

IN THE SUPREME COURT OF MISSISSIPPI

AND

THE MISSISSIPPI COURT OF APPEALS

No. 2009-CA-00756

A-1 PALLET COMPANY

APPELLANT

VS.

CITY OF JACKSON, MISSISSIPPI

APPELLEE

**APPEAL FROM THE CHANCERY COURT
OF HINDS COUNTY, MISSISSIPPI**

**BRIEF FOR APPELLANT
A-1 PALLET COMPANY**

ORAL ARGUMENT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

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SO CERTIFIED this the 6th day of November, 2009.



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I. STATEMENT OF THE ISSUES

The issues presented for review are:

1. Whether the Trial Court committed reversible error when it declined to exercise subject matter jurisdiction over A-1 Pallet Company's Motion for Permanent Injunction, Motion to Amend Motion for Permanent Injunction and Amended Motion for Permanent Injunction.
2. Whether the Trial Court committed reversible error when it refused to exercise pendant subject matter jurisdiction over the tort claims asserted by A-1 Pallet Company against the City of Jackson, Mississippi in its Amended Motion for Permanent Injunction.
3. Whether the Trial Court committed reversible error when it failed to treat A-1 Pallet Company's Motion to Amend Motion for Permanent Injunction as a motion to amend the pleadings and correspondingly relate A-1 Pallet Company's Amended Motion for Permanent Injunction back to the original filing date of A-1 Pallet Company's Petition for Temporary Restraining Order and Permanent Injunction, or, at a minimum, the original filing date of its Motion for Permanent Injunction.
4. Whether the Trial Court committed reversible error when it dissolved the Temporary Restraining Order in favor of A-1 Pallet Company with regard to the Property in question.

II. STATEMENT OF THE CASE

(A) **Course of Proceedings and Disposition in the Court Below**

On June 19, 2007, the City Council of Jackson, Mississippi ordered that the real property (the “Property”) owned by Appellant, A-1 Pallet Company (“A-1”), and located at 1000 North Mill Street, Jackson, Mississippi, be demolished.¹ On June 20, 2007, A-1 filed its Petition for Temporary Restraining Order and Permanent Injunction against the Appellee, the City of Jackson, Mississippi (“City of Jackson”).² That same day, the Trial Court granted A-1’s Petition for Temporary Restraining Order and Permanent Injunction and temporarily restrained the City of Jackson from taking any action against, or interfering with, the Property or business of A-1.³ Thus, the Trial Court’s Temporary Restraining Order enjoined the City of Jackson from executing its plan to demolish the Property.⁴

On June 28, 2007, the Trial Court extended its previously issued Temporary Restraining Order against the City of Jackson and did so again on July 20, 2007, this time extending the Temporary Restraining Order into perpetuity.^{5 6} The Trial Court’s Order from July 20, 2007 prompted A-1 to file its Motion for Permanent Injunction, Motion to Amend Motion for Permanent Injunction, and Amended Motion for Permanent Injunction, *seriatim*, each of which is more specifically described below.

On November 17, 2008, the City of Jackson filed its Motion to Dismiss and Dissolve Temporary Restraining Order.⁷ Said Motion was heard by the Trial Court on April 14, 2009.⁸ After being briefed by both parties, and hearing arguments from the same, the Trial Court took matters under advisement and ultimately handed down a Memorandum Opinion and Order on May 4, 2009.⁹ In its Memorandum Opinion and Order, the Trial Court made several dispositive findings of fact and conclusions of law from which A-1 takes this Appeal.

¹ See Record, Vol. 1, pgs. 40 and 104; See also Record Excerpts at Tab 8.

² See Record, Vol. 1, pgs. 1-10; Record Excerpts at Tab 3.

³ See Record, Vol. 1, pg. 12; Record Excerpts at Tab 4.

⁴ See Record, Vol. 1, pg. 12; Record Excerpts at Tab 4.

⁵ See Record, Vol. 1, pg. 17; Record Excerpts at Tabs 5.

⁶ See Record, Vol. 1, pgs. 38-39; Record Excerpts at Tab 7.

⁷ See Record, Vol. 1, pgs. 86-95; Record Excerpts at Tab 12.

⁸ See Record, Vol. 3, Pgs. 1-24; Record Excerpts at Tab 16.

⁹ See Record, Vol. 2, Pgs. 151-156; Record Excerpts at Tab 2.

In its Memorandum Opinion and Order, the Trial Court first determined that it lacked jurisdiction over the entirety of action brought by A-1, claiming that Mississippi's circuit courts hold the exclusive jurisdiction to hear appeals from rulings of the Jackson City Council.¹⁰

Second, the Trial Court determined that it could not exercise pendant subject matter jurisdiction over A-1's tort claims against the City of Jackson, which had been asserted in A-1's Amended Motion for Permanent Injunction in conjunction with A-1's claims in equity against the City of Jackson, all of which arose from the same conduct, transaction and/or occurrence.¹¹

Third, the Trial Court held that the claims for tort damages asserted in A-1's Amended Motion for Permanent Injunction were not properly before the Court for adjudication, since the same were presented through A-1's Amended Motion for Permanent Injunction and not through an amended version of its Petition for Temporary Restraining Order and Permanent Injunction.¹²

Finally, the Trial Court concluded that A-1 no longer needed the Temporary Restraining Order with regard to the Property against the City of Jackson, finding that the Jackson Historic Preservation Commission's vote not to destroy the Property obviated A-1's need for injunctive relief against the City of Jackson.

A-1 appeals the Trial Court's findings of fact and conclusions of law on all four (4) of the aforesaid issues.

(B) Statement of Relevant Facts

This case arises from a series of actions taken by the City of Jackson, and certain elected officials thereof, against A-1 with regard to the Property. At all relevant times, the Property was zoned by the City of Jackson as I-2, Heavy Industrial.¹³ Real property that is zoned I-2, Heavy Industrial may be used for a variety of activities, including, but not limited to, a recycling plant.¹⁴ In compliance with the City of Jackson's zoning regulations and ordinances, A-1 operated a wooden pallet recycling plant on the Property. By letter dated May 23, 2007, A-1 received notice from the City of Jackson that a hearing had been scheduled for June 19, 2007 at 10:00 a.m. to determine whether the Property was in such a state of uncleanness as to be a menace to public health.¹⁵ Two days later, on May 25, 2007, A-1 received a second notice advising it that

¹⁰ See Record, Vol. 2, Pg. 151-156; Record Excerpts at Tab 2.

¹¹ See Record, Vol. 2, pgs. 151-156; Record Excerpts at Tab 2.

¹² See Record, Vol. 2, pgs. 151-156; Record Excerpts at Tab 2.

¹³ See Record, Vol. 1, pgs. 15-16.

¹⁴ See Record, Vol. 1, pg. 26.

¹⁵ See Record, Vol. 1, pgs. 15-16.

the hearing would be held on June 19, 2007 at 6:00 p.m.¹⁶ The notices, however, contained substantially different allegations with regard to the type and degree of clean-up that would be required by the City of Jackson as to the Property in order to avoid demolition.¹⁷

The notice dated May 23, 2007 described the work to be done on the Property as “[c]utting of grass & weeds and removing of trash and debris, remove heavy vegetation on front of building at gate. Remove deteriorated pallets, scrap metal and inoperable equipment....”¹⁸ The description from the May 25, 2007 notice read “[d]emolish and remove remains of structures or bldgs, cut grass and weeds and remove trash, debris, steps, foundations and driveway, scrap metal and deteriorated pallets....”¹⁹

Despite a request for a continuance of the scheduled hearing by A-1’s counsel, a hearing was held before the Jackson City Council, in the absence of A-1’s former counsel, Thomas Starling, Esq., on June 19, 2007 at 6:00 p.m., wherein false and unsubstantiated claims were asserted as to the condition of the Property.²⁰ The result of the hearing was a vote by the Jackson City Council to demolish the Property.²¹

A-1 filed its Petition for Temporary Restraining Order and Permanent Injunction against the City of Jackson the next day, June 20, 2007.²² That same day, the Trial Court entered its Order in favor of A-1 thereby temporarily restraining the City of Jackson from interfering with A-1’s Property and business operations.²³ As noted above, the Trial Court’s Order establishing a temporary restraining order against the City of Jackson was twice extended, once on June 28, 2007 and again on July 20, 2007.^{24 25} In each instance where the Trial Court extended the Temporary Restraining Order at issue, the Trial Court determined that it had “full jurisdiction over both parties and subject matter herein.”^{26 27}

On July 24, 2007, a press release was issued and filed by former Mayor of the City of Jackson, Frank E. Melton.²⁸ The press release publicly announced that “[t]he Jackson City

¹⁶ See Record, Vol. 1, pgs. 15-16.

¹⁷ See Record, Vol. 1, pgs. 5 and 8.

¹⁸ See Record, Vol. 1, pg. 5.

¹⁹ See Record, Vol. 1, pg. 8.

²⁰ See Record, Vol. 1, pg. 10.

²¹ See Record, Vol. 1, pg. 40; Record Excerpts at Tab 8.

²² See Record, Vol. 1, pgs. 1-10; Record Excerpts at Tab 3.

²³ See Record, Vol. 1, pg. 12; Record Excerpts at Tab 4.

²⁴ See Record, Vol. 1, pgs. 17-18; Record Excerpts at Tab 5.

²⁵ See Record, Vol. 1, pgs. 38-39; Record Excerpts at Tab 7.

²⁶ See Record, Vol. 1, pgs. 17-18; Record Excerpts at Tab 5.

²⁷ See Record, Vol. 1, pgs. 38-39; Record Excerpts at Tab 7.

²⁸ See Record, Vol. 1, pg. 40; Record Excerpts at Tab 8.

Council ha[d] approved the demolition of the A-1 Pallet Company located at 1000 North Mill Street. . . .”²⁹ In its press release, the City of Jackson, through its Mayor at the time, Frank E. Melton, since deceased, publicly defamed A-1 by calling A-1’s operations “a serious environmental issue. . . .”

As evidenced by the proof presented to the Trial Court, by and through the exhibits attached to A-1’s Motion for Permanent Injunction, the City of Jackson’s statements with regard to A-1 could not have been more false or injurious. Such is evidenced not only by the twice extended Temporary Restraining Order issued by the Trial Court in favor of A-1 but also by the subsequent reversal of the Jackson City Council’s decision to demolish the Property by the Jackson Historic Preservation Commission.³⁰

As a result of the City of Jackson’s publicity of false statements with regard to A-1 and the condition of the Property, A-1 not surprisingly filed a Motion to Amend Motion for Permanent Injunction against the City of Jackson so that it could include various tort claims against the City of Jackson in addition to the claims in equity that A-1 had already made in its Petition for Temporary Restraining Order and Permanent Injunction and Motion for Permanent Injunction.³¹ The tort claims asserted by A-1 in its Amended Motion for Permanent Injunction included, but were not limited to, civil rights violations under 42 U.S.C. § 1983, defamation, abuse of process, malicious prosecution, intentional interference with contract, intentional interference with business relations or prospective advantage, injurious falsehood or trade libel and/or negligence.³² The effect of the amended version of A-1’s Motion for Permanent Injunction was to add claims for damages at law against the City of Jackson, in conjunction with the already existing claims at equity against the City of Jackson.³³

As of the filing date of A-1’s Motion to Amend Motion for Permanent Injunction, October 2, 2008, the City of Jackson had not made a response to A-1’s initial Motion for Permanent Injunction.³⁴ Such a response was not made by the City of Jackson until October 13, 2008.³⁵ Therefore, A-1 filed its Motion to Amend Motion for Permanent injunction before a responsive pleading to A-1’s original Motion for Permanent Injunction had been made by the

²⁹ See Record, Vol. 1, pg. 40; Record Excerpts at Tab 8.

³⁰ See Record, Vol. 1, pgs. 91-95.

³¹ See Record, Vol. 1, pgs. 44-53 ; Record Excerpts at Tab 9.

³² See Record, Vol. 1, pgs. 66-85 ; Record Excerpts at Tab 10.

³³ See Record, Vol. 1, pgs. 47-53.

³⁴ See Record, Vol. 1, pgs. 44-53.

³⁵ See Record, Vol. 1, pgs. 56-63.

City of Jackson. A-1 filed its Amended Motion for Permanent Injunction on November 14, 2008.³⁶

On November 17, 2008, the City of Jackson filed its Motion to Dismiss and Dissolve Temporary Injunction, which was noticed for hearing on March 27, 2009.³⁷ Said hearing was later re-noticed for April 14, 2009. It was the April 14, 2009 hearing from which the Trial Court handed down its Memorandum Opinion and Order. It is from the Trial Court's final Memorandum Opinion and Order that A-1 takes this Appeal.^{38 39}

³⁶ See Record, Vol. 1, pgs. 66-85; Record Excerpts at Tab 12.

³⁷ See Record, Vol. 1, pgs. 86-95.

³⁸ See Record, Vol. 2, pgs. 151-156; Record Excerpts at Tab 2.

³⁹ Prior to April 14, 2009, the City of Jackson had made no formal response to A-1's initial Petition for Temporary Restraining Order and Permanent Injunction. See Record, Vol. 2, pgs. 118-120.

III. SUMMARY OF THE ARGUMENT

This appeal presents four (4) issues for review. They are:

ISSUE 1: Whether the Trial Court committed reversible error when it declined to exercise subject matter jurisdiction over A-1 Pallet Company's Motion for Permanent Injunction, Motion to Amend Motion for Permanent Injunction and Amended Motion for Permanent Injunction.

Under Chapter 70 of the City Ordinances of Jackson, Mississippi, also known as the Historic Preservation Ordinance, no building or structure within a historic district may be demolished or altered until a Certificate of Appropriateness ("COA") is obtained and approved by the Historic Preservation Commission. See Jackson City Ordinance 70-81. Any person aggrieved by an action of the Historic Preservation Commission, pertinent to an application for a COA, may appeal such action to the Jackson City Council. See Jackson City Ordinance 70-82(7). Therefore, the Jackson City Council maintains only appellate jurisdiction over action involving the demolition of structures within a historic district.

In the case at bar, the City of Jackson attempted to demolish A-1's Property by and through an order of the Jackson City Council. However, prior to entering such an order the City of Jackson failed to first obtain, or otherwise seek, a COA from the Historic Preservation Commission; although the City of Jackson ultimately requested a COA, such request was denied. Thus, the Jackson City Council, possessing only appellate jurisdiction over such matters, lacked subject matter jurisdiction to issue the subject order for demolition of A-1's Property. As such, the order and/or decision of the Jackson City Council for demolition of the Property was an absolute nullity from the outset and had no force or effect whatsoever. See Roberts v. Roberts, 866 So.2d 474 (Miss. Ct. App. 2003).

The City of Jackson alleges that the decision of the Jackson City Council ordering the demolition of A-1's Property should have been appealed to the Hinds County Circuit Court, pursuant to Miss. Code Ann. § 11-51-75; however, the City of Jackson's position is without merit in that A-1 was not required to appeal to the Hinds County Circuit Court an order or decision of the Jackson City Council possessing no force or effect. It is the law in Mississippi that a void judgment or decision may be attacked directly or collaterally, anywhere, and at any time. See Roberts, 866 So.2d at 477. Thus, the Trial Court committed reversible error when it concluded that it lacked subject matter jurisdiction to adjudicate the claims asserted by A-1 in its

Petition for Temporary Restraining Order and Permanent Injunction and its subsequent Motion for Permanent Injunction and Amended Motion for Permanent Injunction.

ISSUE 2: Whether the Trial Court committed reversible error when it refused to exercise pendant subject matter jurisdiction over the tort claims asserted by A-1 Pallet Company against the City of Jackson, Mississippi in its Amended Motion for Permanent Injunction.

Chancery courts have jurisdiction over all matters and cases conferred to them by the Mississippi Constitution. Miss. Code Ann. § 9-5-81 (2002). Generally, such matters and cases involve issues of equity; however, once a Chancery Court acquires equity jurisdiction it may proceed to complete adjudication of all of the disputed questions materially involved in the entire transaction and award all appropriate legal and equitable remedies, including punitive damages. Issaquena Warren Counties Land Co. v. Warren County, 996 So.2d 747 (Miss. 2008); Re/Max Real Estate Partners, Inc. v. Lindsley, 840 So.2d 709 (Miss. 2003); and Shaw v. Owen, 90 So.2d 179 (Miss. 1956). Where there is one issue of exclusive equity cognizance, i.e. injunctive relief, such an issue brings the entire case within the subject matter jurisdiction of the Chancery Court. Lindsley, 840 So.2d at 712. For this reason, the Trial Court erred when it refused to exercise pendant subject matter jurisdiction over the tort claims asserted by A-1 against the City of Jackson, claims that had been made in conjunction with A-1's initial claims for injunctive relief.

ISSUE 3: Whether the Trial Court committed reversible error when it failed to treat A-1 Pallet Company's Motion to Amend Motion for Permanent Injunction as a motion to amend the pleadings and correspondingly relate A-1 Pallet Company's Amended Motion for Permanent Injunction back to the original filing date of A-1 Pallet Company's Petition for Temporary Restraining Order and Permanent Injunction, or, at a minimum, the original filing date of its Motion for Permanent Injunction.

On July 20, 2007, A-1 filed its Petition for Temporary Restraining Order and Permanent Injunction. Before there was ever a formal answer filed by the City of Jackson to A-1's Petition, A-1 filed its Motion for Permanent Injunction and Amended Motion for Permanent Injunction, clarifying and adding to the claims asserted by A-1 against the City of Jackson in the initial Petition for Temporary Restraining Order and Permanent Injunction.

Rule 15 of the Mississippi Rules of Civil Procedure provides that amendments to pleadings "relate back" to the date of the original pleading if the additional claim or defense

arises out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading. Miss. R. Civ. P. 15. As to the assertion of new claims against existing parties, such will relate back, avoiding a potential statute of limitations problem, if such new claims arose from the same conduct, transaction, or occurrence set forth in the original pleading. Bedford Health Properties, LLC v. Estate of Williams, 946 So.2d 335 (Miss. 2006).

Here, A-1 originally sued the City of Jackson for a Temporary Restraining Order and Permanent Injunction with regard to the Property that the City of Jackson had voted to demolish. A-1 then filed its initial Motion for Permanent Injunction. With no responsive pleading having yet been filed by the City of Jackson as to either of these pleadings, A-1 filed its Amended Motion for Permanent Injunction on November 14, 2008. See Am. Bankers Ins. Co. v. Booth, 830 So.2d 1205, 1214 (Miss.2002) (quoting Arnona v. Smith, 749 So.2d 63, 66 (Miss.1999) (“[w]e look to the content or substance of a pleading over its form.”))).

ISSUE 4: Whether the Trial Court committed reversible error when it dissolved the Temporary Restraining Order in favor of A-1 Pallet Company with regard to the Property in question.

Since the Trial Court’s entry of its second Order Extending Temporary Restraining Order, on July 20, 2007, the circumstances involved in this dispute have not changed and A-1’s need for injunctive relief against the City of Jackson with regard to the Property still exists.

On July 20, 2007, the City of Jackson voted to demolish A-1’s Property. To date, the City of Jackson still seeks to demolish A-1’s Property, although perhaps more covertly than overtly. The intent of the City of Jackson has been evidenced in a recent article in the Jackson Free Press wherein former Mayor Frank Melton, both individually and as Mayor of Jackson, Mississippi, stated that A-1 “doesn’t belong in that neighborhood,” that he was “adamant about having it closed down,” and that he wanted to have it “taken down and demolished.”¹

Although a new Jackson Mayor has since taken office, A-1 cannot rest assured that former Mayor Melton’s plan and intentions will not be actively attempted by the City of Jackson. The City of Jackson has never calmed A-1’s fears through any reassuring gestures towards A-1 and its Property. The only gesture received by A-1 from the City of Jackson has been an active effort on the latter’s behalf to dissolve the Temporary Restraining Order that has been in place and avoid having a permanent injunction issued as to the Property.

¹ See Record, Vol. 2, pgs. 149-150.

Due to the irreparable harm that A-1 faces if it loses its injunctive protection against the City of Jackson, the Trial Court should not have dissolved the Temporary Restraining Order at issue and committed a grave abuse of discretion in doing so. For this reason, the Trial Court's decision with regard to this issue should be overturned.

IV. ARGUMENT

ISSUE 1: Whether the Trial Court committed reversible error when it declined to exercise subject matter jurisdiction over A-1 Pallet Company's Motion for Permanent Injunction, Motion to Amend Motion for Permanent Injunction and Amended Motion for Permanent Injunction.

The City of Jackson alleges that the decision of the Jackson City Council ordering the demolition of A-1's Property should have been appealed to the Hinds County Circuit Court, pursuant to Miss. Code Ann. § 11-51-75; however, the City of Jackson's position is without merit in that A-1 was not required to appeal to circuit court an order or decision of the Jackson City Council possessing no force or effect. It is the law in Mississippi that a void judgment or decision may be attacked directly or collaterally, anywhere, and at any time. See Roberts v. Roberts, 866 So.2d 474, 477 (Miss. Ct. App. 2003). In fact, as further discussed below, a void decision or judgment for lack of jurisdiction cannot even support an appeal under many states' laws and, arguably, under Mississippi law.

In the instant case, the Jackson City Council's decision to demolish the Property was a complete nullity and of no force or effect whatsoever against A-1, since the City Council did not have original subject matter jurisdiction to decide this particular question. Chapter 70 of the City Ordinances of Jackson, Mississippi, also known as the Historic Preservation Ordinance, expressly states that no building or structure within a historic district may be demolished or altered until a Certificate of Appropriateness ("COA") is obtained and approved by the Jackson Historic Preservation Commission. See Jackson City Ordinance 70-81. Any person aggrieved by an action of the Historic Preservation Commission, pertinent to an application for a COA, may appeal such action to the Jackson City Council. See Jackson City Ordinance 70-82(7). Therefore, the City of Jackson has been conferred only appellate jurisdiction over actions involving the demolition of structures within a historic district.

In the case at bar, the City of Jackson attempted to demolish A-1's Property by and through an order of the Jackson City Council, which order came as a result of the City of Jackson's unlawful supersession of the authority and jurisdiction of the Jackson Historic Preservation Commission. Prior to making its decision to demolish the Property, the City of Jackson failed to first obtain, or otherwise seek, a COA from the Historic Preservation Commission; although the City of Jackson ultimately requested a COA, such request was denied. Thus, the Jackson City Council, possessing only appellate jurisdiction over such matters, lacked

the original subject matter jurisdiction to order the demolition of A-1's Property. As such, the order and/or decision of the Jackson City Council for demolition of the A-1 Property was an absolute nullity from the outset and never had any force or effect whatsoever against A-1. See Roberts v. Roberts, 866 So.2d 474 (Miss. Ct. App. 2003).

While no Mississippi case squarely addressing the appealability of a void judgment or order has been found, numerous other state courts have decided the issue and held that judgments, orders or decrees that are absolutely void are not appealable and the remedy to such an order should be pursued by motion in the lower court to set aside or vacate the order or by seeking appropriate relief against the void order's execution. See Harris v. Cook, 2006 WL 1579599 (Ala. Civ. App. 2006); Keiser v. Zoning Com'n of Town of Redding, 771 A.2d 959 (Conn. 2001), certification granted, cause remanded, 791 A.2d 568 (Conn. 2002); Levert v. University of Illinois at Urbana/Champaign ex rel. Bd. of Trustees, 857 So.2d 611 (La. Ct. App. 1st Cir. 2003) (further citation omitted); In re Estate of Pittsenbarger, 136 S.W.3d 558 (Mo. Ct. App. W.D. 2004); Farm Credit Bank of Columbia v. Van Dorp, 431 S.E.2d 222 (1993); Wyoming Health Services, Inc. v. Deatherage, 773 P.2d 156 (Wyo. 1989); see also Faith Properties, LLC v. First Commercial Bank, 988 So.2d 485, 492 (Ala. 2008) ("*[A] void judgment will not support an appeal.*") (emphasis added).

This rule has also been applied to a judgment, decree, or order which is void for want of jurisdiction. See Alabama Public Service Commission v. McGill, 71 So.2d 12 (Ala. 1954); Simmons v. Smith, 79 So.2d 504 (La. Ct. App. 1st Cir. 1955); Peters v. United Consumers Club, 786 S.W.2d 192 (Mo. Ct. App. E.D. 1990).

Here, A-1 did what the aforementioned states have deemed proper; it sought injunctive relief against the void decision or judgment of the Jackson City Council in a Mississippi Chancery Court. A-1 immediately took action to seek appropriate relief against the execution of the Jackson City Council's void decision to demolish the Property. As demonstrated by the Mississippi Court of Appeals case of Roberts v. Roberts, and the outside case law noted above, the course of action through which A-1 chose to protect its Property and business was lawful and in no way a violation of Miss. Code Ann. § 11-51-75, a statute which does not control this case since the Jackson City Council's order was void due to the City Council's lack of original subject matter jurisdiction.

Chancery courts in Mississippi have jurisdiction over all matters and cases conferred to them by the Mississippi Constitution. Miss. Code Ann. § 9-5-81 (2002). Such matters

unquestionably include equitable claims for injunctive relief of the type sought by A-1 in this case. Constitution of the State of Mississippi § 159 (1890). The key goal of a Mississippi Chancellor is to make certain that equity is accomplished, which requires fairness to both parties. See Stewart v. Stewart, 2009-MS-0211.122 (Miss. Ct. App. 2009). Here, it cannot be said that the Trial Court ensured fairness to A-1 when it declined to exercise the inherent subject matter jurisdiction expressly conferred upon it by the Mississippi Constitution. If A-1 could not turn to a Mississippi chancery court for injunctive relief from the void order of the Jackson City Council, where could it turn? Again, the City of Jackson would have this Court believe that the only proper avenue for A-1 to seek relief from the order of the Jackson City Council was in the Hinds County Circuit Court; however, as demonstrated above this isn't so.

In Roberts v. Roberts, the Mississippi Court of Appeals held that, as a matter of law, no judgment exists when a court enters a judgment but lacks subject matter jurisdiction over the case. See Roberts, 866 So.2d at 477. This is exactly the scenario in the instant case with regard to the decision of the Jackson City Council to demolish the Property. Pursuant to Chapter 70 of the Jackson City Ordinances, subject matter jurisdiction over the demolition of properties located within a historic district is conferred upon the Jackson Historic Preservation Commission, not the Jackson City Council. Chapter 70 of the City Ordinances of Jackson, Mississippi expressly states that no building or structure within a historic district may be demolished or altered until a COA is obtained and approved by the Historic Preservation Commission. See Jackson City Ordinance 70-81. Any person aggrieved by an action of the Jackson Historic Preservation Commission, pertinent to an application for a COA, may appeal such action to the Jackson City Council. See Jackson City Ordinance 70-82(7). Therefore, the Jackson City Council possesses only limited appellate jurisdiction over actions involving the demolition of structures within a historic district. In that light, the City of Jackson's argument that A-1 must have appealed the Jackson City's Council's void decision to a Mississippi circuit court, under Miss. Code Ann. § 11-51-75, is fundamentally incorrect.

Under Roberts, A-1 was free to attack the void order of the Jackson City Council in a Mississippi chancery court. See Roberts, 866 So.2d at 477. This is so in that a void judgment or decision may be attacked directly or collaterally, anywhere, and at any time. Roberts, 866 So.2d at 477. As the Trial Court in this case had proper subject matter jurisdiction over A-1's Petition for Temporary Restraining Order and Permanent Injunction, it committed reversible error in holding otherwise. The Trial Court's declination to exercise subject matter jurisdiction over A-

l's claims against the City of Jackson, therefore, constituted reversible error and must be overturned.

ISSUE 2: Whether the Trial Court committed reversible error when it refused to exercise pendent subject matter jurisdiction over the tort claims asserted by A-1 Pallet Company against the City of Jackson, Mississippi in its Amended Motion for Permanent Injunction.

It is well settled law in Mississippi that once a chancery court acquires equity jurisdiction over a cause it may proceed to complete adjudication of all of the disputed questions materially involved in the entire transaction and award all appropriate legal and equitable remedies, including punitive damages. Issaquena Warren Counties Land Co. v. Warren County, 996 So.2d 747 (Miss. 2008); Re/Max Real Estate Partners, Inc. v. Lindsley, 840 So.2d 709 (Miss. 2003); and Shaw v. Owen, 90 So.2d 179 (Miss. 1956). Where there is one issue of exclusive equity cognizance, i.e. A-1's Petition for Temporary Restraining Order and Permanent Injunction, such issue brings the entire case within the subject matter jurisdiction of the chancery court. Lindsley, 840 So.2d at 712. For this reason, the Trial Court erred when it refused to exercise pendent subject matter jurisdiction over the tort claims asserted by A-1 against the City of Jackson.

In the instant case, the Trial Court's subject matter jurisdiction attached upon the filing of A-1's Petition for Temporary Restraining Order and Permanent Injunction, which requested equitable relief on June 20, 2007. By virtue of pendent jurisdiction, the Trial Court was authorized and empowered to entertain all of the issues involved in this action. Such would include all of A-1's tort claims and requests for damages.

As to A-1's claims under 42 U.S.C. § 1983, a municipality may be held liable for violating another person's federally protected rights. Monell v. Department of Social Services of New York, 436 U.S. 658 (1978). Along with federal courts, state courts are permitted to adjudicate such claims under 42 U.S.C. § 1983. City of Jackson v. Powell, 917 So.2d 59 (Miss. 2005). This too was a misconception of law by the Trial Court.⁴³

⁴³ **The Court:** That '93 – what did you file, a civil rights action?

Mr. Flechas: It was a civil rights action – a federal action that was also thrown in with the – in the amended motion for permanent injunction.

The Court: Well, I don't have jurisdiction to hear a federal action.

Mr. Flechas: Well, your Honor, I would disagree. . . . See Record, Vol. 3, pg. 9; Record Excerpts at Tab 17.

Further, A-1 was not required to exhaust any administrative remedies prior to bringing its action under 42 U.S.C. § 1983. East Mississippi State Hospital v. Callens, 892 So.2d 800 (Miss. 2005). Thus, the Trial Court erred in stating in its Memorandum Opinion and Order that “[i]t should be noted that Chancery Court lacks jurisdiction to hear damage claims. . . .”⁴⁴

It is clear that the Trial Court erred in failing to recognize that A-1’s initial Petition for Temporary Restraining Order and Permanent Injunction provided an original, independent and surviving basis of chancery court jurisdiction, a basis upon which the Trial Court should have exercised pendent subject matter jurisdiction over A-1’s related tort claims against the City of Jackson.

Here, the Jackson City Council’s decision or judgment to demolish the Property was void as a matter of law for lack of jurisdiction. Hence, no valid judgment from the Jackson City Council existed from which A-1 could have been forced to take an appeal in a Mississippi circuit court, pursuant to § 11-51-75. See Roberts, 866 So.2d at 477 (a void judgment or decision may be attacked directly or collaterally, anywhere, and at any time).

Despite the lack of force behind the City Council’s decision, A-1 nonetheless faced a very real need for injunctive relief against the City of Jackson with regard to the Property. Such has been clearly evidenced by the press release issued by former Jackson Mayor, Frank E. Melton, deceased, on June 24, 2007.⁴⁵ Taking the former Mayor at his word, his behavior during that period of time, the then pending criminal charges against him involving the illegal destruction of another privately owned building, and his comments contained within Vol. 71, No. 26 of the *Jackson Free Press*, A-1 reasonably feared that it would suffer immediate and irreparable harm to its Property and business if it didn’t seek injunctive relief from a Mississippi chancery court.⁴⁶

Since § 11-51-75 does not dictate jurisdiction in this case, A-1 was free to seek such injunctive relief against the City of Jackson in the Trial Court. Upon the filing of A-1’s Petition for Temporary Restraining Order and Permanent Injunction on June 20, 2007, the Trial Court was conferred original subject matter jurisdiction and, likewise, pendent subject matter

⁴⁴ See Record, Vol. 2, pg. 154; Record Excerpts at Tab 2.

⁴⁵ See Record, Vol. , pg. 40; Record Excerpts at Tab 8.

⁴⁶ See Record, Vols. 1 and 2, , pgs. 40, 85, and 149-150.

jurisdiction over every claim in equity and at law that A-1 held against the City of Jackson with regard to the Property.⁴⁷

“A claim invokes the court’s pendent jurisdiction if it ‘arise[s] out of the same transaction or occurrence as the principal claim or, as others put it, out of a common nucleus of operative fact.’” See RE/Max Real Estate Partners v. Lindsley, 840 So.2d 709, 712 (Miss.2003) (recognizing that “where there is in a case one issue of exclusive equity cognizance, such an issue can bring the entire case within subject matter jurisdiction of the chancery court and that court may proceed to adjudicate all legal issues as well.”); Tillotson v. Anders, 551 So.2d 212, 213 (Miss.1989) (“Where there appears from the face of the well-pleaded complaint an independent basis for equity jurisdiction, our chancery courts may hear and adjudge law claims.”).

In its Memorandum Opinion and Order, the Trial Court concluded that because A-1 no longer needed an injunction against the City of Jackson with regard to the Property, there was no other independent basis for equity jurisdiction.⁴⁸

Contrary to the Trial Court’s Memorandum Opinion and Order, it matters not that the Trial Court choose to summarily dispose of the equitable issues that originally established subject matter jurisdiction in the chancery court, since once an independent basis for subject matter jurisdiction had been established in the Trial Court it remained a viable basis of jurisdiction upon which the chancery court should have exercised pendent subject matter jurisdiction over the remaining legal claims of A-1 against the City of Jackson. See ERA Franchise Systems, Inc. v. Mathis, 931 So.2d 1278, 1284 (Miss. 2006) (J. Graves, dissenting) (“The majority takes the position that because some of Mathis’ claims are legal in nature, all of his claims must be adjudicated in circuit court. This position ignores prior decisions of this Court which allow chancery courts to adjudicate pendent legal claims *once* original equity jurisdiction has been established.”) (emphasis added). In McLendon v. Mississippi State Highway Commission, an *en banc* Mississippi Supreme Court stated:

It has long been settled in this state, as one of the pre-eminent principles of equity procedure, that the Chancery Court having taken jurisdiction on any one ground of equity, will thereupon proceed in the one suit to a complete adjudication and settlement of every one of all the several disputed questions materially involved in the entire transaction, awarding by a single comprehensive decree all appropriate remedies, legal as well as equitable, although all the other questions involved

⁴⁷ See Record, Vol. 1, pg. 1-10; Record Excerpts at Tab 3.

⁴⁸ See Record, Vol. 2, pg. 155; Record Excerpts at Tab 2.

would otherwise be purely of legal cognizance; and in this state, the rule goes even to the extent that if the ground of equity fail under the proof, the cause may still be retained to a complete final decree on the remaining issues although the latter present legal subjects only and the decree would cover only legal rights and grant none but legal remedies,-- that having taken jurisdiction the power of the court to administer full relief is limited by nothing but justice itself.

McClendon v. Mississippi State Highway Commission, 38 So.2d 325, 205 Miss. 71, 78 (Miss. 1949).

Since the Trial Court erroneously ignored the original basis of subject matter jurisdiction in this case and used the disposition of A-1's equitable claims to negate the Court's pendent jurisdiction over A-1's remaining legal claims, the Trial Court's determination that it lacked the ability to exercise pendent jurisdiction over said claims constitutes reversible error worthy of reversal.

ISSUE 3: Whether the Trial Court committed reversible error when it failed to treat A-1 Pallet Company's Motion to Amend Motion for Permanent Injunction as a motion to amend the pleadings and correspondingly relate A-1 Pallet Company's Amended Motion for Permanent Injunction back to the original filing date of A-1 Pallet Company's Petition for Temporary Restraining Order and Permanent Injunction, or, at a minimum, the original filing date of its Motion for Permanent Injunction.

Rule 15 of the Mississippi Rules of Civil Procedure provides that amendments to pleadings "relate back" to the date of the original pleading if the additional claim or defense arises out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading. Miss. R. Civ. P. 15. As to the assertion of new claims against existing parties, such will relate back, avoiding a potential statute of limitations issue, if such new claims arose from the same conduct, transaction, or occurrence set forth in the original pleading. Bedford Health Properties, LLC v. Estate of Williams, 946 So.2d 335 (Miss. 2006). With regard to claims against new parties, such claims will relate back to the date of the original pleading if: (1) the claims against the newly named defendant arise from the same conduct, transaction, or occurrence as set forth in the original pleadings, (2) the newly named defendant received notice of the original pleading so as not to be prejudiced in defending the action, and (3) the newly named defendant knew, or should have known that, but for a mistake as to the identity of the proper party, the action would have been brought against the party. Womble By and Through Havard on Behalf of Womble v. Singing River Hosp., 618 So.2d 1252 (Miss. 1993). As to the

third prong, a claim against a new defendant will relate back even if the plaintiff knew the identity of the newly named defendant but did not know that he or she possessed a viable cause of action against said defendant. Id. at 1253.

Here, A-1 sued the City of Jackson for a Temporary Restraining Order and Permanent Injunction on June 20, 2007. With no responsive pleading yet on file by the City of Jackson, A-1 filed an initial Motion for Permanent Injunction on July 13, 2007, and an Amended Motion for Permanent Injunction on November 14, 2008.⁴⁹ The additional claims asserted by A-1 against the City of Jackson in its Amended Motion for Permanent Injunction should have related back to the original date of filing of A-1's Petition for Temporary Restraining Order and Permanent Injunction. This is so in that the claims against newly named defendant Frank E. Melton, since deceased, in both his individual and former official capacity, arose out of the same conduct, transaction, or occurrence set forth in A-1's initial Petition and Motion for Permanent Injunction. Timely notice was received by the City of Jackson and former Mayor Melton, as evidenced by the latter's various comments and statements to the Jackson City Council and media.

Finally, but for the mistaken belief that A-1 did not possess a viable cause of action against former Mayor Melton, said defendant would have been named as a party defendant in both the original Petition and Motion.

For these reasons, the Trial Court committed reversible error when it refused to relate the causes of action asserted by A-1 in its Amended Motion for Permanent Injunction back to the date of filing of A-1's initial Petition for Temporary Restraining Order and Permanent Injunction, filed on June 20, 2007, or, at a minimum, the date on which A-1's Motion for Permanent Injunction was filed, July 13, 2007.

The Trial Court also erred in concluding that the filing of an amended Petition, as opposed to the Amended Motion for Permanent Injunction, was necessary for A-1 to properly bring its additional causes of action before the Trial Court. Such an argument is clearly inconsistent with Mississippi law. See Am. Bankers Ins. Co. v. Booth, 830 So.2d 1205, 1214 (Miss.2002) (quoting Arnona v. Smith, 749 So.2d 63, 66 (Miss.1999) (“[w]e look to the content or substance of a pleading over its form.”))).

⁴⁹ The City of Jackson did not file an Answer to A-1's Petition for Temporary Restraining Order and Permanent Injunction until April 14, 2009. See Record, Vol. 2, pgs. 118-120; Record Excerpts at Tab 13.

ISSUE 4: Whether the Trial Court committed reversible error when it dissolved the Temporary Restraining Order in favor of A-1 Pallet Company with regard to the Property in question.

A temporary restraining order may be issued pursuant to Rule 65 of the Mississippi Rules of Civil Procedure, so as to prevent immediate and irreparable harm or injury. Miss. R. Civ. P. 65. In addition, such temporary restraining order may be extended into perpetuity upon the consent of the party against whom such an order is directed. Id.

In the instant case, a temporary restraining order was issued by this Court on June 20, 2007, prohibiting the City of Jackson from taking any action against the A-1 Property or interfering with A-1's business operations. On June 28, 2007, an Order Extending Temporary Restraining Order was entered by this Court upon agreement of the parties and, on July 20, 2007, the Trial Court once again extended the Temporary Restraining Order, this time into perpetuity. It must also be noted that in both of the above referenced Orders the Trial Court recognized that it had full subject matter and personal jurisdiction over the parties and issues involved in this matter.⁵⁰

Since the entry of the Order Extending Temporary Restraining Order, on July 20, 2007, the circumstances involved in this dispute have not changed and the need to substitute the Temporary Restraining Order with a permanent injunction still exists. On July 20, 2007, the City of Jackson sought to demolish A-1's Property. To date, A-1 has no reason to believe that the City of Jackson has abandoned its intent to demolish A-1's Property. This position has been made clear in a recent article from the Jackson Free Press wherein former Mayor Frank Melton, deceased, stated that A-1 "doesn't belong in that neighborhood," that he was "adamant about having it closed down," and that he wanted to have it "taken down and demolished."⁵¹

Although a new Jackson Mayor has taken office since those statements were made, A-1 cannot rest assured that former Mayor Melton's plan and intentions will not be actively pursued by the City of Jackson in the future. The City of Jackson has certainly not calmed A-1's fears of this possibility through any reassuring gestures. In fact, at the hearing of this matter on April 14, 2009, the City of Jackson would not even give a definitive answer as to whether it would seek to demolish the Property at a later date through a reversal of the Jackson Historic Preservation

⁵⁰ See Record, Vol. 1, pgs. 17-18 and 38-39; Record Excerpts at Tab 5 and 7.

⁵¹ See Record, Vol. 2, pgs. 149-150; Record Excerpts at Tab 14.

Commission's decision.⁵² The only gestures made by the City of Jackson to A-1 have been statements to the public evidencing the City of Jackson's desire to tear the Property down.

The Trial Court rested its decision to dissolve the Temporary Restraining Order on the fact that the City of Jackson has not sought a reversal of the Jackson Historic Preservation Commission's ruling in favor of A-1; however, there has been nothing but an active effort on behalf of the City of Jackson to avoid the continuation of the Temporary Restraining Order that was in place and the substitution of a permanent injunction in its place.⁵³ The City of Jackson has taken the position that the Temporary Restraining Order has served its purpose of protecting A-1's Property, however, the City of Jackson, through its counsel at the time Kenneth Grigsby, Esq., made it clear that the City of Jackson hasn't ruled out the possibility of beginning new proceedings aimed at the demolition of the A-1 Property.⁵⁴

There is simply no need for A-1 to have to spend time and money defending new proceedings by the City of Jackson to demolish the A-1 Property and there is no reason to believe that the City of Jackson won't initiate such proceedings in the future.

Given the City of Jackson's history with the unlawful demolition of private property, the Trial Court should not have caused A-1 to become vulnerable to that possibility by dissolving the Temporary Restraining Order at issue. In doing so, the Trial Court committed an abuse of its discretion and, for this reason, should be reversed.

⁵² See Record, Vol. 3, pgs. 10-11; Record Excerpts at Tab 17.

⁵³ See Record, Vol. 3, pgs. 10-11; Record Excerpts at Tab 17.

⁵⁴ See Record, Vol. 3, pgs. 10; Record Excerpts at Tab 17.

V. CONCLUSION

As to the first issue presented in this Appeal, the City of Jackson alleges that the decision of the Jackson City Council ordering the demolition of A-1's Property should have been appealed to the Hinds County Circuit Court, pursuant to Miss. Code Ann. § 11-51-75. The City of Jackson's argument, however, is fundamentally incorrect since A-1 was not required to appeal to circuit court a void order or decision of the Jackson City Council. It is the law in Mississippi that a void judgment or decision may be attacked directly or collaterally, anywhere, and at any time. Thus, the Trial Court committed reversible error when it held that it lacked subject matter jurisdiction to adjudicate the claims asserted by A-1 in its Petition for Temporary Restraining Order and Permanent Injunction and in its subsequent Motion for Permanent Injunction and Amended Motion for Permanent Injunction. The Trial Court's decision with regard to this first issue should, therefore, be reversed.

As to the second issue presented in this Appeal, chancery courts have jurisdiction over all matters and cases conferred to them by the Mississippi Constitution. Such matters and cases generally involve issues of equity; however, once a chancery court acquires equity jurisdiction it may proceed to complete adjudication of all of the disputed questions materially involved in the entire transaction and award all appropriate legal and equitable remedies, including punitive damages. Where there is one issue of exclusive equity cognizance, i.e. injunctive relief, such an issue brings the entire case within the subject matter jurisdiction of the Chancery Court.

When a chancery court has taken jurisdiction on any one ground of equity, it must thereupon proceed in one suit to a complete adjudication and settlement of every one of all the several disputed questions materially involved in the entire transaction, even to the extent that if the ground of equity fails under the proof the cause may still be retained to a complete final decree on all the issues. This is so even if the remaining issues present legal subjects only, the decree would cover only legal rights and grant none but legal remedies. For this reason, the Trial Court erred when it refused to exercise pendant subject matter jurisdiction over the tort claims asserted by A-1 against the City of Jackson, claims that had been made in conjunction with A-1's initial claims for injunctive relief and which established subject matter jurisdiction in the Trial Court. The Trial Court's decision with regard to this second issue should, therefore, be reversed.

As to the third issue presented in this Appeal, Rule 15 of the Mississippi Rules of Civil Procedure provides that amendments to pleadings "relate back" to the date of the original pleading if the additional claim or defense arises out of the conduct, transaction, or occurrence

set forth or attempted to be set forth in the original pleading. Miss. R. Civ. P. 15. As to the assertion of new claims against existing parties, such will relate back, avoiding a potential statute of limitations problem, if such new claims arose from the same conduct, transaction, or occurrence set forth in the original pleading. Here, A-1 originally sued the City of Jackson for a Temporary Restraining Order and Permanent Injunction with regard to the Property that the City of Jackson voted to demolish. A-1 then filed its original Motion for Permanent Injunction.

With no responsive pleading having yet been filed by the City of Jackson, as to either of these pleadings, A-1 filed its Amended Motion for Permanent Injunction on November 14, 2008. The additional claims asserted by A-1 against the City of Jackson in the Amended Motion for Permanent Injunction should have related back to the original filing date of A-1's Petition for Temporary Restraining Order and Permanent Injunction, or, at a minimum, the original date of filing for A-1's Motion for Permanent Injunction. This is so in that the claims asserted in A-1's Amended Motion for Permanent Injunction arose out of the same conduct, transaction, or occurrence set forth in the initial Petition and initial Motion for Permanent Injunction filed by A-1.

The Trial Court committed reversible error when it refused to relate the causes of action asserted by A-1 in its Amended Motion for Permanent Injunction back to the filing date of its initial Petition for Temporary Restraining Order and Permanent Injunction, or, at a minimum, the date on which A-1 filed its first Motion for Permanent Injunction. The Trial Court also erred in holding that the filing of an amended Petition, as opposed to a Motion, was necessary for A-1 to properly bring its additional causes of action before the Trial Court. Such an argument is clearly inconsistent with Mississippi law. The Trial Court's decision with regard to this third issue should, therefore, be reversed.

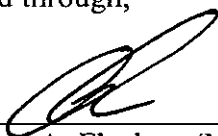
As to the fourth and final issue presented in this Appeal, the circumstances involved in this dispute have not changed since the Trial Court's entry of its second Order Extending Temporary Restraining Order, on July 20, 2007, and A-1's need for injunctive relief against the City of Jackson with regard to the Property still exists. Although a new Jackson Mayor has since taken office, A-1 cannot rest assured that former Mayor Melton's plan and intentions will not be actively attempted by the City of Jackson. The City of Jackson has never calmed A-1's fears through any reassuring gestures towards A-1 and its Property. The only gesture received by A-1 from the City of Jackson has been an active effort on the latter's behalf to dissolve the

Temporary Restraining Order that has been in place and avoid having a permanent injunction issued as to the Property.

Due to the irreparable harm that A-1 faces if it loses its injunctive protection against the City of Jackson, the Trial Court should not have dissolved the Temporary Restraining Order at issue and committed a grave abuse of discretion in doing so. The Trial Court's decision with regard to this fourth issue should, therefore, be reversed.

This the 6th day of November, 2009.

Respectfully submitted,
A-1 PALLET COMPANY
By and through,


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VI. CERTIFICATE OF SERVICE


I, Eduardo A. Flechas, attorney for Appellant, do hereby certify that I have forwarded via First Class, United States Mail, postage paid, an original and three (3) copies of the Brief of Appellant, an original and three (3) copies of the Record Excerpts of Appellant to the Clerk of the Mississippi Supreme Court and Mississippi Court of Appeals and have also forwarded via First Class, United States Mail, postage paid, one (1) copy of the above and foregoing Brief of Appellant and one (1) copy of the Record Excerpts of Appellant to the following:

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The Honorable Dwayne Thomas
Chancery Court Judge of Hinds County, Mississippi
P.O. Box 686
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This the 6th day of November, 2009.



Eduardo A. Flechas, MSB# 