

Case No. 2009-CA-00878

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

**KENNETH D. SARANTHUS and LAURA M. SARANTHUS
APPELLANTS**

v.

**HEALTH MANAGEMENT ASSOCIATES, INC.,
d/b/a CENTRAL MISSISSIPPI MEDICAL CENTER
APPELLEE**

**Appeal from the Circuit Court
of the First Judicial District of Hinds County, Mississippi**

REPLY BRIEF OF THE APPELLANTS

ORAL ARGUMENT REQUESTED

Submitted by:

**DON H. EVANS, MSB [REDACTED]
Attorney for Appellants
500 East Capitol Street, Suite 2
Jackson, Mississippi 39201
Telephone Number: (601) 969-2006
Facsimile Number: (601) 353-3316**

THE SUPREME COURT OF THE STATE OF MISSISSIPPI

Case No. 2009-CA-00878

KENNETH D. SARANTHUS and LAURA M. SARANTHUS

APPELLANTS

VS.

**HEALTH MANAGEMENT ASSOCIATES, INC.,
d/b/a CENTRAL MISSISSIPPI MEDICAL CENTER**

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and/or entities 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.

- I. Kenneth Saranthus, Appellant;
- II. Laura Saranthus, Appellant;
- III. Health Management Associates, Inc., d/b/a Central Mississippi Medical Center, Appellee;
- IV. Crothall Healthcare, Inc., Trial Court Defendant;
- V. Judge Swan Yerger, Circuit Court Judge of Hinds County, Mississippi;
- VI. Honorable Don H. Evans, Attorney for Appellants;
- VII. Honorable Stephen Kruger, Attorney for Appellees, Health Management Associates, Inc., d/b/a Central Mississippi Medical Center; and
- VIII. Honorable Joshua Wiener and Honorable Alyson B. Jones, Attorneys for Crothall Healthcare, Inc.

RESPECTFULLY SUBMITTED, this the 30th day of June, 2010.

BY:



DON H. EVANS

OF COUNSEL:

DON H. EVANS, MSB #5259
Attorney for Appellants
500 East Capitol Street, Suite 2
Jackson, Mississippi 39201
Telephone Number: (601) 969-2006
Facsimile Number: (601) 353-3316

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ARGUMENT

In reply to the Appellee's brief, the appellants would like to address several issues and they are as follows:

I. THE TRIAL COURT ERRED IN GRANTING THE APPELLEES' MOTION FOR SUMMARY JUDGMENT WHEN A CONTRACTUAL ISSUE EXISTED BETWEEN CENTRAL MISSISSIPPI MEDICAL CENTER AND CROTHALL IN REGARD TO WHO HAD A DUTY TO MAINTAIN THE I-BEAM and HOIST, MAKING THE ISSUE A QUESTION FOR THE JURY.

A. A Contract Existed between Central Mississippi Medical Center and Crothall.

This case is not about contractors and subcontractors, as the Appellees would have the Court believe. The Appellants would show the main issue in this case is contractual. Furthermore, the Appellants would show that *defining* whether the I-beam and hoist in question is a "fixture" or "equipment" as detailed in the contract *is the main dispute in this case*. The Appellants would show that Central Mississippi Medical Center and Crothall entered an agreement under which Crothall would run the laundry facility owned by Central Mississippi Medical Center. Under said agreement, Crothall was responsible for maintaining equipment pertaining to the laundry facility and Central Mississippi Medical Center was responsible for maintaining the building, fixtures and "any other items not related directly to the laundry equipment." The Appellants would show, however, that the contract between Crothall and Central Mississippi Medical Center fails to define *"equipment" and/or "laundry equipment," nor does the contract specifically mention who is to maintain the subject I-beam and hoist.* (The Contract is referred to and attached to the Appellants' Response to Appellee's Motion for Summary Judgment, Volume 5 of 7 and Volume 6 of 7, pages 602-753/ more specifically, the contract is attached to the Deposition of James H. Baxter, Volume 5 of 7 and Volumes, pages 666-727, which is attached as Excerpts to the Appellant's Brief). So, the basis

question in this case is whether the hoist is equipment (making Crothall responsible for maintaining the I-beam and hoist) or a fixture (making Central Mississippi Medical Center responsible for maintaining the I-beam and hoist).

The Appellants will show that the trial of this matter will be presented to a jury as a contractual issue whereby the jury will have to decide whether the I-beam and hoist in question is equipment or a fixture. Since the Lower Court Judge ruled that this is a question for the jury, it is imperative that both Crothall and Central Mississippi Medical Center are Defendants at the trial of this matter to avoid the “empty-chair” defense and prejudicing the Appellants.

B. When the Trial Court Granted the Appellee’s Motion for Summary Judgment, the Appellants were highly prejudiced.

The Appellants would show that when Crothall filed its Motion for Summary on February 19, 2008, Crothall’s main argument was that the hoist was not equipment but a fixture, therefore making the maintenance the responsibility of Central Mississippi Medical Center. However, while the Appellants do believe the hoist to be equipment, *the trial court denied Crothall’s Motion for Summary Judgment stating that “There are genuine issues of material fact on the issue of liability,” therefore Crothall was not entitled to Summary Judgment.* (Order Denying Crothall’s Motion for Summary Judgment, Volume 5 of 7, page 601, which is attached as Excepts to the Appellant’s Brief).

While the do Appellants feel that the hoist is most likely equipment, *the issue is a question for the jury.* The court determined that a genuine issue of material fact did exist and, thus, denied Crothall’s Motion for Summary Judgment. However, the court granted the Appellee, Central Mississippi Medical Center’s Motion for Summary Judgment. This is highly prejudicial to the Appellants. If this Court does not reverse the lower court’s decision and this case is tried, the jury

will be presented with the issue of whether the hoist is equipment or a fixture. Therefore, if the jury decides in favor of the Appellants and determines the I-beam and hoist are equipment, then the Appellants will be able to obtain a verdict against Crothall. *However, if the jury decides in favor of the Appellants and determines that the I-beam and hoist is a fixture, then Central Mississippi Medical Center will not be a party to the case and the Appellants will not be able to obtain a verdict in their favor.* Therefore, the Appellants' fear is that Crothall will use the "empty-chair" defense at the trial of this matter. If the issue of whether the hoist is equipment or a fixture is a question for the jury, then both Crothall and Central Mississippi Medical Center are essential Defendants in the trial court case.

II. THE TRIAL COURT ERRED IN GRANTING THE APPELLEE'S MOTION FOR SUMMARY JUDGEMENT IN THAT A GENUINE ISSUE OF MATERIAL FACT EXISTS THAT CENTRAL MISSISSIPPI MEDICAL CENTER HAD KNOWLEDGE OF THE DANGEROUS CONDITION OF THE HOIST

A. The Trial Court erred in Granting the Appellee's Motion for Summary Judgment in that a Genuine Issue of Material Fact Exists in that Central Mississippi Medical Center Owed the Appellant a Duty to Maintain a Safe Premise and to Warn Him of Unsafe Conditions and in that Central Mississippi Medical Center had Knowledge of the Dangerous Condition of the Hoist and Failed to Correct the Problem

1. Central Mississippi Medical Center Owed a Duty to the Appellant, Kenneth Saranthus, to Maintain a Safe Premises and to Warn Him of Unsafe Conditions.

The Appellee, in its Reply Brief, try to muddy this argument by *erroneously stating* that the monorail system "...was used for transporting bags of laundry," and that "...CMMC had no knowledge that the washing machine needed repairing." *There is absolutely no truth to these statements.* Basically, the Appellee's primary argument is that Central Mississippi Medical Center did not owe a duty to the Appellant, as the owner of the premises does not have a duty to protect an

independent contractor against risks arising from or intimately connected with the work. Regardless of the Appellant's status, he was also a business invitee. Therefore, Central Mississippi Medical Center owed him the duty which the owner or occupier of a business premises owes business invitees. But, the bottom line is that whether the owner retained substantial control over work site is a question for the jury. *Coho Resources, Inc. v. Marion C. Chapman*, 913 So.2d 899, (Miss. Supreme Ct. 2005).

Furthermore, the Appellants would show that the Appellee did not know, nor should he have known, about the hidden peril lurking above him. The Appellant, Kenneth Saranthus, would refer to his Affidavit, dated March 5, 2008, which states, "At no time did anyone advise me or my co-workers that the rail did not have a stop on it, nor were there any kind of warning signs up to let me know this. *Had I looked straight up, there would have been nothing to indicate whether there was or was not a stop on the rail*, and the danger was not open and obvious to me. *I have never known a rail to not have a stop on it*, as it is required by OSHA that a stop be in place on the rail, and *I had no reason to even suspect that the trolley would run off the end of the rail.*" (Appellants' Response to Appellee's Motion for Summary Judgment, Volume 5 of 7 and Volume 6 of 7 and 602-753/ more specifically the Affidavit of Kenneth Saranthus, Volume 5 of 7, pages 608-611, all of which are attached as Excepts to the Appellant's Brief).

2. Central Mississippi Medical Center had knowledge of the dangerous condition of the hoist and failed to correct the problem and/or warn the Appellant of the dangerous condition.

The Appellants have present evidence to support that Central Mississippi Medical Center knew of the dangerous condition of the hoist, failed to correct the problem, and failed to warn the Appellant of the dangerous conditions. The following in a concise time line of events:

- The subject accident occurred on March 7, 2001, at the Crothall-run laundry facility on the property of Central Mississippi Medical Center.
- Crothall and Central Mississippi Medical Center entered a contract on February 4, 2001, for Crothall to operate the laundry facility located on the property of Central Mississippi Medical Center.
- ***Central Mississippi Medical Center ran the subject laundry facility for approximately a year before Crothall took over the laundry facility.*** (Appellants' Response to Appellee's Motion for Summary Judgment, Volume 5 of 7 and Volume 6 of 7 and 602-753/ more specifically the Deposition of James H. Baxter, Volume 5 of 7, pages 654-665, which are is attached as Excepts to the Appellant's Brief).
- The subject accident occurred approximately a month after Crothall took over the running of the laundry facility.
- At some point, either during or after Crothall's running of the laundry facility under the contract between Central Mississippi Medical Center and Crothall, ***the laundry facility was closed by Central Mississippi Medical Center.*** (Appellants' Response to Appellee's Motion for Summary Judgment, Volume 5 of 7 and Volume 6 of 7 and 602-753/ more specifically the Deposition of James H. Baxter, Volume 5 of 7, pages 654-665, which are is attached as Excepts to the Appellant's Brief).
- Upon closing of the laundry facility, ***Central Mississippi Medical Center sold the laundry equipment*** that had value and salvaged the balance, ***and cut down the monorail and hoist.*** (Appellants' Response to Appellee's Motion for Summary Judgment, Volume 5 of 7 and Volume 6 of 7 and 602-753/ more specifically the Deposition of James H. Baxter, Volume 5 of 7, pages 654-665, which are is attached as Excepts to the Appellant's Brief).

The Appellant would further show that, per his conversations with employees of Central Mississippi Medical Center, ***Central Mississippi Medical Center had knowledge that the trolley and hoist had fallen off before the subject accident.*** The Appellant, Kenneth Saranthus, would refer to his Affidavit, which states, "Don Williams was the maintenance man for Central Mississippi Medical Center, and he told me that the trolley and hoist had fallen off before, and that when he performed work at the laundry facility, he would put a clamp on the end of the beam to act as a stop

and keep the trolley and hoist from falling off the beam.” (Appellants’ Response to Appellee’s Motion for Summary Judgment, Volume 5 of 7 and Volume 6 of 7 and 602-753/ more specifically the Affidavit of Kenneth Saranthus, Volume 5 of 7, pages 608-611, which are is attached as Excepts to the Appellant’s Brief). The trial court judge completely ignored the Appellant, Kenneth Saranthus’, Affidavit. As previously stated, a trial judge may not make any credibility determinations or weigh any of the evidence. The Appellant’s Affidavit, alone, was enough to show that a genuine issue of material fact exists. Said Affidavit was submitted in the Plaintiff’s original Response to the Appellee’s Motion for Summary Judgment. Furthermore, the Affidavit of Edward Odom states that Mr. Odom (an employee of Crothall who was at work at the laundry facility owned by Central Mississippi Medical Center and operated by Crothall on the date of the subject accident on which Kenneth Saranthus was injured by the falling hoist) has knowledge that “the same hoist and trolley which fell off the rail and injured Kenneth Saranthus, had fallen off the rail numerous times before Kenneth Saranthus was injured, and that when it previously fell, it fell onto the floor each time. I state that I personally remember the same hoist and trolley which fell off the rail and injured Kenneth Saranthus, had fallen off the rail approximately four (4) to six (6) times before the incident in which it fell off and injured Kenneth Saranthus.” (Appellants’ Response to Appellee’s Motion for Summary Judgment, Volume 5 of 7 and Volume 6 of 7 and 602-753/ more specifically the Affidavit of Edward Odom, Volume 6 of 7, pages 728-730, which are is attached as Excepts to the Appellant’s Brief).

And, yet another employee submitted an Affidavit stating that Central Mississippi Medical Center, as well as Crothall, had knowledge of the dangerous condition of the hoist. The Appellants, in support and supplementation of their Response to Appellee, Central Mississippi Center Medical

Center's, Motion for Summary Judgment, attached the Affidavit of Equilla Haymer. (Response, Volume 6 of 7 and Volume 7 of 7, at pages 773-841/ and, more particularly, the Affidavit of Haymer, Volume 6 of 7, at pages 779-781, which are is attached as Excepts to the Appellant's Brief). The Appellants would show that they had been trying to locate Equilla Haymer for sometime. When they finally located her, she was a patient at St. Dominic's hospital. During her hospital stay, she executed an Affidavit stating the following:

- That she was employed by Crothall at the subject laundry facility on the date of the subject accident in which Kenneth Saranthus was injured.
- That the laundry facility and equipment, including the hoist and trolley, was owned by Central Mississippi Medical Center and run by Crothall.
- *That before the laundry facility was run by Crothall, it was run by Central Mississippi Medical Center.*
- *That prior to being employed by Crothall, she was employed by Central Mississippi Medical Center to work in the same laundry facility.*
- *That while the laundry facility was being run by Central Mississippi Medical Center (before it was run by Crothall), the same hoist and trolley which fell off the rail and injured Kenneth Saranthus, had fallen off the rail.*
- *That she informed Earl Carter, her supervisor at Central Mississippi Medical Center, about the hoist and trolley falling off the rail, and that the condition of the hoist and trolley was unsafe and going to hurt someone.*
- *That she informed Don Williams, maintenance man for Central Mississippi Medical Center, about the hoist and trolley falling off the rail, and that the condition of the hoist and trolley was unsafe and going to hurt someone.*
- That after she informed Earl Carter and Don Williams about the hoist and trolley falling off the rail, and that the condition of the hoist and trolley was unsafe and was going to hurt someone, *Central Mississippi Medical Center superiors did nothing to repair the rail.*
- *That at the time Central Mississippi Medical Center was running the facility, there were no warning signs in place to warn people that the hoist and trolley could run off the end of the rail and fall down on them.*

- *That at the time the laundry facility was turned over from Central Mississippi Medical Center to Crothall, there were no warning signs in place to warn people that the hoist and trolley could run off the end of the rail and fall down on them.*
- That at the time Crothall was running the facility, there were no warning signs in place to warn people that the hoist and trolley could run off the end of the rail and fall down on them.
- That at the time Kenneth Saranthus was injured by the falling hoist and trolley, there were no warning signs in place to warn people that the hoist and trolley could run off the end of the rail and fall down on them.

The Affidavits of Kenneth Saranthus, Edward Odom, and Equilla Haymer clearly create a genuine issue of material fact as to whether Central Mississippi Medical Center had knowledge of the dangerous condition of the hoist and failed to correct the problem and/or warn the Appellant, Kenneth Saranthus, of the dangerous condition. As the basis of the inviter's liability for injuries sustained by the invitee on the premises rests on the owner's superior knowledge of the danger, and *Central Mississippi Medical Center not only owned the property, the hoist and beam and the laundry equipment, but ran the subject laundry facility for approximately a year prior to the contract with Crothall*, obviously Central Mississippi Medical Center would have superior knowledge of the danger, and should have either cured the defect, or at least warned business invitees, such as Kenneth Saranthus of the danger. Quite simply . . . Central Mississippi Medical Center failed to fulfill its duty to the Appellant and, therefore, should be held liable for its failure. *Central Mississippi Medical Center failed to place a stop at the end of the beam, and Central Mississippi Medical Center failed to warn the Appellant that there was no stop on the end of the beam.*

CONCLUSION

Again, the Appellants would state that *this case is not about contractors and subcontractors, as the Appellees would have the Court believe*. This case is, first, about a contract issue that existed between Central Mississippi Medical Center and Crothall. Central Mississippi Medical Center and Crothall entered into a contract approximately one month before the subject incident. The contract states that Central Mississippi Medical Center is responsible for the maintenance of any fixtures and that Crothall is responsible for the maintenance of any equipment. *Therefore, the question exists as to whether the hoist was a fixture or equipment*. This question was posed when Crothall filed its Motion for Summary Judgment. The court did not make a determination as to whether the hoist is equipment or a fixture, but simply ruled that a genuine issue of material fact exists, *that this matter was a question for the jury*, and the Motion for Summary Judgment was denied. While the Appellants feel that the hoist is most likely equipment, the Court has ruled that this issue is a question for the jury. However, the court granted the Appellee, Central Mississippi Medical Center's, Motion for Summary Judgment. This is highly prejudicial to the Appellants. If this Court does not reverse the lower court's decision and this case is tried, the jury will be presented with the issue of whether the hoist is equipment or a fixture. Therefore, if the jury decides in favor of the Appellants and determines the hoist is equipment, then the Appellants will be able to obtain a verdict against Crothall. However, if the jury decides in favor of the Appellants and determines that the hoist is a fixture, then Central Mississippi Medical Center will not be a party to the case and the Appellants will not be able to obtain a verdict in their favor. Therefore, the Appellants' fear is that Crothall will use the "empty-chair" defense at the trial of this matter. If the issue of whether the hoist is equipment or a fixture is a question for the jury, then both Crothall and Central Mississippi

Medical Center are essential Defendants in the trial court case.

Secondly, this case deals with notice and whether or not Central Mississippi Medical Center had knowledge of the dangerous condition of the hoist before Crothall took control of the laundry facility. The Appellant, Kenneth Saranthus, submitted an Affidavit in his original Response to the Appellee's Motion for Summary Judgment stating that *Don Williams, the maintenance man for Central Mississippi Medical Center, had told him, after the subject incident, that the trolley and hoist had fallen off before*, and that when Williams performed work at the laundry facility, he would put a clamp at the end of the beam to act as a stop and keep the trolley and hoist from falling off the beam. *The trial court completely ignored said Affidavit.* Also, the Appellants' presented an Affidavit of a Central Mississippi Medical Center employee, which the Court struck, stating that Central Mississippi Medical Center had knowledge of the dangerous condition of the hoist *before* Crothall took control of the laundry facility. And while the trial court ruled that the Appellants presented no evidence to demonstrate that Central Mississippi Medical Center had knowledge of the dangerous condition of the hoist, the Appellants feel that they have presented evidence that clearly shows that Central Mississippi Medical Center had knowledge of the dangerous condition of hoist. This issue was a question for the jury.

A genuine issue of material fact exists in this matter. Therefore, the trial court erred in granting Central Mississippi Medical Center's Motion for Summary Judgment. For the foregoing reason, the lower court's failure to deny the Appellee's Motion for Summary Judgment and rule in favor of the Appellants was reversible error requiring this Court to reverse the trial court's order and remand this matter for a trial on the merits of the claims. If the Appellants have prayed for improper relief, then they ask that this Court grant them the appropriate relief.

RESPECTFULLY SUBMITTED,

**KENNETH D. SARANTHUS and LAURA M.
SARANTHUS, APPELLANTS**

BY:


DON H. EVANS

DON H. EVANS, MSB # [REDACTED]
Attorney for Appellants
500 East Capitol Street, Suite 2
Jackson, Mississippi 39201
Telephone Number: (601) 969-2006
Facsimile Number: (601) 353-3316

CERTIFICATE OF SERVICE

I, Don H. Evans, attorney for Appellants, do hereby certify that I have served, via U.S. Mail, postage prepaid, a copy of the foregoing Appellants' Brief to the following:

Honorable W. Swan Yerger
Circuit Court Judge of Hinds County, Mississippi
Post Office Box 327
Jackson, Mississippi 39205-0327

Alyson B. Jones, Esq.
Joshua J. Wiener, Esq.
Butler, Snow, O'Mara,
Stevens & Cannada, PLLC
Post Office Box 6010
Ridgeland, Mississippi 39158

Stephen P. Kruger, Esq.
Page, Kruger & Holland, P.A.
P.O. Box 1163
Jackson, Mississippi 39215-1163

On this the 30th day of June, 2010.


DON H. EVANS

DON H. EVANS, MSB [REDACTED]
Attorneys for Appellants
500 East Capitol Street, Suite 2
Jackson, Mississippi 39201
Telephone Number: (601) 969-2006
Facsimile Number: (601) 353-3316