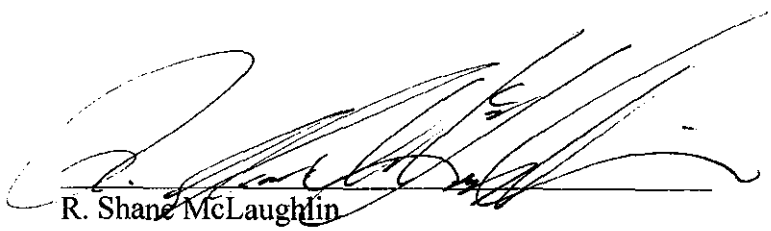
2009-CA-00328T

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 the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Verna Mae P. Carroll, Appellant;
2. Anna F. Carroll, Appellee;
3. S. Carter Dobbs, counsel for Appellee;
4. Clifford Parish, surety on supersedeas bond;
5. Kathy Parish, surety on supersedeas bond;
6. Michael W. Carroll, surety on supersedeas bond;
7. Jeanni Carroll, surety on supersedeas bond;
8. Roger Carroll, defendant in trial court;
9. R. Shane McLaughlin, counsel for Appellant; and
10. Nicole H. McLaughlin, counsel for Appellant.



R. Shane McLaughlin
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This case involves an issue of first impression. Namely, whether a transfer of funds can be set aside as fraudulent and a judgment entered against the transferee, where the funds were undisputedly owed to the transferee at the time of the transfer and the transferee lacked any intent to defraud.

Oral argument should be granted to discuss this issue as well as which statutes should be applied in this case.

STATEMENT OF THE ISSUES

1. 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
2. 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 statutes where Roger Carroll undisputedly owed this sum to Verna Mae Carroll at the time of the transfer.
3. 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.

STATEMENT OF THE CASE

Anna Carroll filed her Complaint alleging various fraudulent conveyances against Defendants on January 27, 2005. (R. Vol. 1, p. 1-13). Anna Carroll made claims against Mississippi Gravel Sales, LLC, Cynthia Loden, Tim Parker, Roger Carroll and Verna Mae Carroll. (*Id.*). Anna Carroll voluntarily dismissed Mississippi Gravel Sales, LLC, the purchaser of Mississippi Gravel Sales, Inc.'s assets, on May 18, 2007. (R. Vol. 1, p. 108).

Verna Mae Carroll filed a Motion for Summary Judgment on July 2, 2008. (R. Vol. 2, p. 187). The Trial Court denied the Motion by Order entered on December 15, 2008. (R. Vol. 3, p. 415). Verna Mae Carroll filed a Motion to Dismiss, or Alternatively for Summary Judgment, Based on Judicial Estoppel, on December 15, 2008. (R. Vol. 2, p. 372). The Trial Court continued a hearing on this dispositive Motion. (T. Vol. 1, p. 91). The Trial Court proceeded with trial on December 15, 2008. (*See id.*). The Trial Court never ruled on the Motion to Dismiss, or Alternatively for Summary Judgment, Based on Judicial Estoppel.

Trial was concluded on December 15, 2008. (*See* T. Vol. 2, p. 263). The Trial Court issued its opinion orally on December 16, 2008. (T. Vol. 2, p. 263-289; Appellant's R.E. tab 3). A Judgment was signed by the Court on January 14, 2009 and filed on January 21, 2009. (R. Vol. 2, p. 419; Appellant's R.E. tab 2).

Verna Mae Carroll filed a Motion for New Trial or to Alter or Amend Judgment on January 22, 2009. (R. Vol. 4, p. 433). Anna Carroll filed her post-trial Motion on January 29, 2009. (R. Vol. 4, p. 439). The Trial Court denied both Parties' post-trial Motions by Orders entered on February 23, 2009. (R. Vol. 4, p. 457-59).

Verna Mae Carroll timely perfected this appeal and Anna Carroll filed a Notice of Cross Appeal. (T. Vol. 4, p. 461, 465).

STATEMENT OF FACTS

Roger A. Carroll ("Roger") and Anna F. Carroll ("Anna") were married in 1983 and resided in Monroe County, Mississippi. (T. Vol. 1, p. 95, Ex. No. 265). Roger's parents, William R. Carroll and Verna Mae Carroll ("Verna Mae") owned two (2) gravel businesses. (T. Vol. 2, p. 191). One of the businesses was Mississippi Gravel Sales, Inc. (T. Vol. 2, p. 190). The other business operated as Carroll's Gravel. (T. Vol. 2, p. 191).

Verna Mae and her husband, William Carroll, sold Mississippi Gravel Sales, Inc. to their son, Roger, in January 1999 during his marriage to Anna. (T. Vol. 2, p. 192). Roger and his parents signed an "Agreement for Sale and Transfer of Assets" on January 15, 1999, under which Roger purchased Mississippi Gravel Sales, Inc. (*See* Ex. No. 5, Appellant's R.E. tab 7, "Agreement for Sale and Transfer of Assets"). The Agreement for Sale and Transfer of Assets ("Agreement") provided that Roger would purchase the business under the following terms:

> A. The purchase price due from Buyer to Seller shall be Four Hundred Fifty Thousand Dollars ($450,000) to be payable as follows:
>
> (1) $150,000 cash at the time of closing.
>
> (2) $300,000.00 payable over a period of ten (10) years at the rate of seven (7%) per cent due and payable in monthly installments of $3,483.25 with the first payment being due on the 15th day of February, 1999 and on the 15th day of every month thereafter until paid in full.

(*Id.*). As part of the purchase, Roger obtained ownership of Mississippi Gravel Sales, Inc.'s equipment. (T. Vol. 2, p. 193). However, his parents' other business, Carroll's Gravel, retained a few pieces of equipment. (T. Vol. 2, p. 194). Roger took over Mississippi Gravel Sales, Inc. and was the president and sole shareholder of the corporation. (T. Vol. 2, p. 170-71).

Roger obtained a $150,000 bank loan to make the down payment to his parents for the business. (T. Vol. 2. p. 167, 194). Following the closing on the purchase of the business, Roger

paid payments on the $300,000 remaining indebtedness under the Agreement. (T. Vol. 2, p. 194.). During trial Verna Mae introduced evidence, in the form of bank statements, demonstrating that Roger had indeed made the monthly payments called for under the Agreement for the business purchase indebtedness. (*See* T. Vol. 2, p. 197; Ex. No. 9). Verna Mae explained that she and her husband planned to use Roger's monthly payments to live on during their retirement. (T. Vol. 2, p. 192).

Roger's father, William R. Carroll, died intestate a few years after he sold the business to Roger, on May 29, 2003. (*See* T. Vol. 2, p. 190, 199). William R. Carroll had owned three (3) parcels of real property solely in his name at the time of his death. (T. Vol. 2, p. 199). As a result, these properties passed equally to Verna Mae and each of the four children of Verna Mae and William R. Carroll. (*See id*). Shortly after William R. Carroll's death, in July 2003, each of the children conveyed their undivided one-fifth interest in these parcels back to their mother, Verna Mae. (*Id.*).

Following William Carroll's death, Roger continued to make payments to Verna Mae on the indebtedness owed on the purchase of the gravel business. (*See* T. Vol. 2, p. 198). Anna filed her Complaint for Divorce against Roger a few months later on September 19, 2003. (R. Vol. 3, p. 420; T. Vol. 2, p. 263). An Agreed Temporary Order was entered in Anna and Roger's divorce case on January 16, 2004. (*See* Ex. No. 1). The Agreed Temporary Order required Roger to pay a few household bills for Anna, mow the lawn at the marital home and pay $160 per month child support and $600 per month spousal support. (*Id.* at 27).

Roger testified that the gravel business began to decline later in 2004. (T. Vol. 2, p. 171). Roger testified he decided to sell the business because of lower profits and decreased gravel reserves on the site. (T. Vol. 2, p. 171-72). Roger sold the business for $500,000 to Mississippi

Gravel Sales, LLC on November 17, 2004, while the divorce action was ongoing. (*See* Ex. No. 2). Roger testified that his attorney in the divorce case advised him that he could sell the gravel business. (T. Vol. 1, p. 185). Roger's attorney in the divorce case produced documents evidencing the sale of the business to Anna's divorce attorney on November 30, 2004. (T. Vol 1, p. 104-07; Ex. No. 4).

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 the 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).

Roger owed Verna Mae $153,274.65 under the Agreement as of the date he sold the business. (*See* T. Vol. 2, Ex. No. 10, amortization schedule). There was no dispute at trial that Roger owed Verna Mae this amount from his purchase of the business. (T. Vol. 1, p. 114-15). The separately transferred funds of $38,497.64 represented the value of equipment – a portable screening plant and a wash plant – which had been retained by Carroll's Gravel that Roger sold with the business to Mississippi Gravel Sales, LLC. (T. Vol. 2, p. 173-76, 203-04; Ex. No. 8).

The divorce action between Roger and Anna was finally tried on February 1, 2005. (Ex. No. 3, Decree for Divorce). The Chancery Court found that Mississippi Gravel Sales, Inc. had been a marital asset, but noted that the business had been sold prior to the conclusion of the divorce proceeding. (R. Vol. 2, p. 261-62). The Court held that "in the event the sale of [the

business] is set aside in any future litigation, the Plaintiff will be entitled to one-half of the net proceeds of that business." (R. Vol. 2, p. 262).

Anna commenced this action on January 27, 2005, seeking to set aside alleged "fraudulent conveyances" including the sale of Mississippi Gravel Sales, Inc. to Mississippi Gravel Sales, LLC. (R. Vol. 1, p. 13).[1] However, Anna subsequently abandoned her claim to set aside the sale of the business to Mississippi Gravel, LLC. (R. Vol. 1, p. 108). Anna, through her counsel, agreed to the dismissal of Mississippi Gravel Sales, LLC as a party to this action by Order entered on May 18, 2007, based on the fact that Roger Carroll had no ownership or connection with Mississippi Gravel Sales, LLC . (*Id.*).

Anna's remaining claims sought to attack Roger's transfer of funds owed to Verna Mae and the conveyance of property following William Carroll's death. (*See* R. Vol. 1, p. 11). However, Anna conceded at trial that Roger still owed Verna Mae under the Agreement when he sold the gravel business. (T. Vol. 1, p. 114). The record reflects the following stipulation and testimony in this regard:

> [ANNA'S TRIAL COUNSEL]: Your Honor, we don't dispute that Mr. Carroll owed his mother under the terms of that agreement.
>
> * * *
>
> Q: Ms. Carroll, in light of the statement that was just made, I may be able to skip some of this. Would you agree with me that Roger Carroll legitimately owed his mother $153,274.65 under the agreement which you're holding in your hand, which is Exhibit 5, as of the date that he sold Mississippi Gravel Sales, Inc.?
>
> A. [ANNA CARROLL] Yes.

(T. Vol. 1, p. 114-15). Anna further admitted that she had no evidence that any of the property transferred to Verna Mae were "shady dealings" or otherwise fraudulent in any respect. (T. Vol.

[1] Chancellor Littlejohn presided over both Anna's divorce case and this case. (*See* R. Vol. 4, p. 409) (Decree for Divorce in cause number 2003-490-48-L).

1, p. 115). 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 payment for a debt that was legitimately owed to her. (*Id.*).

This case was scheduled for trial on December 15, 2008. (R. Vol. 3, p. 357). Ten (10) days before trial, Anna filed a new action in the Circuit Court of Monroe County, Mississippi alleging that this very case, and the divorce case against Roger, had both been settled by the mutual agreement of all of the Parties on April 14, 2008.[2] (*See* Trial Exhibit No. 6; T. Vol. 1, p. 120-21) ("Circuit Court Complaint").[3] Anna filed the Circuit Court Complaint on December 5, 2008. (*Id.*). Defendant Verna Mae P. Carroll was served with process on December 10, 2008, just five (5) days before trial. (R. Vol. 3, p. 372).

Anna's Circuit Court Complaint alleged that the Parties engaged in settlement negotiations on April 14, 2008, regarding this matter and her divorce case. (Ex. No. 6, Circuit Court Complaint). The Circuit Court Complaint alleges, *inter alia*, that:

> At the end of the day a settlement was reached in said Cause No. 2003-490-48-L and 2005-53-48-L of the Chancery Court of Monroe County, Mississippi, between Plaintiff and the Defendants in this instant case whereby Defendant Roger A. Carroll agreed to pay certain sums to the Plaintiff, and Defendants Verna Mae P. Carroll and/or Cynthia Ann Carroll Loden agreed to pledge certain real property as security for a loan, whereby Defendant Roger A. Carroll would obtain the funds necessary to effect said settlement. The Plaintiff agreed to dismiss all pending litigation in said two Chancery Court cases with prejudice. Said settlement was expected to have been finally consummated within 30 days of April 14, 2008.

(Ex. No. 6, Circuit Court Complaint at ¶ 17; R. Vol. 4, p. 384). The Circuit Court Complaint goes on to allege that Defendants, including Verna Mae, failed to consummate the settlement,

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[2] The Chancellor's decision in the divorce case had been reversed in part and remanded by the Court of Appeals in May 2007. *Carroll v. Carroll*, 976 So. 2d 880, 888 (Miss. Ct. App. 2007).

[3] The Trial Court sustained an objection to the relevance of Anna's Circuit Court action and denied admission of the Circuit Court Complaint. (T. Vol. 1, p 119-20). The Complaint was marked for identification only and limited questioning regarding the Circuit Court action was made by proffer. (T. Vol. 1, p. 120-21).

and alleges various causes of action based on the breach of the alleged settlement agreement. (*Id.*). The Circuit Action was still pending as of the trial of this case in Chancery Court. (*See id.*). Anna dismissed the Circuit Court Action on February 25, 2009, seventy one (71) days *after* the Chancery Court's decision in her favor in this case. (R. Vol. 4, p. 454).

Following the trial in this case, the Trial Court found that Roger's payment of $153,274.65 to Verna Mae should be set aside as fraudulent, and ordered Verna Mae to repay that sum into the Registry of the Chancery Court of Monroe County for equitable distribution in the divorce proceeding. (T. Vol. 2, p. 286; Appellant's R.E. tab 6). The Trial Court found that the conveyance of Roger's interest in the real property to Verna Mae and his transfer of $38,497.64 to her were not fraudulent conveyances and did not set those transfers aside. (T. Vol. 2, p. 286-87; Appellant's R.E. tab 6).

Aggrieved from the Trial Court's Judgment, Verna Mae perfected this appeal.

STANDARD OF REVIEW

A Chancellor's ruling on a question of law is subject to *de novo* review by this Court. *Warren v. Derivaux*, 996 So. 2d 729, 735 (Miss. 2008). Factual findings, however, are affirmed if they are supported by substantial evidence in the record. *Barnes, Broom, Dallas & McLeod, PLLC v. Estate of Cappaert*, 991 So. 2d 1209, 1211 (Miss. 2008).

All of the issues presented by Verna Mae Carroll involve issues of law. Accordingly, each of Verna Mae's assignments of error should be reviewed *de novo*.

SUMMARY OF THE ARGUMENTS

The Trial Court's decision should be reversed for four (4) separate reasons. First, the Court applied the wrong law. The Trial Court applied the Uniform Fraudulent Transfer Act to Anna Carroll's claims. The Uniform Act was not effective until July 1, 2006. The Complaint in

this case was filed on January 27, 2005, and all of the occurrences giving rise to this action occurred well before the enactment of the Uniform Fraudulent Transfer Act. Since the Uniform Act does not contain a provision making it retroactive, the Trial Court erred in applying the Act to this case.

The second and third reasons for reversal are the Trial Court's misapplication of both the predecessor statues and the Uniform Fraudulent Transfer Act to find a fraudulent conveyance. Regardless of whether the Uniform Act or the predecessor statues are applied to this case, the Trial Court erred in finding that the payment to Verna Mae Carroll was fraudulent and in imposing a judgment against Verna Mae. It was undisputed at trial that Roger Carroll legitimately owed Verna Mae $153,274.65 when he made the payment to her. When Roger sold the gravel business Verna Mae acted in the normal course of business, and in good-faith, by accepting payment for a debt legitimately owed to her stemming from Roger's purchase of the business. This payment was a bona fide transfer based on good consideration. Roger owed the funds to Verna Mae and received an equivalent satisfaction of his debt in exchange for the payment. In the nomenclature of the Uniform Fraudulent Transfer Act, Verna Mae received the funds in good faith and for equivalent value such that the transfer could not be set aside pursuant to Miss. Code Ann. § 15-3-113(1).

As Roger's payment to Verna Mae was, undisputedly, based on a legitimate debt to Verna Mae he incurred in the purchase of the very business he had sold, the analysis under either the Uniform Act or the predecessor statutes demonstrates that the transfer was not fraudulent. In fact, Anna Carroll admitted at trial that she knew of nothing to show that Verna Mae had acted with the intent to defraud her or did anything other than accept payment from Roger for a debt he owed. Accordingly, regardless of the statutory framework applied in this case, the Trial Court

erred in finding the payment to have been fraudulent and in entering judgment against Verna Mae.

Finally, the Trial Court also erred by refusing to apply the doctrine of judicial estoppel based on Anna's inconsistent claims in this case and another proceeding. Just ten (10) days before the trial in this case Anna filed a Complaint in the Circuit Court of Monroe County, Mississippi claiming that this case and her divorce action had been settled by all parties. Anna claimed that the Defendants in that action, including Verna Mae, had acted in bad faith and tortiously breached the settlement agreement. The doctrine of judicial estoppel prohibited Anna from taking such conflicting positions in different proceedings. The Trial Court should have dismissed Anna's claims against Verna Mae in this case pursuant to the doctrine of judicial estoppel.

Accordingly, Verna Mae respectfully requests this Court to reverse the Trial Court's decision and to render judgment in her favor.

ARGUMENT I.

THE TRIAL COURT ERRED BY RETROACTIVELY APPLYING THE UNIFORM FRAUDULENT TRANSFER ACT.

Statutes are applied prospectively only unless the statute unequivocally provides that it is to be applied retroactively. *See, e.g, City of Starkville v. 4-County Elec. Power Ass'n*, 909 So. 2d 1094, 1109 (Miss. 2005). In *City of Starkville* the Court explained:

> It is well-settled in our jurisprudence that statutes be interpreted prospectively, and where they are not, there must be a clear indication from the Legislature that they be applied retrospectively as well. A statute will not be given retroactive effect unless it is manifest from the language that the Legislature intended it to so operate.

City of Starkville, 909 So. 2d at 1109 (internal citations omitted). Similarly, the Court in *Mladinich v. Kohn*, 186 So. 2d 481 (Miss. 1966) explained:

> A statute will not be given retroactive effect unless it is manifest from the language that the legislature intended it to so operate. It will not be construed as retroactive unless the words admit of no other construction or meaning, and there is a plain declaration in the act that it is. In short, these cases illustrate a well-settled attitude of statutory interpretation

Mladinich, 186 So. 2d at 483.

Unless newly enacted legislation is applied retroactively, the statutes in effect at the time a Complaint is filed are applicable to the action. *Bullock v. Lott*, 964 So. 2d 1119, 1125 (Miss. 2007). Stated differently, "[i]f the statutory language mandates that the statute is to apply from and after passage, it is not to be applied retroactively to causes of action which accrued prior to passage of the statute." *Jones v. Baptist Mem. Hosp.-Golden Triangle, Inc.*, 735 So. 2d 993, 998 (Miss. 1999).

The Uniform Fraudulent Transfer Act (Miss. Code Ann. § 15-3-101 *et seq.*) went into effect on July 1, 2006, and repealed section 15-3-3 on this date. *See* MISS. CODE ANN. § 15-3-121. The Uniform Act and repeal of section 15-3-3 were "effective from and after July 1, 2006." *See* MISS. CODE ANN. § 15-3-101, *et seq.* (Supp. 2008); MISS. CODE ANN. § 15-3-3 (Supp. 2008). Therefore, the Uniform Fraudulent Transfer Act is inapplicable to this case since the Complaint was filed on January 27, 2005, over two (2) years before the Act's effective date.

During the Trial Court's lengthy bench ruling, the Court applied the Uniform Fraudulent Transfer Act.[4] (T. Vol. 2, p. 273-74; Appellant's R.E. tab 6). The Court noted that section 15-3-3 was repealed on July 1, 2006, and was replaced by the Uniform Act. (*Id.*). The Court then conducted an analysis of several factors in section 15-3-107 of the Uniform Act. (*Id.*).[5]

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[4] Verna Mae argued in the Trial Court that the Uniform Act was inapplicable to this case. (*See, e.g.*, R. Vol. 2, p. 281, n. 2; T. Vol. 2, p. 245-46). Anna Carroll argued that the Uniform Act should be applied. (*See* T. Vol. 2, p. 233; T. Vol. 4, p. 445-46).

[5] As discussed below, even if the Uniform Act had been applicable, Verna Mae contends the Trial Court committed a host of reversible errors in applying the provisions of the Act and the payment to her could not be set aside under the Act.

The Court directed the attorney for Anna Carroll to prepare a Judgment for entry consistent with the Court's rulings. (T. Vol. 2, p. 288). 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).[6]

Obviously, the Chancellor committed error by considering the Uniform Fraudulent Transfer Act in this case. The Act was not effective when the Complaint was filed. Indeed it was not in effect until over two (2) years later. The Uniform Fraudulent Transfer Act does not contain any provision making it retroactively effective.

Further, the Court committed error by purporting to apply both statutory provisions in its Judgment. One of the provisions, or the other, must have been applicable. The Court could not properly apply both provisions as the Judgment attempted to do.

Under both the Court's bench ruling and the Final Judgment, the Court clearly applied the Uniform Fraudulent Transfer Act. This constitutes reversible error. Accordingly, on this basis alone, the Trial Court's decision should be reversed.

ARGUMENT II.

THE TRIAL COURT ERRED IN SETTING ASIDE THE TRANSFER AS FRAUDULENT SINCE THE TRANSFERRED SUM WAS LEGITIMATELY OWED TO VERNA MAE CARROLL.

Regardless of whether Miss. Code Ann. § 15-3-3 *et seq.* or the Uniform Fraudulent Transfer Act is applied to the undisputed facts of this case, the Trial Court manifestly erred in finding a fraudulent conveyance since Verna Mae Carroll was legitimately owed the funds Roger

[6] The Judgment provided that the Court found the conveyance fraudulent under either section 15-3-3 or section "95-3-107." Section "95-3-107" was a typographical error meant to refer to section 15-3-107 of the Uniform Fraudulent Transfer Act. The Trial Court corrected this reference in its Order dated February 23, 2009. (T. Vol. 4, p. 458).

paid to her, took the payment in good-faith and undisputedly had no fraudulent intent. The transfer could not be set aside as fraudulent under either legal framework.

The analysis under each of the statutory provisions is discussed in turn.

A. The transfer was not fraudulent under section 15-3-3 *et seq.*

Section 15-3-3 provides as follows:

> Every gift, grant, or conveyance of lands, tenements, or hereditaments, goods or chattels, or of any rent, common or other profit or charge out of the same, by writing or otherwise, and every bond, suit, judgment, or execution had or made and contrived of malice, fraud, covin, collusion, or guile, to the intent or purpose to delay, hinder, or defraud creditors of their just and lawful actions, suits, debts, accounts, damages, penalties, or forfeitures, or to defraud or deceive those who shall purchase the same lands, tenements, or hereditaments, or any rent, profit, or commodity out of them, shall be deemed and taken only as against the person or persons, his, her, or their heirs, successors, executors, administrators, or assigns, and every of them whose debts, suits, demands, estates, or interests by such guileful and covinous devices and practices shall or might be in any wise disturbed, hindered, delayed, or defrauded, to be clearly and utterly void; any pretense, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.
>
> Moreover, if any conveyance be of goods or chattels, and be not on consideration deemed valuable in law, it shall be taken to be fraudulent within this section, unless the same be by will duly proved and recorded, or by writing acknowledged or proved, and such writing, if the same be for real estate, shall be acknowledged or proved and filed for record in the county where the land conveyed is situated, and, if for personal property, then in the county where the donee shall reside or the property shall be. The proof or acknowledgment in either case shall be taken or made and certified in the same manner as conveyances of lands and tenements are by law directed to be acknowledged or proved, unless, in the case of personal property, possession shall really and bona fide remain with the donee.
>
> And in like manner, where any loan of goods or chattels shall be pretended to have been made to any person, the possession thereof having remained with said person or with those claiming under him for the space of three years without demand made and pursued by due course of law on the part of the pretended lender, or where any reservation or limitation shall be pretended to have been made of a use of property by way of condition, reversion, remainder, or otherwise in goods or chattels, the possession thereof having remained in another or those claiming under him for a space of three years without demand made and pursued by due course of law on the part of the one making such pretended reservation or limitation, the same shall be taken to be fraudulent within this statute as to the

> creditors and purchasers of the persons so remaining in possession, and the absolute property shall be deemed to be with the possession, unless such loan, reservation, or limitation were declared by will or by writing, proved or acknowledged, and filed for record.

MISS. CODE ANN. § 15-3-3.[7] Section 15-3-5 provides that section 15-3-3 is not applicable to a bona fide transfer based on good consideration. MISS. CODE ANN. § 15-3-5.

The Mississippi Supreme Court addressed the operation of sections 15-3-3 and 15-3-5 in the context of the transfer of marital property in *Blount v. Blount*, 95 So. 2d 545, 552 (Miss. 1957). The *Blount* Court held that a conveyance made with the sole purpose of cheating creditors, including a spouse's prospective claims for marital property, is void. *Blount*, 95 So. 2d at 558-59. The Court in *Blount* noted that in order for a transfer to be set-aside, there must be an intent to defraud the transferor's creditors. *Blount*, 95 So. 2d at 560. Thus, where the transferee lacks fraudulent intent a transfer is not fraudulent and may not be set-aside. *See Graham v. Graham*, 35 So. 874 (Miss. 1903) (where husband transferred property to wife to avoid creditor's claims, conveyance was not fraudulent since husband owed bona fide debt to wife and wife was not participant in fraudulent intent).

As noted by the Supreme Court in *Graham*, it is well-established that a debtor has every right to prefer one creditor over another. *See, e.g., Barbee v. Pigott*, 507 So. 2d 77, 85 (Miss. 1987); *Fargason v. Oxford Mercantile Co.*, 27 So. 877 (Miss. 1900). Where the transfer is to near relatives, there must be clear and convincing evidence of a valid antecedent debt. *Barbee*, 507 So. 2d at 85. However, a conveyance to a close relative is valid even where it defeats claims of other creditors, where there exists an antecedent debt equaling or exceeding the amount of the transfer. *Id.*

[7] As discussed above, section 15-3-3 was in effect at the time the Complaint was filed in this case but was subsequently repealed by the Legislature on July 1, 2006. *See* Miss. Code Ann. § 15-3-3 (Supp. 2008).

The Supreme Court has enumerated several "badges of fraud" which should be evaluated in determining whether a conveyance is bona fide or fraudulent. The *Barbee* Court noted the following badges of fraud:

> Inadequacy of consideration, transaction not in usual course or mode of doing business, absolute conveyance as security, secrecy, insolvency of grantor, transfer of all his property, attempting to give evidence of fairness by conscripting sister-in-law as a conduit for passing title to the wife, retention of possession, . . . relationship of the parties, and transfer to person having no apparent use for the property.

Id. (citing *Reed v. Lavecchia*, 187 Miss. 413, 193 So. 439 (1940)).

The fact that the payment from Roger to Verna Mae was based on an undisputedly valid antecedent debt defeats any claim that the transfer was fraudulent. *See, e.g., Barbee v. Pigott*, 507 So. 2d 77, 85 (Miss. 1987). Moreover, as explained in *Graham v. Graham*, 35 So. 874 (Miss. 1903) in order for a transfer to be fraudulent as to a transferee, the transferee must have had fraudulent intent to deprive assets from a transferor's creditors. That is, in order to term such a conveyance "fraudulent" its *sole purpose* must be to cheat creditors. *See Blount v. Blount*, 95 So. 2d 545, 552 (Miss. 1957). It is, of course, illogical to contend that one who is owed a legitimate debt has a fraudulent intent when they accept payment for the legitimate debt.

In this case, all parties concede that Roger Carroll legitimately owed the sum of $153,274.65 at the time he made the payment to Verna Mae. 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. Anna Carroll admitted as much at trial. It defies logic to contend that Verna Mae's acceptance of a debt legitimately owed to her amounts to a fraudulent action which could be set aside. Roger received good consideration from the transfer to Verna Mae in the form of

satisfaction of his legitimate debt owed to her. Thus, the transaction was a bona fide transfer based on good consideration and manifestly not fraudulent pursuant to section 15-3-5.

Under the reasoning of *Barbee*, Roger had a right to pay Verna Mae with proceeds from the sale, since the funds were legitimately owed to her on an antecedent debt. No badges of fraud indicate that the payment of this legitimate debt was fraudulent. To the contrary, the facts establish that the transfer was completely legitimate. There was adequate consideration for the payment to Verna Mae, since Roger's legitimate debt was satisfied by the transfer. The transaction cannot be said to be out of the ordinary course of business, since the payment of the debt owed on a business necessarily follows when the business is sold.[8] There was no secrecy as to the transaction, and the transaction is well-documented. The Chancellor found that the transaction had been disclosed to Anna. Roger retained no interest in the funds transferred to Verna Mae, and Verna Mae herself used the proceeds after the transfer.

Anna's only response to this is to argue that Roger, not Mississippi Gravel Sales, Inc., owed Verna Mae the sum of $153,274.65, but the funds were actually transferred by the corporate entity to Verna Mae. This argument fails for several reasons. First, the contention is simply wrong. The funds were mailed to Verna Mae by the law firm which closed the sale of the gravel business. This was a reasonable and proper way of Roger satisfying his debt owed to Verna Mae. Second, Anna's argument is illogical. If, as Anna argues, the payment was simply from Mississippi Gravel Sales, Inc. to Verna Mae, Anna can have no claim at all. Anna was a potential judgment creditor of Roger Carroll only, not Mississippi Gravel Sales, Inc. The corporation was never indebted to Anna. If Roger were a stranger to the payment to Verna Mae, Anna could have no quarrel with the transaction. Anna argues that she was a judgment creditor

[8] Notably, in this regard, Anna conceded that the sale of the business itself was not fraudulent, and dismissed the transferee, Mississippi Gravel Sales, LLC as a party to this action in the Trial Court.

to Roger, thus a transfer from him to may be fraudulent; however, when Anna admits that the amount transferred was legitimately owed to Verna Mae she alters her argument to claim that the corporation made the transfer and it owed Verna Mae nothing. Thus, Anna wishes to view the transfer as between Roger and Verna Mae when that is convenient for her and between the corporation and Verna Mae when that is more expedient. Anna cannot have it both ways. So long as the payment to Verna Mae is viewed consistently, it could obviously not be a fraudulent transfer.

Of course, the obvious fact is that Roger was the President and sole shareholder of Mississippi Gravel Sales, Inc. Roger owned the entirety of the business. When he sold the business he paid Verna Mae $153,274.65 from closing, which he still (undisputedly) owed her from the purchase of the business.

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. In fact she agreed that Verna Mae did not act fraudulently. Verna Mae was owed $153,274.65 on the indebtedness incurred when Roger bought the business and she received precisely this amount when Roger sold the business. Anna admitted at trial she had no evidence that Verna Mae had attempted to keep any funds from her, or that Verna Mae did anything other than accept payment for a debt which she was owed.

The undisputed evidence at trial demonstrated that Verna Mae was owed $153,274.65 and that she had no fraudulent intent in accepting the payment. The payment of the funds owed to Verna Mae could not be a fraudulent transfer under Mississippi law. Accordingly, the Trial Court erred in setting the transfer aside. This Court should reverse and render judgment as to this issue.

B. The transfer was not voidable under the Uniform Fraudulent Transfer Act.

Even if the Uniform Fraudulent Transfer Act were applicable in this case, the payment to Verna Mae was not voidable under the provisions of the Act. Further, as discussed, below, the Chancellor committed several instances of reversible error in conducting an analysis under the Uniform Fraudulent Transfer Act.

Similar to the predecessor statues, the Uniform Act provides the overriding principle that:

> A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation with actual intent to hinder, delay or defraud any creditor of the debtor.

MISS. CODE ANN. § 15-3-107(1). Thus, just as under the predecessor statutes, there must have "actual intent" to defraud a creditor in order for the transfer to be fraudulent. *Id.*

The Uniform Act continues to provide several factors which may be considered in determining actual intent:

> (a) The transfer or obligation was to an insider;
> (b) The debtor retained possession or control of the property transferred after the transfer;
> (c) The transfer or obligation was disclosed or concealed;
> (d) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
> (e) The transfer was of substantially all the debtor's assets;
> (f) The debtor absconded;
> (g) The debtor removed or concealed assets;
> (h) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
> (i) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
> (j) The transfer occurred shortly before or shortly after a substantial debt was incurred;
> (k) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor;
> (l) The debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(i) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) Intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due;

(m) A transfer made or obligation incurred by a debtor may be fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation; and

(n) A transfer made by a debtor may be fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

MISS. CODE ANN. § 15-3-107(2). The Act also provides:

> If there exists a combination of facts such as described in subsection (2)(l), (m) or (n) only, then there will be a strong presumption of fraud which can be rebutted only by clear and convincing evidence.

MISS. CODE ANN. § 15-3-107(3). Finally, of critical moment to this case, the Uniform Act makes explicit that good-faith transfers for fair value may not be set aside:

> A transfer or obligation is not voidable under Section 15-3-107(1) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

MISS. CODE ANN. § 15-3-113.

As discussed below, the Trial Court erred in its analysis of several of the factors set forth in section 15-3-107(2). An analysis of the factors in 15-3-107(2) do not indicate that the transaction was made with intent to defraud Anna. Further, the transaction was undisputedly in good faith and for precisely equivalent value such that it was not voidable pursuant to section 15-3-113.

First of all, the Trial Court concluded, on the one hand, that Verna Mae was an insider under subparagraph (a), since she was the transferor's (*Roger Carroll's*) mother. Admittedly,

Verna Mae Carroll meets the definition of an insider to Roger Carroll as defined by section 15-3-101(g). However, the Chancellor also concluded that there was no debt owed between the transferor and Verna Mae since the transferor was actually *Mississippi Gravel Sales, Inc.*, not Roger Carroll. It was this conclusion, that no debt was legitimately owed, that ostensibly led the Trial Court to set aside the payment.

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. He was the president and sole shareholder of Mississippi Gravel Sales, Inc. When he sold the business, the law firm which handled the closing mailed checks paying off the amounts Roger owed to Verna Mae.

As described above, so long as the transferor is consistently viewed as one or the other, it is clear that there was no fraudulent transfer. If Roger Carroll was truly the transferor (as he obviously was), the transferor was not fraudulent because all Parties concede that Roger still owed Verna Mae $153,274.65 from his purchase of the gravel business. If the corporation was the transferor, Roger was a stranger to the transaction in any event and Anna was not a creditor of the corporation. Rather, the corporation was paying its sole shareholder's debt incurred from purchasing the business in the first place. Likewise from this angle, Verna Mae acted in good faith in accepting payment she was owed and Roger's legitimate debt was satisfied in exchange for the payment.

The Trial Court should have determined that the transfer was between Roger Carroll and his mother, Verna Mae. While Verna Mae was an insider to Roger, it is equally true that Roger owed Verna Mae the transferred sum and that Verna Mae accepted the payment in good-faith.

Next, the Trial Court misapprehended the import of its finding with regard to subparagraph (b). The Trial Court concluded that "Verna Mae Carroll, retained the possession of the money paid to her after this transaction was consummated." (T. Vol. 2, p. 275). This is certainly accurate, as the Record reveals that Verna Mae spent the funds to pay her own bills and did not hold the funds for Roger. However, this finding strongly supports a conclusion that the transfer to Verna Mae was *legitimate*, rather than a conclusion that the transfer was voidable under the Act.

With regard to subparagraph (c), the Trial Court found that the transaction had not been concealed, but had been disclosed to Anna. This finding, of course, further militated against finding a voidable transaction.

Next, the Chancellor erred by refusing to consider subparagraph (h), which directs an analysis of whether the debtor received adequate consideration for the transfer. The Trial Court stated "[w]ell, that is vague as to that particular factor and I don't make any finding as to that." (T. Vol. 2, p. 277).

A proper analysis of subparagraph (h) is essential in this case. The undisputed evidence is that Roger Carroll received not just reasonable consideration in exchange for the $153,274.65 payment to Verna Mae, but in fact received precisely equivalent consideration in the form of satisfaction of his debt in the amount of $153,274.65. Roger received a dollar-for-dollar satisfaction of the debt he owed from the purchase of the business.[9] This factor overwhelmingly indicates a legitimate transfer and absence of any fraudulent intent. The Trial Court erred in ignoring subparagraph (h).

[9] Notably, this debt would have been owed to Verna Mae regardless of when Roger sold the business or whether it was divided in his divorce case. The debt was, by all accounts, legitimately owed to Verna Mae from Roger's purchase of the business.

The Trial Court also misapplied subparagraph (i), which directs an analysis of whether the debtor became insolvent shortly after the transaction. As the Trial Court noted, Roger testified that he was essentially insolvent both before and after the transaction. His business had no equity and was declining prior to his payment to Verna Mae. Several creditors went unpaid. This factor does not indicate that there was any intent to defraud Anna.

Similarly, the Trial Court misapplied subparagraph (k) which allows an inference of fraudulent intent where the debtor transferred assets of a business to a lienholder who then transfers the assets to an insider. That did not happen here. Roger sold the business to a third-party, and paid Verna Mae what she was owed from the closing. Subparagraph (k) was inapplicable in this case.

Next, similar to subparagraph (h), the Chancellor committed reversible error by failing to properly apply subparagraph (l), which strongly militated against a finding of fraudulent intent. Subparagraph (l) directed the Court to consider whether the transferor made the transfer without receiving a "reasonably equivalent value" if the debtor was about to engage in business with obviously insufficient assets or intended to incur debts beyond his ability to pay. The Trial Court stated it made no specific finding as to subparagraph (l) beyond that Roger was essentially insolvent. Roger was not about to engage in any new business dealings or incur any new debts when he made the transfer. Roger paid what he owed from the purchase of the business when he sold the business. Roger received precisely equivalent value for the transfer to Verna Mae, as discussed above, in the form of satisfaction of his legitimate debt.

The Trial Court also erred in considering subparagraph (m) which provides:

> A transfer made or obligation incurred by a debtor may be fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation

and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation

The Court's findings in this regard were irreconcilable. As to one aspect, the Court found, as it was undisputed, that Roger owed Verna Mae an antecedent debt. (T. Vol. 2, p. 279) (noting "admittedly, he had a debt to her. That's admitted."). However, the Trial Court held that subparagraph (m) militated toward a finding of fraudulent intent. This cannot be. Since Roger owed a legitimate antecedent debt to Verna Mae of $153,274.65, transferred to her precisely this sum, and received a satisfaction of the debt, Roger manifestly received "equivalent value in exchange for the transfer." Thus, subparagraph (m) militates in Verna Mae's favor, not in favor of finding fraudulent intent.

The Court concluded that, since there was a combination of the factors in subparagraphs (l), (m) and (n), there was a strong presumption of fraud which could be rebutted only by clear and convincing evidence. The Court then concluded that Verna Mae had not rebutted the presumption. The Chancellor erred in both conclusions, as the factors do not indicate fraudulent intent. However, even if there was a combination of two factors which gave rise to the presumption (which there was not), the presumption would have been sufficiently rebutted by undisputed evidence that the transaction was legitimate and without fraudulent intent. The Agreement for Sale and Transfer of Assets and the undisputed evidence that Roger had incurred the debt to Verna Mae in 1999 rebut any presumption that the transaction was fraudulent. Verna Mae was unquestionably still owed the $153,274.65, under the 1999 Agreement. This amounts to undeniable, and certainly clear and convincing evidence that the transaction was in no way fraudulent.

Next, the Chancellor manifestly erred by ignoring section 15-3-113(1), which is directly on-point and crucial in this case. Section 15-3-113(1) provides that a transfer is not voidable

under the Uniform Act "against a person who took in good faith and for a reasonably equivalent value." That is undisputedly the case here. No one disputes that Verna Mae took the payment in good faith. Roger owed her the money. Anna did not present evidence, or even claim at trial, that Verna Mae acted in bad faith or intended to defraud her. Further, no one disputes that Roger received equivalent value for the payment, as his legitimate debt to Verna Mae was satisfied by the payment. Section 15-3-107 is thus the death knell to Anna's claims against Verna Mae. Had the Trial Court considered this section the payment could not have been set aside as fraudulent under any circumstances.

Finally, Verna Mae also contends, in the alternative, that even if the transfer could be set aside as fraudulent she would be entitled to the funds under section 15-3-113(4) of the Uniform Act. Section 15-3-113(4) provides that a good-faith transferee is entitled to retain the property transferred or offset their liability to the extent of the value given to the debtor in exchange for the transfer. MISS. CODE ANN. § 15-3-113(4). Verna Mae gave Roger the value of satisfaction of a $153,274.65 debt. Verna Mae should have therefore been allowed to retain the entire payment under 15-3-113(4).

The Trial Court erred in its analysis under the Uniform Fraudulent Transfer Act, even if the Act had been applicable to this case. Accordingly, the Trial Court's decision should be reversed and Judgment rendered in this Court in Verna Mae's favor.

ARGUMENT III.

THE TRIAL COURT ERRED BY REFUSING TO DISMISS ANNA'S CLAIMS UNDER THE DOCTRINE OF JUDICIAL ESTOPPEL.

The doctrine of judicial estoppel prevents a party from asserting one position in litigation and then changing that position when it becomes more convenient or profitable. *See Scott v. Gammons*, 985 So. 2d 872, 877 (Miss. Ct. App. 2008). Judicial estoppel prevents a party from

taking contrary positions in litigation. *Scott*, 985 So. 2d at 877 (citing *Richardson v. Cornes*, 903 So. 2d 51, 56 (Miss. 2005)). Importantly, the *Scott* Court held that the doctrine of judicial estoppel also prevents a litigant from taking such contrary positions in separate proceedings. *Scott*, 985 So. 2d at 877.

Of course, an agreement to settle pending litigation is simply a contract, and as such is governed by principles of contract law. *Parmley v. 84 Lumber Co.*, 911 So. 2d 569, 573 (Miss. Ct. App. 2005). Mississippi law recognizes both oral and written contracts to settle cases, so long as there was a valid contract under normal contract principles. *See Parmley*, 911 So. 2d at 573.

Anna was judicially estopped from pursuing her claims in this case in light of the Circuit Court Complaint she filed ten (10) days before trial.[10] In the Circuit Court action, Anna alleged this case had been finally settled. In the Circuit Court Complaint Anna alleged that Verna Mae Carroll and Roger Carroll tortiously breached the settlement agreement reached on April 14, 2008, and sought damages for that breach.

Under the reasoning in *Scott*, Anna was estopped from changing her position, and claiming otherwise in this case. Again here, Anna could not change her position to suit the exigency of the moment. Anna could not contend, on one hand, that the case had settled and maintain an action for damages based on breach of the settlement agreement, and argue on the other hand that it had not settled and go forward with trial. When Anna alleged her claims against Verna Mae had been settled the suit should have been abated. The doctrine of judicial estoppel prevents Anna from getting two bites at the apple by pursuing both this case on the

[10] The Trial Court "continued" the hearing on Verna Mae's motion to dismiss based on judicial estoppel, proceeded with trial and ruled against Verna Mae. (T. Vol. 1, p. 91). During trial the Trial Court excluded evidence pertaining to judicial estoppel. (T. Vol. 1, p 119-21). Verna Mae again urged the Court to rule on the judicial estoppel issue in her post-trial motion. (R. Vol. 4, p. 435). Anna eventually dismissed the Circuit Court Complaint only after the Chancery Court awarded a judgment against Verna Mae in this case. (R. Vol. 4, p. 454).

merits before the Trial Court and simultaneously claiming that the case was settled in a different Court.

The Trial Court should have dismissed Anna's claims pursuant to the doctrine of judicial estoppel. This Court should reverse and render as to this issue.

CONCLUSION

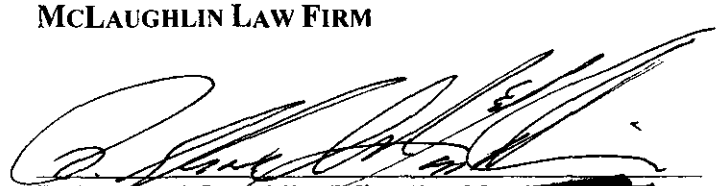
The Trial Court committed reversible error by applying the Uniform Fraudulent Transfer Act retroactively in this case, rather than applying the predecessor statutes, Miss. Code Ann. § 15-3-3 *et seq.* However, regardless of which statutory framework is applied, the Trial Court erred in finding that the payment to Verna Mae was fraudulent and in entering a judgment against Verna Mae. Both the Uniform Act and the predecessor statutes provide that a transaction is not fraudulent where the transferee took in good faith and gave reasonably equivalent value. The undisputed evidence, and the Chancellor's findings, demonstrate that Verna Mae accepted the payment in good faith as she was legitimately owed the sum of $153,274.65. Roger Carroll received equivalent value for the payment as his debt in this amount was satisfied. The transaction could not be set aside as fraudulent under either of the statutes.

Finally, the Trial Court also erred by declining to dismiss Anna Carroll's claims under the doctrine of judicial estoppel. Anna was judicially estopped from proceeding with her claims against Verna Mae when she claimed in another proceeding, ten (10) days before trial, that Parties had settled this case.

Accordingly, for the above and foregoing reasons, Verna Mae Carroll respectfully requests the Court to reverse the Trial Court's decision and render judgment in her favor.

RESPECTFULLY SUBMITTED, this the 5th day of October, 2009.

MCLAUGHLIN LAW FIRM

By: 

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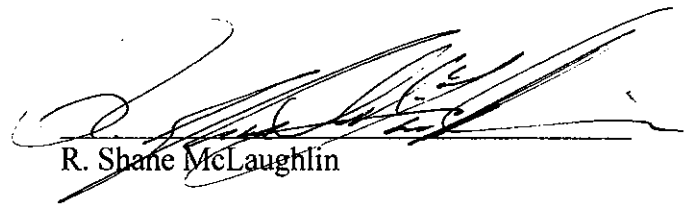
CERTIFICATE OF SERVICE

I, R. Shane McLaughlin, attorney for the Appellant in the above styled and numbered cause, do hereby certify that I have this day mailed a true and correct copy of **Brief of Appellant / Cross-Appellee Verna Mae P. Carroll** to all counsel of record and the Trial Court Judge by placing said copy in the United States Mail, postage-prepaid, addressed as follows:

S. Carter Dobbs, Jr.
Attorney At Law
Post Office Box 517
Amory, Mississippi 38821

Hon. Talmadge D. Littlejohn
Chancellor
Post Office Box 869
New Albany, Mississippi 38652

This the 5th day of October, 2009.



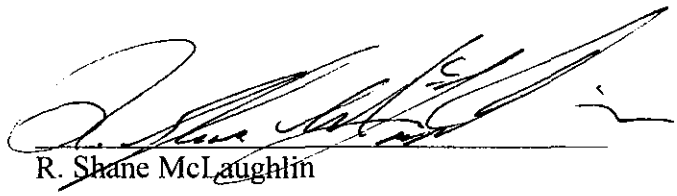
R. Shane McLaughlin

CERTIFICATE OF FILING

I, R. Shane McLaughlin, attorney for the Appellant in the above styled and numbered cause, do hereby certify, pursuant to Miss. R. App. P. 25(a), that I have this day filed the **Brief of Appellant / Cross-Appellee Verna Mae P. Carroll** by mailing the original of said document and three (3) copies thereof via United States Mail, to the following:

Ms. Betty W. Sephton
Supreme Court Clerk
P.O. Box 249
Jackson, MS 38295-0248

This, the 5th day of October, 2009.



R. Shane McLaughlin