

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

VERNA MAE P. CARROLL

DEFENDANT/APPELLANT/
CROSS-APPELLEE

V.

NO. 2009-CA-00328-COA

Re

ANNA F. CARROLL

PLAINTIFF/APPELLEE/
CROSS-APPELLANT

**ON APPEAL FROM THE CHANCERY COURT
OF MONROE COUNTY MISSISSIPPI**

**REPLY BRIEF OF APPELLEE/CROSS-APPELLANT
ANNA F. CARROLL**

**CARTER DOBBS, JR.
MISSISSIPPI BAR NO. [REDACTED]
103 2ND AVENUE NORTH
POST OFFICE BOX 517
AMORY, MISSISSIPPI 38821
TEL: (662) 256-5697
FAX: (662) 256-1483
E-MAIL: carterdobbslaw@gmail.com**

ATTORNEY FOR THE APPELLEE/CROSS-APPELLANT

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

VERNA MAE P. CARROLL

DEFENDANT/APPELLANT/
CROSS-APPELLEE

V.

NO. 2009-CA-00328-COA

ANNA F. CARROLL

PLAINTIFF/APPELLEE/
CROSS-APPELLANT

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

TABLE OF CONTENTS

	<u>PAGE</u>
I. REPLY TO CROSS-APPELLEE’S CROSS APPEAL ARGUMENT.....	1
(A)ERRONEOUS FINDING OF FACT AS THE BALANCE OF THE SALE PROCEEDS OF \$38,497.64.....	1
(B) APPLICATION OF “BEST EVIDENCE” AND “PAROL EVIDENCE” RULES.....	3
II. CONCLUSION.....	4

TABLE OF CASES

	<u>PAGE</u>
<i>Blount v. Blount</i> , 95 So.2d 545, 560.....	2
<i>Byrd v. Rees</i> , 171 So.2d, page 864 (Miss. 1965).....	3
<i>Godfrey, et al v. Huntington Lumber & Supply Co., Inc.</i> 584 So.2d 1254 (Miss. 1991).....	3

I. REPLY TO CROSS-APPELLEE'S CROSS APPEAL ARGUMENT

(A) ERRONEOUS FINDING OF FACT AS THE BALANCE OF THE
SALE PROCEEDS OF \$38,497.64

Cross-Appellee Verna Mae Carroll's reply brief continues to repeatedly state that Roger Carroll sold the gravel business and that Roger Carroll paid his mother, Verna Mae Carroll. These statements of fact are wholly inaccurate, and their continued repetition in Verna Mae's reply brief does not make them so. Roger, not the corporation, owed Verna Mae money and Verna Mae received the money in question from the corporation through the closing attorneys, not from Roger.

Verna Mae states at the bottom of page 14 and the top of 15 in her reply brief that "Roger paid Verna Mae the balance of the sale proceeds, \$38,497.64, representing payment for the equipment that he had sold that still belonged to her." This \$38,497.64 had nothing to do with the value of any equipment. It was simply and clearly the balance of the \$500,000.00 purchase price of the sand and gravel business after the payment of the corporation's secured debt and the payment of Roger's unsecured indebtedness to Verna Mae.

Verna Mae states in her reply brief at the top of page 15 that "Anna has failed to cite a single authority in support of her argument." No authority is necessary to support Anna's argument that (1) 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 she wholly failed to do so by clear and convincing evidence and (2) the finding of fact by the Chancellor on this issue is not supported even by substantial evidence.

Verna Mae states at the bottom of page 17 of her reply brief that the payment of the \$38,497.64 was a bona fide transfer based on good consideration. As set out in Cross-Appellee's Brief, no consideration whatsoever flowed from Verna Mae to the corporation for the payment of the sum of \$38,497.64. Thus, the Chancellor erred in finding that the transfer of this purchase price balance of \$38,497.64 to Verna Mae was not fraudulent. Furthermore, Verna Mae's testimony was vague about what equipment was transferred in return for this remaining sale's sum of \$38,497.64. She was unable to identify the equipment involved in this alleged separate transaction. (T.204, line 23.)

The case of *Blount v. Blount*, 95 So.2d 545, 560 states as follows:

Where the conveyance is founded in actual fraud the grantee is regarded as a particeps criminis, and is not entitled to reimbursement, or to have the conveyance stand for any purpose of reimbursement or indemnity, for the consideration paid. 37 C.J.S. Fraudulent Conveyances § 280 b, p. 1118.

Therefore, the lower Court having found fraud in connection with the transfer of the sum of \$153,274.85, this conveyance of the remaining sum of \$38,497.64, being part of the total transaction, cannot stand.

(B) APPLICATION OF “BEST EVIDENCE” AND “PAROL EVIDENCE” RULES

Verna Mae states at the bottom of her reply brief that

“The testimony in the Record is, indeed, *undisputed* that Verna Mae owned the equipment and was thus entitled to be paid for it when Roger sold it along with the business. There is no evidence establishing that anyone other than Verna Mae owned the equipment.”

The best evidence of the clear ownership of this equipment is the inclusion of the equipment in the Contract Of Sale between Mississippi Gravel Sales, Inc. and Mississippi Gravel Sales, LLC. (Appellee-Cross Appellant’s R. E. 1; T. 174). Significantly, Verna Mae Carroll was not a party to the sales transaction or to this Contract Of Sale. This written evidence as to the ownership of this equipment is conclusive. The Mississippi Supreme Court, in the case of *Byrd v. Rees*, 171 So.2d, 864, 868 (Miss. 1965) held that parol extrinsic evidence is not admissible to add to, subtract from, vary or contradict written instruments which are contractual in nature and which are valid, complete, unambiguous and unaffected by accident, mistake or fraud. This Court in the case of *Godfrey, et al v. Huntington Lumber & Supply Co., Inc.* 584 So.2d 1254, 1257 (Miss. 1991) held that a written contract cannot be varied by prior oral agreements, and that parol evidence is inadmissible to vary the terms of a written contract.

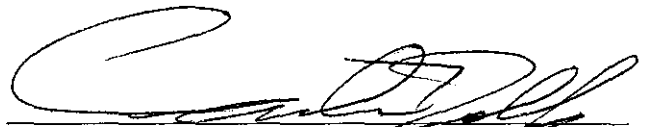
Verna Mae states at page 17 of her reply brief that Anna’s argument that the Settlement Statement is the “best evidence” is procedurally barred because Anna did not object to Verna Mae’s testimony that she and her husband had retained the ownership of the subject equipment. This argument by Verna Mae is erroneous and disingenuous. When Roger Carroll began

testifying to these same facts (T. 173, line 26) Anna's attorney objected, which objection was overruled. (T. 174, line 3). Roger's further testimony on this point (T. 175, line 4) was again objected to by Anna's attorney. These objections were overruled by the Chancellor. In light of these rulings by the Court overruling Anna's attorney's objections by the Chancellor, it would have been pointless to have continued to object to Verna Mae's testimony as to the same facts.

II. CONCLUSION

The transfer of the remaining sum in connection with the \$500,000.00 sale of the corporation's assets, being the sum of \$38,497.64, was presumptively fraudulent. This presumption was not overcome by Verna Mae Carroll by clear and convincing evidence. Therefore, this Court should reverse and render on Anna's Cross-Appeal and order this remaining sum of \$38,497.64 paid into the registry of the lower Court.

Respectfully submitted,



ATTORNEY FOR THE APPELLEE/
CROSS-APPELLANT

CARTER DOBBS, JR.
ATTORNEY FOR THE APPELLEE/
CROSS APPELLANT
MISSISSIPPI BAR NO. [REDACTED]
POST OFFICE BOX 517
103 2ND AVENUE NORTH
AMORY, MISSISSIPPI 38821

TEL.: (662) 256-5697
FAX: (662) 256-1483
E-MAIL: carterdobbslaw@gmail.com
10.0604.mbw

CERTIFICATE OF SERVICE

I, Carter Dobbs, Jr., attorney for the Appellee/Cross-Appellant, do hereby certify that I have, on this the 27 day of May, 2010, mailed by United States mail, postage pre-paid, a true and correct copy of the above and foregoing Reply 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.