

IN THE SUPREME COURT OF MISSISSIPPI

MARK S. BOUNDS REALTY PARTNERS, INC.

PLAINTIFF/APPELLANT

VS.

NO. 2009-TS-00493

MELANIE LAWRENCE

DEFENDANT/APPELLEE

AMENDED BRIEF OF APPELLANT

**APPEAL FROM THE CHANCERY COURT
OF MADISON COUNTY, MISSISSIPPI**

ORAL ARGUMENT NOT REQUESTED

COUNSEL FOR PLAINTIFF/APPELLANT

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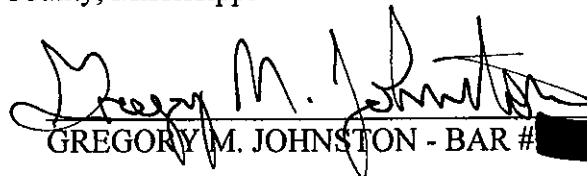
MELANIE LAWRENCE

DEFENDANT/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.

1. Plaintiff/Appellant
Mark S. Bounds Realty Partners, Inc. - Mark S. Bounds - President
2. Defendant/Appellee
Melanie Lawrence
3. Counsel for Plaintiff/Appellant
Gregory M. Johnston
4. Counsel for Defendant/Appellee
John Cosmich and Kathleen S. Cook
Cosmich, Simmons, & Brown, PLLC
5. Trial Judge
Honorable Janace Goree,
Chancellor, Madison County, Mississippi


GREGORY M. JOHNSTON - BAR # [REDACTED]

STATEMENT REGARDING ORAL ARGUMENT

The Plaintiff/Appellant does not request oral argument in this matter.

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I. STATEMENT OF ISSUES

1. Whether the Chancellor's Award of Attorney's Fees Is Improper and Should Be Reversed?

II. STATEMENT OF THE CASE

On July 24, 2008, Defendant's attorney, Kathleen S. Cook of Cosmich, Simmons, & Brown, PLLC, wrote a letter to Plaintiff. (R. at 13). With this letter, Ms. Cook included an unsigned complaint that had been drafted at Ms. Lawrence's request demanding payments in the amount of \$18,500 for a breach of an alleged oral contract between Ms. Lewis and the Company. (R. at 13). The Complaint referenced other damages including "mental anguish and emotional distress." (R. at 13). According to the letter, Ms. Lawrence intended to file the Complaint "within the next week" if the matter was not resolved to her satisfaction. (R. at 13).

In response to the abrupt and hostile communication, Plaintiff reviewed its office files to determine if there was any validity to the claims. During the file review, Plaintiff uncovered a number of improprieties committed by Ms. Lawrence during her employment. Rather than waiting to be sued by Defendant, Plaintiff elected to file a claim in the Chancery Court of Madison County, Mississippi, for causes of action against Defendant which were uncovered during the file review.

Plaintiff filed its Complaint for Declaratory Judgment and Other Relief on July 31, 2008. (R. at 1). On October 14, 2008, Defendant filed a Motion to Dismiss for Lack of Subject-Matter Jurisdiction and For Other Relief. (R. at 19). On December 2, 2008, Plaintiff

filed its Response In Opposition to Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction and For Other Relief. (R. at 41).

On December 3, 2008, a hearing on Defendant's Motion to Dismiss was held before Chancellor Janace Goree in the Chancery Court of Madison County, Mississippi. (Tr. at 1). At the hearing, the Chancellor granted Defendant's Motion to Dismiss, and also awarded attorneys' fees against Plaintiff in the amount of \$1250. (Tr. at 17-18). An Order on Defendant's Motion to Dismiss was entered on March 3, 2009. Neither at the hearing, nor in the Order, did the Chancellor offer any legal or factual conclusions to explain or justify the award of attorneys' fees against Plaintiff.

Taking issue with the Chancellor's ruling as to the award of attorneys' fees, Plaintiff filed its Notice of Appeal on March 25, 2009. Plaintiff now brings its cause before this Court, respectfully asserting that the Chancellor's award of attorneys' fees was improper and should be reversed.

III. STATEMENT OF THE FACTS

The Defendant, Ms. Lawrence, began working as an administrative assistant for Plaintiff in September of 1997. (R. at 2). In early October 2007, Ms. Lawrence voluntarily quit her employment with Plaintiff to take a job with a real estate auction company in Ridgeland, Mississippi. (R. at 2).

On July 24, 2008, Plaintiff received a letter from attorney Kathleen S. Cook of Cosmich, Simmons, & Brown, PLLC. (R. at 13). With this letter, Ms. Cook attached a draft of a complaint that had been drafted at Ms. Lawrence's request demanding payments in the amount of \$18,500 for a breach of an alleged oral contract between Ms. Lawrence and Plaintiff. (R. at 14). The Complaint referenced other damages including "mental anguish

and emotional distress.” (R. at 14). According to the letter, Ms. Lawrence intended to file the Complaint “within the next week” if the matter was not resolved to her satisfaction. (R. at 13).

In response to this abrupt and hostile communication from Ms. Lawrence’s attorney, employees of Plaintiff began reviewing their files related to Ms. Lawrence’s employment. (R. at 3). During their file review, employees of the Company discovered a number of improprieties committed by Ms. Lawrence during her employment with Plaintiff.

In light of the improprieties by Ms. Lawrence during the term of her employment, and the looming lawsuit by Ms. Lawrence, Plaintiff herein elected to file suit in the Chancery Court of Madison County, Mississippi. (R. at 3).

After filing suit, Plaintiff hired a process server, Tyler Miller, to serve the Complaint on Ms. Lawrence. (Tr. at 12). Mr. Miller attempted on thirteen (13) separate occasions to serve Defendant with process at her home. (Tr. at 12). Mr. Miller would knock on the door at Defendant’s home and her daughter would answer the door, but when Mr. Miller would ask to see Ms. Lawrence, Defendant would refuse to come to the door. (Tr. at 12). Finally, the process server gave the Complaint and summons to Matt Shackelford, the Madison County Constable. Constable Shackelford was able to serve Defendant with the Complaint and summons, but was forced to restrain Defendant with handcuffs after she became belligerent and tried to physically assault him. (Tr. at 13).

Despite the Defendant’s refusal to accept process on thirteen (13) different occasions, and her unruly behavior toward a law enforcement officer, it was alleged at the hearing on Defendants’ Motion to Dismiss, that Plaintiff was engaging in “bad tactics” and that the Chancellor should award attorneys’ fees to deter this. (Tr. at 10). There is no reference in

the records as to why an award of attorneys' fees was warranted, nor on what basis, but the Chancellor nonetheless awarded attorneys' fees to Defendant. Taking issue with this ruling, Plaintiff respectfully appeals to this Court, seeking a reversal of the Chancellor's award of attorneys' fees to Defendant.

IV. SUMMARY OF THE ARGUMENT

The Chancellor below improperly awarded attorneys' fees to Defendant. Plaintiff was faced with an imminent lawsuit and had only three (3) days to respond to the demands of Defendant prior to being sued. During Plaintiff's review, it determined that valid claims existed against Defendant and Plaintiff elected to bring its claims in Chancery Court. While the Chancellor ultimately opined that her Court did not have subject matter jurisdiction, Plaintiff nonetheless did not do anything to warrant the punitive assessment of attorneys' fees against it. Neither the hearing transcript, nor the Order contained any findings from the Chancellor of any wrongdoing by Plaintiff, nor any justification for the award of attorney fees against it. On the contrary, it was undisputed that Defendant refused service of process by a private process server on thirteen (13) occasions, and had to be restrained in handcuffs by the Madison County Constable when he finally served Defendant.

As a result, Plaintiff respectfully asserts that in light of the absence of any stated basis or justification for the award of attorneys' fees, and the absence of any wrongdoing on the part of Plaintiff, the Chancellor's award of attorneys' fees was improper and should be reversed by this Court.

V. ARGUMENT

A. **Standard of Review: The Chancellor's Decision to Award Attorney's Fees to Defendant is Not Supported By Any Factual or Legal Conclusions and Therefore Requires a *De Novo* Review.**

Normally, this Court will not disturb a chancellor's findings if the chancellor's decision is not manifestly wrong and is supported by substantial, credible evidence. *Smith By Young v. Estate of King*, 579 So. 2d 1250 (Miss. 1991). However, in instances where a chancellor fails to make any factual or legal conclusions to support a holding, this Court is left to analyze the chancellor's decision *de novo*. *Industrial Contractors v. Tim Mote Plumbing*, 962 So.2d 632 (Miss.Ct. App. 2007) citing *Facilities, Inc. v. Rogers-Usry Chevrolet, Inc.*, 908 So.2d 107 (Miss. 2005).

B. **The Chancellor's Award of Attorneys' Fees Was Improper and Should Be Reversed.**

Plaintiff respectfully asserts that the Chancellor's award of attorneys' fees to Defendant was improper as Plaintiff did not engage in any wrongdoing to warrant the punitive sanction of attorneys' fees, and the Chancellor provided no legal or factual conclusions, either during the hearing or in the Order, to support the award of attorneys' fees.

"Attorney's fees can only be awarded pursuant to a relevant contractual provision, statutory authority, or where punitive damages are also proper." *Industrial Contractors*, 908 So.2d at 638 citing *Hearn v. Autumn Woods Office Park Property Owners Ass'n*, 757 So.2d 155, 164 (Miss. 1999). In *White v. Cooke*, 4 So.3d 330, 335 (Miss. 2009), the Supreme Court reversed a chancellor's award of attorney's fees and found that the party against whom the award had been assessed had not acted in bad faith and that the chancellor had abused his discretion.

In the case *sub judice*, there was no basis for the Chancellor to award attorneys' fees against Plaintiff as no contractual provision or statutory authority existed, and there was no reason to punish Plaintiff. As stated above, with less than a week's notice, Plaintiff was forced to take legal action that it deemed necessary to defend itself against Defendant's claims, and advance Plaintiff's claims based upon the wrongdoing of Defendant. Furthermore, Plaintiff did not act in bad faith in attempting to serve Defendant with process. On the contrary, it was Defendant's bad faith refusal of process on thirteen (13) separate occasions, that ultimately placed her in conflict with the constable who was forced to handcuff Defendant in light of her attempts to assault him.

Neither the hearing transcript, nor the Chancellor's Order, contain any factual or legal foundation for awarding \$1250 in attorneys' fees against Plaintiff. This unsupported award unfairly punishes Plaintiff by sanctioning it without the benefit of any explanation or basis for the award. There was no contractual basis or statutory basis for the award of attorney's fees so the only possible basis for awarding attorneys' fees against Plaintiff was on a punitive basis. However, as stated above, Plaintiff did nothing to warrant the punishment of having attorneys' fees levied against it, and the Chancellor provided no findings to justify them.

For these reasons, Plaintiff respectfully submits that the Chancellor's award of attorneys' fees in the amount of \$1250 in favor of Plaintiff was improper and this Court should reverse the same.

VI. CONCLUSION

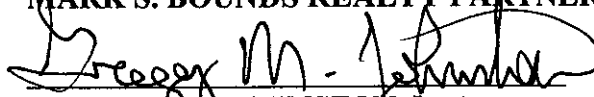
In summary, the Chancellor below improperly awarded attorneys' fees to Defendant. Plaintiff respectfully asserts that in light of the absence of any stated basis or justification for

the award of attorneys' fees, and the absence of any wrongdoing on the part of Plaintiff, the Chancellor's award of attorneys' fees was improper and should be reversed by this Court.

Respectfully submitted, this the 5th day of October, 2009.

MARK S. BOUNDS REALTY PARTNERS, INC.

By:


GREGORY M. JOHNSTON, Its Attorney

OF COUNSEL:

GREGORY M. JOHNSTON (MSB )

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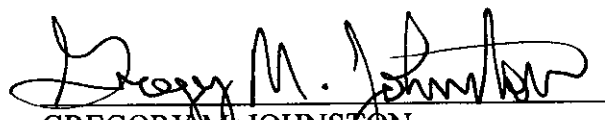
CERTIFICATE OF SERVICE

I, GREGORY M. JOHNSTON, do hereby certify that I have this date served via U.S. Mail, postage pre-paid, a true and correct copy of the above and foregoing pleading(s) to:

Honorable Janace Harvey-Goree, Chancellor
Chancery Court of Madison County, Mississippi
P.O. Box 39
Lexington, MS 39095; and

Kathleen S. Cook, Esq.
John D. Cosmich, Esq.
Cosmich, Simmons & Brown, PLLC
120 North Congress Street Suite 400
P.O. Box 22626
Jackson, MS 39201

DATED this the 5th day of October, 2009.


GREGORY M. JOHNSTON