IN THE SUPREME COURT OF MISSISSIPPI

NO. 2010-CA-00429

ASPIRED CUSTOM HOMES, LLC — PLAINTIFF/APPELLANT

V.

TODD MELTON and TINA MELTON — DEFENDANTS/APPELLEES

ON APPEAL FROM THE CHANCERY COURT
OF LEE COUNTY, MISSISSIPPI

BRIEF OF APPELLANT
ASPIRED CUSTOM HOMES, LLC

ORAL ARGUMENT REQUESTED

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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 Mississippi Supreme Court and/or the judges of the Mississippi Court of Appeals may evaluate possible disqualification or recusal.

Interested Persons	**Connection or Interest**
Aspired Custom Homes, LLC	Plaintiff/Appellant
Thomas M. McElroy	Attorney for Plaintiff/Appellant
Todd Melton and Tina Melton	Defendants/Appellees
Michael B. Gratz, Jr.	Attorney for Defendants/Appellees
Honorable John A. Hatcher, Jr.	Chancery Court Judge

THOMAS M. McELROY
Counsel of Record for Plaintiff/
Appellant

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TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

Cases:

Other Authorities

STATEMENT OF ISSUES

This appeal, from the Final Judgment entered in favor of Defendants Todd Melton and Tina Melton by the Chancery Court of Lee County, Mississippi on March 5, 2010[1] (R., pp. 140-142), presents the following issues for appeal:

Did the Chancellor err in entering final judgment for the Meltons where:

(1) The Meltons breached the implied covenant of good faith and fair dealing by:

(a) obtaining a fatally erroneous appraisal;

(b) prohibiting their appraiser from re-evaluating his erroneous work;

(c) claiming that the home inspection "did not meet standard" where the home inspector made no such finding and, instead, suggested only "various minor repairs; and

(d) refusing to allow Aspired to cure the "various minor repairs" as required by the real estate contract;[2]

(2) The Chancellor failed to order specific performance which is "a particularly appropriate remedy" in cases involving real estate contracts and, in fact, is "the preferred remedy" where a contracting party can feasibly be given the benefits of his bargain;

(3) The Chancellor failed to consider the contract as a whole, give effect to every word and phrase of the contract, and give the contract a reasonable construction rather than an unreasonable one;

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1 Note that the Final Judgment explicitly incorporates the terms of the Court's Opinion and Judgment of September 24, 2009, bench ruling of February 5, 2010, and Order of February 12, 2010. (R, p. 140).

2 See Section V. which discusses the real estate contract's home inspection addendum in detail.

(4) The Chancellor made a number of manifestly wrong, clearly erroneous findings including his findings that:

(a) nothing prevented Aspired from securing appraisals from Mike Guyton and the Jimmy Langley Appraisal Company before the July 9 closing date;

(b) the Meltons gave written notice to Aspired that the contract was null and void "as the sales price had not been met and that the house had not been completed as of the date they inspected in on July 4, 2008" where Mrs. Melton's sworn testimony was that the only two reasons she and her husband did not proceed to closing were that the appraisal came under the agreed purchase price and the home inspection "did not meet standard;"

(c) considerable work was required by Aspired to rectify standing water after a significantly heavy rain;

(d) appraiser Ed Neelly's computer was not working properly and the [fatal] errors in Mr. Neelly's appraisal were cured since they did not change his appraised value of the property;

(e) the independent appraisals of Jimmy Langley and Mike Guyton, which were within two percent of each other, "have proven to be unreliable;"

(f) Ed Neelly's appraisal, which was fraught with error and contained mistakes which he admittedly should have caught, is a sufficient basis for declaring the contract null and void; and

(g) the fact that the house was not one-hundred percent complete on July 9 is a sufficient basis for declaring the contract null and void; and where

(5) The Meltons entered the Chancery Court with "unclean hands?"

STATEMENT OF THE CASE

(1) Nature of case, course of proceedings, and disposition below:

On or about October 2, 2008, Aspired Custom Homes, LLC, [hereinafter "Aspired"] filed its cross-claim against Defendants Todd Melton and Tina Melton [hereinafter "the Meltons"] in the Chancery Court of Lee County, Mississippi.[3] (R., pp. 11-54)[4]. Specifically, Aspired sued the Meltons for specific performance of the real estate contract they had entered into to purchase the home it built at 142 Herdstown in Tupelo, Mississippi and for damages caused by the Meltons' failure to perform. (R., p. 16). On the tenth of October of that same year, the Meltons filed their cross-claim against Aspired.[5] (R., pp. 55-98). Aspired answered the Meltons' cross-claim on November 7, 2008. (R., pp. 101-103).

Discovery ensued. (See, e.g., R., pp 104-114).

On July 2, 2009, Aspired's cross-claim for specific performance and for damages

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3

Crye-Leike South, Inc. had filed an interpleader action in the Chancery Court of Lee County, Mississippi against Aspired Custom Homes, LLC, Todd Melton, and Tina Melton with regard to earnest money the Meltons had deposited with it towards the purchase of the home that Aspired Custom Homes built at 142 Herdtown Drive, Tupelo, Mississippi 38804. (R., pp. 6-9). On October 2, 2008, Aspired Custom Homes answered Crye-Leike's Complaint for Interpleader and, simultaneously, cross-claimed against Todd and Tina Melton for specific performance of the real estate contract they had entered into to purchase the home and for damages it suffered as a result of the Melton's failure to perform. (R., pp. 11-54).

4

The following abbreviations were used for record citations: "R" - record; "Tr" - trial transcript; and "Ex" - trial exhibit."

5

Technically, the Meltons answered Crye-Leike's Complaint for Interpleader and simultaneously cross-claimed against Aspired Custom Homes. (R., pp. 55-98) At that time, however, they did not respond, paragraph by paragraph, to the cross-claim Aspired Custom Homes had filed against them as required by Rule 12(a) of the Mississippi Rules of Civil Procedure which states, in pertinent part, that [a] party served with a pleading stating a cross-claim against him shall serve an answer thereto within thirty days after the service upon him." Miss. R. Civ. P. 12(a).

proceeded to trial against the Meltons. (Tr., p. 1). That same day, the Meltons finally answered Aspired's cross-claim against them. (R., pp. 136-139). Testimony was taken from the parties and from witnesses, arguments were had, and the proceedings were adjourned. (Tr., pp. 1-340).

On September 24, 2009, the Chancellor issued his "Opinion and Judgment." (R., pp. 117-122). The next day, he gave notice of the entry of his opinion and judgment pursuant to Rule 77(d) of the Mississippi Rules of Civil Procedure. (R., p. 123).

Aggrieved by the Chancellor's ruling, Aspired filed its Motion For Reconsideration on October 8, 2009. (R., pp. 124-125). Hearings were held on Aspired's Motion on January 19, 2010 and on February 5, 2010. (Tr., pp. 344-359 and 363-390). On February 12, 2010, the Court issued its order, denying Aspired's Motion For Reconsideration, awarding attorney fees to the Meltons, and assessing court costs against Aspired. (R., pp. 126-127). That same day, Aspired filed its objection to the Meltons' itemization and request for attorney fees. (R., pp. 128-135). Ten days later, on February 22, 2010, the Meltons responded to Aspired's objection. (R, pp. 136-139).

On March 5, 2010, the Chancellor entered his Final Judgment which incorporated his September 24, 2009 Opinion and Judgment, his February 5, 2010 bench ruling, and his February 12, 2010 Order. (R., pp. 140-142).

This Appeal followed. (R., pp. 146-147).

(2) Statement of Facts.

Aspired began constructing a spec home at 142 Herdtown Drive in Tupelo, Mississippi in 2007. (Tr., p. 131). It listed the home with real estate agent Alfredo Giacometti of Crye-Leike

Realtors in early 2008 for $358,000.00. (Tr., p. 132-33). By June of 2008, the home was nearly complete and in move-in condition. (Tr., p. 132).

On June 20, 2008, the Meltons, through their Coldwell Banker real estate agent, Frances Dempsey, offered to purchase Aspired's home for $328,000.00. (Tr., p. 133; Ex. 7). Their offer was accompanied by a demand for substantial changes to the property. (Tr., p. 133, Ex. 13). Aspired rejected the Meltons' offer and made a counter-offer. (Tr., p. 134). After negotiations back and forth, the Meltons and Aspired finally reached an agreement and entered into a real estate contract. (Tr., p. 134; Ex. 7). The contract, which was signed by Aspired on June 24, 2008 and by the Meltons on June 25, 2008, set the purchase price at $340,000.00 and closing for July 9, 2008. (Ex. 7). It explicitly provided that "[s]pecific performance is the essence of this [c]ontract." (Ex. 7, p. 3, ¶ 16). It also required Aspired to make a substantial number of changes and additions to the home and required the Meltons to (1) make application in proper form for a loan sufficient to close within seven calendar days and (2) arrange for a home inspection to be conducted and a written request for repairs delivered to Aspired within ten calendar days. (Ex. 7 at p. 1 at ¶ 2. , at "Buyer's Counter Offer # 1," and at "Home Inspection Addendum").

Aspired immediately began working on the changes and additions. (Tr., pp. 135-143). It was anticipated and understood that all of the changes and/or additions might not be completed by July 9, 2010 but that closing would nevertheless proceed that day. (Ex. 7 at p. 2 of Buyer's Counter Offer # 1). This is evidenced by the hand-written notation on the next to last page of the contract which required Aspired to deliver and install the new door the Meltons had chosen as soon as it arrived. See Ex. 7 at p. 2 of Buyer's Counter Offer # 1. Said notation explicitly stated that late delivery and installment of the door would not delay closing which was set for July 9, 2008. See Ex. 7 at p. 2 of Buyer's Counter Offer # 1.

In any event, on June 24, the Meltons retained E. C. ["Ed"] Neelly, IV [hereinafter "Neelly"], to appraise the home and to perform a home inspection on it. (Tr., p. 35). A week later, on July 1, 2010, Neelly performed an appraisal and home inspection of the property. (Tr., p. 35). They did not, however, within seven days, "make application in proper form" "for a loan sufficient to close" as required by the real estate contract. (Tr., p. 28; Ex. 7, p. 1).

A few days later on the July 4 holiday, Aspired received a phone call from its real estate agent, Alfredo Giacometti. (Tr., p. 146). Giacometti relayed to Aspired that the Meltons' real estate agent, Frances Dempsey, had called and advised that Neelly had appraised the home below its contract price and that there were some standing water issues. (Tr., pp. 145-47; Ex. 1). By that time, Aspired had completed the vast majority of the changes and/or additions at an additional cost to it in the amount of $10,408.69 and with closing still five days away. (Tr., pp. 135-143 and 152-59).

Significantly, the Meltons did not, as required by the real estate contract (see Ex. 7 at Home Inspection Addendum), deliver Aspired a written request for repairs within ten calendar days of said contract. In fact, to date, they have yet to deliver Aspired a written request for repairs. Nevertheless, Aspired did go ahead and address the issues and, having done so, assumed that the sale would proceed as scheduled. (Tr., pp. 145-46).[6]

However, on July 7, 2008, Closing Coordinator, Jessica Coggins of Coldwell Banker, prepared a "To Whom It May Concern" letter. (Ex. 16). In the letter, Ms. Coggins indicated that the Meltons did not wish to move forward with closing and that the real estate contract should be

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6

More specifically, Aspired attached a four-inch boot to down spouts, replaced the four-inch pipe under the driveway with an eighteen-inch pipe, and widened the swell to prevent standing water following heavy rainfalls. (Tr., pp. 148-49).

considered null and void. (Ex. 16). She set forth the bases for the Meltons' decision as being standing water in the front yard following the July 4, 2008 heavy rainfall, a "suggestion" by the home inspector that dirt work and grading be performed to eliminate water from ponding in certain areas, and the fact that the Meltons' appraiser had appraised the property below the contract price. (Ex. 16).

Aspired immediately responded that same day. (Ex. 15). It stated that it had been unaware of any water issues, that the situation could be corrected easily, and that it would provide dirt work and grading as necessary to prevent the ponding of water. (Ex. 15). It also voluntarily assumed an additional obligation to install a fourteen-inch storm drain pipe to allow water to move freely under and away from the driveway. (Ex. 15).

The next day, July 8, 2010, just one day before the scheduled July 9, 2010 closing, Ms. Coggins prepared a second "To Whom It May Concern" letter. (Ex. 17). In this letter, she stated that the Meltons would not move forward because, despite the fact that their appraiser, Ed Neelly, had re-measured the property and found an additional thirty square-feet not included in his appraisal, he "did not feel the need to make changes to his report." (Ex. 17). Importantly, and as set forth below, Mr. Neelly offered to re-evaluate the property as well as re-measure. (Tr., pp. 47, 52-53, 62, 70). However, Mrs. Melton prevented him from doing so, stating that she was perfectly happy with what he had originally done. (Tr., pp. 47, 52-53, 62, 70). This is despite the fact that Mr. Neelly had made a number of mistakes in his evaluation and appraisal including under-measuring the home by 30 square feet, failing to value the 552 square foot garage at $30.00 per square foot as he had intended to do, and failing to value the 67 square foot storage room. (Tr., p. 39). Additionally, the evidence revealed there to be a glitch in the software program Neelly used in appraising the property. (Tr., pp. 39-40). Neelly admittedly should have

caught the mistakes caused by the glitch before his report went out. (Tr., p. 40). However, he failed to do so and, despite his failure, was not allowed to re-evaluate the property and his appraisal. (Tr., pp. 40, 47, 52-53, 62, and 70). Moreover and significantly, the copy of the contract sent to Neelly at the time of his appraisal was incomplete. (Tr., pp. 36-37). It showed the contract price at $328,000.00 rather than $340,000.00. (Tr., pp. 36-37). And, even more significantly, it did not reflect all of the changes and additions that Aspired was making to the property for the Meltons, at the Meltons' request, and as reflected in the document entitled "Buyer's Counter Offer # 1" which was appended to the back of the real estate contract. (Tr., pp. 37-37). Neelly had no way of knowing about these changes and additions at the time of his July 1 inspection and appraisal because they had not all been completed at that time and because he had not been provided the complete contract which reflected these items.[7]

This Court should also note that, at the time the Meltons' agent wrote the second "To Whom It May Concern" letter on July 8, 2010 advising that the Meltons would not move forward on the contract due to Neelly's appraisal, the Meltons still had not made application in proper form for a loan sufficient to close as required by the real estate contract. (Tr., p. 28; Ex. 7, p. 1). Rather, all they had done by that time was make informal inquiry about interest rates at several banks in their hometown of Grenada, Mississippi. (Tr., p. 28). They made no effort whatsoever to make formal application as they were contractually required to do. (Tr., p. 28). This is

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7

Significantly, as the Chancellor noted, Neelly's $330,000.00 appraisal would have increased to a minimum of $339,060.00 had he valued the 552 square foot garage at $30.00 per square foot as he had intended to do. (Tr., pp. 29-30 and 39). $339,060.00 would have been just $940.00 short of the $340,000.00 contract. Presumably, that difference would have easily been made up had Neelly evaluated and appraised the changes and additions Aspired made to the house pursuant to the real estate contract and as reflected in the portion of the real estate contract that Neelly had not received at the time of his appraisal.

presumably because the Meltons were contemplating simply getting the money from Mrs. Melton's father, Ernest Braswell. (Tr., p. 28). Interestingly, within three weeks of backing out of the real estate contract with Aspired, the Meltons did obtain money for another, more expensive home from Mrs. Melton's father. (Tr., p. 31). In fact, the Meltons obtained significantly more than the $340,000.00 they would have had to have acquired to complete the real estate transaction with Aspired. They actually obtained $370,000.00 from Mrs. Melton's father and used that money to close on another, more expensive home on July 29, 2010. (Tr., p. 31).

Ultimately, Aspired sued the Meltons for specific performance and for the damages caused by the Meltons' failure to perform the contract. (R., pp. 11-54). The matter proceeded to trial on July 2, 2009. (Tr., p. 1). That day, testimony was taken from the parties and from three witnesses, Neelly and two other appraisers, Mike Guyton who had appraised the subject property at $358,000.00 and Jason Thomas Roberts who had appraised the subject property at $352,000.00. (Tr., pp. 1-162). Additional testimony was taken on August 20, 2009. (Tr., pp. 167-330).

On September 24, 2009, the Chancellor issued his "Opinion and Judgment." (R., pp. 117-122) In his "Opinion and Judgment," the Chancellor denied Aspired the specific performance and damages it had sued for despite the fact that the contract itself explicitly stated that specific performance was the essence of the contract. (R., pp. 117-122 and Ex. 7 at p. 3, ¶ 16). He also declared the real estate contract between it and the Meltons to be null and void, ordered the earnest money to be returned to the Meltons, and ultimately ordered Aspired to pay the Meltons' attorney fees in the amount of $6,554.56. (R., pp. 117-122 and 140-142).

This appeal followed. (R., pp. 146-147).

SUMMARY OF THE ARGUMENT.

I.. A chancellor's factual findings are reviewed under an abuse of discretion standard. His conclusions of law are to be reviewed *de novo*.

II. Questions of contract construction are legal questions and, as such, are to be reviewed *de novo*.

Trial courts are required to consider a contract as a whole and to give effect to every word and phrase within the contract. They are to make every word operate according to the intention of the parties. After examining a contract in this manner, and then only if the contract is unclear or ambiguous, may a court apply the canons of construction. In so doing, trial courts must nevertheless make every endeavor to give the contract a reasonable construction rather than an unreasonable one. They may not adopt an unreasonable interpretation of a contract. Indeed, an interpretation must be reasonable to warrant adoption.

III. The Meltons breached their implied duty of good faith and fair dealing with regard to Ed Neelly's appraisal and home inspection. More specifically, they obtained and relied upon an appraisal from Ed Neelly which was fraught with error and which contained mistakes he admittedly should have caught. They prohibited Mr. Neelly from re-evaluating his work despite the fatal errors therein. They claimed Mr. Neelly's inspection "did not meet standard" although nowhere in the inspection report is there any indication that the inspection failed. Additionally, they refused to give Aspired the opportunity to cure the "various minor repairs" suggested within the home inspection report and in contravention of the home inspection addendum which required them to do so.

IV. Under Mississippi law, specific performance is "a particularly appropriate remedy" in cases involving real estate. Indeed, it is "the preferred remedy" where a contracting party may

feasibly be given the benefit of its bargain. Yet, the Chancellor refused to award specific performance in this case and, rather, declared the contract null and void on unfounded bases.

V. The Chancellor failed to make a reasonable interpretation of the contract's home inspection addendum. His interpretation that the Meltons were allowed to simply cancel the contract without affording Aspired the opportunity to cure is in direct contravention of the contract. His interpretation clearly failed to give effect to every word and phrase. It completely ignored mandates and at least two phrases within the contract's home inspection addendum.

VI. The Chancellor was manifestly wrong and clearly erroneous in at least seven of his factual findings. The following findings were not supported by substantial evidence as required by Mississippi law: that nothing prevented Aspired from obtaining appraisals before the scheduled July 9, 2008 closing date; that one of the Meltons' bases for canceling the contract was that the home had not been completed by July 4, 2008; that the drainage situation constituted a serious problem which required considerable work to rectify; that appraiser Ed Neelly's computer was not working properly but that he, nevertheless, cured the defects in his appraisal; that the appraisals of Mike Guyton and Jimmy Langley have proven unreliable; that Mr. Neelly's appraisal was a sufficient basis for canceling the contract; and that the house was not one-hundred percent complete as of July 4, 2008 and that this was a sufficient basis for allowing the Meltons to back out of the contract.

VII. The Meltons failed to enter the equity court with clean hands. Rather and as stated, they breached their implied covenant of good faith and fair dealing. Additionally, they failed to fulfill their own contractual obligations. Specifically, they failed to make application in proper form for a loan sufficient to close within seven days of the contract. Additionally, they failed to

deliver Aspired a written demand for repairs within ten days of the contract and to allow Aspired the opportunity to cure.

ARGUMENT.

I. Standards of Review.

A chancellor's factual findings are reviewed under an abuse of discretion standard. Miller v. Parker McCurley Properties, L.L.C., 36 So.3d 1234, 1239 (Miss. 2010). Under this standard, a chancellor's findings will be reversed if they are manifestly wrong, clearly erroneous, or the result of application of the wrong legal standard. Miller, 36 So. 3d 1234, 1239; Wheat v. Wheat, 37 So. 3d 632, 636 (Miss. 2010). Findings are manifestly wrong or clearly erroneous if they are not supported by substantial evidence. Houston v. Willis, 24 So.3d 412, 417 (Miss. App. 2009); White v. Cooke, 4 So. 3d 330, 332 (Miss. App. 2009). Finally, though appellate courts review factual findings for an abuse of discretion, they review questions of law *de novo*. Wheat, 37 So. 3d 632, 636; Miller, 36 So. 3d 1234, 1239; Houston, 24 So.3d 412, 417; Facilities, Inc. v. Rogers-Usry Chevrolet, Inc., 908 So.2d 107, 110 (Miss. 2005); Starcher v. Byrne, 687 So. 2d 737, 739 (Miss. 1997).

II. Contract Construction.

The Mississippi Supreme Court has held that questions concerning the construction of contracts are questions of law. Facilities, Inc., 908 So. 2d 107, 110 (citing Parkerson v. Smith, 817 So. 2d 529, 532 (Miss. 2002) (quoting Miss. State Hwy Comm'n v. Patterson Enters., Ltd., 627 So. 2d 261, 263 (Miss. 1993)). As stated above, questions of law are reviewed under a *de novo* standard. Wheat, 37 So. 3d 632, 636; Miller, 36 So. 3d 1234, 1239; Houston, 24 So.3d 412, 417; Facilities, Inc., 908 So.2d 107, 110; Starcher, 687 So. 2d 737, 739. Thus, this Court

should review the questions concerning construction of the real estate contract subject of this lawsuit *de novo*.

According to the Mississippi Supreme Court, "[t]he primary purpose of all contract construction principles and methods is to determine the intent of the contracting parties." Facilities, Inc., 908 So. 2d at 110 (quoting Royer Homes of Miss., Inc. v. Chandeleur Homes, Inc., 857 So. 2d 748, 752 (Miss. 2003)); Mississippi Rice Growers Ass'n (A. A. L.) v. Pigott, 191 So.2d 399, 402-03 (Miss. 1966); see also Houston v. Willis, 24 So. 3d 412, 419 (Miss. App. 2009). In determining the intent of the parties, courts are to focus upon the language of the contract itself. Facilities, Inc., 908 So. 2d 107, 110-11 (quoting Turner v. Terry, 799 So. 2d 25, 32 (Miss. 2001) and Osborne v. Bullins, 549 So. 2d 1337, 1339 (Miss. 1989)). They do this by considering the whole agreement, giving every word therein effect, and making every word operate according to the intention of the parties. Facilities, Inc., 908 So. 2d at 111 (citing Brown v. Hartford Ins. Co., 606 So.2d 122, 126 (Miss.1992)); Mississippi Rice Growers Ass'n, 191 So.2d 399, 403 (quoting Rubel v. Rubel, 221 Miss. 848, 865, 75 So. 2d 59, 65 (1954)). According to the Mississippi Supreme Court, "the words employed are by far the best resource for ascertaining the intent and assigning meaning with fairness and accuracy." Facilities, Inc., 908 So. 2d at 111 (citing Simmons v. Bank of Miss., 593 So.2d 40, 42-43 (Miss.1992)). Clearly, then, courts are not at liberty to infer intent contrary to that emanating from the text itself. Facilities, Inc., 908 So. 2d at 111 (citing Cooper v. Crabb, 587 So. 2d 236, 241 (Miss. 1991)).

After examining a contract in this manner, and then only if the contract is unclear or ambiguous, should a court apply the canons of construction. In re Dissolution of Marriage of Wood, 35 So.3d 507, 513 (Miss. 2010); Facilities, Inc., 908 So. 2d at 111 (citing Pursue Energy Corp. v. Perkins, 558 So. 2d 349, 350-51 (Miss. 1990)). Significantly, where terms of a contract

are ambiguous, the contract must be interpreted in a reasonable manner. Harris v. Harris, 988 So. 2d 376, 378 (Miss. 2005). The Mississippi Supreme Court has noted that every endeavor should be made to give the contract a reasonable construction rather than an unreasonable one. Mississippi Rice Growers Ass'n, 191 So. 2d at 403 (quoting Rubel, 221 Miss. 848, 865, 75 So. 2d 59, 65)). Indeed, an interpretation of a contract must be reasonable to warrant adoption. Lehman-Roberts Co. v. State Hwy. Comm'n of Mississippi, 673 So. 2d 742, 744 (Miss. 1996) (citing Frazier v. Northeast Mississippi Shopping Center, 458 So. 2d 1051, 1054 (Miss. 1984)). At the same time, the aim in construing should be in the manner most equitable to the parties and so as not to give one of the parties an unfair or unreasonable advantage over the other. Id. (quoting Rubel, 221 Miss. at 865, 75 So. 2d at 65).

The Mississippi Supreme Court has made clear that the mere fact that parties disagree about the meaning of a contract does not make the contract ambiguous. Facilities, Inc., 908 So. 2d at 111 (citing Turner, 799 So. 2d, 25, 32; Cherry v. Anthony, 501 So.2d 416, 419 (Miss.1987)). Rather, a contract is only ambiguous if it is susceptible to two reasonable interpretations. Dalton v. Cellular South, Inc., 20 So.3d 1227, 1232 (Miss. 2009) (citing American Guar. & Liab. Ins. Co. v. 1906 Co., 129 F.3d 802, 811-812 (5th Cir.1997) and Insurance Co. of N. Amer. v. Deposit Guar. Nat'l Bank, 258 So.2d 798, 800 (Miss.1972)). Put another way, a contract is only ambiguous if it is capable of more than one reasonable meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire contract and who is familiar with the customs, practices, usages and terminology as generally understood in the particular trade or business. Dalton, 20 So. 3d 1227, 1232 (quoting Walk-In Med Ctrs., Inc. v. Breuer Capital Corp., 818 F.2d 260, 263 (2d Cir.1987) and Eskimo Pie Corp. v. Whitelawn Dairies, Inc., 284 F. Supp. 987, 994 (S.D.N.Y.1968)).

was not required to allow Aspired to make the repairs. (Tr., p. 23). However, that requirement is quite implicit in the contract. If the contract had not required the Meltons to give Aspired the opportunity to cure, it would not have contained the mandate that they deliver a "written request for repairs" to Aspired within ten calendar days of the contract. See Ex. 7 at Home Inspection Addendum, lines 9-11.

Undoubtedly, the Meltons conduct in complaining about the "various minor repairs" and relying upon them to cancel the contract, while simultaneously prohibiting Aspired from addressing the "various minor repairs," violated the standards of decency, fairness or reasonableness. Accordingly, the Meltons breached the implied covenant of good faith and fair dealing as well as the contract's implied duty to afford Aspired the opportunity to cure.

IV. The Chancellor Erred When He Refused to Order Specific Performance and Declared the Contract Null and Void.

The Chancellor erred when he refused to order the Meltons to specifically perform the real estate contract and declared it null and void. As set forth above, "the primary purpose of all contract construction principles and methods is to determine the intent of the contracting parties." (Citations omitted). The intent of the contracting parties is clear in this case. Indeed, the contract explicitly states that the parties' intent is specific performance:

> **BREACH OF CONTRACT.** Specific performance is the essence of this Contract. . . .

Ex. 7, p. 3, ¶ 16.

The Mississippi Supreme Court considers specific performance "a particular appropriate remedy" in matters pertaining to a breach of real estate contract. Derr Plantation, Inc. v. Swarek, 14 So. 3d 711, 720 (Miss. 2009); see also Houston v. Willis, 24 So.3d 412, 418 (Miss. App. 2009); In re Estate of Pickett; Van Etten v. Johnson, 879 So.2d 467, 471(Miss. App. 2004). This

is because of the unique nature of real estate. Houston, 24 So. 3d 412, 418, Derr Plantation, Inc., 14 So. 3d 711, 720, In re Estate of Pickett, 879 So. 2d 467, 471. Specific performance is not only an appropriate remedy but the preferred remedy where a contracting party can feasibly be given that for which he bargained. Houston, 24 So. 3d at 418 (citing Frierson v. Delta Outdoor, Inc., 794 So. 2d 220, 225-25 (Miss. 2001) and Osborne, 549 So. 2d at 1340). In fact, our state supreme court has acknowledged that the remedy of specific performance has become "widely available." Houston, 24 So. 3d at 419.

Most reported cases have involved the real estate buyer requesting specific performance from the seller. Id.; see, e.g., Derr Plantation, Inc. v. Swarek, 14 So. 3d 711 (Miss.2009). However, Mississippi law clearly recognizes that the seller has a remedy in specific performance as well. Houston, 24 So. 3d at 419.

Houston v. Willis is illustrative. It involved a contractual dispute over the sale of a house in Grenada, Mississippi between seller Robert Willis and buyer Gary Houston. Houston, 24 So. 3d at 416. The contract allowed Houston to temporarily rent Willis' house while attempting to sell his own home in Michigan. Id. It obligated Houston to then buy the house. Id. Because Houston had difficulty selling his own home in Michigan, the rental period was extended twice through two separate addendums to the contract. Id. However, ten days before the closing set in the second addendum, Houston wrote Willis and informed Willis that he did not intend to exercise an option to purchase the property. Id.

Willis then sued Houston in Chancery Court for specific performance. Id. at 417. The real estate contract at issue, like the one before this Honorable Court, specified that "specific performance is the essence of this contract." Id. at 416. The Chancellor awarded Willis the specific performance, expressly finding that the contract was for the sale of real estate and not for

a lease with an option to purchase as Houston claimed. Id. at 417. On appeal, the Mississippi Court of Appeals affirmed the Chancellor's award of specific performance. Id. at 422. In so doing, the Mississippi Court of Appeals recognized that specific performance is a "particularly appropriate remedy in matters pertaining to a breach of a real estate contract because of real estate's unique nature." Id. at 418.

V. The Chancellor's Construction of the Contract Was Not Reasonable.

As set forth above, "the primary purpose of all contract construction principles and methods is to determine the intent of the contracting parties." (Citations omitted). In doing this, judges are required to focus upon the language of the contract. (Citations omitted). They are required to give every word effect and make every word operate according to the intention of the parties. (Citations omitted). And, notably, they are to make every endeavor to give the contract before them a reasonable construction rather than an unreasonable one. (Citations omitted).

In this case, the chancellor interpreted the Home Inspection Addendum provisions of the contract to allow the Meltons to simply cancel the contract for "deficiencies" (though that term is not expressed anywhere in the home inspection report (see Ex. 19) without affording Aspired the opportunity to cure. (Tr., p. 380). However, that interpretation indubitably violates contract construction principles and methods as demonstrated below.

The Home Inspection Addendum to the contract provides, in pertinent part:

> 1. Buyer(s) shall, at its expense, arrange for a Home Inspection to be conducted *and a written request for repairs delivered Seller(s) or Seller(s)' agent within 10 calendar days*. . . .
>
> 2. . . .
>
> 3. If deficiencies are revealed by the Home Inspection Report that have not been previously disclosed, Buyer may:
> (a) identify such deficiencies in writing to Seller, along with a copy of the Home

> Inspection Report to the Seller. Seller will have three (3) days to consent in writing to correct deficiencies on Buyer's list, in an amount not to exceed $ to be determined. *Should correction of deficiencies cost more than the predetermined expense limitation, Seller(s) 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)'s cancellation, whereupon all earnest money deposits shall be returned to Buyer(s).

See Ex. 7 at Home Inspection Addendum. Italics added.

The Chancellor clearly did not give every word effect in interpreting the Home Inspection Addendum. His interpretation completely ignored the mandate on lines 9-11 of the addendum that the Meltons both arrange for a home inspection to be conducted and a written request for repairs delivered Aspired within ten days. See Ex. 7 at Home Inspection Addendum, lines 9-11. He ignored the provisions in paragraphs 3(a) and 3(b) that state "*should correction of deficiencies cost more than the predetermined expense limitation, Seller(s) may elect to correct the deficiencies and proceed with the Contract* OR Buyer may accept responsibility for correction of deficiencies and proceed to Closing *if Seller(s) elects not to correct deficiencies in excess of the expense limitation.*" See Ex. 7 at Home Inspection Addendum, lines 22-25 (italics added). A close examination of these provisions makes clear their meaning and the meaning of the whole addendum when read as a whole. The only reasonable interpretation which gives effect to every word, when the addendum is read as a whole, is as follows:

- The Meltons were required to arrange for a home inspection to be conducted.
- If the home inspection revealed any "deficiencies," then the Meltons would have been required to deliver a written request for repairs to Aspired within ten days. At the same time, they would have been required to provide Aspired a copy of the home inspection report.

- Upon receipt of the written request for repairs and the copy of the report, Aspired would have had three days to consent in writing to correct deficiencies on the Melton's list in an amount not to exceed the dollar figure which should have been, but was not, filled in the blank on line 22 of the addendum.

- If Aspired failed to consent to correct the deficiencies in an amount not to exceed the dollar figure which should have been failed in, then Aspired would have been in breach, and the Meltons could have canceled the contract.

- Alternatively, if it were going to cost Aspired more than the predetermined expense limitation to correct the deficiencies, then Aspired would not have been required to correct the deficiencies. However, Aspired could have nevertheless chosen to correct the deficiencies, though not required to do so, and proceeded with the contract.

- On the other hand, if it were going to cost Aspired more than the predetermined expense limitation to correct the deficiencies and Aspired chose not to correct the deficiencies, then the Meltons could have themselves accepted responsibility for the deficiencies and proceeded with the contract.

- Finally, only if neither party was willing to assume responsibility for the deficiencies, then the Meltons could have exercised option 3(c) and canceled the contract.

This is the only interpretation of the addendum which gives every word and phrase effect and which results in a reasonable construction rather than an unreasonable construction. As stated, the chancellor clearly did not give effect to every word and phrase in the addendum. Likewise, he clearly did not make every endeavor to give the addendum a reasonable construction. Had he done so, he would have considered the fact that the addendum mandated the Meltons to both arrange for a home inspection to be conducted and a written request for repairs delivered Aspired within ten days. He would have reconciled that mandate with sub-paragraphs (a), (b), and (c) of paragraph 3. of the addendum and reached the only reasonable construction. Instead he completely ignored and gave no effect whatsoever to the mandate in lines 9-11 that the Meltons deliver a written request for repairs to Aspired within 10 days. He

ignored and gave no effect whatsoever to the alternative phrase "should correction of the deficiencies cost more than the predetermined expense limitation" in lines 22-23 of the addendum. And he ignored and gave no effect whatsoever to the provision "if the Seller(s) elects not to correct the deficiencies in excess of the expense limitation" in lines 24-25 of the addendum.

VI. The Chancellor's Findings Are Clearly Erroneous.

Findings are manifestly wrong or clearly erroneous if they are not supported by substantial evidence. Houston v. Willis, 24 So.3d 412, 417 (Miss. App. 2009); White v. Cooke, 4 So. 3d 330, 332 (Miss. App. 2009). A number of the chancellor's findings are not supported by substantial evidence and, thus, are manifestly wrong or clearly erroneous.

A. The Chancellor's Finding that Nothing Prevented Plaintiff from Securing Appraisals Before the July 9, 2008 Closing Date Is Manifestly Wrong or Clearly Erroneous.

In his September 24, 2009 "Opinion and Judgment" (R., pp. 117-122), the Chancellor faulted Aspired for the separate appraisals it obtained from Mike Guyton on July 15, 2008 and from Jimmy Langley on July 30, 2008. (R., p. 120, ¶ IX). He found that nothing prevented Aspired from securing those appraisals before the July 9 closing date, noting that the Meltons had given Aspired written notice that the contract was null and void prior to the dates of the Guyton and Langley appraisals. (R., p. 120, ¶ IX). The Chancellor's finding in this regard is not supported by substantial evidence and, thus, is manifestly wrong or clearly erroneous.

The evidence of record reveals that Mr. Neelly performed his inspection and appraisal of the subject property on July 1, 2008. See Exs. 1 and 19. Yet, the Meltons did not give Aspired written notice that they wished to cancel the contract until a week later on July 7, 2008, two days before the contractual closing date of July 9, 2008. See Ex. 16. At that time, they notified

Aspired, through their realty company, that water was standing in the front yard. See Ex. 16. Aspired responded in writing that same day. See Ex. 15. It advised that it had been unaware of any ponding water situation, that the situation could easily be corrected, and that it would remedy the situation as soon as possible by providing dirt work and grading and by adding a larger 14-inch storm drain pipe which would allow water to move freely under the driveway. See Ex. 15.

On July 8, 2008, just one day before the scheduled closing, the Meltons replied in writing to Aspired's response. See Ex. 17. On that date and for the first time, the Meltons provided Aspired written notice, through their realty company, that they did not wish to move forward with the contract "due to the property not appraising for the purchase price." See Ex. 17. Again, though Mr. Neelly had performed his appraisal on July 1, the Meltons did not provide written notice to Aspired that it did not wish to move forward on the contract due to Neelly's appraisal until July 8, 2008 (see Ex. 17) - just one day prior to the scheduled July 9, 2008 closing. At that point - just one day prior to the scheduled closing - it was impossible for Aspired to obtain an appraisal prior to the scheduled July 9 closing date. Nevertheless, it did move diligently and obtain an appraisal from Mike Guyton less than a week later on July 15, 2008. See Ex. 3. It obtained a second appraisal from the Jimmy Langley Appraisal company on July 30, 2008. See Ex. 2. Interestingly and though Guyton and the Jimmy Langley appraiser never saw each other's reports and never discussed the property with each other, they both appraised the property higher than the contract price, significantly higher than Neelly had appraised the property, and within two percent (2%) of each other. Cf. Exs. 2 and 3.

B. The Chancellor's Finding that a Basis for the Meltons' Attempt to Cancel the Contract Was that the House Had Not Been Completed as of July 4 Is Manifestly Wrong or Clearly Erroneous.

The Chancellor also found that the Meltons gave written notice to Aspired that the contract was null and void "as the sales price had not been met and that the house had not been completed as of the date they inspected in on July 4, 2008. . . ". (R., p. 120, ¶ IX). However, the Chancellor's finding is manifestly wrong or clearly erroneous. Mrs. Melton testified that there were two reasons she and her husband did not proceed to closing: "the appraisal came under the agreed purchase price, and the home inspection did not meet standard." (Tr., pp. 17, 20, 23). Likewise, the Meltons' written notice to Aspired cited two reasons for not proceeding with closing: standing water in the front yard, and the property did not appraise for the purchase price. (Exs. 16 and 17). There was no evidence that the Melton's based their canceling of the contract upon a claim that the house had not been completed as of July 4, 2008. Moreover, even if there had been such evidence, it would be irrelevant as closing was still five (5) days away.

C. The Chancellor's Finding that Rectifying a Drainage Issue Required Considerable Work Is Manifestly Wrong or Clearly Erroneous.

The Chancellor also found that considerable work was required by Aspired to rectify the standing water. (R., p. 120, ¶ X). This finding, too, is manifestly wrong or clearly erroneous. There was neither evidence nor testimony that considerable work was required to rectify the problem. Rather, according to Aspired, the situation was corrected easily, in two or three days, and for less than $1,000.00. (See Ex. 15 and Tr., p. 149). There was no contradictory testimony.

D. The Chancellor's Findings that Neelly's Computer Was Not Working Properly and That the Errors in His Appraisal Were Cured Are Manifestly Wrong or Clearly Erroneous.

The Chancellor made at least two manifestly wrong or clearly erroneous findings about Ed Neelly's appraisal. First, he found that Neelly's computer was not working properly. (R., p. 120, ¶ X). However, that is not the case. There was neither evidence nor testimony that Neelly's computer was not working properly. Rather, Mr. Neelly testified that the software program he used to conduct his appraisal contained a glitch which he should have caught but did not. (Tr., pp. 39-40).

Second, the Chancellor found that the errors in Neelly's appraisal were cured since they did not change his appraised value of the property. (R., p. 120, ¶ X). He apparently based this finding on the subjective claim of Neelly in his letter to realtor Francis Dempsey. (R., p. 120, ¶ X) (referring to Ex. 9, Neelly's letter to Francis Dempsey). That claim was that, though he re-measured the property and found an additional thirty (30) square feet, the additional square footage had no significant effect on his original appraised value. See Ex. 9. However, nowhere in the record is there any evidence that Neelly's failure to account for the 552-square foot garage was cured. Nowhere in the record is there any evidence that Neelly's failure to consider the changes and additional improvements to the property pursuant to the addendum to the contract was cured. See Section III.A. above for detailed discussion.

E. The Chancellor's Finding That the Appraisals of Jimmy Langley and Mike Guyton Have Proven Unreliable Is Manifestly Wrong or Clearly Erroneous.

Particularly egregious, manifestly wrong, and clearly erroneous is the Chancellor's finding that the appraisals of Jimmy Langley and Mike Guyton "have proven to be unreliable." (R., 120, ¶ X). The Chancellor is not an expert in the appraisal field. He was not presented with

expert testimony which discredited either the appraisal of Jimmy Langley or the appraisal of Mike Guyton. He had neither expert basis, nor legal basis, nor factual basis for concluding that their appraisals have proven to be unreliable. Rather, his sole basis for that finding was the fact that the house has yet to sell. (R., p. 120, ¶ X). However, many factors completely unrelated to Langley's and Guyton's appraisals could have contributed to the house's failure to sell including, most notably, the economy and the housing market which has steadily declined over the last several years. Indeed, the Court may take judicial notice that over the last three years, foreclosure activity has significantly increased, lenders have tightened lending restrictions, the building industry has struggled, inventory is up everywhere across the country, and multi-million dollar ad campaigns are being launched in an attempt to bolster the sinking housing market but to no avail.

Stated simply, the Chancellor's finding regarding Langley's and Guyton's appraisals is, at best, speculative. He neither relied upon pertinent expert opinion nor considered the economy and housing market trends existing at the time in question. As such, the Chancellor's finding is unsupported by substantial evidence, or for that matter, any evidence at all.

F. The Chancellor's Finding That Neelly's Appraisal (Which Was Fraught With Error) Is a Sufficient Basis For Canceling the Contract Was Manifestly Wrong and Clearly Erroneous.

As set forth in Section III. A. above, Mr. Neelly's appraisal was frought with error. He failed to even consider the 552-square-foot garage which he himself testified should have been valued at $30/square foot or $16,560.00. He used a program which he knew contained glitches and, yet, did not even proof his report enough to catch the glitch, which he admits he should have caught, before the report went out. (Tr., pp. 39-40). And most significantly, he failed to take into consideration any of the changes or additions which were being made to improve the

property pursuant to the addendum to the contract. Because he did not have a complete copy of the contract at the time of his appraisal, he was not even aware of any of the many changes and additions which were to be made to the property in accordance with the addendum to the contract.

It was error for the Chancellor to accept Mr. Neelly's report which was admittedly fraught with error. It was error for the Chancellor to speculate that the report somehow cured itself of all of its deficiencies simply because Mr. Neelly testified that his re-measuring which produced an additional thirty (30) square-feet would not affect his original appraised value.

G. The Chancellor's Finding that The House Was Not 100% Complete on July 9 is an Additional Reason for Declaring the Contract Null and Void Is Manifestly Wrong and Clearly Erroneous.

Finally, the Court made a finding that the house was not one-hundred percent complete on July 9 and that this fact constituted an acceptable reason for declaring the contract null and void. (R., p. 121, ¶ XII). This finding is clearly erroneous.

First, a review of the real estate contract reveals no requirement that the house be one-hundred percent complete by July 9, 2010. (Ex. 7). Rather, it only required that closing take place on July 9, 2009 and that possession be delivered to the Meltons upon completion of the closing. (Ex. 7, p. 2, ¶¶ 9 and 10). Indeed, the parties anticipated and understood that the home would not likely be one-hundred percent complete by July 9 but explicitly agreed that closing would nevertheless proceed that day. (Ex. 7 at p. 2 of Buyer's Counter Offer # 1). This is evidenced by the hand-written notation on the next to last page of the contract which required Aspired to deliver and install the new door the Meltons had chosen as soon as it arrived. See Ex. 7 at p. 2 of Buyer's Counter Offer # 1. Said notation explicitly stated that late delivery and

installment of the door would not delay closing which was set for July 9, 2008. See Ex. 7 at p. 2 of Buyer's Counter Offer # 1.

There is neither evidence nor suggestion in the record that Aspired would not have been able to deliver possession to the Meltons on July 9, 2008. In fact, according to all of the testimony, the house was substantially complete before the Meltons backed out of the contract prior to the scheduled closing. See Tr., p. 132 (Aspired's testimony that house was pretty much complete and in move-in condition by June, 2008); p. 218 (Realtor Alfredo Giacometti's testimony that house was pretty much completed at time of listing in April or May of 2008); p. 224 (Realtor Alfredo Giacometti's testimony that he was unaware of anything that would have prevented closing on July 9 and that "everything was working according to schedule"); R., pp. 202 and 314 (Aspired's testimony that house was in move-in condition by July 4 and that virtually everything was done or was in line to have been done by July 9 other than special item orders which parties had discussed). Likewise, and though Mrs. Melton complained that the house was not one-hundred percent complete, she admits that her complaint was based on the home's July 4, 2008 condition, that she never saw the house after July 4 - - the date on which she and her husband decided to cancel the contract - - , and that she has no knowledge of the home's July 9 condition. (Tr., pp. 14, 16, 17, 21, 23). Significantly, Mrs. Melton and her husband did not base their cancellation of the contract on the fact that house was not one-hundred percent complete; rather, they based it solely on Neelly's flawed appraisal and the fact that they observed water standing in the yard on July 4, 2010 after an unusually heavy rain. (Tr., pp. 17, 20).

VII. The Meltons Failed to Come into the Court with Clean Hands.

It is a well-established maxim of Mississippi law that a party seeking equity must come into the court of equity with clean hands. Houston, 24 So. 2d at 421 (citing Thigpen v. Kennedy,

238 So. 2d 744, 746 (Miss. 1970)); Dill v. Dill, 908 So.2d 198, 202 (Miss. App. 2005); Cole v. Hood, 371 So. 2d 861, 863 (Miss. 1979); see also O'Connor v. Dickerson, 188 So. 2d 241, 246 (Miss. 1966) (holding he who seeks equity must do equity). However, this Honorable Court should note that the Meltons did not enter the Chancery Court of equity with clean hands. Rather, and in addition to breaching the implied covenant of good faith and fair dealing as set forth in Section III above, they failed to fulfill a number of their contractual obligations. For example, the Meltons did not "make application in proper form" for a loan sufficient to close on the house within seven (7) days of the contract as they were contractually obligated to do. (Ex. 7, ¶ 2). In fact, at the time the Meltons decided to back out of the closing (July 4 - - five days before closing), the Meltons had not yet secured a lender. (Tr., p. 28). Rather, they were merely looking at interest rates of banks in Grenada and contemplating that maybe Mrs. Melton's father would lend them the money. (Tr., p. 28). The Melton's failure to have even applied for a loan as late as July 4, 2008, after indicating in the real estate contract that the purchase price would be paid via a new loan (Ex. 7, p. 1, ¶ 1), certainly calls into question whether the Meltons ever intended to close on the house they had contracted to purchase.

Likewise and significantly, the Meltons never delivered a written request of repairs to Aspired as it was required to do within ten days of the contract. (Ex. 7, at Home Inspection Addendum, p. 1, lines 9-11; Tr., pp. 22-23).

Further, though Mrs. Melton faulted Aspired for not completely finishing the home by July 4, she and her husband failed to provide a number of items that he needed to complete the home and that they were contractually obligated to provide. (Ex.7 at addendum entitled "Buyer's Counter Offer # 1; Tr., p. 313). For instance, the Meltons were contractually obligated to purchase three pendant lights which they were requiring Aspired to install over the bar. (Ex. 7 at

addendum entitled "Buyer's Counter Offer # 1). Yet, they never purchased and provided the pendant lights. (Tr., p. 313). They were contractually obligated to provide under cabinet lights which they were requiring Aspired to install in the cabinets with glass. (Ex. 7 at addendum entitled "Buyer's Counter Offer # 1). Yet, they never purchased and provided the under cabinet lights. (Tr., p. 313).

CONCLUSION.

As this Court can clearly see, the Chancellor committed a number of reversible errors in this case - errors that were unsupported by substantial evidence, manifestly wrong, and contrary to Mississippi law.

First and foremost, the Meltons breached the implied covenant of good faith and fair dealing. Their conduct in refusing to allow Mr. Neelly to take the steps necessary to correct his fatally erroneous appraisal, in refusing to deliver Aspired a written request for repairs, and in refusing to allow Aspired to cure alleged deficiencies clearly violated all standards of decency, fairness, and reasonableness. Yet, the Chancellor ignored their egregious conduct and allowed them to cancel the contract.

Second and just as significant, the Chancellor failed to enforce specific performance which was clearly and indisputably the essence of this real estate contract. Instead, he declared the contract null and void in violation of Mississippi law which considers specific performance a particularly appropriate remedy in real estate disputes and, in fact, the preferred remedy when a contracting party such as Aspired can feasibly be given the benefit of its bargain.

Third and particularly important, the Chancellor erred in his construction of the Home Inspection Addendum to the real estate contract. His interpretation allowed the Meltons to simply cancel the contract without giving Aspired the opportunity to cure. His interpretation

constituted an unreasonable construction of the contract and was, in fact, in direct contravention of explicit provisions in the contract. Clearly, the Chancellor failed to consider the contract as a whole and give every word and phrase their proper effect as required by Mississippi law.

Fourth, as demonstrated hereinabove, the Chancellor was manifestly wrong and clearly erroneous in at least seven of his factual findings. As detailed in this brief, these following findings of the Chancellor were unsupported by substantial evidence: that nothing prevented Aspired from obtaining appraisals before the scheduled July 9, 2008 closing date; that one of the Meltons' bases for canceling the contract was that the home had not been completed by July 4, 2008; that the drainage situation constituted a serious problem which required considerable work to rectify; that appraiser Ed Neelly's computer was not working properly but that he, nevertheless, cured the defects in his appraisal; that the appraisals of Mike Guyton and Jimmy Langley have proven unreliable; that Mr. Neelly's appraisal was a sufficient basis for canceling the contract; and that the house was not one-hundred percent complete as of July 4, 2008 and that this was a sufficient basis for allowing the Meltons to back out of the contract.

Finally, the Meltons failed to enter the equity court with clean hands. Rather, as detailed, they egregiously breached the covenant of good faith and fair dealing implicit in the real estate contract. Additionally, they refused or failed to meet or even attempt a number of their contractual obligations.

For all these reasons, Aspired submits that the Chancellor's opinion and judgment in this matter should be reversed. Aspired requests this Honorable Court to reverse the Chancellor's opinion and judgment and to order the Meltons to specifically perform the contract and to pay Aspired the damages it sustained as a result of their refusal to honor the contract. Additionally, since the Chancellor's opinion and judgment cannot stand, neither can his award of attorney's

fees. Thus, Aspired requests that this Honorable Court reverse the Chancellor's award of attorney's fees as well.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This will certify that the undersigned attorney, Thomas M. McElroy, has this date caused true and correct copies of the above and foregoing Brief of Appellant to be delivered to counsel of record and to the trial court judge by causing the same to be placed in the United States Mail, postage prepaid, addressed as follows:

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Chancellor
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THIS, the 30th day of August, 2010.

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