IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

ASPIRED CUSTOM HOMES, LLC	**APPELLANT**
VS.	**CASE NO. 2010-CA-00429**
TODD AND TINA MELTON	**APPELLEES**

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. Todd and Tina Melton, Defendants/Appellees
2. Aspired Custom Homes, LLC, Plaintiff/Appellant
3. Randall Godwin, Owner, Aspired Custom Homes, LLC
4. Michael B. Gratz, Jr., Esquire, Attorney for Defendants/Appellees
5. Thomas M. McElroy, Esquire, Attorney for Plaintiff/Appellant
6 The Honorable John A. Hatcher, Jr., Chancellor

RESPECTFULLY SUBMITTED, on this the 3 day of December, 2010.

MICHAEL B. GRATZ, JR., MSB#[redacted]
GRATZ & GRATZ, P.A.
312 NORTH GREEN STREET
TUPELO, MS 38804
(662) 844-5531
(662) 844-8747 (FAX)

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Rule 34(a)(3) of the Mississippi Rules of Appellate Procedure, Appellees request no oral argument. The facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument. Nevertheless, if the Court desires to hear oral argument, Appellees have no objection.

TABLE OF CONTENTS

B. STATUTES AND RULES:

C. OTHERS:

STATEMENT OF THE ISSUES[1]

Issues

I. Whether the trial court was correct in its determination that the Contract for the Sale of Real Estate was terminated, null and void due to the fact that (1) the property failed to appraise at or above the sales price and (2) that the property failed the Home Inspection.

II. Whether the trial court was correct in awarding Defendant attorney fees.

III. Appellant's issues 1 and 5 should not be considered on appeal.

[1] Defendants take exception to Plaintiff's Statement of the Issues, specifically Issues 1 and 5. Neither of these issues were considered by the trial court and, thus, are not properly before this Court on appeal. Defendant

On February 12, 2010, Plaintiff filed an objection to Defendants' itemization of attorney fees and Defendants responded to said objection on February 22, 2010. R. 128-135.

On March 5, 2010, the trial court issued a Final Judgment incorporating in full the September 24, 2009 Opinion and Judgment and determining attorney fees in the amount of $6,554.56. R. 140-142.

On March 9, 2010, Plaintiff filed its Notice of Appeal. R. 146-147.

II. Factual Background

The Defendants, Todd and Tina Melton, entered into a Contract to purchase a house from owner, Randall Godwin, [owner of Aspired Custom Homes, LLC (hereinafter "Plaintiff" or "Seller")], located at 142 Herdtown Lane, Tupelo, Mississippi. Plaintiff was both Contractor and Owner of the house or "spec home".

The Contract was for the sales price of $340,000.00 and was executed on June 25, 2008. This Contract required the buyers (the Defendants) to provide earnest money in the amount of $8,000.00, which was in fact deposited with Crye Leike Realtors pursuant to Paragraph 3 of the Agreement. Tr. Ex. 7.

Pursuant to the Contract, the closing was set for July 9, 2008. Tr. Ex. 7.

The Defendants contracted with E.C. Neelly, IV to perform an appraisal for the property in question and Mr. Neelly generated a full appraisal report on July 1, 2008, approximately eight (8) days prior to the set closing date (and six (6) days after the Contract was executed). Tr. 35.

Mr. Neelly's licensed appraisal concluded that the market value of the property in question was $330,000.00. Tr. 60, 68.

The Contract for the Sale and Purchase of Real Estate states clearly in Paragraph 7 that the "property must appraise at or above sales price or Buyers shall not be obligated to complete the purchase of the property described herein and all earnest money shall be refunded to Buyers". Tr.

Ex. 7, p 2, ¶7.

On July 7, 2008 and July 8, 2008, the Defendants put the Plaintiff/Seller on notice that the home failed the home inspection and the property appraisal came in under the purchase price, and that for these two (2) reasons, Defendants were canceling the contract and demanded the return of all of their earnest money. Tr. Ex. 16, 17.

On July 7, 2008, Plaintiff sent Defendants a letter apologizing for the yard flooding and that he would attempt to rectify the problem as soon as possible. According to the testimony at trial, apparently these three (3) letters (the apology letter from Plaintiff and the two (2) notice letters from Defendants) passed each other in the mail or by facsimile. Tr. Ex. 15, 16, 17.

The Defendant/Buyers' agent, Frances Dempsey, testified that she showed no other houses to the Defendants between June 20th and July 8th and that the Defendants were not looking at other houses. Tr. 261-262.

Plaintiff testified that the Home Inspection Addendum was part of the Contract for the Sale and Purchase of Real Estate, acknowledging that the Home Inspection Addendum box was checked on Page 4 of the Contract for the Sale and Purchase of Real Estate and that the Contract was, in fact, subject to that specific Home Inspection Addendum attached to and incorporated therein. Tr. 327-328.

The appraisal and the home inspection were conducted by Ed Neelly, a licensed professional, outside of the power and control of the Buyers. Tr. 192, 34.

Pursuant to the Contract, the Buyers tendered $8,000 in earnest money and ordered the home inspection and appraisal report. Tr. Ex. 7. The home failed the home inspection report and also failed to appraise at an amount equal to or greater than the purchase price. Tr. 250, 254, 255. For these reasons, the Buyers gave written notice in a timely manner to Seller and demanded return of the earnest money, which Seller refused. Tr. 254, 255; Tr. Ex. 16, 17.

The Seller's real estate agent, Crye Leike Realty, interplead the earnest money into the Chancery Court of Lee County, Mississippi. On October 3, 2008, Crye Leike South, Inc. was dismissed as a party to this lawsuit through an Agreed Order. The Buyers' filed a cross-claim for return of their earnest money and for attorney fees as agreed on in the Contract. The Seller subsequently filed a cross-claim for specific performance, for damages in the amount of $25,000 and for attorney fees and for costs of Court.

SUMMARY OF THE ARGUMENT

This is a contract dispute involving a contract for the sale and Purchase of Real Estate. The contract contained two key provisions or "satisfaction clauses" both of which must be met in order to obligate the buyers (Defendants) to complete the purchase. The two "satisfaction clauses" or "conditions precedent" are: (1) that the property must appraise at or above the sales price and (2) that the property is subject to a satisfactory home inspection report. Tr. Ex. 7.

The trial court properly determined that the contract language relating to the appraisal and the home inspection was clear and unambiguous and ruled that the contract was terminated, null and void. R. 117-122. Plaintiff argues that the Defendant should have ordered the appraiser to reevaluate the appraisal based on the theories of good faith and fair dealing and the "clean hands doctrine" – theories the Plaintiff raises for the first time in this appeal. Accordingly, this issue is improperly presented and should not be considered on appeal. However, the trial court properly found there to be no evidence of fraud or collusion between the Defendants/Buyers and their licensed appraiser. Without fraud or collusion or "dishonest purpose" there can be no breach of the implied duty of good faith and fair dealing or the clean hands doctrine. *Bailey v Bailey,* 724 So2d 335, 338 (Miss. 1998); *Thigpen v Kennedy,* 238 So2d 744, 746 (Miss. 1970).

The trial court properly awarded attorney fees due to the court's decision to enforce the satisfaction clauses of the contract.

ARGUMENT

I. Standard of Review

This Court employs a necessarily limited standard of review with regards to an appeal taken from a Chancery Court. *Stevens v Stevens,* 924 So2d 645 (Miss. Ct. Appeals 2006); *Carrow v Carrow,* 642 So2d 901, 904 (Miss. 1994)

This Court has held that "a Motion for Reconsideration is to be treated by the trial court as a post-trial motion under MRCP 59(e)", *Brooks v Roberts,* 882 So2d 229, 233; See also *Boyles v Schlumberger Tech Corp.,* 792 So2d 262, 265 (Miss. 2001); *In Re: Estate of Stewart,* 732 So2d 255, 257 (Miss. 1999). As such, this Court has held that in order to succeed on a Rule 59(e) motion, "the movant must show: (i) an intervening change in controlling law, (ii) availability of new evidence not previously available, or (iii) need to correct a clear error of law or to prevent manifest injustice" *Brooks,* at 233.

This Court reviews a trial court's denial of a motion for reconsideration under an abuse of discretion standard. *Bang v Pittman,* 749 So2d 47, 52 (Miss. 1999).

The Contract for the Sale and Purchase of Real Estate at issue contains two (2) key provisions or "satisfaction clauses" both of which must be met as a condition precedent to obligate the buyer/defendant to complete the purchase. Interpretation of these satisfaction clauses and the contract as a whole is obviously a question of law and as such is subject to *de novo* standard of review. *Russell v Performance Toyota, Inc.,* 826 So2d 719, 721 (Miss. 2002) *Sweet v TCI, MS,* 2009-CA-01260-SCT, citing *Bailey v Estate of Kemp,* 955 So2d 777, 786 (Miss. 2007); and Milton R. Friedman and James Charles Smith, Friedman on Contracts and Conveyances of Real Property §1:2.1, at 1-7 to 1-8 (7th Ed. 2005).

II. Whether the trial court was correct in its determination that the Contract for the Sale of Real Estate was terminated, null and void due to the fact that (1) the property failed to appraise at or above the sales price and (2) that the property failed the Home Inspection.

It is undisputed that Defendants, Todd and Tina Melton, did everything required under the terms of the Contract for Sale and Purchase of Real Estate.[3] Specifically, the Meltons tendered the full amount of the earnest money ($8,000.00) to Crye Leike Realtors in anticipation of closing on the property on July 9, 2008. R. 6-9.

The Defendants selected Neelly Realty Services, LLC to perform the appraisal and on July 1, 2008, Mr. Neelly issued a formal appraisal, appraising the property in the amount of $330,000 – a full $10,000 lower than the agreed upon purchase price.

The Defendants contacted the Plaintiff/Seller in writing and informed him of Mr. Neelly's appraisal and that they were exercising their right under Paragraph 7 of the Sales Contract, namely, that their earnest money be fully refunded due to the appraisal coming in below the purchase price. Tr. Ex. 17.

At the same time, the Defendants informed the Plaintiff/Seller that the property failed to pass the Home Inspection, which cited drainage problems with the yard and driveway. Tr. Ex. 16, 19. These drainage problems were in fact witnessed by the Defendants when they returned to Tupelo and met their realtor at the subject property to discuss their options. Tr. 261. At that time the subject property flooded severely.[4]

It is clear that the Sales Contract contained certain conditions, the occurrence of

---

[3] The Contract in question was the Mississippi Real Estate Standard Form Contract for the Sale and Purchase of Real Estate of which both sides to this action agree was prepared by the Mississippi Real Estate Commission, and "filled out" by both the Buyer and Seller Real Estate Agents and conceded by Plaintiff as not giving any "one side an advantage or disadvantage." Tr. 332.

[4] While the house itself did not flood, the Court heard testimony from Mrs. Melton, Frances Dempsey, Alfredo Giacommetti and Randall Godwin that the front, side and back yards were underwater, as well as the driveway. Tr. 261, 262, 235, 236, 300, 301, 195-196.

which would nullify the duty of the buyer to perform. Specifically, the contract contained two such Conditions: (1) The property appraisal must be equal to or above the purchase price; and (2) The property must pass the Home Inspection. Tr. Ex. 7.

A. The Appraisal as a condition precedent

Plaintiff readily concedes that the contract at issue required that the property appraise at or above the sales price. Plaintiff's Brief p. 16, L 1.

Plaintiff argues that the Defendants/Buyers should have required that Neelly (the Appraiser) re-appraise the house based on a 30 square foot discrepancy, and a misstated purchase price. Mr. Neelly explained to the Court that he utilized a Market Value Approach in appraising the property in question. Tr. 60, 68. Neelly specifically stated that he did not use a Cost Value Approach, which would have included the garage area cost. Tr. 60. Neelly further testified that under a Market Value Approach you do not include the garage area or porch area here as argued by the Plaintiff. Tr. 60. Neelly likewise testified that (at the behest of the Plaintiff's Realtor) he re-measured and found a 30 foot discrepancy which warranted no adjustment. Tr. 59.

The trial court clarified the matter:

> Chancellor Hatcher:
> "Mr. Neelly, did the $330,000 appraised value of yours change based on any of the factors that were provided to you either by Mr. Giacommetti or through Mr. Deaton?"
> Mr. Neelly: "No sir."
>
> Tr. 68.

Mr. Neelly did testify that he would reevaluate using comparable sales Mr. Giacommetti could supply him, but that the Defendant, Mrs. Melton, told him she didn't want him to reevaluate using "new" comparable sales. Tr. 70.

However, the Defendant did allow Mr. Neelly to reevaluate using the 30 square feet and the corrected purchase price, which did not change the appraisal. R. 300, 68.

As to allowing Mr. Neelly to reevaluate using new comparables, which were to be provided by the Seller's Agent, Mr. Giacommetti, the Defendant/Buyer testified:

> "I mean, to me, that would be like saying I didn't trust the appraisal and I wanted it done again. And that don't seem right. I mean, you know, I don't want to say "fraud", but it just doesn't seem -- I get an appraisal that I pay for and I tell him, well, I want you to re-do the whole thing again." R. 300.

The language of the Contract at issue is clear and unambiguous regarding the Appraisal Condition: "Property must appraise at or above sales price or Buyer(s) shall not be obligated to complete the purchase of the property described herein and all earnest money shall be refunded to the Buyer(s)". Tr. Ex. 7. Here we have a Buyer who hired a licensed appraiser to appraise the property in question, an appraisal intended to inform the buyer of the true value of the property. The Defendants/Buyers paid for and received the appraisal and thereupon relied. Tr. 300. The Plaintiff's real complaint seems to be with the Appraiser, Mr. Neelly, who is not a party to this lawsuit. Tr. 192, L 16.

B. <u>The Home Inspection as a condition precedent</u>

Plaintiff argues that Defendants/Buyers should have allowed Plaintiff an opportunity to repair the various deficiencies contained in the Home Inspection. Tr. Ex. 19. Plaintiff consistently argues that the deficiencies in the Home Inspection were "minor", completely ignoring the severe flooding to which the Court heard testimony and which was clearly referenced in the Inspection Report, Tr. Ex. 19. and subsequently addressed in the trial court's Opinion and Judgment. Tr. Ex. 19; R. 120, 121.

The home inspection addendum states that "if deficiencies are revealed by the home inspection report that have not been previously disclosed, Buyer may:

> a) identify such deficiencies in writing to the Seller along with a copy of the home inspection report to the Seller. Seller will have three days to consent in writing to correct deficiencies on Buyer's list, in an amount not to exceed $TBD. Should correction of deficiencies cost more than the

> predetermined expense limitation, Sellers may elect to correct the deficiencies and proceed with the Contract; OR Buyer may
> b) accept responsibility for correction of deficiencies and proceed to closing if Seller(s) elects not to correct deficiencies in excess of the expense limitation; OR Buyer may
> c) cancel the Contract, citing the deficiencies in writing that underlie Buyer(s) cancellation whereupon all earnest money deposit shall be returned to the Buyer" *Emphasis added* Tr. Ex. 7.

Obviously, the Buyer at their option, chose paragraph (c) cited above, and cancelled the Contract in writing and demanded a return of all earnest money. Upon receipt of the Home Inspection Report and witnessing the flooding, the Defendants/Buyers notified the Seller in writing. Tr. Ex. 16, 17. According to the Contract, there is no obligation on the part of the Defendants/Buyers to give the Plaintiff/Seller a "right to cure".

C. The contractual language is clear and unambiguous

This Court has consistently held that "it is a question of law for the court to determine whether a contract is ambiguous and, if not, enforce the contract as written" *Royer Homes of Miss., Inc. v Chandeleur Homes, Inc.,* 857 So2d 748, 752 (Miss. 2003), at 753, citing *Miss. Transp. Comm'n v Ronald Adams Contractor, Inc.,* 753 So2d 1077, 1087 (Miss. 2000); *Universal Underwriters Ins. Co. v Ford,* 734 So2d 173, 176 (Miss. 1999). If the Court does find any ambiguity within the contract, then, and only then, does the Court consider parol or extrinsic evidence. *Royer* at 753. In the instant matter, the trial court determined that there were clearly two (2) conditions precedent which must be met before the Buyer/Defendants were obligated to complete the purchase of the home. R. 119. The trial court ultimately held that these two (2) satisfaction clauses were unambiguous. R. 121. The trial court's decision on this issue was consistent with this Court's rulings in analogous cases. In *Sweet v TCI Ms, Inc.,* 2010WL3259797 (Miss. Aug. 2010) the Court upheld the lower court's decision in favor of a home purchaser that chose to terminate a real estate contract based on the fact that they (the purchasers) could not obtain satisfactory financing. Id. at ¶15. In *Sweet,* the Court specifically determined that the requirement that the purchaser obtain satisfactory

financing served as a condition precedent to the purchaser's obligations to complete the purchase. Id. at ¶14, citing *Bailey v Estate of Kemp,* 955 So2d 777, 786 (Miss. 2007); and *Watkins v Williamson,* 869 Sw2d 383, 384-385 (Tex. Ct. App. 1993). As long as such satisfaction clauses are unambiguous then they will be enforced so long as the purchaser did not act unreasonably or in bad faith. Id. at ¶15.

In another analogous case, *Williams v Estate of C. E. Morrison,* 969 So2d 132 (Miss. 2007) the Court considered a Home Inspection Addendum to a Real Estate Purchase Contract and held that "the terms of the addendum gave the Williams the option to render the contract null and void if the inspection results were not acceptable". Id. at 133.

This Court has repeatedly held that a contract is ambiguous only when "it can be interpreted as having two or more reasonable meanings" *Mississippi Farm Bureau Casual Insurance Company v Britt,* 826 So2d 1261 at 1265 (Miss. 2002); *Universal Underwriters Insurance Company v Ford,* 734 So2d 173, 176 (Miss. 1999); *J&W Foods Corp. v State Farm Mut. Ins. Co.,* 723 So2d 550, 552 (Miss. 1998). If language is clear and unambiguous, then the contract language should be enforced as written and given its plain and ordinary meaning. *Mississippi Farm Bureau Casual Insurance Company* at 1266; *Jackson v Daily,* 739 So2d 1031, 1041 (Miss. 1999); *Lewis v Allstate Insurance Company,* 730 So2d 65, 68 (Miss. 1998); *National Bankers Life Insurance Company v Cabler,* 229 Miss. 118, 125, 90 So2d 201, 204 (1956).

• • •

Like *Sweet v TCI MS,* the trial judge in the instant matter held that "the evidence was insufficient to establish fraud or collusion on the part of the Defendants with Neelly (the Appraiser)". *[parenthetical added]* Tr. Ex. 7. In addition, the Plaintiff's own appraiser testified that Ed Neelly's appraisal was well within the reasonable range for different appraisals with regards to the same property. Tr. 96. Furthermore, one of Plaintiff's Appraisers, Mike Guyton, testified that if

an appraisal comes in under the sales price, the Buyer would get their earnest money back and the Seller would have no remedy.[5] Tr. 103-104, 105. Mrs. Frances Dempsey, the real estate agent for the Defendants, testified that the Defendants did not look at any other properties prior to putting the Seller on notice that the property failed to pass a home inspection and also failed to be equal to or above the purchase price. Clearly, there was no fraud or collusion between the Defendants and their appraiser, Ed Neelly.[6] Without fraud or collusion between the Defendants/Buyers and their appraiser, Ed Neelly, and without any evidence that the Defendants actually breached the agreement, the contract was properly terminated pursuant to either the appraisal condition or the home inspection condition.

III. Whether the trial court was correct in awarding Defendant attorney fees

The Mississippi Supreme Court recently stated in *Marshall v Lindsly,* 2007-CA-01737-COA (April 14, 2009) that if a Court chooses to enforce the terms of a Contract, then it must also enforce the clause addressing attorney's fees, and that to not do so "would be contrary to the law". See also, *Grisham v Hinton,* 490 So2d 1201, 1206 (Miss. 1986); *Faulkner Concrete Pipe Co. v U.S. Fidelity and Guaranty Co.,* 218 So2d 1 (Miss. 1968)

The last clause contained in Paragraph 16 of the Sales Contract states "if it becomes necessary to ensure the performance of this Contract for either party to initiate litigation, then the non-prevailing party agrees to pay reasonable attorney fees and court costs in connection therewith to the prevailing party". Ex. 7 ¶16. Upon interpleader of the earnest money, the Defendants/Buyers initiated litigation by filing cross-claims against the Plaintiff. The mere fact that Plaintiff/Seller refused to return the earnest money, resulted in Crye Leike interpleading the earnest money into the

[5] The Court recessed in order to give Mr. Guyton time to review the Contract in question. Upon review, Mr. Guyton (who testified that he taught college level appraisal courses) agreed that the Buyer should have all earnest money refunded. Mr. Guyton was the Plaintiff's own witness. Mr. Guyton also testified that if the appraisal was lower than the purchase price, the contract was void and the Seller has no remedy. Tr. 105-106.

Court. As such, the prevailing party was properly awarded attorney fees.

IV. Appellant's issues 1 and 5 should NOT be considered on appeal

Plaintiff now attempts to raise for the first time on appeal the following issues:

1) whether the Defendants breached the implied covenant of good faith and fair dealing with regards to the Appraisal and Home Inspection; and,

2) whether the Defendants breached the "clean hands doctrine".

Clearly, neither of these issues was presented to or considered by the trial judge in the trial, in any of Plaintiff's briefs, nor were these two doctrines addressed or even mentioned in the trial judge's Opinion and Judgment or the subsequent "Final Judgment". Accordingly, these issues are improperly presented by Plaintiff and should not be considered on this appeal. "A trial judge cannot be put in error on a matter which was never presented to him for decision." *Methodist Hospital of Memphis v Marsh,* 518 So2d 1227, 1228 (Miss. 1988)

Notwithstanding this fact, this Court has repeatedly held that a Plaintiff suing under the good faith and fair dealing doctrine must establish to the fact finder that the Defendant acted with "dishonest purpose or moral obliquity". *Bailey v Bailey,* 724 So2d 335, 338 (Miss. 1998) Likewise, in *Thigpen v Kennedy,* 238 So2d 744, 746, this Court held that "he who doeth fraud, may not borrow the hands of the Chancellor". Plaintiff never alleged this type of conduct in his pleadings or in argument before the trial court and in fact testified that he knew of no collusion between Neelly and the Defendants. In fact, the lack of fraud or collusion between the Defendants and their Appraiser and Home Inspector was first argued to the trial court by counsel for Defendants. The Court ruled in its Opinion and Judgment that "the evidence was insufficient to establish fraud or collusion on the part of the Defendants with Neelly." R. 120.

---

[6] The Plaintiff testified that he did not think there was any collusion between the Meltons and their appraiser, Ed Neelly.

CONCLUSION

The trial court was correct in its determination that the Contract for Sale of Real Estate was terminated, null and void due to the fact that the property failed to appraise at or above the sales price and the fact that the property failed the home inspection.

The trial court was also correct in its determination that the language contained within the Contract was clear and unambiguous. Furthermore, the trial court heard testimony from numerous witnesses, most of whom the Court questioned directly, and determined that there was no fraud or collusion between the appraiser and home inspector, Mr. Neelly, and the Defendants, Todd and Tina Melton.

Based on the Contract in this case, the Court correctly determined that the Defendants did not breach the contract, that the Defendants were forced to cross-claim for return of their earnest money, and that the Court was obligated to enforce the clause addressing attorney fees.

For all of the reasons set forth above, the trial court's decision dismissing the Plaintiff's Complaint with Prejudice, ordering the Chancery Court Clerk to pay the $8,000 held in the registry of the Court to the Defendants and awarding attorney fees in the amount of $6,554.56, should be affirmed.

Respectfully submitted,

TODD MELTON AND TINA MELTON,
Defendants/Appellees

BY: _____
MICHAEL B. GRATZ, JR., MSB[redacted]
Attorney for Defendants/Appellees

MICHAEL B. GRATZ, JR., MSB[redacted]
GRATZ & GRATZ, P.A.
ATTORNEYS AT LAW
312 NORTH GREEN STREET
TUPELO, MS 38804
(662) 844-5531
(662) 844-8747 (FAX)

ATTORNEY FOR DEFENDANTS/APPELLEES
TODD MELTON AND TINA MELTON

CERTIFICATE OF FILING

This is to certify that I, Michael B. Gratz, Jr., Attorney for **TODD AND TINA MELTON,** Defendants/Appellees in the above-styled and numbered cause, have this date hand delivered the original and three copies of the Brief of Appellees and an electronic diskette containing same on December 3, 2010, to Ms. Betty W. Sephton, Clerk, Supreme Court of Mississippi, 450 High Street, Jackson, Mississippi 39201.

Respectfully submitted,

MICHAEL B. GRATZ, JR., MSB[redacted]
GRATZ & GRATZ, P.A.
312 NORTH GREEN STREET
TUPELO, MS 38804
(662) 844-5531
(662) 844-8747 (FAX)

ATTORNEY FOR DEFENDANTS/
APPELLEES,
TODD AND TINA MELTON