IN THE COURT OF APPEALS OF THE
STATE OF MISSISSIPPI

NO. 2009-CA-00474

DEBRA JOEL, AS EXECUTRIX OF THE ESTATE OF JIMMY JOEL; LINDSEY MEADOR, AS TRUSTEE FOR THE JAMES J. "JIMMY" JOEL TESTAMENTARY MARITAL TRUST AND AS TRUSTEE FOR THE JAMES J. "JIMMY" JOEL FAMILY TRUST; MICHELLE A. HUMBLE, FORMERLY KNOWN AS MICHELLE A. SHACKELFORD; AND MICHAEL A. SHACKELFORD — APPELLANTS

V.

JAMES H. JOEL AND MARGARET R. JOEL — APPELLEES

ON APPEAL FROM THE
CHANCERY COURT OF THE SECOND JUDICIAL DISTRICT OF
BOLIVAR COUNTY

APPELLANTS' REPLY BRIEF

ORAL ARGUMENT REQUESTED

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NO. 2009-CA-00474

DEBRA JOEL, AS EXECUTRIX OF THE ESTATE OF JIMMY JOEL, *et al.* **APPELLANTS**

V.

JAMES H. JOEL AND MARGARET R. JOEL **APPELLEES**

ARGUMENT

I. INTRODUCTION

Before the Court are approximately 170 pages of argument by the parties to this appeal. For brevity's sake, Appellants ("Jimmy's Estate" or "Estate") will limit their Reply to the Appellees' ("Joels") 100-page Response to certain of the Joels' arguments that demand rebuttal and/or clarification.[1]

The Joels would have this Court find that a confidential relationship can be found under circumstances in which the claimants are indisputably competent to make important decisions on their own, they had a lawyer with whom they could have consulted, they had made numerous real estate purchases before, they do not claim to

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[1] In so limiting their Reply, Jimmy's Estate does not in any way mean to imply that the statements and/or arguments made by the Joels that are not specifically addressed herein have merit. In fact, the Estate takes issue with many of the statements of fact made by the Joels and the slant the Joels put on the facts in this case. It will not address them one by one, however. To do so would take more pages than is allowed for a reply. The Estate will, instead, call to the Court's attention a few that go to the heart of the case and/or which reveal the Joels' distortion of the evidence, testimony, and record as a whole.

The Estate also disputes the numerous accusations by the Joels that it made incorrect and/or inaccurate statements of fact and law in the Estate's Brief. Jimmy's Estate stands by its statements and representations, the correctness and accuracy of which is readily apparent upon objective review of the Record, and, for this reason, in addition to our wish to avoid burdening the Court with further voluminous briefing, the Estate will not address each and every such accusation. Jimmy's Estate will instead rely upon its initial Brief, which speaks for itself.

have been dominated or unduly influenced in making their real estate decision, and the deed, which they were shown at the time and which they had in their possession since August of 2001, was clear and unambiguous. The Joels' litany of things that this case is "about" (see Response at pp. 1-3) can, and must, be boiled down to one paramount fact on which their entire case is based: Jimmy Joel was the Joels' son. This is not, however, a sufficient basis under Mississippi law for either finding the existence of confidential relationship, or imposing a constructive trust.

Given the Joels' failure to present substantial evidence to support a finding of either a confidential relationship or abuse, without which a constructive trust cannot be imposed under Mississippi law, this case is, at most, a case for reformation of a deed based upon an alleged misrepresentation that occurred and accrued in 2001, over six (6) years prior to the filing of the lawsuit. The Joels' claim is thus barred by the three-year statute of limitations.

II. THE DEED WAS CLEAR AND THE JOELS RECEIVED A COPY OF THE DEED

A most glaring omission by the Joels in their brief was their failure to acknowledge their own admission that they knew they were purchasing a life estate, rather than fee simple title, prior to the closing (RE 16, 18, 41-42; TT 14, 16, 22, 74 & 84; R 954-55); that they were shown the warranty deed involved herein ("Deed") at the closing in August of 2001 ("Closing") (TT 71-72, 156-57; R 480-81); that they received a copy of the filed Deed within a couple of days of the Closing (TT 135), and the Deed clearly provided in the simplest terms possible[2] that the Joels were only purchasing a life estate and that Jimmy was the

2 Mr. Joel testified at trial that the terms were, in fact, so easily understood that his son Mike, with only his high school education and absolutely no experience in real estate or legal matters, immediately recognized that his parents purchased a life estate and that Jimmy was the remainderman. (RE 4-5; TT 27-28)

remainderman. (RE 3) This is not a case where Jimmy, the Joels' attorney Lindsey Meador, his paralegal Margie Prescott, Jimmy's wife Debbie, or anyone else attempted to hide from the Joels the fact that they were purchasing a life estate in the house involved herein ("Avery Street Property" or "Property") or that Jimmy was the sole remainderman. The Joels had multiple opportunities and ample time to address any alleged misunderstanding on their part as to these matters before the statute of limitations period ran in 2004. Just as clear and unambiguous contracts are binding upon the contracting parties and are enforced according to their terms, so too should the clear and unambiguous Deed that was accepted by the Joels.

III. THE CONFIDENTIAL RELATIONSHIP THRESHOLD AND EVIDENTIARY STANDARD

As set forth in detail in the Estate's original Brief ("Brief"), a constructive trust is not an appropriate remedy for correcting bad business decisions. (Brief at p. 63) A constructive trust may only be imposed if a confidential relationship is found to exist between the parties, and then only if that relationship was abused by one of the parties to the detriment of the other. (See citations to authority in Appellants' Brief, pp. 33-36) This is a well established rule that this Court and the Mississippi Supreme Court have consistently applied and enforced for many, many years. (*See id.*)

The Joels argue that the cases relied upon by Jimmy's Estate are inapplicable to this case because the confidential relationship requirement common to constructive trust cases involving both will disputes and inter vivos transfers, has a different meaning and applicability depending on the type of action involved. (Response pp. 57-64) They also point to language that has been carried over from case to case for decades which suggests that in inter vivos transfer actions the confidential relationship requirement is only one of many bases for creating a constructive trust, and that the factors ("Factors")

applied in determining the existence of a confidential relationship in will disputes need not be applied in inter vivos transfer actions. (*See id.*) What the Joels fail to recognize, however, is that these cases, even when using broad language about other bases for imposing constructive trust, almost invariably based their constructive trust holding on a finding of a confidential relationship. *See, e.g, McNeill v. Hester*, 753 So. 2d 1057, 1064-65 (Miss. 2000). Indeed, the Mississippi Supreme Court in *McNeil* held, after first quoting language dating back to the 1950s and before regarding the numerous bases cited by the Joels for creating a constructive trust, **that a chancellor "must [find] that there was a confidential relationship, . . . plus substantial credible evidence [of its] abuse" in order to properly impose a constructive trust in favor of the claimant.** *Id.* (emphasis added). *See also* citations to authority in Brief at p. 33; *Cole v. Chevron USA, Inc.*, 554 F. Supp. 2d 655, 671-72 (S.D. Miss. 2007) (holding that a confidential relationship is a necessary element to establish a constructive trust under Mississippi law) (citing *McNeil*, 753 So.2d at 1064; *Braddock Law Firm, PLLC v. Becnel*, 949 So. 2d 38, 48 (Miss. Ct. App. 2006)); *Eisenberg v. Grand Bank for Savings, FSB*, 207 F. Supp. 2d 553, 557 (S.D. Miss. 2002) (holding that there can be no constructive trust imposed under Mississippi law without a confidential relationship plus abuse thereof) (citing *McNeil*, 753 So. 2d at 1064; *Davidson*, 667 So. 2d 616).

Further, the Joels ignore and fail to acknowledge or address that: (1) in recent years, Mississippi courts have applied and enforced a much more rigorous standard in finding the existence of a confidential relationship, and (2) in this regard, this Court and the Mississippi Supreme Court have set forth specific factors ("Factors") for a chancellor to use in both will disputes and inter vivos transfer cases in determining whether a confidential relationship exists. *See, e.g.*, citations to authority in Brief at pp. 35-36; *Estate*

of Laughter v. Williams, – So.3d –, 2009 WL 3030969, *5-6 (Miss. September 24, 2009); *Estate of McCorkle v. Beeson*, – So.3d –, 2009 WL 2999174, *4 (Miss. Ct. App. September 22, 2009); *Last Will and Testament of Kistler*, – So.3d –, 2009 WL 1121089, *2 (Miss. Ct. App. April 28, 2009). The chancellor in this case ("Chancellor") did not address these Factors in his Findings of Fact and Conclusions of Law, which is reversible error in and of itself. (Brief at p. 36) Further, when the Factors are applied to the undisputed evidence in this case, it is clear that the Chancellor erred in finding that a confidential relationship existed as between Jimmy and the Joels. (*See id.* at pp. 36-39) To the contrary, the evidence from Mr. Joel himself showed that the Joels were completely independent in their daily lives. (*See id.*)

The Joels also seem to argue that the requirements for a confidential relationship are somehow lesser in this case than in a will contest. (See, e.g., Response at pp. 56-57) This is not supported by the law: the Factors to be considered in finding a confidential relationship are identical, regardless of whether the determination is being made in a dispute involving a will or an *inter vivos* transfer. *Compare In re Estate of Summerlin*, 989 So. 2d 466, 477-78 (Miss. Ct. App. 2008) (applying Factors to determine existence of confidential relationship in constructive trust case involving an *inter vivos* transfer, and finding none despite testimony regarding close and loving familial relationship, trust, and physical dependency) *with In re Estate of Lane*, 930 So. 2d 421, 426 (Miss. Ct. App. 2005) (applying Factors to determine existence of confidential relationship in constructive trust case involving a will dispute, and finding none despite evidence of close family relationship, given lack of substantial evidence showing the son to have exerted a dominant influence over his father). *See, also*, 6 MS Prac. Encyclopedia MS Law § 55:9 "Confidential Relationship" (surveying Mississippi law regarding the factors to be

considered in determining the existence of a confidential relationship in *inter vivos* transfer cases) (citations omitted).

Regardless, the Joels' position violates common sense and good public policy in a case like this where Jimmy died (after the three (3) year statute of limitations had expired, but prior to the filing of this suit), and thus was not available to testify as to the alleged representations he made to his father about the legal effect of a life estate. Common sense dictates that the requirement of clear and convincing, corroborated evidence of a confidential relationship is just as important in this case as in a will contest. Given Jimmy's death prior to the filing of this lawsuit, there is no practical or functional difference between the two.

Despite the foregoing, the Joels still argue that Mr. Joel's testimony that he "trusted" Jimmy with regard to his alleged statement as to the legal effect of a life estate on a will was a sufficient basis for imposing a constructive trust in this case. In doing so, the Joels ignored and failed to address the clear case law in *inter vivos* transfer cases that the oral testimony of the proponent of a constructive trust is to be received only with caution, and that courts should be most reluctant to engraft a trust by parol on the legal title of real estate. *See, e.g., Harris v. Armstrong,* 98 So. 2d 463, 467 (Miss. 1957) (affirming denial of constructive trust in *inter vivos* transfer case where parol evidence by the claimant was the primary evidence on which he based his constructive trust claim). *See also* 8 MS Prac. Encyclopedia MS Law § 73:2 "Constructive trusts" (stating rule under Mississippi law) (citing *Coney v. Coney,* 163 So. 2d 692 (Miss. 1964); *Conner v. Conner,* 119 So. 2d 240 (Miss. 1960)).

In this case, no one but Mr. Joel (the proponent of the trust and, thus, not a disinterested witness) testified as to the alleged misrepresentation made by Jimmy prior

to the Closing, and this parol evidence of an alleged misrepresentation is the sole basis on which the Joels filed suit against Jimmy's Estate. (Brief at pp. 17-18 & 43-44) Clearly, such self-serving self-interested evidence is not sufficient, especially when Jimmy was not available to deny the alleged misrepresentation, explain his side of the story, or provide context regarding the statement he allegedly made to the Joels.

IV. JIMMY'S ALLEGEDLY SUPERIOR KNOWLEDGE WAS NOT A VALID BASIS FOR THE CHANCELLOR'S DECISION TO IMPOSE A CONSTRUCTIVE TRUST IN THIS CASE[3]

The Joels stated in their Response that Jimmy "professed to have a knowledge of the law superior to the [Joels]" and "induc[ed] Mr. and Mrs. Joel to rely on his representations" regarding the legal effect of a life estate versus fee simple ownership. (Response at pp. 7-8) As shown by the Estate in its Brief, there is no evidence that Jimmy ever made such a profession. (Brief at p. 53 (quoting TT 116)) Nor was there any evidence that, based on his experience in buying, building, and selling houses, that Jimmy knew more about property law or the legal effect of life estates than any other lay person with a twelfth grade education who had bought and sold houses. (*See id.*) For that matter, the Joels did not present any evidence that Jimmy knew that they had wills in August of 2001, much less knowledge on Jimmy's part as to terms of their individual wills. The alleged statement (assuming such a statement was made) by Jimmy as to whether a life estate, in general, has the legal effect of altering or negating a will, was nothing anything more than that – a general statement that was truly and

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[3] The legal and factual requirements for finding that a confidential relationship exists and for imposing a constructive trust are set forth in detail in the Appellants' Brief and will not be fully addressed herein. Jimmy's Estate would therefore refer the Court to pages 33-36 of its Brief.

accurately answered the question allegedly posed by the Joels. (Brief at pp. 58-60) The purchase of a life estate does not affect or render void an otherwise valid will. (*See id.*)

Regardless, a constructive trust cannot be imposed under Mississippi law based on a misrepresentation, even if proved.[4-5] *See, e.g., Saulsberry v. Saulsberry*, 78 So. 2d 758 (Miss. 1955) (relied upon by the Joels and setting forth fraud, but NOT misrepresentation, as a proper basis for creating a constructive trust, assuming all other requirements for the creation of a constructive trust have been proven, *e.g.*, the existence of a confidential trust). Likewise, any claim the Joels may have had to set aside the Deed based upon Jimmy's alleged misrepresentations is barred by the three year statute of limitations found at section 15-1-49 of the Mississippi Code, which ran long before they filed their lawsuit on which this appeal is based. *See, e.g., McWilliams v. McWilliams*, 970 So. 2d 200, 202-04 (Miss. Ct. App. 2007) (finding applicable statute of limitations for claim of misrepresentation to be three-year period provided for in section 15-1-49 of the Mississippi Code). *See also Fletcher v. Lyles*, 999 So. 2d 1271, 1277 (Miss. 2009) (finding same).

Even if Jimmy had known, or professed to know, everything there was to know about life estates, however, such knowledge and/or such a profession cannot serve as

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4 Jimmy's Estate asserted and argued in the lower court against reformation of the Deed based on misrepresentation, among other things, and has not waived the statute of limitations defense as the Joels incorrectly argued in their Response. (Response p. 50) The Joels contrary contention is without merit.

5 This is best illustrated by the *McWilliams* case. *See* 970 So. 2d at 202. In that case, John McWilliams, an attorney, drafted legal documents for execution by his brother Frank, who was an admitted drug addict and who was in jail at the time for burglary. *See id.* at 201-02. The effect of the documents was to set up an irrevocable trust, over which John would be the trustee, and to transfer title to real property to Frank's minor son. *See id.* Frank filed suit more than six (6) years later to set aside the *inter vivos* transfer and trust on ground that John misrepresented the legal effect of the documents as facilitating Frank's release from jail and admittance to a drug rehab center. *See id.* at 202. The supreme court affirmed the lower court's dismissal of the case on statute of limitations grounds, despite the defendant brother's status and knowledge as a lawyer and the admitted vulnerability of the plaintiff. Likewise, in this

the basis for finding a confidential relationship between Jimmy and the Joels. The relevant question is not whether Jimmy knew more about buying and selling houses than the Joels, but whether the Joels were competent to decide for themselves whether and under what terms they would purchase an interest in the Avery Street Property.

As set forth in detail in the Estate's Brief (at pp. 32-39), for a "'confidential relationship to exist between two persons, there must be a relation in which one person is in a position to exercise a dominant influence upon the other.'" *Estate of Parker*, 13 So. 3d 877, 880 (Miss. Ct. App. 2009) (quoting *Tatum v. Barrentine*, 797 So. 2d 223, 230 (Miss.2001)). In other words, the party against whom the trust is sought must have exercised his dominant influence in a way that overmastered the weaker party's will. (*See* Brief at pp. 34-35)

In this case, all of the evidence, including the Joels' own admissions, showed the Joels to be competent to make their own decisions, and anything but weak – that they, in fact, were fiercely independent and made their own decision as to whether and under what circumstances to purchase the Avery Street Property, without any attempt by Jimmy to unduly influence them to do so. (Brief pp. 37-39) The undisputed evidence showed that none of the Factors established for determining whether a relationship constituted a confidential relationship for constructive trust purposes were met in this case. (*See id.*) Quoting Mr. Joel's testimony in this regard:

> Q: You would agree that back in 2001, it's fair to say that you and Mrs. Joel were not dependent upon your son, Jimmy Joel, for your every day living.
>
> A: That's right.

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case, the Chancellor should have dismissed the Joels' claims against Jimmy's Estate as misrepresentation claims that were barred by the three-year statute of limitations.

Q: That would extend to making decisions about finances, is that correct?

A: Right.

Q: That would extend to making decisions about what type of purchases you made, correct?

A: Right.

(*Id.*, quoting TT 58; RE 37)

The chancellor erred in finding on these, as well as the other grounds discussed in detail in the Estate's Brief (including the lack of any evidence showing abuse by Jimmy of his relationship with his parents, the Joels), that a confidential relationship existed between the Joels and Jimmy, and thus erred by imposing a constructive trust in this case.

V. THE STANDARD OF REVIEW – DE NOVO

With regard to the standard of review this Court should apply to the "Chancellor's" findings of fact, the Joels do not argue that the Chancellor made any independent findings whatsoever. (Response pp. 36-39) They argue instead that, because the Chancellor made some inconsequential word changes to the ***34 pages*** of proposed findings of fact and conclusions of law they submitted after trial, this Court should defer to the Chancellor and leave "his" findings alone. The Joels do not explain, however, why the Chancellor's actions in this case should be treated any differently than the chancellor in *Smith v. Orman*, a case cited by Jimmy's Estate in which this Court refused to give the chancellor deference, even though he had made substantive additions and changes to the proposed findings of fact submitted in that case. (Response p. 39 (citing *Smith v. Orman*, 822 So. 2d 975 (Miss. Ct. App. 2002).)

In the *Smith* case, it was admitted that "much [of the appellee's submission] was adopted verbatim" by the chancellor in his findings of fact and conclusions of law. (*See id.* at p. 978) The chancellor in that case did make significant changes to the appellee's proposed findings, though, including the addition of an entire paragraph, and made an independent finding as to the amount of damages to be awarded (doubling that proposed by the appellee). (*See id.*) On appeal, this Court cited the rule that, "[w]here the chancellor adopts, verbatim, findings of fact . . . prepared by a party to the litigation, . . . the evidence is subjected to heightened scrutiny," and held that the chancellor's substantive additions and changes "do not affect the rule. . . ." (*See id.*)

The Joels in this case were only able to cite to a few changes by the Chancellor that, even with the Joels' exaggerated descriptions of each, were extremely minor – literally a word here and there. None of the changes pointed out by the Joels were substantive and the Chancellor added nothing of his own that can be compared to the paragraph added by the chancellor in *Smith*, or the independent finding as to the damages to be awarded in that case. The "Chancellor's" findings of fact should not be given deference in this case, but should be scrutinized by the Court and reversed.

As for the degree of scrutiny to be applied, the Joels appear to argue that the "heightened scrutiny" to which this Court referred in *Smith v. Orman* is something less than the *de novo* review requested by Jimmy's Estate in its Brief. (Response p. 39 (stating that the Chancellor's findings "are not subject to heightened review").) They cite no cases to support their argument, however, and failed to acknowledge the caselaw cited by Jimmy's Estate in which the Mississippi Supreme Court found that a chancellor's verbatim adoption of a party's proposed findings of fact required it to "review the record *de novo*." *Brooks v. Brooks*, 652 Sol. 2d 1113, 1118 (Miss. 1995) (emphasis added). Further,

the Joels, on this point again elevate form or substance. Regardless of terminology, Mississippi case law is clear that the normal deference given a chancellor's findings of fact is not applicable when the chancellor's opinion is a wholesale, virtually verbatim adoption of the Plaintiffs' counsel's words and findings, as is the case herein. In such cases, an appellate court is to review the evidence anew *(i.e., de nova)*.

Based on the above-quoted findings in *Smith* and *Brooks* by this Court and the Supreme Court, respectively, and as set forth in detail in the Estate's Brief, the Chancellor's findings of fact should not be given deference in this case. This Court should, instead, review the record *de novo*.

VI. THE *ALLGOOD V. ALLGOOD* CASE

To the extent that the Joels argue that this appeal should be dismissed because Jimmy's Estate failed to address the *Allgood v. Allgood* case, which they characterize as an independent ground on which the Chancellor found for them in the court below (Response pp. 60-61), the Joels are wrong. The *Allgood* case presents issues addressed elsewhere in the Chancellor's findings and conclusions on which he ultimately based his ruling in favor of the Joels. These include common trust as a basis on which a confidential relationship may be found, the parent-child relationship as one on which a constructive trust may be imposed, and unjust enrichment in the context of constructive trusts. *See Allgood v. Allgood*, 473 So. 2d 416, 420-21 (Miss. 1985) (finding that a "trust arises by implication from the relationship *and* conduct of the parties. . . ." (emphasis added)). The Estate addressed each and every issue presented in the *Allgood case* in its Brief.[6] (*See*

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[6] The Joels' argument in this regard once again puts form over substance. Jimmy's Estate was not required to pattern its headings and subheadings on those included by the Joels in the Findings of Fact and Conclusions of Law on which this appeal is based. The Joels' decision to address the *Allgood* case with a subheading of its own in their Proposed Findings of Fact and

Brief pp. 40-45 (addressing the parent-child relationship as insufficient to serve as the basis for a confidential relationship); pp. 45-47 (addressing common trust); and p. 48 (addressing unjust enrichment))

Regardless, and despite the inordinate number of pages the Joels devoted in their Response to the *Allgood* case, the case is factually and legally distinguishable from the case at bar and thus could not properly serve as a basis for imposing a constructive trust herein. In *Allgood*, both of the parties (a mother and son) testified, and the court found that the mother had expressly agreed to purchase the property in question and hold it in trust for the son until he moved back to Mississippi from out of state. The *Allgood* court merely enforced this "trust" agreement (*i.e.*, the agreement to act as a trustee), the existence of which was corroborated by evidence that the son paid all the payments on the bank note, paid all the property taxes, and retained the proceeds from a timber sale and a mineral lease. The Supreme Court gave deference to the chancellor's findings in *Allgood* insofar as the chancellor found that a "trust" relationship existed based on the prior oral agreement between mother and son.

By contrast, in this case, Jimmy could not testify because the Joels waited until after Jimmy had died to file suit against him, the Chancellor is not entitled to deference with regard to the findings and conclusions on which this appeal are based, and there was no claim by the Joels or testimony that Jimmy agreed to be their trustee with regard to any aspect of the real estate transaction involved. To the contrary, the only prior agreement in this case was the verbal agreement (to which Mr. Joel admitted) that the deal was to be a life estate deal, which in turn necessitates a remainder interest. As

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Conclusions of Law (a subheading and subsection the Chancellor adopted verbatim) did not and could not transform what were merely redundant findings and conclusions into a separate

such, after first pleading that the life estate language in the Deed was a mistake and claiming ignorance on their part as to the life estate deal, the Joels then ended up amending their complaint to assert knowledge of the life estate deal, but claiming it to be the product of an alleged misrepresentation by Jimmy.

The undisputed evidence at trial showed that the Joels were presented with a copy of the warranty deed ("Deed')by which they took a life estate in the Avery Street Property at closing, received a copy of the duly filed Deed within days of the closing for their own records, and the life estate/remainder language in the Deed was clear, unambiguous, and simply put in a way that one without any knowledge of such matters could understand (as the Joels' son Mike did when he first read the Deed more than three (3) years after the closing). The *Allgood* case is not factually similar and is neither controlling nor persuasive under the circumstances presented in this case.

VII. The Value of the Avery Street Property

The Joels present in their Response exactly the same arguments they presented to the Chancellor, and which he adopted verbatim in his Findings of Fact and Conclusions of Law. They argue that the market value of fee simple title in the Avery Street Property was $94,500, and, for this reason, that Jimmy was selfishly taking advantage of his parents by only selling them a life estate. They also used this purported value to argue that Jimmy's Estate was not entitled to any of the relief requested in its counterclaim against the Joels because Jimmy had no equity in the Property. They also argue that Jimmy's Estate was not entitled to reimbursement for any of the repairs and improvements Jimmy made to the house because they were gifts, and not investments in Jimmy's future interest in the Property. As set forth in detail in the Estate's Brief (pp. 65-70), the Joels' arguments in these regards cannot withstand

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and independent ground by virtue of its isolation. Any argument to the contrary is without merit.

this Court's scrutiny and the Chancellor's findings and holdings in these regards should be reversed.

The Chancellor's adoption of the Joels' proposed findings on this point, and the Joels' continued use of these arguments when the undisputed evidence is directly contrary thereto, show the weakness of their position, and reveal their arguments to be nothing more than a distortion of the record to allow them to back out of a deal they agreed to in 2001 but now wish they hadn't.

The undisputed evidence at trial showed that:

- the contract price of $94,500 did not in any way represent the fair market value of the Avery Street Property in 2001, but was instead the price negotiated by Jimmy at the time of the 1999 sale to the Shackelfords as a buy-back option, which the Shackelfords exercised in 2001 by entering into a contract with Jimmy to sell him the Property for $94,500, rather than sell it for $115,000 to $120,000 as recommended by Jimmy and Debbie based on her market analysis of the Property (Brief at pp. 5-6);
- the Estate's expert real estate appraiser, whom the Chancellor accepted as an expert in his field, testified that, while the definition of "market value" may be the price a willing buyer will pay a willing seller, the contract price at which Jimmy agreed to buy-back the Avery Street Property in 2001 did not represent the market value of the Property at that time, but was instead the buy-back price to which Jimmy and the Shacklefords agreed two (2) years earlier (Brief at pp. 6-7);

- the appraised value of the Avery Street Property in August of 2001 was $115,000, or approximately $20,000 more than the buy-back price Jimmy negotiated with the Shackelfords in 1999 (Brief at pp. 5-7);
- Jimmy and Debbie would not have sold the Joels' fee simple title to the Avery Street Property, given its greatly appreciated value in 2001 and their equity in the Property, which Jimmy originally built and sold (Brief at p. 7); and
- with one exception as documented by Jimmy, himself, Jimmy's repairs and improvements to the Property after August of 2001 were NOT gifts to the Joels, but were investments in Property Jimmy expected to return to his rental inventory. (Brief at p. 9)

The Joels arguments to the contrary were not credible as proposed findings of fact and conclusions of law and are not credible now. And, by adopting verbatim the Joels' proposed findings and conclusions in this regard, the Chancellor erred.

This point is an important one, for it shows the wrongness of the Joels' assertion and the Chancellor's finding that Jimmy did not put "one penny" in the Avery Street Property. To the contrary, he put $20,000 of equity into the Property, and for this reason, he retained a remainder interest therein. This, in turn, also lays to rest the Joels' assertion that Jimmy schemed to deprive his siblings Mike and Ann of their testamentary interests in the Property. The deal did not provide for Mike and Ann to hold remainder interests because they were the ones who had not put "one penny" toward the purchase of, or maintenance and renovations to, the Avery Street Property.

The evidence showed that the Joels could not afford to pay $115,000 to purchase fee simple title in the Avery Street Property, if this had been an option, and the undisputed evidence showed that Jimmy and Debbie would NOT have sold them fee

simple interest in the Avery Street Property for $94,500 because to do so would essentially have been a $20,000 gift to the Joels. Instead, a deal was struck that would allow the Joels to purchase a life estate for the buy-back price of $94,500, with the remainder going to Jimmy in recognition of, and to protect, the equity he and Debbie had in the Property as of August, 2001. Only long after the fact (more than six (6) years) did the Joels decide that they no longer wanted the deal.

In a related sense, the Joels attempted to argue in their Response that Jimmy somehow misled the Joels' banker Jerry Bullock ("Bullock"), by virtue of his not signing the deed of trust along with the Joels, and by not ensuring that Mr. Bullock knew of the life estate. (Response at pp. 10-11) This is a totally spurious argument. Jimmy may have been present when Mr. Joel met with Bullock to discuss the loan the Joels would take out to purchase the life estate, but it was the Joels who were borrowing money from Bullock, not Jimmy. As such, it was the Joels who were required to signed the loan documents, not Jimmy, and it was the Joels' duty to ensure that Bullock knew they were purchasing a life estate. As for the deed of trust, it was Bullock's duty to ensure that his bank had proper security, not Jimmy's. Bullock could have, and should have, done this by making proper inquiry. The record is devoid of any misrepresentation by Jimmy to Bullock or the bank, despite the Joels' attempt to create this impression in their brief.

CONCLUSION

Mississippi law does not allow courts to undo a bad deal long after the deal was closed upon by the parties by using the allegations purporting to show the deal to have been bad as justification for imposing a constructive trust. That is exactly what happened in this case, though, and it is what the Joels ask this Court to uphold on appeal. Mississippi law does not, and should not, allow purchasers to walk away from

contracts for the purchase of real property, or escape their title obligations in this way. Thus, the Chancellor's ruling in favor of the Joels on the constructive trust question should be reversed and rendered. To the extent this Court finds that the Chancellor did not err in imposing a constructive trust in this case, the Chancellor erred in dismissing the Estate's counterclaim, and his ruling in favor of the Joels should be reversed and rendered.

For these reasons, and for all of the reasons set forth in the Appellants' Brief, Appellants hereby request that this Court reverse the chancellor's ruling, and render a ruling in favor of Appellants.

THIS, the 30th day of December, 2009.

Respectfully submitted,
DEBRA JOEL AND LINDSEY MEADOR

BY: _____

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CERTIFICATE OF SERVICE

I, Charles E. Ross, one of the attorneys for Appellants Debra Joel and Lindsey Meador, do hereby certify that I have this day filed this, their Reply, with the clerk of this Court, and have served a copy of this Brief via United States Mail, postage prepaid, on the following persons at the addresses shown:

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The Honorable William Willard
Post Office Box 22
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CHANCERY COURT JUDGE FOR THE
SECOND JUDICIAL DISTRICT OF
BOLIVAR COUNTY, MISSISSIPPI

This the 30th day of December, 2009.

Charles E Ross

CHARLES E. ROSS