SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI
NO.: 2009-CA-00920

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

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

APPELLANT'S REBUTTAL BRIEF
(Oral Argument Not Requested)

Submitted By:

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TABLE OF AUTHORITIES

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STATEMENT OF FACTS

This matter was originally set for trial on January 12, 2009 in the Circuit Court of the Second Judicial District of Hinds County, Mississippi. Pre-Trial motions were argued on January 6, 2009, six (6) days before the trial of the case was scheduled to begin. The Court made inquiry at that time as to whether settlement negotiations were ongoing and the Court was advised that attorneys had been talking about settlement. Attorney for the Appellants herein and the Appellees contend that on January 7, 2009 an agreement was reached settling all issues in the claim for $80,000.00 in settlement of all four (4) claims. Appellants contend that settlement negotiation specifics were never discussed with them nor had they given Attorney Michael Brown the authority to settle their claim for $80,000.00 or any other amount.

Appellants subsequently refused to sign settlement documents which resulted in a Motion to Enforce Settlement being filed in the Second Judicial District of Hinds County, Mississippi and the hearing had thereon on March 6, 2009.

The Trial Judge set out in that case that the question to be decided was obviously, was there a meeting of the minds as to the settlement. [Pg. 1, L.5-6]. The Trial Judge entered an order enforcing the judgment. [Pg. 20, L.1-2]. Subsequent to the entry of that order the Appellants continued to refuse to sign the documents to settle the claim because they had not agreed to settle it nor had they authorized their attorney to settle it on their behalf under the terms and conditions under which it was settled.

The Appellees filed a Motion for Citation of Contempt and the Appellants herein filed a Motion to Reconsider the Judge's previous ruling, all set to be heard on

May 8, 2009. On page 30, lines 12 through 23 of the transcript sets out the primary interest of Michael Brown in settling the Appellants' case without their authority.

The record herein shows that Michael Brown had authority to negotiate a settlement on Appellants' behalf but never had actual authority from the Appellants to consummate the agreement sought to be enforced. Appellees' reliance on testimony of Michael Brown [R.E. Tab 14] [TT. 55, L.17-21] is totally self serving in order to put Mr. Brown's authority in proper perspective, Michael Brown's whole testimony commencing at [TT. 35, L8 - T.T.61, L. 19].

Pointedly, the questions beginning on [TT. 36, L. 4-29], continuing [T. T. 54, L.13].

Appellees' wish for the Court to *sua sponte* accept Mr. Brown's uncorroborated testimony as to the meeting of the minds between he and Appellant's relevance to his actual authority to settle on their behalf.

The testimony of Tonya Melton, David Melton, Paula Harris and Kendall Harris commencing at [TT. 62, L.4] and continuing to [TT.73, L.3] specifically prove that there had been no meeting of the minds sufficient to give Mr. Brown actual authority to settle their claim for $80,000 or any other amount and that no terms of any proposed settlement had been discussed with them prior to Mr. Brown's agreement to settle without their permission.

B. ARGUMENT

It is disputed that Appellants' attorney had actual authority to enter into settlement agreement with Appellees' attorney.

Appellees' are correct that settlements are contracts enforceable upon their terms. *Hastings v. Guillot*, 825 Sol.2d 20 (Miss. 2002) stands for proposition that "in order for their to be a settlement there must be a meeting of the minds".

Hastings also stands for the proposition that "the law favors the settlement of disputes by agreement of the parties and, ordinarily, will enforce the agreement which the parties have made, absent any fraud, mistake or overreaching. Citing *First Nat'l Bank v. Caruthers*, 443 So.2d 861, 864 (Miss. 1983); *Weatherford v. Martin*, 418 So.2d 777, 778 (Miss. 1982). It is obvious that the disparity of the alleged settlement was grossly overreaching and that the testimony shows the Appellants to have suffered actual damages in excess of $400,000 yet Mr. Brown, claiming Appellants' case to be meritorious, attempted to settle the claim for $80,000 of which he would receive $72,000 in fees and expenses and leaving the burden of Medicare and Medicaid liens and all other medical expenses resting upon the shoulders of the Appellants. Clearly, the Appellees herein were aware of this disparity and were also of the opinion that the case was meritorious: Why else would they pay $80,000 to settle a claim that had no merit?

The factual distinction of *Hastings* and this case is that a settlement offer sought to be enforced was a result of negotiations directly in the presence of Hastings and Guillot. Whereas, in the instant case the settlement negotiations were undertaken and settlement allegedly consummated without the knowledge of Appellants. Therefore, there obviously could not have been a meeting of the minds in that none of the terms of the settlement had been discussed with Appellants.

The Appellees' attempt to establish apparent and actual authority by way of

alleged telephone conversation and e-mail correspondence stating the terms of the settlement [R.E. T.3-A], the peculiar aspect of this e-mail is that it is dated January 8, 2009 and refers to Mr. Brown's tax identification number and stating the Appellants' granted authority realizing they had been contacted by the medical providers that they have medical bills they need to account for. Pointedly, the last sentence in the first paragraph states "they understand this is a complicated case and I will continue to go over it with them".

This is an obvious admission on behalf of Mr. Brown that all of the terms of the alleged settlement had not been discussed with the Appellants as to the obligations and net effect of the alleged settlement.

It is peculiar that there is no correspondence between Appellants and Mr. Brown, either prior to or after the alleged settlement discussing the proposed terms thereof. There was obviously no meeting of the minds since the details of the alleged settlement had not even been presented to the Appellants until after Mr. Brown attempted to settle the Appellants' claim without authority.

The threshold issue of this case is whether or not there had been a meeting of the minds between Appellants and Mr. Brown concerning settlement of their claim and whether or not Mr. Brown had actual authority to attempt to settle their claim as Appellees contend.

Appellants' rely on *Parmley v. 84 Lumber Co.*, 911 So.2d 569 (Miss. App. 2005) to establish the fact that Mr. Brown had authority to settle the claim on Appellants' behalf. *Parmley* contends that e-mail and facsimile transmissions are not sufficient to establish that the parties had agreed to settlement of the case. Citing

McManus v. Howard, 569 So.2d 1213 (Miss. 1990) stating that settlements are contracts and enforceable according to their terms and citing, *Hastings v. Guillot*, which require a meeting of the minds.

Additionally, Hastings states that, "Mississippi law requires the party claiming benefit from the settlement must prove by a preponderance of the evidence that there was a meeting of the minds." The parties claiming benefit in the instant case are the Appellees.

The factual distinction between *Parmley* and the instant case is that *Parmley*'s attorney had extended several unconditional written offers of settlement setting out specific amounts of money and specific acts to be performed by the parties.

Said offers were accepted and confirmed by facsimile transmissions. In this case no such facts similar transmissions of e-mail exists stating any terms that would be agreeable to settle Appellants' claim. The reason for this is, none existed prior to Mr. Brown's clandestine negotiations with the Appellees without authority from Appellants.

An additional distinction in *Howard v. Tolafina E&P USA, Inc.*, 899 So.2d 882 (Miss. 2005) that letters among attorneys confirming telephone conversation do not effectuate a settlement and stated that "in order to have an effectuated settlement, you have to have a meeting of the minds ... and it has to be expressed where there is nothing of consequence left undone." In referring back to R.E. 3A and Mr. Brown's letter of July 5, 2009, it is obvious that many consequential elements relevant to Appellants' case were unresolved and remain so today.

C. CONCLUSION

The threshold issue of this case is whether or not there had been a meeting of the minds between Appellants and Mr. Brown concerning settlement of their claim and whether or not Mr. Brown had actual authority to attempt to settle their claim as Appellees contend. There is no need to address further issues raised in Appellees' Brief.

A fair reading of the record discussed herein and the lack of corroboration of Appellees' position will confirm lack of authority and lack of a meeting of the minds. For the foregoing reasons, Appellants request that the judgment of the Circuit Court enforcing the settlement be set aside, that all settlement documents be voided and that the $80,000.00 settlement proceeds be reimbursed to the Appellees herein and that this matter be set back on the trial docket in the Second Judicial District of Hinds County, Mississippi to proceed to trial.

Respectfully submitted, this the _____ day of _____, 2010.

TONYA MELTON, DAVID MELTON, DAWN HARRIS AND JAMES KENDALL HARRIS

BY: _____

JOHN R. McNEAL, JR., Appellants' Attorney

CERTIFICATE OF SERVICE

I, John R. McNeal, Jr., do hereby certify that I have this day caused to be delivered by United Postal Service, first class prepaid postage or facsimile/electronic transmission and/or by hand-delivery a true and correct copy of the above and foregoing Rebuttal Brief of Appellant as follows:

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This the 27 day of May, 2010.

JOHN R. McNEAL, JR.