

IN THE SUPREME COURT OF MISSISSIPPI

JAMES DAVIS

APPELLANT

VS.

SUPREME COURT CASE NO. 2009-TS-01827

GUARANTY BANK AND TRUST COMPANY

APPELLEE

BRIEF OF APPELLEE

**ON APPEAL FROM THE
CHANCERY COURT OF BOLIVAR COUNTY, MISSISSIPPI
SECOND JUDICIAL DISTRICT
CAUSE NO. 2009-0254**

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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.

James Davis
Appellant

Chaka Smith, Esq.
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Guaranty Bank and Trust Company
Appellee

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The Honorable William Willard
Chancery Court Judge, Seventh Chancery Court District
P.O. Box 22
Clarksdale, MS 38614

This, the 15 day of June, 2010.

Respectfully submitted,
JACKS, ADAMS & NORQUIST
Attorneys for Appellee

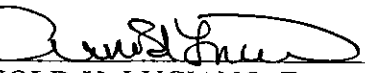
By: 
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STATEMENT OF ISSUES

1. Whether the Bolivar County Chancery Court abused its discretion by granting Guaranty Bank and Trust Company an equitable lien.
2. Whether the Bolivar County Chancery Court abused its discretion by holding James Davis in Contempt of Court and/or failing to Set Aside the Order of Contempt.

STATEMENT OF THE CASE
COURSE OF PROCEEDINGS AND DISPOSITION
IN THE COURT BELOW

This case arises out of multiple loans extended to James Davis by Guaranty Bank and Trust Company (hereinafter "Guaranty Bank"), Cleveland, Mississippi branch, relative to a used automobile purchase and the finance of same. Due to the inability to fulfill the obligations of repayment under those loan agreements, Guaranty Bank filed suit against James Davis. In the Complaint, Guaranty Bank alleged that James Davis breached his contractual obligations of the loan agreements, failed to pay on an open account, and may have been guilty of intentional and/or fraudulent misrepresentations as to the collateral of those loan agreements (Record pps 3-5.) Without counsel, James Davis denied the allegations of the Complaint but offered to resolve the matter by settlement.

The Chancery Court of the Second Judicial District of Bolivar County, Mississippi conducted a hearing on the Guaranty Bank complaint, heard testimony evidence from both sides, reviewed all loan documents and other evidence presented by the parties, and ultimately found in favor of Guaranty Bank. (Record pps. 19-23.) In the Court's Order and Judgment, which was partially based on James Davis' admission that he had entered into the loan agreements, had defaulted under those loans, and was unable to cure or repay same, Chancellor William Willard held that the Guaranty Bank had established the breach of contract/loan agreements, that James Davis had misrepresented numerous material facts to Guaranty Bank and possibly others, that an equitable lien should be imposed against Davis, and that Davis tender and return the collateral vehicle to Guaranty Bank.

Due to admissions by James Davis that he had recently been driving the subject automobile,

Chancellor William Willard ordered Davis to return the collateral vehicle to Guaranty Bank by a particular date. When that time passed, and at a hearing on Guaranty Bank's Motion for Contempt, Davis offered to tender the vehicle but asked for additional time to do so. When the second deadline came and passed with no return of the collateral vehicle, Davis was held in Contempt of Court (Record pps. 33-34.) During this time, Davis retained his current counsel who then filed a Motion to Set Aside Order of Contempt. After conducting two (2) weekly hearings to address the contempt matter, as per the Chancellor's request, and after serving multiple days in jail, the Court, later set aside the Order of Contempt (Supplemented to Record pursuant to MRAP 10(f)) and the current appeal followed.

STATEMENT OF FACTS

On or about October 29, 2008, James Davis executed a Note, Disclosure and Security Agreement in favor of Guaranty Bank, with a principal amount of \$5,010.00 and a maturity date of February 1, 2009, bearing loan number 6764198888 (Record pps. 7-10.) Davis agreed to secure this loan with a 2000 Chevrolet Suburban, bearing VIN 3GNEC16T5YG184953, which he purchased from Guaranty Bank. Due to the inability to pay on this loan, on or about January 9, 2009, Defendant Davis executed another Note, Disclosure and Security Agreement, in favor of Guaranty Bank, with a principal amount of \$5,979.81 and a maturity date of March 9, 2009, bearing loan number 8850336437, which again, pledged as collateral, the subject vehicle mentioned above. (Record pps. 11-15.) As a result of the agreement to pledge the above referenced vehicle as security for the loans, Plaintiff Guaranty Bank was listed as "1st Lienholder" on the Certificate of Title, issued by the State of Mississippi (Record p. 15.)

On or about April 27, 2009, James Davis approached Doug Springer, President of Guaranty

Bank's Cleveland, MS branch, about paying off of the above indebtedness by selling the collateral vehicle. James Davis promised and represented to Springer that if he would release the lien and provide Davis with clear title to the vehicle, Davis could sell the vehicle and immediately return to the bank to pay off and fully satisfy the above referenced indebtedness.

Guaranty Bank, to its detriment, relied on Defendant Davis' representations and released the title to Mr. Davis. After doing so, James Davis never returned to Guaranty Bank to make the promised payment and never attempted to make any further payments to Guaranty Bank under the above referenced notes nor according to his promise to Doug Springer. In fact, Davis did not sell the vehicle but continued to driver the vehicle, up to the date of the hearing on Plaintiff's Complaint.

SUMMARY OF THE ARGUMENT

The Appellant's claims fail first because there is no evidence in the record to establish that the Court abused its discretion in granting Guaranty Bank an equitable lien. James Davis acknowledged the loans and admitted that he was in default of the loans. (Record p. 41.) Furthermore, the Court found that the certificate of title was wrongfully released to James Davis under his representations to Guaranty Bank and his promise to tender the proceeds from the sale of the vehicle to Guaranty Bank if they would release clear title to Davis (Record p. 44.) Secondly, the Contempt of Court finding by the Chancellor was due to the Appellant's own actions and misrepresentations. Finally, and contrary to the Appellant's assertions, the Order of Contempt was set aside by the trial Court by Order dated November 19, 2009 and as such, any and all arguments concerning the issue of contempt is now moot (Supplement to Record pursuant to MRAP 10(f).)

STANDARD OF REVIEW

Under well established Mississippi law, an equitable lien is proper in order to prevent unjust

enrichment and where it would be contrary to equity and good conscience for an individual to retain a property interest acquired at the expense of another. *Neyland v. Neyland*, 482 So.2d 228, 230 (Miss. 1986), citing *Sherman v. Rhode Island Hospital Trust Co.*, R.I.Sup., 68 R.I. 525, (1943). “An equitable lien can be impressed to reflect an express agreement that the property to be lien was intended to be held as security for the obligation of the promisor and out of recognition of general equitable principles of right and justice.” *Neyland v. Neyland*, 482 So.2d 228 at 230 citing *Acacia Mutual Life Insurance Company v. Newscomb*, 21 A.2d 723 (1941)(other citations omitted). The Mississippi Supreme Court, in *Dobbs v. Bowling*, 339 So.2d 985, 986 (Miss. 1976), citing *Pincus v. Pincus*, 22 So.2d 361 (Miss. 1945), defined an equitable lien as a right by which a creditor is entitled to obtain satisfaction of his debt by resort to specified property belonging to the debtor, and no particular form of expression is necessary in such a contract, so long as it is clear that the debtor intended to create the encumbrance.

As to the issue of contempt, such matters are generally at the substantial discretion of the trial court. According to the Court of Appeals, in *Estate of Patton v. Patton*, 971 So.2d 1281 (Miss. Ct. App. 2008), the trial court was identified as “infinitely more competent to decide the matter than the Supreme Court.” *Id* at 1283 citing *Cumberland v. Cumberland*, 564 So.2d 893, 845 (Miss. 1990). In the proper case, the contempt was civil and contrary to Appellant’s brief, was set aside by Court order dated November 19, 2009.¹ (See Chancery Court Order Setting Aside Order of Default, supplemented at the end of the Appellee’s Record Excerpts.) However, this issue will still be

¹ The Chancery Court’s Order Setting Aside Order of Contempt, dated November 19, 2009, was inadvertently omitted from the Trial Court’s Appeal Record. However, counsel for Appellant Davis has included this Order in her “Record Excerpts for Appellant” and it is noted on page 2 of the Clerk’s Papers, which represents the Chancery Court Docket. Additionally, pursuant to MRAP Rule 10(f), in order to accurately convey a fair, accurate and complete account of what has transpired in the trial court as it affects the issue of contempt, supplementation of this Order is helpful and necessary.

addressed as the finding of contempt was due to the Appellants own actions.

Finally, well established in Mississippi jurisprudence in reviewing a Chancellor's findings is that unless the trial court's findings are manifestly wrong, clearly erroneous, or if the Court applied an incorrect legal standard, the trial court's findings are insulated from disturbance and shall not be disturbed. *Lindsey v. Lindsey*, 612 So.2d 376, 381 (Miss. 1993).

ARGUMENT

I. AN EQUITABLE LIEN WAS PROPER DUE TO DAVIS' ACTIONS AS TO CERTIFICATE OF TITLE, PROMISE TO PAY AND OFFER OF SETTLEMENT

A. JAMES DAVIS' ACTIONS AS TO CERTIFICATE OF TITLE, PROMISE TO PAY and OFFER OF SETTLEMENT

Guaranty Bank and Trust Company was listed as "1st Lienholder" on the Mississippi Certificate of Title when James Davis financed his vehicle with Guaranty Bank in October of 2008. (Record p. 15.) On April 27, 2009, James Davis approached Doug Springer of Guaranty Bank about paying off the two (2) loans. During this discussion, Davis advised Springer that he intended to sell the collateral vehicle in order to pay off his indebtedness to Guaranty Bank. However, in order to sell the collateral vehicle, Davis advised Springer that he would need clear title and promised Springer that he would immediately return with the funds to pay off the loans. (Record p. 4 and p. 37). Springer, on behalf of Guaranty Bank, detrimentally relied upon Davis' representations and released the Certificate of Title to Davis. After that time, James Davis never made any payment to Guaranty Bank and his default on his promises is the subject of the Chancery Court's Order and Judgment. In fact, the first paragraph of the Chancery Court's Order and Judgment contains the acknowledgment by James Davis of his default and nonpayment. (Record p. 19.)

As Davis had been placed on notice of default and while Guaranty Bank was attempting to

work out the matter, Davis was still in possession of the vehicle and had advised Springer that he had been unable to sell the vehicle. (Record p. 25.) For several months and up to the date of the hearing on Guaranty Bank's Complaint, Davis had possession of the vehicle and even obtained a second loan with Tower Loan Corporation. (Record p. 21 and p. 25.) When questioned as to the "current" location of the vehicle by the Chancellor, James Davis offered numerous responses that the vehicle was being repaired in Tupelo, MS; that the vehicle had been put up as collateral with Tower Loan but was being kept in Tupelo, MS; and later, that the vehicle had been taken to California. (Record p. 25.)

At the October 8, 2009 hearing before the Chancery Court, Guaranty Bank and Trust Company established, though that it had two (2) valid loans with James Davis, that James Davis had pledged the subject vehicle as collateral for said loans, and that James Davis was in default of those loans. Upon inquiry by the Chancery Court, James Davis acknowledged the loans, his default, and that he had been unable to make any payments on those loans. The Court further inquired as to James Davis' promise to make payment on the loans if Guaranty Bank would release title and same was acknowledged by Davis. Davis' acknowledgment and failure to make payment was the basis for the Court's finding that "Certificate of Title was wrongfully released to James E. Davis as the loans had not been fully paid and satisfied...." (Record p. 21.) These facts were a substantial factor in the Court's imposition of an equitable lien, and same is supported by Mississippi jurisprudence.

The Chancellor, after considering the above, and in order to prevent unjust enrichment for James Davis, imposed an equitable lien in favor of Guaranty Bank. Furthermore, as it would have been contrary to equity and good conscience for Davis to retain any property interest acquired at the expense of Guaranty Bank, the Chancellor imposed an equitable lien in favor of Guaranty Bank.

During the hearing on Guaranty Bank's Complaint, James Davis' constantly offered payment to Guaranty Bank if the Court would grant him additional time in order for Davis to receive settlement funds supposedly due to him from a pending pharmaceutical litigation. This is the basis for the language contained at ¶ 4 of the Court's Order and Judgment. (Record p. 20.)

The Chancery Court, when faced with the facts above and the totality of the circumstances, recognized Guaranty Bank's right to have this equitable lien imposed against James Davis and his property in order to reflect an express agreement that the collateral vehicle was intended to be held as security for the James Davis' promises and obligations. Further recognizing the general equitable principles of right and justice, the equitable lien was imposed. Mississippi jurisprudence necessitated the imposition of this equitable lien.

B. MISPLACED RELIANCE UPON MCA §75-2-403(1)

Appellant cites to MCA §75-2-403(1) and state that the Chancellor was wrong when ordering that title remained with James Davis despite a bill of sale being presented to the Court. The only evidence presented to the Court at the October 8, 2009 hearing when considering the supposed "sale" of the collateral vehicle was James Davis' oral testimony that he prepared a bill of sale and had sold the vehicle to an individual named Troy Stevens. (Transcript p. 4.) Furthermore, the purported "bill of sale" was never offered to the Court, was not admitted as evidence, cannot be authenticated, nor is it a part of the appeal record. The Chancellor, as the primary finder of fact, and after considering Davis' assertions, found and held that the purported sale did not take place and that title of the collateral vehicle still remained with James Davis. (Transcript p. 5. and Record pps. 19-23.) The documents offered by Appellant in support of this argument were never offered to the Chancellor for his consideration and were not entered into evidence. Finally, said documents are not part of the

appeal record, are not authenticated, and as such, are not proper for consideration by this Court. More importantly, even assuming that Davis had offered the purported “Bill of Sale” document into evidence, the Chancellor, as the primary finder of fact, gave such argument little weight and/or did not accept the credibility of the argument, and ultimately found in favor of Guaranty Bank.

Appellant’s argument is further flawed by the fact that although Davis may have had possession of the collateral vehicle at the time of the supposed “sale” (although said sale is not supported by the evidence, is disputed, and was found to be not fact by the Chancellor), Guaranty Bank & Trust company still had a valid lien on the property at the time the collateral vehicle was supposedly “sold” to Troy Stevens as Davis had wrongfully, improperly, and possibly fraudulently obtained title to the collateral vehicle from Guaranty Bank under the promise that he would sell the vehicle and tender the sale funds to Guaranty Bank. This is further supported by the Court’s Order and Judgment at ¶ 5 (Record p. 21), where the Court held that the Certificate of Title was wrongfully released to James Davis as the loans had not been fully paid and satisfied and that [Certificate of Title] should be returned to the status as Guaranty Bank and Trust Company being the first (1st) lienholder. (Record p. 21.)

Finally, although denying that Appellant’s arguments are valid, even if the Chancery Court’s ruling that the vehicle be returned to Guaranty Bank was flawed, the remainder of the equitable lien is still appropriate, even under the Appellant’s arguments, and the Order of Contempt has been set aside, thus making the entire issue, moot. As such, the Appellant’s arguments are without merit and this Court should affirm the lower court’s holdings.

II. AN ORDER OF CONTEMPT, WHICH HAS SINCE BEEN SET ASIDE, WAS PROPER ACCORDING TO THE COURT’S ORDER AND JUDGMENT AND DUE, IN PART, TO JAMES DAVIS’ OWN ACTIONS

Civil contempt is a civil remedy available to vindicate and enforce the rights and interest of litigants or a penalty used to enforce compliance with a court order. *Wood v. Ratliff*, 104 So.2d 156 (Miss. 1925) and *Common Cause of Mississippi v. Smith* 548 So.2d 412, 415 (Miss. 1989). Generally speaking, contempt matters are committed to the substantial discretion of the trial court which, by institutional circumstance and both temporal and visual proximity, is infinitely more competent to decide the matter than the Supreme Court. *Estate of Patton v. Patton*, 971 So.2d 1281, 1283 (Miss. App. Ct. 2008), citing *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. *Id* at 1283.

Chancellor Willard, after finding that a sale of the collateral vehicle had not taken place, that James Davis had made numerous misrepresentations and wrongfully acquired title for the collateral vehicle, and that Davis had offered numerous non-truths to the Court as to the location of the collateral vehicle, ordered James Davis to tender the collateral vehicle to Guaranty Bank by a date certain. Important to note is that at the end of the October 8, 2009 hearing, Chancellor Willard explained to James Davis, the reasons for his ruling, and more importantly addressed the return of the collateral vehicle to Guaranty Bank. Chancellor Willard even discussed the implications of the sale of mortgaged property. James Davis acknowledged that he understood the Chancellor's directions and issues involved and that he was to tender the vehicle to Guaranty Bank by the deadline imposed by the Court. (Record p. 24, ¶ 2.)

When Davis did not tender the collateral vehicle to Guaranty Bank, Guaranty Bank filed a Motion to Compel and for Order of Contempt. (Record p. 24.) At the October 29, 2009 hearing before the Chancellor, James Davis represented to the Court that he had not had enough time to comply with the Court's Order and Judgment but that if he were given additional time and not held

in contempt, he would deliver the vehicle to Guaranty Bank several days later, on a date offered by and convenient to James Davis. Important to note is that Davis did not argue that he no longer had title or owned the collateral vehicle. Davis simply requested additional time to comply.

Although the offered date was on a weekend (Saturday, October 31, 2009), Guaranty Bank, in good faith, accepted James Davis' offer and the Court allowed the additional time. More importantly, and as is noted in paragraph 2 of the Court's Order Granting [Guaranty Bank's] Motion to Compel and for Order of Contempt, the Court advised James Davis of the possible consequences, of failing to abide by the Order and Judgment and his own promise to deliver the collateral vehicle if given additional time and Davis acknowledged same, especially considering that it was Davis who requested the additional time to tender the collateral vehicle. (Record p 33.)

The October 31, 2009 deadline came without delivery of the collateral vehicle and on November 2, 2009, based on the above, the Chancery Court entered an Order of Contempt and issued a warrant for the arrest of James Davis. (Record p. 33-34.) One day later, Appellant's current attorney formally entered her first appearance by filing a Motion to Set Aside Order of Contempt on behalf of James Davis. (Record p. 41.) On that same date, Appellant's current attorney also faxed Appellee's counsel, a group of documents which supposedly supported Davis' position. (Record p. 51-55.) This was the first time that the documents, although un-authenticated, were offered on behalf of James Davis, that the collateral vehicle may have been sold to Mr. Stevens (although same is still in disputed.)

In any event, the Court conducted a hearing on the Motion to Set Aside Order of Contempt on November 5, 2009. At that hearing, the Chancellor allowed Davis a temporary release from incarceration but ordered that he return to incarceration three (3) days later, until Davis could purge

himself of the contemptuous actions. (Record p. 62.) Furthermore, the Chancellor directed counsel for both parties to have weekly hearings before the Chancellor to determine whether or not the contempt had been purged and whether the Order of Contempt should be set aside. After conducting two (2) weekly hearings, and after having received the Appellant's Notice of Appeal, on November 19, 2009, this Court entered an Order Granting Defendant's Motion to Set Aside Order of Contempt, which in part, ordered the immediate release of James Davis from his incarceration. (Supplemented to end of Appellant's Record Excerpts pursuant to MRAP 10(f).)

Chancellor Willard, as the finder of fact, has a high level of discretion in regards to consideration of the credibility of the evidence and the amount of weight afforded to the evidence presented to him. In light of the above, and as finder of fact, Chancellor Willard's finding of contempt was not only reasonable, but warranted. Additionally, as the Order of Contempt has since been set aside, the Appellant's argument is now moot.

CONCLUSION

The Appellants assertions before this Court are not based on any established Mississippi law, are premised on missing and/or incomplete facts, and tenuous at best. The Chancellor, as the trial court's finder of fact, considered all the evidence, all of James Davis' misrepresentations, acts and omissions, and admission that he had breached his loan agreements with Guaranty Bank. After considering his lack of credibility, the Court made certain rulings which were and still are, proper. Appellant's arguments on appeal only address certain issues and, based on the above, are all without merit. Accordingly, the Chancery Court's ruling in favor of Guaranty Bank was correct and based on proper legal standards and as such, this Court should uphold the Chancellor's findings.