

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CASE NO.: 2009-CA-00920

**TONYA MELTON, CHARLES DAVID
MELTON, JR., PAULA DAWN HARRIS
AND JAMES KENDALL HARRIS**

PLAINTIFFS / APPELLANTS

VS.

**SMITH'S PECANS, INC., A MISSISSIPPI
CORPORATION, ALFRED RANDOLPH
SMITH, JR., JOHN DOES 1 THROUGH 5,
JANE DOES 1 THROUGH 5, AND DOE
CORPORATIONS 1 THROUGH 5**

DEFENDANTS / APPELLEES

**APPEAL FROM THE CIRCUIT COURT OF
THE SECOND JUDICIAL DISTRICT OF
OF HINDS COUNTY, MISSISSIPPI**

**BRIEF OF APPELLEES
SMITH'S PECANS, INC. AND RANDOLPH SMITH, JR.**

ORAL ARGUMENT NOT REQUESTED

**J. Tucker Mitchell, MSB [REDACTED]
W. Shan Thompson, MSB [REDACTED]
LaToya T. Jeter, MSB [REDACTED]
COPELAND, COOK, TAYLOR AND BUSH, P.A.
600 Concourse, Suite 100
1076 Highland Colony Parkway (39157)
Post Office Box 6020
Ridgeland, Mississippi 39158
Telephone No.: (601) 856-7200
Facsimile No.: (601) 353-6235**

COUNSEL FOR APPELLEES

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CASE NO.: 2009-CA-00920

**TONYA MELTON, CHARLES DAVID
MELTON, JR., PAULA DAWN HARRIS
AND JAMES KENDALL HARRIS**

PLAINTIFFS / APPELLANTS

VS.

**SMITH'S PECANS, INC., A MISSISSIPPI
CORPORATION, ALFRED RANDOLPH
SMITH, JR., JOHN DOES 1 THROUGH 5,
JANE DOES 1 THROUGH 5, AND DOE
CORPORATIONS 1 THROUGH 5**


DEFENDANTS / APPELLEES

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 judges of this Court may evaluate possible disqualification or recusal.

1. Tonya Melton, Charles David Melton, Jr., Paula Dawn Harris, and James Kendall Harris, Appellants;
2. Smith's Pecans, Inc. and Alfred Randolph Smith, Jr., Appellees;
3. John R. McNeal, Jr., Esquire, Attorney of Record for Appellants;
4. J. Tucker Mitchell, Esquire, W. Shan Thompson, Esquire, and LaToya T. Jeter, Esquire, Attorneys of Record for Appellees; and
5. Honorable William Coleman

THIS the 8th day of April, 2010.


LATOYA TATE JETER
APPELLEES, SMITH'S PECANS AND
RANDOLPH SMITH, JR.

STATEMENT REGARDING ORAL ARGUMENT

The Appellees, Smith's Pecans, Inc. and Alfred Randolph Smith, Jr., believe that oral argument is unnecessary. There are no novel issues on appeal. Mississippi law governs the points on appeal and is well settled on those points. It is therefore, respectfully submitted, that the issues on appeal can be adequately dispensed with by this Court without the need for any oral argument.

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS	i
STATEMENT REGARDING ORAL ARGUMENT	ii
TABLE OF CONTENTS	iii-iv
TABLE OF AUTHORITIES	v-vi
STATEMENT OF THE CASE	1-4
A. NATURE OF THE CASE	1
B. COURSE OF PROCEEDINGS AND DISPOSITION IN COURT BELOW	1-2
C. STATEMENT OF FACTS	3-4
SUMMARY OF ARGUMENT	5-7
STANDARD OF REVIEW	8-9
ARGUMENT	10-21
I. It is Undisputed that Plaintiffs' attorney Entered Into a Settlement Agreement with Defendants' Attorney	10-11
II. Plaintiffs' Attorney Michael Brown had Authority to Settle the Case	11-19
A. Michael Brown had Apparent Authority to Settle the Case	12-13
1. Michael Brown was the Attorney of Record for Plaintiffs when he Entered into the Settlement Agreement on Behalf of Plaintiffs	13
2. Smith's Pecans Justifiably Relied on the Settlement Agreement Entered into by Michael Brown on Behalf of the Plaintiffs	13-14
3. Smith's Pecans and its Attorneys Acted in Good Faith	14-16
B. Michael Brown had Actual Authority to Settle the Case	17-19

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE(S)</u>
<i>Ammons v. Cordova Floors</i> , 904 So.2d 185, 189 (Miss. App. 2005)	8
<i>Anderson v. Kimbrough</i> , 741 So.2d 1041 (Miss. Ct. App. 1999)	8
<i>Bailey v. Worton</i> , 752 So.2d 470 (Miss. Ct. App. 1999)	10
<i>Craft v. Burrow</i> , 89 So. 2d 122, 725 (Miss. 1956)	12
<i>Cumberland v. Cumberland</i> , 564 So.2d 839, 845 (Miss. 1990)	9
<i>Diaz v. Bounds</i> , 989 So.2d 953, 956 (Miss. 2008)	9
<i>Fairchild v. General Motors Acceptance Corp.</i> , 179 So.2d 185, 187 (Miss. 1965)	16
<i>Franklin v. BSL, Inc.</i> , 987 So.2d 1050, 1053 (Miss. Ct. App. 2008)	12
<i>Hastings v. Guillot</i> , 825 So.2d 20, 23 (Miss. 2003)	8, 10
<i>Hirsch Bros. & Co. v. R.E. Kennington Co.</i> , 124 So. 344 (Miss. 1929)	13
<i>Howard v. Totalfina E&P USA</i> , 899 So.2d 882, 889 (Miss. 2005)	8
<i>In re Crawford</i> , 388 B.R. 506, 519 (Bankr. S.D.N.Y. 2008)	13, 14
<i>In re Williamson</i> , 838 So.2d 226, 237 (Miss. 2002)	9

CASES

PAGE(S)

<i>Link v. Wabash R. Co.</i> , 370 U.S. 626, 634 (1962)	14
<i>Mabus v. Mabus</i> , 910 So.2d 486, 491 (Miss. 2005)	9
<i>McManus v. Howard</i> , 569 So.2d 1213, 1215 (Miss. 1990)	8, 10
<i>McPherson v. McLendon</i> , 221 So.2d 75, 78 (Miss. 1969)	12, 13
<i>Muhammad v. Strausburger</i> , 587 A.2d 1346, 1351 (Penn. 1991)	14, 15
<i>Parmley v. 84 Lumber Co.</i> , 911 So.2d 569, 572 (Miss. Ct. App. 2005)	8, 10, 16
<i>Purvis v. Purvis</i> , 657 So.2d 794, 796(Miss. 1994)	9, 20
<i>Tarver v. J.W. Sanders Cotton Mill</i> , 192 So.17 (Miss. 1939)	13
<i>Terrain Enterprises, Inc. v. Western Cas. & Sur. Co.</i> , 775 F.2d 1320, 1322 (5 th Cir. 1985)	12, 13, 14, 15, 16
<i>Thomas v. Bailey</i> , 375 So.2d 1049, 1052 (Miss. 1979)	8

RULES

Miss. R. Civ. P. 70(a), (d)	19, 20
-----------------------------------	--------

STATEMENT OF THE CASE

A. Nature of the Case

This appeal arises from the Hinds County Circuit Court's enforcement of a settlement agreement that was reached between Plaintiffs Tonya Melton, Charles Melton, Paula Harris and James Harris (hereinafter referred to collectively as the "Plaintiffs") and Defendants Smith's Pecans, Inc. and Alfred Randolph Smith, Jr. (hereinafter referred to collectively as "Smith's Pecans"). A settlement was reached between the parties acting through their attorneys on January 7, 2009. The settlement was subsequently disavowed by Plaintiffs who refused to execute the release and dismiss the case after Defendants tendered the settlement monies. Defendants filed a Motion to Enforce Settlement and Motion for Citation of Contempt and Appointment of Clerk to Execute Settlement Documents. The court granted Defendants' motions.

B. Course of Proceedings and Disposition in Court Below

This cause of action was instituted on August 31, 2004, when Plaintiffs filed suit against Smith's Pecans alleging that they received physical injuries due to exposure to chemicals used on the property of Smith's Pecans Inc. The matter was set for trial on Monday, January 12, 2009. Pretrial motions were argued on January 6, 2009, six days before the trial. On February 3, 2009, Smith's Pecans filed a Motion to Enforce Settlement and For Attorneys' Fees. (R.E. at Tab 3) (R. 14-37). Plaintiffs filed their Response. (R.E. at Tab 4) (R. 38-45). Smith's Pecans filed a Rebuttal to the Plaintiffs' Response. (R.E. at Tab 5) (R. 46-73). There was a hearing on the Motion to Enforce Settlement on March 6, 2009. (T T. 3-21). The Plaintiffs attended the hearing. (R.E. at Tab 13) (T.T. 13, L. 1-8). On March 9, 2009, the trial court entered an order granting Smith's Pecans' Motion to Enforce Settlement and denying their request for attorneys'

fees. (R.E. at Tab 6) (R. 74-75).

On March 18, 2009, Michael Brown filed a Motion to Withdraw as counsel for the Plaintiffs and Notice of Lien. (R.E. at Tab 7) (R. 76-81). On March 25, 2009, Smith's Pecans filed a Motion for Citation of Contempt and Appointment of Clerk to Execute Settlement Documents and for Attorneys' Fees. (R.E. at Tab 8) (R. 84-103). On April 7, 2009, new counsel for Plaintiffs, John McNeal, filed a response and a Motion to Set Aside the trial court's order enforcing settlement. (R.E. at Tab 9) (R. 111-115). The hearing on the Motion for Citation of Contempt and Motion to Set Aside was on May 8, 2009. (T.T. 22-79).

On May 13, 2009, Michael Brown filed an affidavit stating that he sent Plaintiffs correspondence confirming the settlement agreement and his intentions to notify Medicare that an enforceable agreement had been reached. (R.E. at Tab 10) (R. 124-126). On May 15, 2009, Michael Brown filed a Supplement to Affidavit attaching a copy of the correspondence dated January 8, 2009 sent to Plaintiffs from him confirming the settlement. (R.E. at Tab 11) (R. 127-135). The Supplemental Affidavit also attached a copy of the correspondence dated January 19, 2009 sent to the Plaintiffs after a telephone call from Tonya and David Melton stating their desire to finalize the settlement as soon as possible. (R.E. at Tab 11) (R.132). On May 27, 2009, the court entered an order granting Smith's Pecans' Motion for Citation of Contempt and Appointment of Clerk to Execute Settlement Documents. (R.E. at Tab 12) (R. 141-143). The court denied the Plaintiffs' Motion to Set Aside the Settlement. (R. 139). On June 5, 2009, the Plaintiffs filed their Notice of Appeal. (R.E. at Tab 2) (R. 144) .

C. Statement of Facts

This lawsuit arises out of personal injuries the Plaintiffs allege they received from exposure to farm chemicals while working at Smith's Pecans. Possible settlement of the claims took place throughout the litigation, and after the hearing on January 6, 2009, counsel for the Plaintiffs¹ and counsel for Smith's Pecans continued to discuss settlement. On Wednesday, January 7, 2009, a settlement agreement was reached and confirmed in writing. (R.E. at Tab 3A) (R. 20). The settlement included an agreement that all liens, including those asserted by Medicaid, Medicare, and any of the Plaintiffs' medical providers, were to be paid by the Plaintiffs from the settlement proceeds. (R.E. at Tab 3A) (R. 20). The settlement was acknowledged by the Plaintiffs' counsel via email on January 8, 2009. (R.E. at Tab 3B) (R. 21). After the settlement was reached, a settlement check, a release, and an Agreed Judgment of Dismissal were delivered to Plaintiffs' counsel (R.E. at Tab 3C) (R. 23-32). On January 22, 2009, Plaintiffs' counsel advised via email, that Plaintiffs did not intend to go through with a settlement that might result in settlement proceeds being paid to Tonya Melton's ex-husband, Stacy Thomas, for child support payments allegedly owed by Tonya Melton. (R.E. at Tab 3D) (R. 33). No objection was made to Brown's authority to settle the case. As noted by the trial judge, Plaintiffs' actions after the settlement demonstrated that they were aware that a settlement had been reached yet they did not object that their attorney lacked authority to settle the case.

When Plaintiffs refused to "go through with" the settlement, Smith's Pecans filed a Motion to Enforce Settlement with Exhibits. (R.E. at Tab 3) (R. 14-37). Plaintiffs' response to

¹ Michael Brown was the Plaintiff's attorney at this time. He filed a Motion to withdraw as counsel for the Plaintiffs on March 18, 2009. Although Brown did not file the lawsuit on behalf of the Plaintiffs, he formally entered an appearance on or about August 2006 and represented the Plaintiffs throughout the course of the litigation and specifically throughout the settlement negotiations. (R.E. at 14) (T.T. 54, L. 21-24).

the motion does not argue that Plaintiffs did not agree to the settlement amount or that their attorney lacked authority to accept a settlement offer. (R.E. at Tab 4) (R. 38-45). Their only objection to the settlement was that Plaintiff, Tonya Melton's ex-husband asserted a lien for child support that Plaintiffs claim they were unaware of and that might somehow interfere with other liens on the settlement proceeds. *Id.*

The records shows that Brown had actual and apparent authority to settle Plaintiffs' case. Brown was Plaintiffs' attorney of record. He conducted the litigation on Plaintiffs' behalf. He represented them in open court at a hearing in their presence. Brown testified under oath at the hearing on the Motion for Citation of Contempt and Motion to Set Aside the Settlement that he had actual authority from all four of the Plaintiffs to consummate a settlement agreement.

Q. Okay. The bottom line here is you had the actual authority of all four plaintiffs to consummate a settlement agreement, correct?

A. I did.

(R.E. at Tab 14) (T.T. 55, L. 17-21).

Plaintiffs Tonya Melton, David Melton, and Kendall Harris testified that they did not give Brown authority to enter into a settlement agreement on their behalf on January 7, 2009. (R.E. at Tab 14) (T.T. 63, L. 27-29, 66, L. 23-25, 72, L. 17-20). However, Paula Harris testified under oath that she was aware that Michael Brown had entered into settlement discussions with counsel for Smith's Pecans the morning of January 7, 2009.

Q. So on January 7th 2009, you knew your attorney had entered settlement discussions with the defense, correct?

A. Correct that morning.

(R.E. at Tab 14) (T.T. 69, L. 13-16).

SUMMARY OF ARGUMENT

This Court should affirm the lower court's Order granting Smith's Pecans' Motion to Enforce Settlement and their Motion for Citation of Contempt and Appointment of Clerk to Execute Settlement Documents. The lower court properly determined that there was a valid settlement between the parties. There was a meeting of the minds between the parties, and that there was no evidence of fraud, misrepresentation, or illegal concealment of the facts sufficient to set aside the settlement agreement. (R.E. at Tab 13) (T.T 19, L. 5-29). The lower court determined that Plaintiffs' Attorney, Michael Brown, had authority to settle the case. (R.E. at Tab 14) (T.T. 76, L. 12-29, T.T. 77, L 1-29, T.T. 78, L. 1-25), (R. 139). The lower court also determined that Plaintiffs were required to comply with the terms of the settlement agreement by executing the "Full, Final and Absolute Release of Claims, Settlement and Indemnity Agreement" and "Agreed Judgment of Dismissal with Prejudice". *Id.* When Plaintiffs failed to comply with the court's order, the court correctly determined that Plaintiffs were in contempt and appointed and instructed the Hinds County Circuit Clerk to execute the settlement documents on their behalf. (R.E. at Tab 12) (R. 141-142).

Plaintiffs do not assert that a settlement agreement was not reached by their attorney. They simply argue that they did not give their attorney authority to settle the case. Michael Brown, as an acknowledged agent for Plaintiffs, was presumed to have apparent authority to settle the case on their behalf. Plaintiffs appear to argue that Brown did not have actual or apparent authority because he breached a duty of good faith and fair dealings that existed between him and Plaintiffs. Plaintiffs specifically allege that Brown did not advise them of the settlement terms and that the result of the settlement would leave them with a "net zero plus liability for all liens". Plaintiffs do not cite any authority in support of their breach of good faith

argument. Plaintiffs' allegation that Brown breached the duty of good faith and fair dealings that existed between them is irrelevant to the issue of whether he had apparent authority to enter into a settlement agreement on their behalf.

Under well-established Mississippi law, apparent authority is predicated on Smith's Pecans' reasonable belief that Brown as Plaintiffs' agent had authority to settle the case on their behalf based upon the nature of the duties which were entrusted to him. Apparent authority is determined from the acts of the principal and requires reliance and good faith on the part of the third party. All requirements needed to establish apparent authority are present in this case. Brown was the attorney of record for Plaintiffs when he entered into the settlement agreement on their behalf. Smith's Pecans was justified in relying on the settlement agreement made by Brown based on his previous actions as Plaintiffs' representative. There are no allegations of bad faith or fraud on the part of Smith's Pecans or their attorneys relating to the settlement.

Plaintiffs specifically argue that they did not have sufficient information about the settlement terms, Brown's attorney's fees and satisfaction of their Medicare and Medicaid liens to grant Brown actual authority to settle the case. These are essentially the same arguments presented to and rejected by the trial court. Plaintiffs have failed to present any evidence that the trial court acting as a fact finder was manifestly wrong in determining that Brown had actual authority to enter into a settlement agreement on behalf of Plaintiffs. Brown testified under oath that he obtained consent from all four Plaintiffs to settle the case. (R.E. at Tab 14) (T.T. 55, L. 17-21). In support of Brown's testimony, Plaintiff Paula Harris testified that she was aware that Brown was engaged in settlement discussions with Smith's Pecans' counsel the morning the settlement agreement was reached. (R.E. at Tab 14) (T.T. 69, L. 13-16). Further, Plaintiffs attended the hearing on the Motion to Enforce Settlement and at no time denied giving Brown

authority to settle the case. Based on the foregoing, Smith's Pecans respectfully submits that there is sufficient evidence in the record to support the trial court's findings that Brown had the Plaintiffs' authority to settle the case.

Further, the trial court properly granted Smith's Pecans' Motion for Citation of Contempt and Appointment of Clerk to Execute Settlement Documents. Plaintiffs have cited no error by the court or the clerk in adhering to Rule 70 of the Mississippi Rules of Civil Procedure.

STANDARD OF REVIEW

This Court reviews a trial court's grant of a Motion to Enforce Settlement for an abuse of discretion. *Howard v. Totalfina E&P USA*, 899 So.2d 882, 889 (Miss. 2005); *Ammons v. Cordova Floors*, 904 So.2d 185, 189 (Miss. App. 2005). A settlement agreement is a contract. *Totalfina E&P USA*, 899 So.2d 882 at 889 (citing *McManus v. Howard*, 569 So.2d 1213, 1215 (Miss. 1990)). "This Court has previously stated that in order for there to be a settlement, there must be a meeting of the minds." *Totalfina E&P USA*, 899 So.2d 882 at 889 (citing *Thomas v. Bailey*, 375 So.2d 1049, 1052 (Miss. 1979)). "Mississippi law requires that the party claiming benefit from the settlement prove by a preponderance of the evidence that there was a meeting of the minds." *Totalfina E&P USA*, 899 So.2d 882 at 889 (citing *Hastings v. Guillot*, 825 So.2d 20, 23 (Miss. 2003)). "The existence of a contract and its terms are questions of fact to be resolved by the fact-finder, whether a jury, or a judge in a bench-trial." *Anderson v. Kimbrough*, 741 So.2d 1041 (Miss. Ct. App. 1999).

Whether an attorney, as an agent for the client, has agreed to a settlement on behalf of the client is a question of fact to be resolved by a fact-finder. *Parmley v. 84 Lumber Co.*, 911 So.2d 569 (Miss. Ct. App. 2005). The trial court serves as a fact finder on the issue of whether the attorney has authority to enter into a settlement agreement on his behalf. *Id.* "[A] circuit court judge sitting without a jury is accorded the same deference with regard to his findings as a chancellor," and his findings are safe on appeal where they are supported by substantial, credible, and reasonable evidence. *Id.* (citations omitted). The appellate court will not disturb a circuit court judge's findings unless they are manifestly wrong, clearly erroneous, or an erroneous legal standard was applied. *Id.*

There is sufficient evidence in the record to show that there was a meeting of the minds

between counsel for the parties and that Plaintiffs' attorney had authority to enter into a settlement agreement on Plaintiffs' behalf.

The trial court also granted Smith's Pecans' Motion for Citation of Contempt and Appointment of Clerk to Execute Settlement Documents pursuant to Rule 70 of the Mississippi Rules of Civil Procedure. In reviewing a finding of contempt, the court held:

Generally, "[c]ontempt matters are committed to the substantial discretion of the trial court which, by institutional circumstances and both temporal and visual proximity, is infinitely more competent to decide the matter than we are." *Mabus v. Mabus*, 910 So.2d 486, 491 (Miss. 2005) (quoting *Cumberland v. Cumberland*, 564 So.2d 839, 845 (Miss. 1990)). If the contempt is civil, the proper standard utilized for review is the manifest error rule. *In re Williamson*, 838 So.2d 226, 237 (Miss. 2002). A contempt order is civil contempt if its purpose is to enforce the rights of a party or to enforce compliance with court order. *Id.* (citing *Purvis v. Purvis*, 657 So.2d 794, 796 (Miss. 1994)).

Diaz v. Bounds, 989 So.2d 953, 956 (Miss. 2008). There is no evidence in the record that the trial court committed "manifest error" in its finding of contempt.

ARGUMENT

I. It is Undisputed that Plaintiffs' Attorney Entered Into A Settlement Agreement with Defendants' Attorney.

Settlements are contracts, which are enforceable according to their terms. *Parmley*, 911 So.2d 569 at 572 (citing *McManus v. Howard*, 569 So.2d 1213, 1215, (Miss. 1990)). "In order for there to be a settlement there must be a meeting of the minds." *Hasting v. Guillot*, 825 So.2d 20 (Miss. 2002). The existence of a settlement agreement may be established by the actions of the parties, or that of their respective agents. *Parmley*, 911 So.2d at 572 (citing *Bailey v. Worton*, 752 So.2d 470 (Miss. Ct. App. 1999)).

In this case, a valid settlement was reached between the parties acting through their respective attorneys. The settlement was reached over the telephone and was confirmed by email correspondence from Defense counsel to Plaintiffs' counsel that stated the terms of the settlement agreement, including the amount to be paid on behalf of Defendants, the execution of a release by Plaintiffs in favor of Defendants, Plaintiffs' agreement to pay medical liens and a dismissal of the lawsuit. (R.E. at Tab 3A) (R. 20). The agreement was acknowledged by Plaintiffs' counsel by email correspondence. (R.E. at Tab 3B) (R. 21-22).

After Plaintiffs reneged on the settlement, Defendants filed a Motion to Enforce Settlement and a hearing was held on March 6, 2009. (R.E. At Tab 3) (R. 14-37), (T.T. 1-21). At the hearing Plaintiffs' counsel did not dispute that a settlement was reached. (R.E. at Tab 13) (T.T. 8-18). He argued instead that one of the Plaintiffs, Tonya Melton, had received a notice of a lien for a large amount of back child support monies owed to her children who were in the custody of her ex-husband. (R.E. at Tab 13) (T.T. 18, L. 21-25). Plaintiffs argued that they should be allowed to *rescind* the settlement agreement due to a "mistake of fact", apparently

meaning that Plaintiffs did not know Tonya might actually be required to use her settlement monies to help pay for the support of her children who were in the custody of her ex-husband. *Id.* There was no argument that Plaintiffs did not agree to the settlement before finding out about the child support lien.

Again, at the May 8, 2009 hearing on Defendants' Motion for Citation of Contempt and Plaintiffs' Motion to Set Aside the trial court's prior ruling, Plaintiffs' attorney, Michael Brown testified under oath that an enforceable settlement was reached. (R.E. at Tab 4) (T.T. 39-40).

As noted by the trial court, Plaintiffs were all present in court during the March 6, 2009 hearing, yet never objected to their attorneys' representation that there was a settlement and that their failure to consummate the settlement was based on their desire to *rescind* the agreement, not that a settlement was not reached. (R.E. at Tab 14) (T.T. 25).

There has been no evidence presented at any time that a settlement agreement was not reached between the attorneys representing the parties.

Correspondence from Plaintiffs' attorney to Plaintiffs also shows that a settlement was in fact reached, and communicated to Plaintiffs. (R.E. at Tab 3B) (R. 21). No evidence was presented showing that Plaintiffs disputed this at the time or complained that their attorney misrepresented their intentions.

II. Plaintiffs' Attorney Michael Brown had Authority to Settle the Case.

Plaintiffs' chief argument now is that their attorney did not have actual or apparent authority to settle the case on their behalf. This, despite the fact that they entered into an employment contract with him, silently allowed him to sign and file pleadings on their behalf and watched and heard him make arguments in their behalf in open court. These same arguments were heard and rejected by the lower court, and for good reason. The entire body of

their attorney. (R.E. at Tab 13) (T.T. 24, L. 23–25, T.T. 25, L. 2-16). “[A]ttorneys are...presumed to act with authority from-and as agents of their clients.” *In re Crawford*, 388 B.R. 506, 519 (Bankr. S.D.N.Y. 2008). “Any other notion would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by acts of his lawyer-agent....” *Link v. Wabash R. Co.*, 370 U.S. 626, 634 (1962).

Smith’s Pecans relied on the settlement offer extended by Brown by tendering \$80,000 to Plaintiffs in settlement of all claims. In *Terrain Enterprises, Inc.*, the Fifth Circuit Court of Appeals, applying Mississippi law, held that a defendant was justified in relying on a settlement offer made by the plaintiff’s attorney when it accepted the offer. *Terrain Enterprises, Inc.*, 744 F.2d at 1322.

3. Smith’s Pecans and its Attorneys Acted in Good Faith.

There are no allegations of bad faith or fraud on the part of Smith’s Pecans or its attorneys in entering into a settlement agreement with Plaintiffs through Brown. Plaintiffs’ “bad faith” argument pertains only to their allegations that there was “a breach of the implied duty of good faith and fair dealing existing between Mr. Brown and the appellants herein.” (Plaintiffs’ brief at p. 5). They allege the “duty was breached in that the Appellants did not have sufficient information to give Mr. Brown the authority to settle.” *Id.*

Brown’s conduct towards Plaintiffs is irrelevant to the issue of whether Smith’s Pecans was justified in relying on their attorney of record in negotiating a settlement. It is not bad faith, fraud or misrepresentation between Plaintiffs and their own lawyer that can potentially avoid an otherwise valid settlement. There has to be fraud on the part of the defendants. This issue was squarely addressed in *Muhammad v. Strausburger*, 587 A.2d 1346, 1351 (Penn. 1991), where clients alleged that their own lawyers had fraudulently induced them into settling their case by

concealing and/or failing to disclose that the lawyers had committed malpractice and sought to cover up their negligence by convincing their clients to agree to a settlement. *Id.* at 1352. The court recognized that fraudulent inducement by a party's own lawyer "does not alter the settlement agreement between plaintiff and defendant, since it is not the opposition who has committed the fraud, but the plaintiff's own lawyer." *Id.* at 1151. The court further noted that the appropriate recourse for such a claim is to proceed against his lawyer, not to attack the settlement that was entered into in good faith by the other party. *Id.*

To the extent that Plaintiffs imply that there was some fraud on the part of Smith's Pecans, the burden to prove such fraud is on Plaintiffs and has not been met.

The undisputed facts show that Brown had apparent authority to settle Plaintiffs' claims. He was the acknowledged attorney of record for Plaintiffs. His representation was acknowledged by them by their acquiescence in his filing pleadings, entering into negotiations and making arguments in court on their behalf and in their presence. Part of the accepted authority of a party's attorney is to make and accept settlement offers on his clients' behalf. Smith's Pecans had no reason to doubt that Brown was authorized to settle this case, and Plaintiffs did nothing to indicate to Smith's Pecans that Brown's authority was limited in any way. Smith's Pecans' reliance on Brown's acceptance of the settlement was justified. There is absolutely no evidence of fraud on the part of Smith's Pecans.

Mississippi appellate courts have addressed arguments similar to Plaintiffs in a number of cases. In *Terrain Enterprises, Inc.*, the attorney for a plaintiff entered into a settlement agreement with the defendant's attorney. *Terrain Enterprises, Inc.*, 774 F.2d at 1321. The plaintiff subsequently disavowed the offer as unauthorized. *Id.* As in this case, the plaintiff's attorney testified under oath that he was authorized to make the offer. The lower court

recognized that a settlement offer was made and accepted, but denied a motion to enforce the settlement based on a “genuine misunderstanding between [the plaintiff] and [its] attorney regarding the attorney’s authority to settle the case.” *Id.* at 1321.

The Fifth Circuit reversed, holding that the plaintiff’s actions were dispositive of the question of apparent authority, because it hired the attorney, and “from that point until the termination of his services, he handled the case. Testimony showed that he attended and took depositions, corresponded with counsel for [the defendant], conducted discovery and participated in all pretrial conferences and orders.” *Id.* The court noted that “[i]t is presumed that an attorney who has represented a party is authorized to take all action necessary to conduct the litigation.”

The Mississippi Court of Appeals has also held that an attorney is presumed to have authority to speak for and bind his client. *Parmley*, 911 So.2d at 573 (citing *Fairchild v. General Motors Acceptance Corp.*, 179 So.2d 185, 187 (Miss. 1965)). In *Parmley*, the plaintiff alleged that he did not authorize his attorney to settle the case on his behalf and refused to execute settlement documents. *Id.* at 571. The defendants filed a Motion to Enforce Settlement arguing that an email and facsimile sent by counsel for the plaintiff was sufficient to establish that the plaintiff, through his attorney agreed to settle his claims. *Id.* At the hearing on the Motion to Enforce Settlement, the plaintiff denied having agreed to any settlement or having authorized his prior attorney to settle the case on his behalf. The trial court granted the Motion to Enforce Settlement, holding that there was sufficient evidence including written offers of settlement via e-mail and facsimile by the plaintiff’s counsel to the defendants’ counsel and the delivery of releases and settlement, to establish that a settlement agreement was reached by the attorneys which was binding on the parties. *Id.* at. 573.

B. Michael Brown had Actual Authority to Settle the Case.

Not only did Plaintiffs' attorney have apparent authority to settle their claims, there is sufficient evidence in the record to establish that he had actual authority from Plaintiffs. Brown, testified under oath that he had actual authority from all four Plaintiffs to settle their claims:

- Q. Okay. The bottom line here is you had the actual authority of all four plaintiffs to consummate a settlement agreement, correct?
- A. I did.
- Q. And you did consummate a settlement agreement?
- A. I did. And I would like to point out I did talk to Paula as well after talking to David and Tonya. Kendall handled most of the discussions that Thursday, I believe, but it was, you know, everybody was in agreement. There was no confusion.
- Q. So to make sure I got a clear answer to a clear question is you had the actual authority of all four plaintiffs to consummate a settlement agreement, and you and I, in fact, consummated a settlement agreement for \$80,000, correct?
- A. I did.

(R.E. at Tab 14) (T.T. 55, L. 18-29, T.T. 56, L. 1-5).

Brown's testimony is supported by the fact that all four Plaintiffs were in the courtroom during the hearing on Smith's Pecans' Motion to Enforce Settlement, allowed the opportunity to speak up, and yet never asserted that Brown lacked authority to settle the claims or that there was any disagreement whatsoever over the terms of the settlement. Brown testified:

- Q. You were here at the March 6th hearing on the defendants' motion to enforce a settlement agreement, correct?
- A. Correct.
- Q. And during that hearing you were counsel of record, and you were arguing in opposition to that motion?
- A. I was. And the plaintiffs came in, and I stopped at times and asked them to correct me if I'm wrong or to let me know if they disagreed with anything, but I advanced the arguments they had seen before that and went from there.
- Q. The reason for my question is what you just said. The plaintiffs came into the courtroom on March 6th during that hearing on the motion to enforce the settlement agreement, correct?
- A. Yes. That's correct.
- Q. And all four plaintiffs were here and heard argument of counsel and heard the Court's ruling at that time, did they not?

A. They did.

(R.E. at Tab 14) (T.T. 56, L. 9-29).

Brown's testimony is further supported by his January 19, 2009 letter to Plaintiffs indicating that Tonya Melton had called him that day "expressing some urgency in wanting to sign off on the settlement as agreed by the parties," and noting "Tonya's request that the settlement agreement be signed as soon as possible." (R.E. at Tab 11) (R. 132-133). Brown forwarded to Smith's Pecans' attorneys his clients' intentions to execute the settlement documents in a letter dated January 20, 2009 which indicated copies were sent to all Plaintiffs. (R.E. at Tab 11) (R. 134-135).

The trial court, acting as a fact finder on the issue of whether an enforceable settlement was reached, heard testimony from Plaintiffs Tonya Melton, David Melton, Paula Harris and Kendall Harris that they were not aware of the settlement terms and that they did not give Brown authority to settle the case. The trial court also heard contradictory testimony from Plaintiff, Paula Harris, who admitted under cross-examination that she was aware of the settlement discussions at the time they took place:

Q. So on January 7th 2009, you knew your attorney had entered settlement discussions with the defense, correct?

A. Correct that morning.

(R.E. at Tab 14) (T.T. 69, L. 13-16).

The trial court also noted that, Plaintiffs' actions after the settlement demonstrated that they were aware of the settlement yet did not object that their attorney lacked authority to settle the case:

BY THE COURT: -- well, we had a hearing on that, did we not?
* * * *

BY MR. MCNEAL: At that hearing my clients were neither noticed of the hearing. They found out about it and came to the court but were never allowed to testify and never called by either party to determine whether or not they had –

BY THE COURT: If they were here, they were allowed, were they not, Mr. McNeal?

BY MR. MCNEAL: Their attorney never called them, Your Honor. The attorney for the insurance company nor their attorney ever called them to testify.

BY THE COURT: That didn't prevent them from testifying if they wanted to testify. If they objected at that time, they could have, is that not right?

BY MR. MCNEAL: Yes, sir, Your Honor, I understand, but they didn't know what had transpired or what was going on

(R.E. at Tab 14). (T.T. 24, L. 23-24, 29, T.T. 25, L. 1-19).

After hearing all of the testimony, the trial court found that Plaintiffs' actions after the settlement agreement did not support their allegations that they were unaware of the settlement terms. The court recognized that Plaintiffs attended the hearing on the Motion to Enforce Settlement and at no point denied that they gave Brown authority to settle the case or otherwise object to the settlement. In fact, their argument at that time was that they should be allowed to rescind the settlement agreement because of a child support lien that Tonya Melton's ex-husband threatened to place on the settlement monies. It had nothing to do with whether Plaintiffs had in fact given Brown authority to settle the case.

Based on the foregoing, there is substantial evidence in the record to support the trial court's finding that Brown had actual as well as apparent authority to enter into a settlement agreement on Plaintiffs' behalf and that the agreement is valid and binding.

III. Smith's Pecans' Motion for Citation of Contempt and Appointment of Clerk to Execute Settlement Documents was Properly Granted by the Circuit Court Judge Pursuant to Rule 70 of the Mississippi Rules of Civil Procedure.

Plaintiffs do not address their second issue of contention in their brief. The trial court properly granted Smith's Pecans' Motion for Citation of Contempt and Appointment of Clerk to

Execute Settlement Documents. Plaintiffs have cited no error by the court or the clerk in adhering to Rule 70 of the Mississippi Rules of Civil Procedure. Rule 70(d) of the Mississippi Rules of Civil Procedure authorizes the court to adjudge a party in contempt. The purpose of a contempt order is to enforce the rights of a party or to enforce compliance with the court's order. *Purvis v. Purvis*, 657 So.2d 794, 796 (Miss. 1994). As set forth above, the evidence in the record supports the trial court's finding that there was a valid settlement agreement between the parties. The trial court's order compelling the Plaintiffs to execute and return the Full, Final and Absolute Release of All Claims, Settlement and Indemnity Agreement and the Agreed Judgment of Dismissal with Prejudice to Smith's Pecans was clear. Plaintiffs refused to comply with the court's order. Therefore, the court properly appointed the clerk to execute the settlement documents on behalf of Plaintiffs pursuant to Rule 70(a) of the Mississippi Rules of Civil Procedure which provides as follows:

- (a) Specific Acts. If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party.**

"The purpose of Rule 70 is to provide ample power to the courts for dealing effectively with parties who seek to thwart judgments by *refusing to comply with court orders or perform specific acts.*" *MISS. R. CIV. P. 70 (a) cmt.* (Emphasis added). "This rule is intended primarily to *preclude recalcitrant parties from frustrating court orders* for the performance of specific acts..." *Id. cmt.* (Emphasis added). Smith's Pecans respectfully submits that the trial court adhered to all procedures as provided under 70(a) and (d), and properly found Plaintiffs in contempt and entered an order appointing and instructing the Hinds County Circuit Clerk to

execute the settlement documents, thereby having the same effect as if Plaintiffs had executed the documents as instructed.

CONCLUSION


Plaintiffs, through their attorney of record, Michael Brown, entered into a valid, binding settlement agreement with Smith's Pecans. The settlement agreement was confirmed in writing. Under Mississippi law, Brown is presumed to have authority to enter into a settlement agreement on behalf of his clients. Plaintiffs have failed to present credible evidence that Brown did not have authority to act on their behalf and have presented absolutely no evidence that Brown lacked apparent authority. Smith's Pecans was justified in relying upon Brown's acceptance of the settlement offer based on Brown's prosecution of the case as Plaintiffs' attorney of record, and his previous actions as Plaintiffs' representative. No bad faith on the part of Smith's Pecans has been alleged, and any alleged bad faith by Brown toward his clients is not relevant to the issue of Brown's actual or apparent authority to accept settlement on Plaintiffs' behalf. Further, Plaintiffs have cited no specific error nor have they cited any authority in support of their argument with regard to the trial court's citation of contempt or the execution of the settlement documents by the Hinds County Circuit Clerk pursuant to Rule 70.

Smith's Pecans respectfully submits that the Circuit Court properly granted their Motion to Enforce Settlement and Motion for Citation of Contempt and Appointment of Clerk to Execute Settlement Documents, and the judgment of the lower court should be affirmed.

THIS the 8th day of April, 2010.

Respectfully submitted,

SMITH'S PECANS, INC., A MISSISSIPPI
CORPORATION AND ALFRED RANDOLPH
SMITH, JR.

BY: 
J. TUCKER MITCHELL (MSB# [REDACTED])
W. SHAN THOMPSON (MSB# [REDACTED])
LATOYA TATE JETER (MSB# [REDACTED])

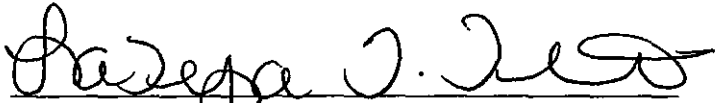
COPELAND, COOK, TAYLOR & BUSH, P.A.
600 Concourse, Suite 100
1076 Highland Colony Parkway
Post Office Box 6020
Ridgeland, Mississippi 39158
Telephone: (601) 856-7200
Facsimile: (601) 856-7626

CERTIFICATE OF SERVICE

I, LATOYA TATE JETER, do hereby certify that I have this day forwarded via United States mail, postage pre-paid, a true and correct copy of the above and foregoing Brief of Appellees to:

John B. McNeal, Jr., Esquire
P O Box 690
Jackson, MS 39205-0690

This the 8th day of April, 2010.



LATOYA TATE JETER