IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

IN RE SMITH, ANTHONY WALKER ESTATE **CAUSE NO. 2009-CA-01838**

W.E. DAVIS, ADMINISTRATOR **APPELLANT**
V.
RAYMOND SMITH **APPELLEE**

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 this Court may evaluate possible disqualifications or recusal.

1. Appellee Raymond Smith and his attorneys John B. Turner, Jr., Billy C. Campbell, Jr., and the firm of Baskin, McCarroll, McCaskill, Aldridge & Campbell, P.A.

2. Appellant W.E. "Sluggo" Davis, Administrator of the Estate of Anthony Walker Smith and his attorneys, John T. Lamar, Jr., John T. Lamar, III and the law firm of Lamar & Hannaford, P.A.

3. Ruth Smith and her attorney Darrin Vance, Esq.

4. Creditor First Security Bank and its attorneys Gary Snyder and Watkins, Ludlam, Winter & Stennis, P.A.

5. BancorpSouth and its attorney Eric L. Sappenfield, Esq.

6. Creditor Bank of Holly Springs and its attorney William Schneller.

7. Creditor Sycamore Bank.

8. Mrs. Vicki Anlea Moses Smith, widow of Anthony Walker Smith.

9. Hon. Percy L. Lynchard, Jr., Chancery Court Judge.

John B. Turner by JBT

JOHN B. TURNER, JR.
Certifying Attorney

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF ISSUES

The issues addressed in this reply brief are:

ISSUE 1: WHETHER THE CHANCELLOR WAS CORRECT IN NOT AWARDING PRE-JUDGMENT INTEREST.

ISSUE 2: WHETHER THE CHANCELLOR WAS CORRECT TO FIND THAT RAYMOND SMITH WAS IMPROPERLY EXCLUDED FROM HIS PROPERTY FOR A PERIOD OF APPROXIMATELY TWO YEARS AND WAS THEREFORE ENTITLED TO BACK RENT.

STATEMENT OF CASE

Counsel for the Appellant does an able job of setting out much of the history of this case. However, this statement does contain several inaccuracies that merit correction.

ESTATE ADMINISTERED IN DESOTO COUNTY, MISSISSIPPI

It is correct that Tony Smith died intestate leaving a wife and three children, and that the value of his estate was approximately $9 million dollars and beset by creditors. It is also correct that Tony Smith's father, Raymond Smith, and Tony's ex-wife, Ruth Smith, were the beneficiaries of life insurance policies of $2 million dollars and $125,000, respectively.

However, it is incorrect to state that, "on July 29, 2002, the estate paid the estate taxes due to the IRS and the Mississippi State Tax Commission in the total amount of $632,107.83." While that may be the amount paid by the estate to the Internal Revenue Service and the Mississippi State Tax Commission, it is inaccurate to say that the amount paid constituted the estate taxes that were actually due. Though Raymond Smith held a life estate in the Tate County farm on which he resided (a fact confirmed by the Chancery Court in a ruling upheld by the Mississippi Court of Appeals in *Davis v. Smith,* 922 So.2d 814 (Miss. App., 2005)), the Administrator incorrectly included the Tate County farm in the inventory of the estate's assets. Further, the Administrator grossly overestimated the value of that farm in his attempt to determine the amount of the estate taxes due. These mistakes, the responsibility for which lies solely at the feet of the Administrator, resulted in an overpayment to the IRS and the State of Mississippi.

Related to this was litigation over what share of the total estate taxes, whatever their correct amount, should be borne by Raymond and Ruth Smith. This Court apportioned tax

liability to the life insurance beneficiaries based on the gross estate for probate purposes, rather than the gross value of the taxable estate. While Raymond Smith, obviously, felt the ruling was correct and comported with the letter of the Internal Revenue Code, the Mississippi Supreme Court disagreed and reversed the DeSoto County Chancery Court on this issue. When the Chancery Court made a final determination as to the value of the Tate County Property, thereby establishing the value of the estate for estate tax purposes, Raymond Smith complied with the court's order and paid his share of the taxes to the estate, less the rent to which Raymond was entitled.

COMPLAINT FOR REFORMATION OF DEED AND OTHER DAMAGES FILED IN TATE COUNTY, MISSISSIPPI

In a related case in Tate County, Mississippi, Raymond Smith brought an action against the Estate seeking to reform a deed executed by him to his son Tony. Though the parties intended for Raymond to retain a life estate in his Tate County farm and for his son Tony to receive a remainder interest in the property, the life estate was inadvertently omitted from the deed. Based upon the testimony of eight witnesses who supported Mr. Smith's version of events, the Chancellor found that reformation of the deed to reflect the true intent of the parties was in order, and issued an order correcting the earlier deed. This decision was upheld by the Mississippi Court of Appeals.

STATEMENT OF FACTS

At the time of his death, Tony Smith's estate included, among other assets, a remainder interest in a portion of his father's Tate County Farm. The life estate in this farm was owned by Raymond Smith, with the house making up the homestead of Raymond Smith and his wife

Dorothy owned by Raymond and Dorothy in fee simple. At the time of Anthony Smith's death, the Estate's remainder interest in the farm had a value of $245,000, or approximately $496.25 per acre. (Record, p. 105) In spite of this, in determining the value of the farm for estate tax purposes, the Administrator claimed that the estate had a fee simple interest in the property, and overestimated the value of it, assuming its price to be $770,000, or $1150 per acre. (Record, p. 95) Because of these two incorrect assumptions regarding the value of the land, the estate overestimated the estate taxes due and overpaid the IRS and the Mississippi State Tax Commission. The estate then demanded Raymond Smith and Ruth Smith reimburse the estate for its error.

Because of this overpayment, and because they had a good-faith disagreement with the Administrator's interpretation of the Internal Revenue Code regarding apportionment of estate taxes, Raymond and Ruth declined to accede to the estate's demand. Though the Supreme Court ultimately overruled the trial court's interpretation of the Internal Revenue Code, the Court of Appeals upheld the trial court's determination that Raymond still owned a life estate in his farm, and that Dorothy Smith had never conveyed her homestead interest. (*Davis v. Smith* at 819.) Furthermore, in his March 2009 ruling, the Chancellor found that Raymond Smith was correct in his belief that the Estate's initial assumed value of $770,000 for the farm was far too high, and that the actual value of the estate's interest in the property was $245,000, less than half of the Administrator's guess.

It was not until the Chancery Court made its determination as to the value of the estate that any party could know what it was obligated to pay in estate taxes. Estate taxes are based upon the value of the decedent's estate. A dispute as to that value existed until the Court made

its March 2009 ruling, finding, once again, that the Administrator was wrong in his assessment of the value of the estate. Consequently, the amount owed the estate was not known to any party (and therefore, "liquidated") until the Chancellor's ruling. Once the Court did determine that amount, Mr. Smith promptly remitted the funds to the Administrator. Included in the amount delivered to the Administrator was $17,208.78 for the post-judgment interest awarded to the estate by the Court.

The Court ruled that Raymond Smith was entitled to an offset against the judgment for the estate in the amount of $22,640.00, this amount representing the rent Raymond Smith was due from the estate for the period during which Raymond was improperly excluded from the property by the Administrator. Though the estate claims that this exclusion was a proper exercise of the Administrator's powers, there was no reason for the Administrator to continue to exclude Raymond Smith from his property afer the Chancellor's finding that Raymond held a life estate.

SUMMARY OF ARGUMENT

The Chancellor was correct in refusing to award pre-judgment interest to the Administrator. Pre-judgment interest is proper only when damages are liquidated, or when pursuit of a claim is frivolous and without merit. As the damages were not liquidated, the only basis for claiming pre-judgment interest would be a frivolous claim by Mr. Smith. Inasmuch as the Chancery Court ruled in Mr. Smith's favor, it is apparent that the claim was not frivolous, and that reasonable people could come to different conclusions about the proper interpretation of the Internal Revenue Code as it applies to this case.

Furthermore, the estate's occupation of the property constituted an act of trespass for which Raymond Smith was entitled to rent. Consequently, the Court's award of an offset for rent

to Raymond Smith was completely proper as well.

ARGUMENT

A. STANDARDS OF REVIEW

In reviewing a Chancellor's refusal to award pre-judgment interest, the standard of review is whether the trial court abused its discretion. *Sports Page Inc. v. Punzo* 900 So.2d 1193, 1205 (Miss.App.,2004), citing *Sentinel Industrial Contracting Corp. v. Kimmins Industrial Service Corp.,* 743 So.2d 954, 970-71 (Miss.1999); *Preferred Risk Mut. Ins. Co. v. Johnson,* 730 So.2d 574, 577 (Miss.1998). As an award of prejudgment interest was fully within the Chancellor's purview, only a clear abuse of the Court's discretion would permit this Court to overrule the Chancery Court on this issue.

On the issue of the rent owed to Raymond Smith, as this is a question of law, the standard of review is *de novo*. As it is undisputed that the Administrator occupied Mr. Smith's property and excluded him therefrom for a period of more than two years, it remains only for the Court to determine how to apply the law to these facts.

B. ISSUE ONE. THE CHANCELLOR WAS CORRECT IN REFUSING TO AWARD PRE-JUDGMENT INTEREST.

The estate bases its argument regarding the alleged frivolity of Raymond Smith and Ruth Smith's denial of their claim or what they claim is "unambiguous" portion of the Internal Revenue Code. Although the Chancery Court and this Court have previously addressed this issue, and have found no wrongdoing on the part of Raymond Smith, the estate apparently wishes to relitigate the matter. While the Administrator of the Estate is certainly to be congratulated for his quick grasp of what most consider to be one of the most arcane areas of federal law, the fact

remains that what was unambiguous to him was quite ambiguous not only to Raymond Smith and Ruth Smith, but also to their respective counsels and the Chancellor who heard the case. Furthermore, while the Mississippi Supreme Court ultimately reversed the Lower Court solely on the question of apportionment, it remains uncontested that the estate was incorrect in the amount it deemed to be due from Raymond Smith and Ruth Smith. Not only did Raymond Smith and Ruth Smith have a good faith basis for disputing the Administrator's interpretation of the Internal Revenue Code, but they were ultimately proved correct in their contention that the amount demanded by the Administrator was wrong. Though the estate has appealed the Chancellor's correct decision not to award pre-judgment interest, the estate has not contested the Chancellor's findings regarding the value of the estate. Further, the Court of Appeals has already upheld the Chancellor's findings regarding ownership and division of the real property. Because the estate could not get those facts right, its calculations regarding the amount of estate tax due in were incorrect. Now, because of the negligence of the Administrator in determining the value of the estate and his insistence upon dragging this litigation out, he contends that his negligence should be rewarded by an interest award that has no basis in law or fact.

The estate cites *Moeller v. American Guaranty and Liability Insurance Company*, 812 So.2d 953, 958-59 (Miss. 2002), which was originally cited by the Chancery Court in its Opinion in this matter. *Moeller* makes it clear that pre-judgment interest may be awarded only when (1) the amount due is liquidated or (2) when a refusal to pay a claim is frivolous or done in bad faith.

However, Mississippi's appellate courts have repeatedly held that if there is a genuine dispute as to the amount of damages owed, no award of pre-judgment interest is proper. *Sports Page* at 1205-1206, citing *Warwick v. Matheney,* 603 So.2d 330, 342 (Miss.,1992), *Aetna Cas.*

& Sur. Co. v. Doleac Elec. Co., Inc., 471 So.2d 325, 331 (Miss.1985). ("In the case *sub judice*, damages were unliquidated ... [T]he record reflects a legitimate dispute as to the amount of damages. Therefore, the lower court did not err in denying Doleac's claim for pre-judgment interest."), *In re Estate of Gillies,* 830 So.2d 640, 647 (Miss.2002), ("In the case *sub judice*, there was a bona fide dispute as to whether Gillis was entitled to a quantum meruit award, and if so, the amount. As such, the claim was not liquidated, ... thus, an award of pre-judgment interest was not warranted."), *U.S. Fidelity & Guar. Co. v. Estate of Francis ex rel. Francis,* 825 So.2d 38, 49-50 (Miss.2002) (No award of pre-judgment interest is allowed where the principal amount has not been fixed prior to judgment.... The damages ...were in dispute and unliquidated.... It was error for the trial court to award pre-judgment interest."), *Hancock Bank v. Ensenat,* 819 So.2d 3, 15(¶ 58) (Miss.App.2001) ("[P]re-judgment interest ... requires that damages be liquidated...") (citations omitted); *Estate of Baxter v. Shaw Associates, Inc.,* 797 So.2d 396, 403 (¶ 31-32) (Miss.Ct.App.2001) ("Interest may be denied if 'there is a bona fide dispute as to the amount of damages as well as the responsibility for the liability therefor.'" (quoting *Thompson Mach. Commerce Corp. v. Wallace,* 687 So.2d 149, 152 (Miss.1997)).

One must wonder what possible definition of the term "liquidated" the estate could be using. As the foregoing cases make clear, if the amount owed by one party to another is subject to dispute, the amount is not liquidated and may not be used to justify an award of pre-judgment interest. The amount Raymond and Ruth Smith were obligated to pay could only be determined when the Court made a final determination regarding the value of the estate. **This did not happen until February of 2009.**

Had the Administrator done his job correctly, included in the inventory only those assets

the estate actually owned, excluded those it clearly did not own, and set a correct (or even reasonable) value on acreage which the estate did own, the amount due in estate taxes could well have been liquidated several years ago. However, the Administrator seeks to penalize Raymond Smith for his own mistakes. While it is certainly arguable that there is a bad faith claim being made in this matter, it is the claim being made by the Administrator (one that was soundly rejected by the trial court), and not the defense raised by Raymond Smith. Inasmuch as responsibility for the overpayment of taxes lies solely with the Administrator, it is the Administrator who should bear the burden of that error, and not Raymond Smith.

The Estate goes on to argue that, not only was a figure about which it maintained an incorrect position for nearly nine (9) years "liquidated", but that for Raymond Smith to dispute those eminently disputable figures constituted an act of "bad faith". The estate complains that the Chancellor erred "by not even addressing the frivolous and bad faith denials of his Opinion and Order." These were not addressed for the simple reason they were so ludicrous as not to merit discussion by the Court. The Administrator seems to take the position that any dissent from his own opinion is, *ipso facto,* an act of bad faith. However, as a matter of law, a defense legitimately raised and upheld by the Courts is, by definition, not one raised in bad faith. The Court of Appeals addressed this issue in *Southland Enterprises, Inc. v. Newton County,* 940 So.2d 937, 943 -944 (Miss.App.,2006), when it defined bad faith as

> a refusal to fulfill a duty, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive. *Bailey v. Bailey,* 724 So.2d 335, 338(¶ 9) (Miss.1998) (quoting *Black's Law Dictionary* 139 (6th ed. 1990)). Bad faith is not simply bad judgment or negligence. *Id.* It implies conscious wrongdoing because of dishonest purpose or moral obliquity. *Id.* It is different from negligence, because it contemplates a state of mind affirmatively operating with furtive design or ill will. *Id.* For (a party) to be guilty of a bad faith dispute, it

would have to concede that it owed the amount due, yet still refused to pay.

In the case at bar, the only negligence was on the part of the Administrator, and Raymond Smith legitimately and correctly did not concede the Administrator's argument as to the amount owed. Nothing the estate has offered in the record could support a finding of any "conscious wrongdoing," "dishonest purpose," or "moral obliquity" on the part of Raymond Smith.

As noted above, whether to award pre-judgment interest was within the Chancellor's discretion. As neither of the factors required for such an award were present, the Chancellor's decision was not only not an abuse of his discretion, it was the only decision he could have made in keeping with the law.

C. ISSUE 2: THE CHANCELLOR WAS CORRECT TO FIND THAT RAYMOND SMITH WAS IMPROPERLY EXCLUDED FROM HIS PROPERTY FOR A PERIOD OF TWO YEARS AND WAS THEREFORE ENTITLED TO BACK RENT.

From October 30, 2001 until May 22, 2006, Raymond Smith was excluded by the Administrator from portions of his farm. At trial of this matter, Raymond Smith argued that, as he was the true and rightful owner of the possessory interest in the Tate County farm from the moment he signed the deed that was later reformed by the Chancery Court, this exclusion was improper. Consequently, he was entitled to the rental value of the property from which he was excluded for that entire period. However, the Chancellor found that the Administrator was acting properly by excluding Raymond and all others from the hangar and storage facility from the time of his appointment as Administrator until the Chancellor's ruling that Raymond Smith was the lawful holder of the life estate in the property. (Record, p. 104) Though the estate appealed this

ruling, its appeal was without supersedeas, making its exclusion of Raymond improper from that date on. In spite of this ruling, the Executor failed to remove the locks from the buildings, thereby excluding Mr. Smith from his own property for a period of 24 months. (Record p. 106). The estate produced no evidence to contradict the expert testimony of Mr. Roger Brown, a licensed real estate appraiser, that the buildings in question had a fair market rental value of fifty cents ($.50) per square foot per year, or that they had an aggregate size of 22,640 square feet.

While the Administrator makes much of his obligation to exclude all persons from the buildings on the farm during the period he believed himself to be in lawful possession of them, that contention is a red herring, as it is not at issue in this appeal. The only matter before the court is the time period between the Chancellor's ruling in Raymond Smith's favor regarding his life estate on September 15, 2003 and Raymond's entry into the premises with the assistance of a locksmith on May 22, 2006 (Transcript, p. 77, 98), a period of two years, eight months, and 7 days. If the Chancellor erred in calculating the time period during which Raymond Smith was excluded from his property, the error was in the Estate's favor, and not Raymond Smith's.

It is undisputed that the Administrator padlocked the two buildings in question, and undisputed that the Administrator failed to remove the locks from the buildings after he was informed by the court that Raymond Smith had a possessory interest in those buildings. By failing to remove the locks, as he was legally obligated to do, the Administrator illegally excluded Raymond Smith from his property. Every principle of law and equity requires that the Administrator compensate Mr. Smith for the fair market value of his property, and that is precisely what the Chancery Court did. "The measure of recovery in quantum meruit is the reasonable value of the materials or services rendered." *Estate of Johnson v. Adkins*, 513 So.2d

922, 926 (Miss.1987) (citing *Kalavros v. Deposit Guaranty Bank & Trust Co.*, 158 So.2d 740 (1963)). The Chancellor's findings are supported by the evidence, and the Estate has produced no basis for overturning those findings, or the Chancellor's application of the law to those facts.

CONCLUSION

The Estate's assignments of error are utterly without merit. Mississippi law permits a court to make an award of pre-judgment interest only upon a finding that (1) damages were liquidated or (2) that defense against a claim of damages was frivolous or made in bad faith. Neither of those criteria are present here.

The Estate wrongfully excluded Raymond Smith from his property for a period of more than two years. The evidence regarding the rental value was undisputed, as was the evidence that the Administrator failed to remove the locks on the property after he became obligated to do so.

The Court's ruling was proper in all respects and should be affirmed.

Respectfully submitted this the 9th day of November, 2010.

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CERTIFICATE OF SERVICE

I, John B. Turner, Jr., of Baskin, McCarroll, McCaskill, Aldridge & Campbell, A Professional Association, attorneys for Raymond Smith in the above styled and numbered cause, do hereby certify that true and correct copy of the foregoing instrument has been this day forwarded by United States mail, postage prepaid to:

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This the 9th day of November, 2010.

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JOHN B. TURNER, JR.