

IN THE SUPREME COURT OF MISSISSIPPI

ARVIND KUMAR, INDIVIDUALLY AND D/B/A
HOLIDAY INN OF COLUMBUS, BHAVNA KUMAR
TONY SAVAGE AND TRACEY SAVAGE

APPELLANTS

V.

NO. 2009-CA-02037

SHANNA LOPER

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies 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. Shanna Loper, Appellee;
2. Hicks & Smith, PLLC, Attorneys for Appellee;
3. Holiday Inn of Columbus, Appellant;
4. Arvind Kumar, Appellant;
5. Tony Savage, Appellant;
6. Tracey Savage, Appellant;
7. John W. Crowell, Attorney for Appellant;
8. Judge Lee J. Howard, 16th District Circuit Court Judge.

This the 23rd day of November, 2011.



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SUPPLEMENTAL BRIEF OF APPELLEE

COMES NOW, Shanna Loper, Plaintiff /Appellee, (hereinafter “Loper”) by and through her counsel and files this her Supplemental Brief pursuant to Rule 17(h) of the Rules of Mississippi Rules of Appellate Procedure and respectfully submits to the Court the following:

ARGUMENT AND AUTHORITIES

Appellee acknowledges that the consideration by this Court of the grant of *Certiorari* shall be conducted on the record of briefs previously filed pursuant to the Mississippi Rules of Appellate Procedure. This supplemental brief is respectfully submitted as a concise summary of the critical facts and compelling controlling law. Plaintiff/Appellee was an employee at Holiday Inn in Columbus, Mississippi. She was sexually harassed on the job and despite numerous reportings to her employers, nothing was done. Accordingly, her cause of action was commenced through a Complaint for intentional infliction of emotional distress on or about December 9, 2008. Counsel

chosen by all the defendants, Attorney Ed Pleasants, never entered any appearance in Court on behalf of the defendants and never made any effort to defend the defendants. Defendants failed to answer the Complaint although the sworn proof shows the defendants were aware of their responsibility. The defendants so testified at the hearing on the Motion to Set Aside Default Judgment. Mrs. Savage testified that she noted on the summons that she had thirty (30) days to respond. *[Record Excerpt 0036/Trial Transcript, Page 31, lines 18-20.]* She further testified that she had communications with Mr. Pleasants about the need to respond and “I did on a weekly basis because I was reminding him we have so many days, we have so many days.” *[Record Excerpt 0036/Trial Transcript, Page 31, lines 21-24]*

Mr. Tony Savage testified in substance that he knew what the complaint was and thought that their attorney was going to take care of the complaint. However, Mr. Savage testified that he never followed up with Mr. Pleasants to see if the complaint was ever answered. *[Record Excerpt 0057-0058 /Trial Transcript 52-53]*

Defendant Kumar did not even attend the hearing on the Motion to Set Aside the Default Judgment. He never answered the Complaint, never attended the writ of inquiry on damages, and failed to attend the Motion to Set Aside. As this Court eloquently stated in Flagstar Bank, F.S.B. v. Danos, 46 So.3d 298 (Miss. 2010), “assuming that [the defendant] could count to thirty and had some rudimentary familiarity with the Julian calendar, the summons instructed him that his answer was due ...”. Guaranty National

Insurance Company v. Pittman, 501 So.2d 377(Miss. 1987). This Court stated in Flagstar, again citing Pittman, and maybe people will miss fewer trains if they know the engineer will leave the station without them rather than delay for no shows the established departure. This Court stated that although we are not about to inaugurate a policy of entering irrevocable defaults where no answer has been filed by the 31st day, we are equally resolved that the people know that the duty to answer must be taken seriously. At some point the train must leave. That point had clearly been reached in the case at bar as determined by the Trial Judge... *Id.*, citing Pittman at 501 So.2d at 388-389.

The Mississippi Rules of Civil Procedure clearly establish that there is no additional duty, as required by the Court of Appeals, to give these defendants three (3) days notice [See paragraphs 13 and 18 in Kumar v. Loper, 2009-CA-02037-COA (MSCA)] when their attorney totally failed to file any responsive pleading or enter any appearance of any kind. In fact their chosen attorney stated he was not representing them anymore. The duty then fell squarely upon the shoulders of the defendants to hire an attorney and request more time or answer the complaint themselves. The default judgment was a valid default judgment and the Trial Judge so found after a thorough evidentiary hearing. The decision by the Court of Appeals is a sharp departure from the Mississippi Rules of Civil Procedure and the established Mississippi law concerning default judgments. The decision of the trial judge was imminently correct. The Court of Appeals failed to follow the controlling Supreme Court decisions as the lower Court had


done. The discretion of the Trial Judge should not have been disturbed since clearly this discretion was fully supported and had not been abused.

CONCLUSION

Loper respectfully requests that this Court correct the misapplication of default judgment law and apply the well established law based on the provisions of the Mississippi Rules of Civil Procedure. Loper respectfully requests this Court to reverse the Court of Appeals and render its decision supporting the Trial Court's finding of default judgment and the damages awarded therein.

DATED: November 23rd, 2011.

By:


DEWITT T. HICKS, JR. (MB# [REDACTED])
ATTORNEY FOR APPELLEE

OF COUNSEL:

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CERTIFICATE OF SERVICE

I, the undersigned attorney, Dewitt T. Hicks, Jr., counsel for the Appellee, do hereby certify that I have filed this *Supplemental Brief of Appellee Pursuant to Rule 17 (h) of the Mississippi Rules of Appellate Procedure* with the Clerk of this Court, and have served a true and correct copy of this *Supplemental Brief of Appellee Pursuant to Rule 17 (h) of the Mississippi Rules of Appellate Procedure* by United States first class mail, postage prepaid, to the following:

John W. Crowell
Nichols Crowell Gillis Cooper and Amos
P. O. Box 1824
Columbus, MS 39703-1824

The Honorable Lee J. Howard
Circuit Judge, District 16
Post Office Box 1344
Starkville, MS 39760

SO CERTIFIED, this the 23rd day of November, 2011.



DEWITT T. HICKS, JR.

CERTIFICATE OF MAILING

I, the undersigned attorney, Dewitt T. Hicks, Jr., counsel for the Appellee, do hereby certify that I have shipped the original and 10 copies of the *Supplemental Brief of Appellee Pursuant to Rule 17 (h) of the Mississippi Rules of Appellate Procedure* by Federal Express prepaid, to the following:

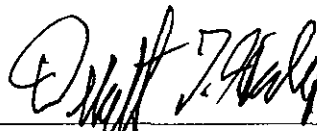
Kathy Gillis, Clerk
Mississippi Supreme Court
Post Office Box 249
Jackson, MS 39205-0249

And further certifies that a true and correct copy of the *Supplemental Brief of Appellee Pursuant to Rule 17 (h) of the Mississippi Rules of Appellate Procedure* was mailed via United States first class mail, postage prepaid, to the following:

John W. Crowell
Nichols Crowell Gillis Cooper and Amos
P. O. Box 1824
Columbus, MS 39703-1824

The Honorable Lee J. Howard
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DEWITT T. HICKS, JR.