendant

The Appellant reasonably incurred expenses in locating other office space as a result of the uninhabitable nature of the demised premises which expenses were directly and proximately caused by the Appellee's failure to properly maintain the premises.

CONCLUSION

The purported lease attached to the Appellee's Complaint fails to support the Appellee's claims for relief, and therefore, this Court should dismiss the Appellee's claims with prejudice. Additionally, this Court should not consider the Appellee's altered version of the purported lease as it is not signed or initialed by the Appellant and thus it is unenforceable. Finally, this Court should not consider the Appellee's affidavit and allegations of an alleged oral agreement between the parties because the Appellee has argued inconsistently that there was an oral agreement but that there is a written modification commemorating that oral agreement and such parol evidence is inadmissible. For these reasons, the Appellant respectfully requests that this


Court enter a final judgment dismissing the Appellee's claims with prejudice. The Appellant requests any such other relief as this Court may deem just.

This the 7th day of December, 2009.

Respectfully submitted,

Cynthia A. Stewart

By: 

Cynthia A. Stewart (MBN )

Of Counsel:

CYNTHIA A. STEWART, P.A. (MB# )

2088 Main Street., Suite A.

P.O. Box 2629

Madison, Mississippi 39130-2629

T (601) 856-0515

F (601) 856-0514


CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via

U.S. Mail, postage pre-paid, to:

William Stacy Kellum, III, Esq.
P. O. Box 4318
Jackson, Mississippi 39296

This the 7th day of December, 2009.



Cynthia A. Stewart