IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

VERNA MAE P. CARROLL	DEFENDANT/APPELLANT/ CROSS-APPELLEE
V.	NO. 2009-CA-00328
ANNA F. CARROLL	PLAINTIFF/APPELLEE/ CROSS-APPELLANT

ON APPEAL FROM THE CHANCERY COURT OF MONROE COUNTY MISSISSIPPI

APPEAL BRIEF OF APPELLEE/CROSS-APPELLANT ANNA F. CARROLL

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V.	NO. 2009-CA-00328
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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.

Verna Mae P. Carroll	-	Defendant/Appellant/Cross-Appellee
Anna F. Carroll	-	Plaintiff/Appellee/Cross-Appellant
Roger A. Carroll	-	Former husband of Anna F. Carroll and son of Verna Mae P. Carroll
R. Shane McLaughlin	-	Attorney for Defendant/Appellant/Cross-Appellee
Nicole H. McLaughlin	-	Attorney for Defendant/Appellant/Cross-Appellee
Carter Dobbs, Jr.	-	Attorney for Plaintiff/Appellee/Cross-Appellant
Honorable Talmadge Littlejohn	-	Trial Judge

ATTORNEY FOR THE APPELLEE/
CROSS-APPELLANT

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III. STATEMENT OF THE CASE

Plaintiff/Appellee/Cross-Appellant Anna F. Carroll will be referred to in this Brief as "Anna." Defendant/Appellant/Cross-Appellee Verna Mae P. Carroll will be referred to in this Brief as "Verna Mae." Roger Carroll, the former husband of Anna and the son of Verna Mae will be referred to in this Brief as "Roger."

Anna agrees with Verna Mae's Statement of the Case as set out in her Brief, except for the statement that the trial Court never ruled on Verna Mae's Motion to Dismiss, Or Alternatively For Summary Judgment, Based On Judicial Estoppel. By proceeding to trial in this case, the trial Court effectively overruled Verna Mae's Motion To Dismiss, Or Alternatively For Summary Judgment, Based On Judicial Estoppel.

IV. STATEMENT OF THE FACTS

Anna agrees with Verna Mae's Statement of Facts, except for the following:

Verna Mae, at Page 6 of her Brief states:

> From the $500,000 proceeds from the sale of the business, Roger paid several creditors, including Verna Mae. (See Ex. No. 8; T. Vol. 2, 200-01). Roger paid Verna Mae the total sum of $191,772.29, in two separate checks, from the sale of the gravel business. (*Id.*) The law firm which closed the transaction mailed Verna Mae two checks on November 18, 2004. (R. Vol. 3. P. 366). The checks mailed to Verna Mae represented: 1) the amount she was still owed under the Agreement for Sale and Transfer of Assets; and 2) the value of certain equipment Roger sold with the gravel business which Carroll's Gravel owned. (Ex. No 8; T. Vol. 2 p 201-02, 203-04).

Verna Mae clearly testified that Roger, not the corporation, was obligated to her, and that she had no written instrument evidencing any collateral in the assets of the corporation (T. 219).

Verna Mae's Statement of Facts leaves out one very important point. Roger's indebtedness to Verna Mae was unsecured. She held no security interest, recorded or otherwise, in the assets of the corporation. The corporation, Mississippi Gravel Sales, Inc. did not owe Verna Mae any money. From the sales proceeds of the gravel business, Roger did not pay

anyone. From the sales proceeds the corporation, Mississippi Gravel Sales, Inc., paid all secured creditors and then the *corporation* paid Verna Mae the balance remaining of $191,772.29. The law firm that closed the transaction mailed Verna Mae the two checks on behalf of the corporation, not on behalf of Roger. The checks mailed to Verna Mae actually matched: (1) the amount that she was still owed by Roger under the Agreement For Sale And Transfer Of Assets; and (2) the remaining amount left over after the payment of secured creditors of the corporation. The amount of the second check, $38,497.64, was simply the amount left over from this transaction, and had no specific relation to the proof elicited in this case to the value of any specific equipment.

Verna Mae states at Page 7 of her Brief that Anna sought to attack Roger's transfer of funds owed to Verna Mae ....) In fact, Anna sought to attack the *corporation's* transfer of funds to Verna Mae.

Verna Mae states at Page of 8 of her Brief that "In fact, Anna admitted that she had no evidence that Verna Mae intended to cheat her out of anything, or that Verna Mae did anything other than accept a payment for a debt that was legitimately owed to her." Anna made no such admission in this case, and Verna Mae's representation of her testimony is a mischaracterization of Anna's testimony. The question that Anna was asked by Verna Mae's attorney was "you don't know *personally* of any evidence to show that Ms. Verna Mae Carroll, my client, intended to cheat you out of anything; is that true?" (T. 115). It was not necessary for Anna to have personal knowledge of the facts constituting fraud on Verna Mae's part in order for her to prevail in this lawsuit.

Finally, the Notice Of Dismissal in Cause No. CV2008-584-PFM in the Circuit Court of Monroe County, Mississippi was filed on January 15, 2009, 35 days *before* the hearing of the post-trial Motions in this case on February 19, 2009. (Appellee/Cross-Appellant's R. E. 12.)

V. STANDARD OF REVIEW

Anna agrees with Verna Mae that all of the issues that Verna Mae presents in her appeal involve issues of law. Therefore, all factual findings by the trial Court as to the issues raised by Verna Mae are not at issue in this appeal and are not properly before this Court.

The issue raised by Anna in her Cross-Appeal involves an erroneous finding of facts by the trial Court, which Anna alleges is not supported by substantial evidence in the Record, and also a question of law, which should be reviewed by this Court *de novo*.

VI. APPELLEE'S RESPONSE TO APPELLANT'S SUMMARY OF THE ARGUMENT ON DIRECT APPEAL

(A) WHETHER THE TRIAL COURT ERRED BY APPLYING THE UNIFORM FRAUDULENT TRANSFER ACT, SINCE THE ACT WAS NOT EFFECTIVE UNTIL OVER TWO (2) YEARS AFTER THIS LITIGATION WAS COMMENCED.

It was within the discretion of the trial Court in exercising its equitable powers to apply the new Act to the transaction in this case, even though it occurred before the enactment of the new statute. Also, case law supports the application of the new Act retroactively.

(B) WHETHER THE TRANSFER OF $153,274.65 TO VERNA MAE CARROLL COULD BE SET ASIDE AS FRAUDULENT UNDER EITHER THE UNIFORM FRAUDULENT TRANSFER ACT OR THE PREDECESSOR STATUES WHERE ROGER CARROLL UNDISPUTEDLY OWED THIS SUM TO VERNA MAE CARROLL AT THE TIME OF THE TRANSFER.

The facts in this case clearly show that the conveyance of the funds by the corporation to Verna Mae was neither (1) upon good consideration or (2) bona fide. It is very significant that this issue involves an alleged erroneous determination of fact by the lower Court. Verna Mae states in her Brief under the heading "**STANDARD OF REVIEW**" that all of the issues that she presents to this Court involve issues of law. Accordingly, Verna Mae does not properly present this issue for consideration by this honorable Court.

Verna Mae states at Page 10 of her Brief that Roger Carroll legitimately owed Verna Mae $153, 274.65 "when he made payment to her." Roger did not pay Verna Mae; the corporation paid her from the sale of the corporation's assets.

Verna Mae states at the bottom of Page 10 of her Brief that Anna admitted at trial that she knew of nothing to show that Verna Mae had acted with intent to defraud her or do anything other to except payment from Roger for a debt that he owed. The question that Anna was asked was whether she had *personal knowledge* of any facts supporting Verna Mae's fraud upon her. It was not necessary for Anna to have personal knowledge of any facts constituting Verna Mae's fraud in order for her to prevail at trial. In common parlance, the question regarding Anna's personal knowledge of the facts is - - - "So What?"

(C) WHETHER THE TRIAL COURT ERRED BY NOT DISMISSING ANNA CARROLL'S COMPLAINT PURSUANT TO THE DOCTRINE OF JUDICIAL ESTOPPEL, SINCE ANNA CARROLL CLAIMED IN ANOTHER PROCEEDING THAT THIS CASE HAD BEEN FINALLY SETTLED.

Anna's suit in Monroe County Circuit Court was dismissed on January 15, 2009, 35 days before the post-trial Motions in this case on February 19, 2009. Also, Verna Mae did not rely upon Anna's position taken in the Circuit Court suit that the instant case and the divorce proceeding had been settled, and Anna did not benefit in any way from the Circuit Court suit. Therefore, the doctrine of Judicial Estoppel could not and cannot apply.

VII. CROSS-APPELLANT'S SUMMARY OF THE ARGUMENT ON CROSS- APPEAL

(D) THE TRIAL COURT ERRED IN FINDING THAT THERE WAS NOT A PRESUMPTION OF FRAUD IN CONNECTION WITH THE TRANSFER OF THE SUM OF $38,497.64 BY DEFENDANT MISSISSIPPI GRAVEL SALES, INC. TO DEFENDANT/CROSS-APPELLEE VERNA MAE P. CARROLL AND/OR THAT SAID PRESUMPTION HAD BEEN REBUTTED BY VERNA MAE P. CARROLL BY CLEAR AND CONVINCING EVIDENCE.

There was a presumption of fraud in connection with the transfer of the final sum of the sale proceeds of $38,497.64 by Mississippi Gravel Sales, Inc. to Verna Mae, and said presumption was not rebutted by Verna Mae by clear and convincing evidence for the following four reasons:

(1) There was no proof elicited by the Verna Mae at trial as to the ownership by Verna Mae of the equipment allegedly transferred to Mississippi Gravel Sales, LLC as consideration for said sum of $38,497.64.

(2) There was no evidence elicited by Verna Mae at trial as to the value of said equipment allegedly owned by Verna Mae that was transferred to Mississippi Gravel Sales, LLC.

(3) The equipment referred to at trial allegedly owned by Verna Mae and allegedly transferred to Mississippi Gravel Sales, LLC (supposedly by Verna Mae) as consideration for said sum of $38,497.64 is listed on the Exhibit to the Purchase And Sale Contract between Mississippi Gravel Sales, Inc. and Mississippi Gravel Sales, LLC. (Exhibit "2"; Appellee's R. E. 1.) The inclusion of said equipment on said listing is the best evidence that said equipment was owned by and transferred by Mississippi Gravel Sales, Inc. to Mississippi Gravel Sales, LLC, and that it was not in fact owned by or transferred by Verna Mae.

(4) The payment of the sum of $38,497.64 to Verna Mae from the proceeds of said gravel company transaction had no specific relation to any of the equipment sold in said transaction, but was simply the amount left over from the $500,000.00 purchase price after the payment of the secured indebtedness of Mississippi Gravel Sales, Inc. and the payment of the amount of the unsecured note owing by Roger to Verna Mae.

VIII. APPELLEES' RESPONSE TO APPELLANT'S ARGUMENT ON DIRECT APPEAL

(A) WHETHER THE TRIAL COURT ERRED BY APPLYING THE UNIFORM FRAUDULENT TRANSFER ACT, SINCE THE ACT WAS NOT EFFECTIVE UNTIL OVER TWO (2) YEARS AFTER THIS LITIGATION WAS COMMENCED.

The new Uniform Fraudulent Transfer Act, § 15-3-101, *et seq.*, Mississippi Code of 1972, as amended went into effect on July 1, 2006, and repealed § 15-3-3. The new Fraudulent Transfer Act was properly considered and applied by the Court in this cause for two reasons:

First, the new Act is the expression by the legislature of the public policy of this state to be followed and considered by the Courts in evaluating alleged fraudulent transfers. It is within the discretion of this Court in exercising its equitable powers to consider and apply this public policy statement by the legislature as to the transaction that occurred at any time, even before the enactment of the statute.

Second, there is case law authority for the statute to be applied retroactively. The Uniform Fraudulent Conveyance Act was cited and considered by the Mississippi Supreme Court in the case of *Barbee v. Pigott*, 507 So.2d 77; 85 (Miss. 1987.) This was 19 years before the enactment of the statute in Mississippi.

Verna Mae in her Brief at Page 13 states "Incredibly, the Judgment prepared by Anna Carroll's counsel hedged as to which law might be applicable – the Judgment provided that the transfer was found fraudulent under *either* 15-3-3 *or* the Uniform Fraudulent Transfer Act. (R. Vol. 3, p. 421)." Anna agrees that the Judgment found the transfer fraudulent under either statute, but disagrees that this finding by the Chancellor was "incredible." Anna's counsel simply followed the Chancellor's Opinion in drafting the Judgment. The Chancellor in his Bench Opinion, (at Pages 280 – 281) stated that "all that the new Act did was to put in dignified language what the old code did. The old code had a lot of common sense and it just had a lot of common English in the new Acts."

(B) WHETHER THE TRANSFER OF $153,274.65 TO VERNA MAE CARROLL COULD BE SET ASIDE AS FRAUDULENT UNDER EITHER THE UNIFORM FRAUDULENT TRANSFER ACT OR THE PREDECESSOR STATUES WHERE ROGER CARROLL UNDISPUTEDLY OWED THIS SUM TO VERNA MAE CARROLL AT THE TIME OF THE TRANSFER.

Verna Mae in this portion of her Brief attacks the Chancellor's Findings of Facts in this case. Significantly, Verna Mae states in her Brief under the heading "**STANDARD OF REVIEW**" that all of the issues that she presents involve issues of law. Accordingly, Verna Mae does not properly present this issue for consideration by this honorable Court.

The Chancellor in his Opinion made details Findings of Fact as to the reasons that the transaction in this case was fraudulent under the terms of either the new Uniform Fraudulent Transfer Act or its predecessor fraudulent transfer statute, § 15-3-3. The Chancellor went on to detail how the seminal case of *Blount v. Blount*, 95 So. 2d 545 (Miss. 1957) applies to the facts in this case. (Appellant/Cross-Appellees R. E. 3; R. 269-286).

The conveyance of the funds in this case was neither (1) upon good consideration or (2) bona fide. There was no consideration flowing from Verna Mae P. Carroll to Mississippi Gravel Sales, Inc. because the corporation was not indebted to Verna Mae P. Carroll. The conveyance was not bona fide because the evidence in this case shows that the conveyance of the funds to Defendant Verna Mae P. Carroll was done in order to hinder, delay or defraud the Plaintiff, Anna Carroll, as a creditor of Roger Carroll.

In addition to the foregoing, the transaction in this case violated the old traditional Mississippi Statute of Frauds, § 15-3-1, Mississippi Code of 1972. This statute states that:

> An action shall not be brought whereby to charge a Defendant or other party:
>
> a. Upon any special promise to answer for the debt or default or miscarriage of another person;
>
> * * *

> unless, in each of said cases, the promise or agreement upon which such action may be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith or signed by some person by him or her thereunto lawfully authorized in writing.

There is no writing in this case between Defendant Verna Mae P. Carroll and Defendant Mississippi Gravel Sales, Inc. that would support the conveyance of the funds by the corporation to Verna Mae P. Carroll. Significantly, Verna Mae P. Carroll could not have brought any action in Court against Mississippi Gravel Sales, Inc. to enforce the payment of the funds that were voluntarily paid to her in this case.

At Page 16 of her Brief Verna Mae makes the following statement:

> Thus, not only is there clear and convincing evidence of a legitimate antecedent debt, this fact is undisputed. There is undisputedly no evidence that the transfer from Roger to Verna Mae was intended to defraud or cheat Anna Carroll.

Significantly, Verna Mae states in her Brief under the heading "**STANDARD OF REVIEW**" that all of the issues that she presents involve issues of law. Accordingly, Verna Mae does not properly present this issue for consideration by this honorable Court.

At Page 16 of her Brief Verna Mae again states that the payment was from Roger to Verna Mae. The payment in fact was not made to Verna Mae by Roger but, by the corporation. Verna Mae at Page 17 of her Brief argues that Anna's only contention is to argue that Roger, not Mississippi Gravel Sales, Inc., owed Verna Mae the sum of $153,274.65, but that the funds were actually transferred by the corporate entity to Verna Mae. Incredibly, Verna Mae maintains in her Brief in support of her argument that Anna's argument fails because the funds were mailed to Verna Mae by the law firm that closed the sale of the gravel business. This

argument is simply nonsensical and absolutely defies any logic. What difference did it make that the funds were mailed to Verna Mae by the law firm that closed the sales transaction? Verna Mae further states that at Page 17 of her Brief that "Anna can have no claim at all" to these funds. This is simply not true. As the Chancellor clearly stated in his Bench Opinion, Anna was Roger's creditor; Roger was the sole shareholder of Mississippi Gravel Sales, Inc.; and the corporation and the gravel business owned by the corporation was a marital asset.

Verna Mae states at Page 17 of her Brief that the corporation was never indebted to Anna and that, therefore, she could have no quarrel with the transaction. This argument overlooks the obvious fact that Anna had an interest in the corporation as marital property and that the Judge gave Anna a lien on any sales proceeds of the corporation in the event the sale was set aside in further litigation. (Pages 6-7 of Verna Mae's Brief).

At Page 18 of Verna Mae's Brief she states that "Anna cannot possibly explain how Verna Mae could harbor fraudulent intent by accepting payment for a debt which was legitimately owed to her, regardless of the source." Again, Verna Mae's Brief attacks the factual finding by the Chancellor in this case, which she stated that she was not doing. Anna never agreed that Verna Mae did not act fraudulently. She simply stated in her testimony that she had no *personal* knowledge of fraud on Verna Mae's part. It is simply not necessary for a Plaintiff to have personal knowledge of the facts in a fraudulent transaction in order to prevail in a suit to set aside fraudulent conveyances. Verna Mae's repetition of this argument several times does not lend any weight to it. The facts in this case elicited from the testimony of Verna Mae and Roger establish the presumption of fraud, and their failure to overcome this presumption by clear and convincing evidence.

Verna Mae states at page 21 of her Brief that "The Court erred by inconsistently considering Roger Carroll the transferor for some purposes, but Mississippi Gravel Sales, Inc. the transferor for others. Roger Carroll was clearly the transferor." This is simply not true. The record in this case is replete with references and evidence that Mississippi Gravel Sales, Inc. was the transferor. This is what the Contract Of Sale between the corporation and the LLC states (Appellee/Cross-Appellant's R. E. 1; Exhibit #2.) Verna Mae's Brief again recites at page 21 the fact that the law firm that handled the closing mailed checks paying off the amounts Roger owed to Verna Mae. What has this got to do with anything? The continued repetition of this fact in Verna Mae's Brief clearly illustrates how truly weak her arguments are.

Vera Mae states at the bottom of Page 21 of her Brief that "the Trial Court should have determined that the transfer was between Roger Carroll and his mother, Verna Mae." There is only one thing wrong this argument. It is not true and there are no facts to support it. Again, the terms of the Contract Of Sale And Non-Competition Agreement, the preparation of which Anna had no part, belie this argument (Appellee/Cross-Appellant's R. E. 1; Exhibit #2).

Verna Mae states at the top of Page 23 of her Brief that the Trial Court misapplied subparagraph (i) of the Act, which directs an analysis of whether the debtor became insolvent shortly after the transaction. Verna Mae correctly states in her Brief that "several creditors went unpaid." Contrary to Verna Mae's statement in her Brief that this factor does not indicate that there was any attempt to defraud Anna, this subparagraph really means that if the debtor becomes insolvent, this is an indication of an attempt to defraud. The proof before the Court was that both the corporation and Roger were insolvent, both before and after the sale of the gravel business. Verna Mae's Brief is totally illogical on this point.

Verna Mae repeatedly recites in her Brief, as she again does at the end of Argument II at Page 25 of her Brief, that she gave Roger the value of satisfaction of a $153,274.65 debt because Roger transferred assets to her. Repeating this argument does not change the facts. The money was paid to Verna Mae by the corporation, not by Roger. The corporation, not Roger, conveyed the assets to Mississippi Gravel Sales, LLC , as evidenced by the Contract Of Sale And Non-Completion Agreement (Appellee/Cross-Appellant's R. E. 1; Exhibit #2.)

Verna Mae's Brief is replete with challenges to factual findings of the Trial Court. Again, Verna Mae states in her Brief under the heading "**STANDARD OF REVIEW**" that all of the issues that she presents involve issues of law.

(C) WHETHER THE TRIAL COURT ERRED BY NOT DISMISSING ANNA CARROLL'S COMPLAINT PURSUANT TO THE DOCTRINE OF JUDICIAL ESTOPPEL, SINCE ANNA CARROLL CLAIMED IN ANOTHER PROCEEDING THAT THIS CASE HAD BEEN FINALLY SETTLED.

Anna's suit in Monroe County Circuit Court was dismissed by Notice of Dismissal filed in the Circuit Court case on January 15, 2009. This was 35 days before the hearing on the post-trial Motions on February 19, 2009 (R. 291).

Verna Mae cites as authority *Richardson v. Cornes*, 903 So. 2d 51, 56 (Miss. 2005). In discussing judicial estoppel, this case states that "judicial estoppel preludes a party from asserting a position, benefitting from that position, and then, when it becomes more convenient or profitable, retreating from that position later in the litigation." In the case at bar, Anna never benefited from the Circuit Court case. It was simply dismissed.

Verna Mae in her Brief cites the case of *Scott v. Gammons*, 985 So. 2d 872; 877 (Miss. Ct. App. 2008). In *Scott*, the Plaintiffs settled with the driver of a vehicle, and then filed a second suit claiming that another person was, or could have been, the driver, and attempted to collect under a second insurance policy. The Court of Appeals affirmed the decision of the lower Court dismissing the case on the grounds of judicial estoppel because the Plaintiffs benefited from their position in the first case by receiving settlement proceeds. In the case at bar, Anna received no benefit from the Circuit Court case. It was simply dismissed.

For reasons that are not at all clear, Verna Mae's Brief recites as authority the case of *Parmley v. 84 Lumber Co.* 911 So. 2d 569, 573 (Miss. Ct. App. 2005). This case is actually similar to the Circuit Court case filed by Anna, seeking to enforce the settlement agreement entered into among the parties in the divorce proceedings that would, had it been finally consummated and not scuttled by Verna Mae, ended the present litigation as well as the divorce case, which is still ongoing.

In *Richardson*, the Mississippi Supreme Court reversed the Court of Appeals, affirming the verbal settlement entered into between the litigating parties. If Verna Mae by reciting *Richardson* as authority in her Brief is offering to end this entire this matter, following the Supreme Court's ruling in *Richardson* in confirming the verbal settlement agreement among the parties, then *Anna hereby accepts Verna Mae's offer. If Verna Mae by her argument is maintaining that the settlement reached among the warring parties in this case as maintained by Anna's Monroe County Circuit Court case is acceptable, then this will be a wonderful*

resolution of the long-running litigation in this case and the divorce case between Roger and Anna. Since, regrettably, this is not actually Verna Mae's position, then her argument as to the application of judicial estoppel as set out in her Brief must absolutely fail, because it has no foundation, in fact or in law.

IX. CROSS-APPELLANT'S ARGUMENT ON CROSS-APPEAL

THE TRIAL COURT ERRED IN FINDING THAT THERE WAS NOT A PRESUMPTION OF FRAUD IN CONNECTION WITH THE TRANSFER OF THE SUM OF $38,497.64 BY DEFENDANT MISSISSIPPI GRAVEL SALES, INC. TO DEFENDANT/CROSS-APPELLEE VERNA MAE P. CARROLL AND/OR THAT SAID PRESUMPTION HAD BEEN REBUTTED BY VERNA MAE P. CARROLL BY CLEAR AND CONVINCING EVIDENCE.

The Judgment of the Trial Court in this case found that there was a presumption of fraud as to the transfer by Mississippi Gravel Sales, Inc. to Verna Mae of the sum of $153,274.65 in connection with the sale of the assets of Mississippi Gravel Sales, Inc. and that this presumption had not been rebutted by Verna Mae by clear and convincing evidence. The Judgment of the Trial Court further found that there was not a presumption of fraud in the payment of the remaining sum of $38,497.64 by Mississippi Gravel Sales, Inc. to Verna Mae in this transaction.

There was a presumption of in connection with transfer of said sum of $38,497.64 by Mississippi Gravel Sales, Inc. to Verna Mae, and this presumption was not been rebutted by the Verna Mae by clear and convincing evidence, for the following reasons:

(A) There was no credible proof elicited by the Defendants at trial as to the ownership by Defendant Verna Mae P. Carroll of the equipment allegedly transferred to Mississippi Gravel Sales, LLC as consideration for said sum of $38,497.64. Roger testified that this equipment

may have been the property of the corporation (T. 183). Verna Mae testified that she did not remember what kind of equipment it was, and that in fact there were several items of equipment, rather than only one. (T. 194). Verna Mae testified that Roger, not the corporation, owed her $38,000.00. (T. 202). Verna Mae testified that she did not sell the equipment to Mississippi Gravel Sales, LLC, but rather that Roger sold it to the LLC, that she got the proceeds check and that she did not sign a Bill of Sale. (T. 219-220).

(B) There was no evidence elicited by the Defendants at trial as to the value of said equipment allegedly owned by Verna Mae P. Carroll that was transferred to Mississippi Gravel Sales, LLC.

(C) The equipment referred to at trial allegedly owned by Defendant Verna Mae P. Carroll and allegedly transferred to Mississippi Gravel Sales, LLC (supposedly by Verna Mae P. Carroll) as consideration for said sum of $38,497.64 is listed on the Exhibit to the Contract Of Sale between Mississippi Gravel Sales, Inc. and Mississippi Gravel Sales, LLC. (Appellee/ Cross-Appellant's R. E. 1; T. 174). This is the same piece of equipment that is listed in the Settlement Statement in connection with the sale of the corporation's assets (Defendant's Exhibit # 8). The inclusion of said equipment in the Contract Of Sale is the best evidence that this equipment was owned by and transferred by Mississippi Gravel Sales, Inc. to Mississippi Gravel Sales, LLC, and that it was not in fact owned or transferred by Defendant Verna Mae P. Carroll.

(D) The payment of the sum of $38,497.64 to Defendant Verna Mae P. Carroll in said purchase and sale transaction had no specific relation to any of the equipment sold in said transaction. Roger testified that the price of $38,497.64 was a reasonable price for this piece of

equipment for the age of this piece of machinery, but actually, this sum was simply the amount left over from the $500,000.00 purchase price after the payment of the secured indebtedness of Defendant Mississippi Gravel Sales, Inc. and the payment of the amount of the unsecured note owing by Defendant Roger A. Carroll to Defendant Verna Mae P. Carroll.

Because the burden of proof was on the Defendants (mainly Verna Mae) to rebut the presumption of fraud in connection with the entire transaction surrounding the sale of the assets of Mississippi Gravel Sales, Inc. to Mississippi Gravel Sales, LLC, and because the facts set out in Paragraphs (A) through (D) above were not rebutted by clear and convincing evidence, the payment of the remaining sum of $38,497.64 to Verna Mae by the corporation should be set aside and ordered to be paid into the registry of the lower Court, along with the other sum of $153,274.65.

Further, the sum of eight percent (8%) interest on the amount ordered to be paid by Defendant Verna Mae P. Carroll into the registry of this Court, in accordance with the terms of the Judgment in this cause dated December 15, 2008, from and after January 27, 2005, being the date of the filing of the Plaintiff's Complaint in this cause, should be added to the Judgment and amount required to be paid by Defendant Verna Mae P. Carroll, in accordance with § 75-17-7, Mississippi Code of 1972, as amended.

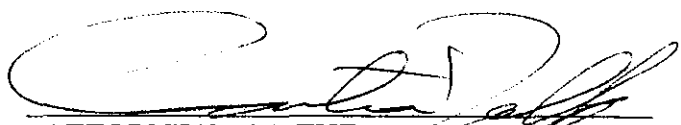
X. CONCLUSION

Anna achieved a hard-fought victory in her previous divorce case that was partially affirmed by this Court by having the assets of the corporation owned by Roger adjudicated by the Court to be marital property. Shortly before the divorce trial Roger conveyed the assets of the corporation, and the corporation paid the remaining funds at settlement to Verna Mae,

ostensibly in satisfaction of Roger's personal unsecured debt to her. Verna Mae had no secured claim to the corporation assets. The obvious intent was to thwart Anna's efforts to receive her equitable portion of the gravel business owned by the corporation which, in turn, was owned by Roger. There was no consideration received by the corporation from Verna Mae and, for the reasons set out above in this Brief and in the Chancellor's Bench Opinion, the transaction was not bona fide. As a matter of law and equity, the Chancellor's decision on direct appeal should be affirmed by this Court.

As to Anna's cross-appeal, as a matter of fact and law, the transfer of the remaining $38,497.64 by the corporation to Verna Mae was presumptively fraudulent, and this presumption was not overcome by clear and convincing evidence. On Anna's cross-appeal, this Court should reverse and render, and order this remaining sum of $38,497.64 paid into the registry of the lower Court.

Respectfully submitted,



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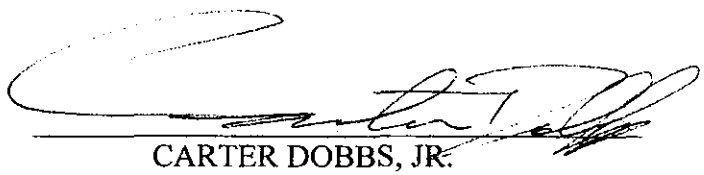
10.0047.mbw

CERTIFICATE OF SERVICE

I, Carter Dobbs, Jr., attorney for the Appellee/Cross-Appellant, do hereby certify that I have, on this the 8 day of January, 2010, mailed by United States mail, postage pre-paid, a true and correct copy of the above and foregoing Appeal Brief Of Appellee/Cross-Appellant Anna F. Carroll to Honorable Talmadge D. Littlejohn, Chancery Court Judge, at his usual mailing address of Post Office Box 869, New Albany, Mississippi 38652-0869, to Honorable R. Shane McLaughlin, attorney for the Appellant/Cross-Appellee, at his usual mailing address of McLaughlin Law Firm, Post Office Box 200, Tupelo, Mississippi 38802 and an original and 3 copies to Honorable Kathy Gillis Supreme Court Clerk of Mississippi, at her usual mailing address of Post Office Box 249, Jackson, Mississippi 39205-0249.



CARTER DOBBS, JR.