2009-CA-01904 E

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

EDWARD L. MONTEDONICO, TRUSTEE FOR THE BANKRUPTCY ESTATE OF MICHAEL JEFFRIES — APPELLANT

v. — Docket No. 2009-CA-01904

MT. GILLION BAPTIST CHURCH — 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 the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

Trial Judge:

Honorable James McLure, III
Circuit Court Judge
Circuit Court of Panola County, Mississippi

Defendant and Related Parties:

Mt. Gillion Baptist Church
Panola County, Mississippi

George Fondren
Panola County, Mississippi
Deacon of Mt. Gillion Baptist Church

Farm Bureau Insurance Company

Plaintiff:

Edward L. Montedonico, Shelby County, Tennessee, plaintiff;

Michael Jeffries, Shelby County, Tennessee;

Attorneys:

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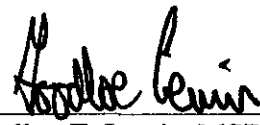
Counsel for Mt. Gillion Baptist Church;

D. Reid Wamble
Holly Springs, Marshall County, Mississippi
Counsel for plaintiff.

RESPECTFULLY SUBMITTED,
MT. GILLION BAPTIST CHURCH

BY: 

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I. STATEMENT REGARDING ORAL ARGUMENT

Plaintiffs request oral argument. They contend that the instant case differs from the cases upon which the trial court relied in reaching the decision now on appeal, which plaintiffs list as *Jackson Ready-Mix Concrete v. Sexton*, 235 So. 2d 267 (Miss. 1970), *Vu v. Clayton*, 765 So. 2d 1253 (Miss. 2000), and *Nofsinger v. Irby*, 961 So. 2d 778 (Miss. App. 2007).

Mt. Gillion believes that oral argument is not necessary. "The facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be aided by oral argument." MISS. R. APP. P. 34(a)(3).

Whatever differences between the case below and the cited authorities may or may not exist, plaintiffs can certainly bring them out in their brief.

II. STATEMENT OF THE ISSUE

I. The Circuit Court of Panola County correctly considered the facts and law and determined that no material issue of fact existed for trial

III. STATEMENT OF THE CASE

Plaintiffs, Michael Jeffries and Edward L. Montedonico as Bankruptcy Trustee, filed their complaint against Mt. Gillion Baptist Church[1] alleging that Mt. Gillion is liable for injuries allegedly sustained by Mr. Jeffries as a result from a fall from a ladder. (R. at 5-11).

At the time of the underlying fall, Mr. Jeffries installed security systems. (R. at 110). He routinely installed them and routinely did so while working alone. (R. at 110). Installation jobs required "a good bit" of ladder climbing, and Mr. Jeffries had substantial experience working with ladders. (R. at 111). He testified as follows:

> Q. Prior to coming to the [Mt. Gillion] church . . . did you have experience with extension ladders?
>
> A. Yes. I've done subcontracting for Time Warner, which you have to climb extension ladders all the time. Also, with extension ladders, doing satellite television systems working for Direct TV.
>
> Q. So you felt comfortable using an extension ladder?
>
> A. Yes, sir.
>
> Q. You were well qualified to use one of those things?
>
> A. Yes, sir.

(R. at 111).

Mr. Jeffries did not own his own extension ladder but had been informed that one would be required to install the security system at Mt. Gillion. (R. at 111). A ladder was provided for his use. (R. at 111-112). Mr. Jeffries arrived at the church around 9:00 a.m. on a weekday

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[1]The defendant in this case was sued as Mt. Gillion Baptist Church; however, there exists no legal entity by that name. The property of the church in question is owned by a corporation called Mt. Gillion Missionary Baptist Church, Inc.

morning. After working that morning and eating lunch, he entered the church's gym to work. There, he found the ladder, which he described to be about an eighteen foot, green extension ladder. He testified that it appeared to be "just like a ladder [he] had used before." (R. at 112). Mr. Jeffries further testified as follows:

> Q. And so before you used the ladder for the first time did you look at it?
>
> A. Of course, I had to look at it.
>
> Q. Did you examine it to see if it would be suitable for the job?
>
> A. I picked it up, looked at it. Everything looked fine to me. The guy even picked it up – helped me pick it up like, you know, I couldn't – he didn't know if I was able to do it by myself or not. But, you know, of course, I've done it before. He helped me pick it up off the floor and lean it up against the wall.
>
> Q. Okay, but I mean, you wouldn't have climbed on that ladder unless you inspected it and made sure you thought it was safe, correct?
>
> A. Right. Everything seemed to be fine with the ladder.
>
> Q. You didn't notice anything unusual about it?
>
> A. No.
>
> Q. Was it broken in any way?
>
> A. No.

(R. at 112-113). Mr. Jeffries used the ladder repeatedly that day before the underlying event. (R. at 113). He further testified as follows:

> Q. You would consider yourself – you're not an average person when it comes to ladders, right?
>
> A. No.
>
> Q. I mean, you have experience with ladders?

A. Yes.

Q. Based upon your experience with ladders, you didn't see anything wrong with is when you looked at it?

A. No, sir.

* * *

A. I would think anybody else if they were there to use it for a security system knew how to use the security system would have got up on the ladder just as I did.

(R. at 113).

After having already ascended and descended the ladder several times, Mr. Jeffries was descending the ladder after running wire when the ladder "just went." From his testimony, it appeared that the base of the ladder slipped out from under him. (R. at 113).

In fact, the ladder had been supplied by George Fondren, a church deacon. Mr. Fondren had obtained the ladder from a church member. Mr. Fondren was not an expert on ladders, although he examined it briefly and found nothing wrong with it before providing it to Mr. Jeffries. (R. at 50-51). Mr. Fondren – lacking experience with ladders – relied on Mr. Jeffries to inform him of any problems or deficiencies with the ladder. (R. at 51).

Based on the above-described testimony, Mt. Gillion filed its Motion for Summary Judgment contending that Mr. Jeffries was an experienced independent contractor, accustomed to working with ladders, and that pursuant to Mississippi premises liability law as it related to contractors, Mt. Gillion was not liable for his injuries. (R. 24-25).

Plaintiff filed a response and supporting memorandum of law on November 5, 2009. On November 6, 2009, the Circuit Court heard oral argument on Mt. Gillion's motion for summary

judgment. The Circuit Court, citing *Vu v. Clayton*, 765 So. 2d 1253 (Miss. 2000) and *Nofsinger v. Irby*, 961 So. 2d 778 (Miss. App. 2007), granted summary judgment in favor of Mt. Gillion.

Plaintiff then commenced the instant appeal.

IV. SUMMARY OF THE ARGUMENT

When he was injured working on the Mt. Gillion gym, Michael Jeffries worked as an independent contractor. Mississippi premises liability law is clear. When a danger exists that is an inherent part of the work being performed, an owner such as Mt. Gillion owes no duty to an independent contractor. For this reason alone, the Circuit Court's grant of summary judgment should be affirmed.

Moreover, plaintiffs have produced no competent summary judgment proof that anyone associated with Mt. Gillion knew of any dangerous conditions related to the ladder provided for Mr. Jeffries's use when doing the work. Even had Mr. Jeffries been present as a business invitee and not an independent contractor, plaintiffs would be required to show actual or constructive knowledge on the part of Mt. Gillion in order to establish the existence of a duty owed.

Throughout their brief, plaintiffs allege negligence on the part of Mt. Gillion, but because as a matter of law no duty was owed by Mt. Gillion, there cannot be negligence. Plaintiffs have come forward with no proof of any duty at law.

For these reasons, and those more fully set forth below, the grant of summary judgment should be affirmed.

V. ARGUMENT

There exists no dispute that Mr. Jeffries possessed skill and experience using ladders. There is no dispute that he was working for Mt. Gillion as an independent contractor. There is no evidence that any problem with the ladder existed when it was provided for his use. For these reasons and others, and pursuant to the authorities set out below, the Circuit Court correctly granted summary judgment in favor of Mt. Gillion.

Plaintiff's only factual assertion, that the ladder was defective because it lacked a rubber grip, is unsupported by any competent proof. Moreover, it does not allow plaintiff to escape the holdings of, *inter alia*, *Vu v. Clayton*, 765 So. 2d 1253 (Miss. 2000) and *Nofsinger v. Irby*, 961 So. 2d 778 (Miss. App. 2007). Even if the rubber foot was missing when Mr. Jeffries began using the ladder, Mt. Gillion is not liable for his injuries.

A. Standard of Review and Summary Judgment Standard.

Appellate courts apply a *de novo* standard when reviewing the granting of a motion for summary judgment. *Whitaker v. Limeco*, 32 So. 3d 429, 433-34 (¶ 10) (Miss. 2010). The summary judgment standard has been articulated as follows:

> In evaluating a grant of summary judgment, this Court views all evidentiary matters, including admissions in pleadings, answers to interrogatories, depositions, admissions, and affidavits. *Glover v. Jackson State Univ.*, 968 So.2d 1267, 1275 (Miss.2007) (citing Miss. R. Civ. P. 56(c)). The evidence must be viewed in the light most favorable to the non moving party. *Simpson v. Boyd,* 880 So.2d 1047, 1050 (Miss.2004) (quoting *Palmer v. Anderson Infirmary Benevolent Ass'n,* 656 So.2d 790, 794 (Miss.1995)). The existence of a genuine issue of material fact will preclude summary judgment. *Massey v. Tingle,* 867 So.2d 235, 238 (Miss.2004). A fact is material if it "tends to resolve any of the issues properly raised by the parties." *Simpson,* 880 So.2d at 1050 (quoting *Palmer,* 656 So.2d at 794). The motion "should be overruled unless the trial court finds, beyond a reasonable doubt, that the plaintiff would be unable to prove any facts to support his claim." *Simpson,* 880 So.2d

at 1050 (quoting *Palmer,* 656 So.2d at 796).

Spann v. Shuqualak Lumber Co., 990 So. 2d 186, 189 (¶ 6) (Miss. 2008).

The non moving party *is not*, as plaintiffs write in their brief, "always given the benefit of every doubt as to the existence of a material fact." (Brief of Appellant at 12). On the contrary, "[t]he non-moving party's claim must be supported by more than a mere scintilla of colorable evidence; it must be evidence upon which a fair-minded jury could return a favorable verdict." *Rowan v. Kia Motors America, Inc.*, 16 So. 3d 62, 66 (¶ 12) (Miss. App. 2009). The Court must draw all *reasonable* inferences in favor of the plaintiffs, *Partin v. North Miss. Med. Ctr., Inc.*, 929 So. 2d 924, 929 (¶ 16) (Miss. App. 2005), not all possible or imaginable inferences.

"To survive summary judgment, the non-moving party must offer 'significant probative evidence demonstrating the existence of a triable issue of fact.'" *Stanley v. Boyd Tunica, Inc.*, 29 So. 3d 95, 97 (¶ 6) (Miss. App. 2010) (citations omitted). In the instant case, plaintiffs were required to "set forth specific facts showing that there is a genuine issue for trial." *Id.*; *see also* MISS. R. CIV. P. 56(e).

B. The Circuit Court of Panola County Correctly Applied Mississippi Law to the Facts of the Case when Granting Summary Judgment in Favor of Mt. Gillion.

1. Mr. Jeffries Worked as an Independent Contractor. The Danger of the Ladder Slipping Was Inherent, and Mt. Gillion Therefore Owed Him No Duty as a Matter of Law.

"[T]he owner or occupier is under no duty to protect [independent contractors] against risks arising from or intimately connected with defects of the premises, or machinery or appliances located thereon, which the contractor has undertaken to repair. *Vu v. Clayton*, 765 So. 2d 1253, 1256 (¶ 12) (Miss. 2000) (citing *Jackson Ready-Mix Concrete v. Sexton*, 235 So. 2d 267

(Miss. 1970)). "The owner/occupier is not an insurer of the invitee's safety, and he is not liable for [conditions] which are not dangerous or which are, or should be known to the business invitee." *Id.* at 1256 (§ 13) (citing *Jones v. James Reeves Contractors, Inc.*, 701 So. 2d 774 (Miss. 1997)). "Furthermore, when a danger exists, which is inherent to the work the independent contractor is employed to perform, or which arises from or is intimately connected with the work to be performed, the employer's duty to protect the contractor is absolved." *Grammar v. Dollar*, 911 So. 2d 619, 622-623 (¶ 8) (Miss. App. 2005) (citing *Coho Resources v. McCarthy*, 829 So. 2d 1, 10-11 (¶¶ 20-21) (Miss. 2002)); *Nofsinger v. Irby*, 961 So. 2d 778, 781 (¶ 10) (Miss. App. 2007).

In the instant case, Mr. Jeffries is an experienced independent contractor with extensive experience with ladders. The risks of using a ladder to install the alarm system were "intimately connected" to the work Mr. Jeffries performed. According to Mississippi law on the duties owed by owners to independent contractors, Mt. Gillion had no duty to protect Mr. Jeffries. *Grammar*, 911 So. 2d at 622-623 (¶ 8); *Nofsinger*, 961 So. 2d at 781 (¶ 10).

Because as a matter of law Mt. Gillion owed Mr. Jeffries, an independent contractor, no duty to protect him, issues such as contributory negligence raised by the plaintiffs are never reached. As a matter of law, with no duty owed, there can be no finding of negligence on the part of Mt. Gillion. *See Todd v. First Baptist Church of West Point*, 993 So. 2d 827, 829 (¶ 10) (Miss. 2008) ("Duty and breach must be established first").

2. The Circuit Court's Decision was Well-Grounded in the Facts and Applicable Mississippi Law.

The Circuit Court cited two cases when rendering its ruling on the underlying motion for

summary judgment: *Vu v. Clayton*, 765 So. 2d 1253 (Miss. 2000) and *Nofsinger v. Irby*, 961 So. 2d 778 (Miss. App. 2007). (T. at 11). *Vu* was brought by an air conditioning contractor against an owner and lessee of a structure after the contractor fell through a hole in the structure's attic. *Id.* at 1254 (¶ 1). The *Vu* Court summarized the facts as follows:

> Vu was hired as an independent contractor by Xuan to install an ancillary air conditioning unit in the unfinished attic. A plywood walkway led the way to the air conditioning unit which was placed on the rafters in the attic. Vu was holding and adjusting a flashlight for a co-worker when he stepped backward off the plywood walkway. He fell through an approximately 4 x 4 foot cased opening to the floor below, seriously injuring his arm. Apparently, at one time, an attic fan had been placed in the opening, but it had since been removed. At trial, both Vu and his co-worker testified that the area was dusty and that, in the dim light of the attic, the cavity of the opening, which was filled with a number of boxes, appeared to be a continuation of the plywood walkway on which Vu had been standing.
>
> Both Clayton and Xuan denied having ever been in the attic area, which was accessible only through a small trap door. They asserted that they had no knowledge of the conditions existing in the attic. Clayton had purchased the building and rented it to Xuan approximately eight months before the accident. Clayton and Xuan further argued that there were no facts which would give rise to a finding that they should have known about this condition or otherwise charging them with constructive notice of its existence.

Id. at 1254 (¶¶ 2-3).

Regarding the duty owed by Mt. Gillion to Mr. Jeffries,

> [A]n owner or operator of a business still owes a duty to an invitee to exercise reasonable or ordinary care to keep the premises in a reasonably safe condition or warn of dangerous conditions not readily apparent, *which owner or occupant knows of, or should know of*, in the exercise of reasonable care. *Jerry Lee's Grocery, Inc. v. Thompson*, 528 So.2d 293 (Miss.1988). The invitee is still required to use in the interest of his own safety that degree of care and prudence which a person of ordinary intelligence would exercise under the same or similar circumstance. *Tate v. Southern Jitney Jungle Co.*, 650 So.2d 1347, 1351 (Miss.1995).

Id. at 1255 (¶ 7) (quoting *Fulton v. Robinson Indus, Inc.*, 664 So. 2d 170, 175 (Miss. 1995))

(emphasis added).

As in *Vu*, *Id.* at 1255 (¶ 9), there is no proof showing anyone with Mt. Gillion had actual or constructive knowledge of any allegedly dangerous condition, including the allegedly missing rubber foot from the ladder used by Mr. Jeffries.[2] As a result, even if plaintiffs have successfully created an issue of fact as to the alleged absence of the rubber foot – which they have not – the fact is not material unless plaintiffs also demonstrate actual or constructive knowledge of the allegedly dangerous condition on the part of Mt. Gillion.

Mr. Vu had been in the attic of the involved structure approximately ten times in two days, *Id.* at 1256 (¶ 11); Mr. Jeffries had climbed the subject ladder numerous times on the day of his fall without mishap. (R. at 113). Mr. Vu had twenty years of experience in climbing into attics, *Id.*; Mr. Jeffries testified to a lengthy and extensive history of using ladders and admitted he was not an "average person" when it came to ladders. (R. at 111-113). Mississippi law establishes that "[t]he party in the best position to eliminate a dangerous condition should be burdened with that responsibility." *Id.* (citing *Tharp v. Bunge Corp.*, 641 So. 2d 20, 25 (Miss. 1994)). Just like Mr. Vu, Mr. Jeffries was in the best position to eliminate any dangerous condition related to the ladder he used repeatedly that afternoon.

As the trial judge stated in the opinion issued from the bench, (T. at 11), the case of *Nofsinger v. Irby*, 961 So. 2d 778 (Miss. App. 2007), is even more on point. Without rehashing the law set forth above, *Nofsinger* involved a contractor who utilized the owner's table saw. A

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[2]As will be discussed more fully below, Mt. Gillion concedes for purposes of the instant appeal only that Mr. Jeffries' testimony establishes that after his fall the rubber foot was missing. However, there is no proof on the record that the foot was missing prior to the fall, or more importantly that the missing foot caused the fall.

wood chip flew from the saw and struck the contractor in the eye, resulting in impaired vision. *Id.* at 778 (¶ 1). The *Nofsinger* Court summarized the facts before it as follows:

> In May 2003, Joe Irby hired his neighbor, Jack Nofsinger, to help him form a driveway at a rental duplex Irby was building. Nofsinger is an experienced carpenter and construction worker with over twenty-five years of experience, and by his own admission often gave Irby pointers regarding home improvement projects. Irby had hired Nofsinger to perform trim work on his rental properties on at least two prior occasions. On the previous two occasions, Irby paid Nofsinger by the job and neither withheld taxes from Nofsinger's payment nor provided Nofsinger with a W-2 form.
>
> On May 29, 2003, while helping Irby construct the driveway form, Nofsinger went into the duplex garage and retrieved Irby's table saw. While Nofsinger was cutting stakes for the driveway form, a wood chip was propelled from the saw blade and struck him in the left eye causing permanent blindness in the eye. Irby's table saw did not have the proper safety guard over the blade and Nofsinger was using the saw without wearing safety goggles. Nofsinger acknowledged during the summary judgment hearing that he was aware of the danger of using a table saw without a safety guard and goggles, and admitted to doing so on numerous occasions in the past. He also testified to operating similar table saws "a couple of thousand times," and that if he had been wearing goggles, the wood chip would not have struck him in the eye.

Id. at 779 (¶¶ 3-4). Based on the foregoing facts, the Mississippi Court of Appeals affirmed the lower court's grant of summary judgment based on the same grounds as urged by the *Vu* defendant and by Mt. Gillion Baptist Church in the instant appeal. The *Nofsinger* Court wrote as follows:

> The facts in the record, viewed in the light most favorable to Nofsinger, do not support his position that Irby breached a duty of care by not placing a safety guard over the saw blade, by not warning him of the absence of the safety guard, nor by not properly instructing him on how to use the saw. The undisputed facts in the record are that Nofsinger has worked in the carpentry and construction industry for more than twenty-five years. Nofsinger has superior knowledge in the industry than that possessed by Irby. Further, Nofsinger has used table saws similar to the one at issue here and without goggles or a safety guard "thousands of times," and Nofsinger admitted that he appreciated the danger of doing so. Therefore, whether Nofsinger was an

> independent contractor, an employee, or an invitee is of no moment to the ultimate decision on the issue of summary judgment. Under the appropriate analysis for either of the three statuses claimed, Nofsinger appreciated or should have appreciated the risks associated with using the table saw without the appropriate safety equipment and his assumption of that risk absolves Irby of the liability claimed. Nofsinger has failed to produce any evidence demonstrating that Irby breached any duty owed to him, and, therefore, summary judgment is affirmed.

Id. at 782-783 (¶ 13).

Once again, the facts are incredibly similar to the case *sub judice*. Mr. Nofsinger testified to years of experience using the tool that injured him. Like Mr. Jeffries, Mr. Nofsinger alleged that the owner failed to warn him. Just as in *Nofsinger*, summary judgment in the instant case was and is appropriate because plaintiffs fail to establish that Mt. Gillion owed any duty to Mr. Jeffries.

3. Even if Mr. Jeffries Had Been an Invitee, Plaintiffs Produced No Evidence that Mt. Gillion Knew of Any Allegedly Dangerous Condition.

Again, the parties in the instant case both refer to Mr. Jeffries as an independent contractor. However, even if he had been a business invitee, as was the plaintiff in *Vu*, plaintiffs have not produced sufficient evidence of any duty owed him by Mt. Gillion. In order to do so, plaintiffs would have to produce evidence that Mt. Gillion, or an individual associated with it, had actual or constructive knowledge of an allegedly dangerous condition. *Vu*, 765 So. 2d at 1255 (¶ 7). There is no such evidence in the record.

C. Plaintiffs Fail to Create An Issue of Fact Regarding the Allegedly Missing Rubber Foot.

Pursuant to the authorities and facts cited above, the Court's inquiry need go no further. Regardless of the condition of the ladder, Mt. Gillion owed no duty to Mr. Jeffries, an

independent contractor.

However, plaintiffs allege in their brief that at the time of the fall the ladder was missing a rubber pad that would have kept the ladder from slipping. Of course, under the authorities cited above, Mt. Gillion is not liable for Mr. Jeffries's injuries even if the rubber foot was missing when the ladder was suppled. In both *Vu* and *Nofsinger* the conditions of which the plaintiffs complained unquestionably existed prior to their beginning to work, yet upon application of Mississippi's premises liability law there was no liability.

Mr. Jeffries offered the following testimony regarding the fall of the ladder and the post-fall condition of the ladder:

> A. The reason it fell I believe is because it was missing a rubber foot that keeps is from sliding when its on a solid surface. One of the rubber footing [sic] was slipped – I don't know why [sic] you call it, but something to keep it from slipping was missing.
>
> Q. You said you believe that?
>
> A. No. After I got up off the ground and was walking around looking for a puddle of water or maybe some sand or something trying to figure out what was going on here, and then looked at the ladder and it's missing a rubber foot.

(R. at 113). Even taken in a light most favorable to plaintiffs, and drawing every reasonable inference in their favor, the testimony of Mr. Jeffries establishes only that the rubber foot was missing after the fall. His testimony regarding the condition of the ladder pre-fall was quite different.

> Q. And so before you used the ladder for the first time, did you look at it?
>
> A. Of course, I had to look at it.

Q. Did you examine it to see if it would be suitable for the job?

A. I picked it up, looked at it. Everything looked fine to me. . . .

Q. Okay. But I mean, you wouldn't have climbed on that ladder unless you inspected it and made sure you thought it was safe, correct?

A. Right. Everything seemed to be fine with the ladder.

Q. You didn't notice anything unusual about it?

A. No.

Q. *Was it broken in any way?*

A. *No.*

(R. at 112-113) (emphasis added). According to Mr. Jeffries' testimony, which is uncontradicted, the ladder had nothing wrong with it when he began using it or – put differently – when Mr. Gillion's deacon left it in the gym for him. He clearly inspected the ladder and found nothing wrong with it. At best, the evidence supplied by plaintiff shows that the rubber foot was missing after the fall. No evidence whatsoever shows the foot was missing before the fall. In other words, the *only* reasonable inference to be drawn is that the ladder was fine when Mr. Jeffries began using it and the rubber foot came off either during the course of the afternoon's work or during the fall.

D. Mt. Gillion Is Not Liable to Plaintiffs as a Matter of Law. Accordingly, Allocation of Fault Rules Do Not Apply.

Plaintiffs rely on various authorities, including *Tharp v. Bunge Corp.*, 641 So. 2d 20 (Miss. 1994), MISS. CODE. ANN. § 11-7-15, and MISS. CODE. ANN. § 11-7-17, to argue that allocation of fault is the province of the finder of fact, and that plaintiffs should be allowed to let a jury allocate fault and make an award accordingly.

In order for a jury to make an allocation of fault, both parties must be liable. As shown above, plaintiffs have failed to come forward with any competent summary judgment proof that Mt. Gillion knew of the allegedly dangerous condition of which plaintiffs complain. Before a jury can consider negligence by Mt. Gillion, plaintiffs must come forward with some evidence of a breach of duty owed to Mr. Jeffries. This they have failed to do. As a matter of law, there is zero liability and no comparative fault issues for a finder of fact to consider.

VI. CONCLUSION

Mt. Gillion owed no duty to Mr. Jeffries, who worked as an independent contractor and who was injured as a result of an activity intimately connected to the job. Plaintiffs have produced no competent proof otherwise, including their failure to produce evidence that Mt. Gillion had actual or constructive knowledge of any allegedly dangerous conditions.

Plaintiffs repeatedly write that an employer is liable for its own negligence. However, as a matter of law in order for plaintiffs to establish negligence on the part of Mt. Gillion they must first establish that Mt. Gillion owed a legal duty to Mr. Jeffries. As demonstrated above, it did not.

There are no issues of fact, and the law is clear. Accordingly, Mt. Gillion requests this Court to affirm the grant of summary judgment.

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

MT. GILLION BAPTIST CHURCH

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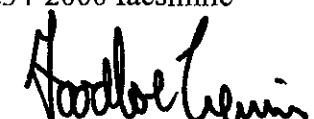
BY: 

GOODLOE T. LEWIS, MSB #[redacted]
JOSIAH DENNIS COLEMAN, MSB [redacted]

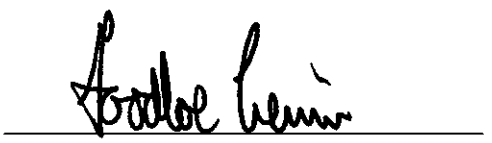
CERTIFICATE OF SERVICE

I, GOODLOE T. LEWIS, of Hickman, Goza & Spragins, PLLC, Attorneys at Law, Oxford, Mississippi, do hereby certify that I have this date mailed by United States Mail, postage prepaid, a true and correct copy of the above and foregoing to:

Honorable James McLure, III
Circuit Court Judge
17th Circuit Court District
Post Office Box 246
Sardis, Mississippi 38666

D. Reid Wamble
Attorney at Law
Post Office Box 416
Holly Springs, Mississippi 38635
Facsimile 662.252.1113

THIS, the 9th day of June, 2010.



GOODLOE T. LEWIS

CERTIFICATE OF MAILING

I, GOODLOE T. LEWIS, of Hickman, Goza & Spragins, PLLC, Attorneys at Law, Oxford, Mississippi, do hereby certify that I have this date mailed by United States Mail, postage prepaid, the original and three copies of the Brief of the Appellant to be filed with the Clerk of the Supreme Court.

THIS, the 9th day of June, 2010.

/s/ Goodloe T. Lewis
GOODLOE T. LEWIS