

IN THE SUPREME COURT OF MISSISSIPPI

CAUSE NO. 2010-CA-00522

ALL AMERICAN PROCESSING, INC.

PLAINTIFF/APPELLANT

VERSUS

LAWRENCE M. RUCKDESCHEL,
KATHERINE R. RUCKDESCHEL, and
TERRY MILLER, in his capacity of
Jackson County Chancery Clerk

DEFENDANTS/APPELLEES

BRIEF OF APPELLEES

APPEAL FROM THE CHANCERY COURT OF
JACKSON COUNTY, MISSISSIPPI
SITTING AS APPELLATE COURT ON APPEAL
FROM THE COUNTY COURT OF
JACKSON COUNTY, MISSISSIPPI

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

1. Lawrence M. Ruckdeschel, Appellee;
2. Katherine R. Ruckdeschel, Appellee;
3. James H. Colmer, Jr., Esq., Attorney for Appellees;
4. Jason M. Payne, Esq., Attorney for Appellees;

5. Heidelberg, Steinberger, Colmer & Burrow, P.A., Attorneys for Appellees;
6. All American Processing, Inc., Appellant;
7. Bruce Garceau, stockholder/officer in All American Processing, Inc.
8. Darlene Garceau, stockholder/officer in All American Processing, Inc.
9. Jason B. Purvis, Attorney for Appellant;
10. Deutsch, Kerrigan & Stiles, L.L.P., Attorneys for Appellant;
11. Billy Parlin, Esq., Attorney for Appellant;
12. David C. Hicks, current owner of the property on which the *lis pendens* is placed;
12. Warren Paving, Inc., purchased the property from the Appellant;
13. Honorable T. Larry Wilson, County Court Judge;
14. Honorable Jaye A. Bradley, Chancellor.

This the 7th day of December, 2010.



JAMES H. COLMER, JR.

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- A. A *Lis Pendens* is a valid and appropriate means by which to give legal notice that an individual(s) is asserting a claim of an equitable interest or equitable lien in a parcel of property.
- B. The underlying claim upon which the *Lis Pendens* was based had a direct relation to the property at issue.
- C. The Judgment against All American Processing, Inc., in the Circuit Court of Jackson County, Mississippi, judicially established as true all factual allegations against All American Processing, Inc., including fraud, conversion of the Appellees' funds into corporate assets, and an equitable interest in the property at issue.
- D. The Appellees have not, and did not, use the *Lis Pendens* to impound a debt against All American Processing, Inc.

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STATEMENT REGARDING ORAL ARGUMENT

Appellees believe oral argument may be helpful to the Court as this appeal addresses an area of the law that the Court has given relatively little guidance on, *lis pendens*, and more specifically, an even lesser addressed issue involving a *lis pendens* based upon an equitable interest in a parcel of property. This case can best be decided with the assistance of oral argument before the Court.

STATEMENT OF THE ISSUES

1. The Chancery Court of Jackson County properly reinstated a *Lis Pendens* finding that, based on a valid Judgment entered in Jackson County Circuit Court litigation on which the *Lis Pendens* was based, the County Court of Jackson County erred in failing to grant relief from its Order lifting the *Lis Pendens*.

STATEMENT OF THE CASE

(A) Nature of the case.

This litigation arises from a Notice of *Lis Pendens* filed by the Appellees, Lawrence and Katherine Ruckdeschel (hereinafter the “Ruckdeschels”), on property owned by the Appellant, All American Processing, Inc. (hereinafter “All American”). (County Court Clerk’s Papers, hereinafter “County CP,” 49-59). The Ruckdeschels lost their home in Pascagoula, Mississippi in August 2005, as a result of Hurricane Katrina. Attempting to rebuild, the Ruckdeschels entered into a contract with defendant, Hurricane Homes, Inc. (hereafter “Hurricane Homes”), in August 2007 for the construction of a new (modular) home. No home was ever constructed or delivered and the Ruckdeschels only recovered a portion of their money from an indicted defendant.

The Ruckdeschels filed an underlying Complaint and later an Amended Complaint in the Circuit Court of Jackson County, Mississippi against several defendants, including All American, alleging breach of contract, negligence, and/or material misrepresentation, fraud in the inducement, conversion, and conspiracy. All American, owner of the property on which Hurricane Homes was to build the modular home, filed a Complaint in the County Court of Jackson County to cancel the *Lis Pendens*, (County CP, 4-59) which was ultimately canceled by Judgment

entered by the County Court. (County CP, 62-63, 102). However, upon appeal, the Chancery Court of Jackson County reversed and rendered the County Court decision stating:

[S]ubstantial evidence existed to grant the Ruckdeschels' Motion for New Trial with the County Court as a Default Judgment had been entered against All American in Circuit Court. As such, all factual allegations filed in Circuit Court against All American were confessed as true and found to be true by a competent court. Therefore the County Court should have reconsidered its Order lifting the *lis pendens*.

[I]n light of the default judgment entered in the Circuit Court action, this Court finds that the County Court's denial of the Ruckdeschels' Motion for a New Trial was manifestly wrong and against the overwhelming weight of the evidence. This Court finds that the County Court committed prejudicial error in failing to grant the Ruckdeschels' Motion for a New Trial and therefore, REVERSES and RENDERS this matter to the County Court of Jackson County, Mississippi. The *lis pendens* shall be reinstated.

(Chancery Court Clerk's Papers, hereinafter "Chancery CP," 76-78).

(B) Procedural/Factual history.

In August 2005, Hurricane Katrina hit the Mississippi coast and, as a result, the Ruckdeschels' home was destroyed. Thereafter, the Ruckdeschels contracted with Hurricane Homes for the construction of a new modular home and provided a \$66,250.00 deposit. No home was ever constructed or delivered and there has only been a partial refund of the \$66,250.00 paid by the Ruckdeschels (Defendant Willie Kirsch paid \$50,000.00 to the Ruckdeschels after being indicted by a Jackson County

Grand Jury). The Ruckdeschels filed suit in Jackson County Circuit Court against Hurricane Homes, its officers, directors, shareholders, and later All American alleging breach of contract, negligence and/or material misrepresentation, fraud in the inducement, conversion, and conspiracy. (County CP, 77-94). All American, owner of the land upon which Hurricane Homes did business, is owned by Defendant, Bruce Garceau, and his wife Darlene Garceau. Bruce Garceau was also involved with Hurricane Homes, and a Default Judgment was entered against him in the underlying Circuit Court action on June 23, 2008. (County CP, 100-101).

Based on information gathered by the Ruckdeschels, a Notice of *Lis Pendens* was filed pursuant to Miss. Code Ann. §11-47-3 with regard to the property at issue owned by All American. (County CP, 49-59). All American thereafter filed its Complaint in the County Court of Jackson County to list the *lis pendens*. (County CP, 4-59).

A hearing was held on June 26, 2008 before Judge T. Larry Wilson and a Judgment was entered on July 3, 2008 canceling the *lis pendens*. (County CP, 62-63). During the time the Judgment was automatically stayed pursuant to MRCP 62, All American sold the property at issue. (County CP, 95-97). A Motion for a New Trial was then timely filed on July 9, 2008. (County CP, 64-67). On September 19, 2008, a Default Judgment was entered against All American in the Jackson County Circuit

Court action (County CP, 98-99) and on November 12, 2008, a Supplement to Motion for New Trial, or Alternatively, Motion for Relief from Judgment pursuant to MRCP 60(b) was filed. (County CP, 68-101). After argument before the Court, an Order was entered on November 19, 2008, denying the Ruckdeschels' pending motions. (County CP, 102).

The Ruckdeschels timely filed a Notice of Appeal. (County CP, 103-104). Following briefing and oral argument on September 22, 2009, Judge Jaye Bradley reversed and rendered the decision of the County Court, thereby reinstating the *lis pendens*. (Chancery CP, 76-78).

All American filed a Motion for Reconsideration of the reversal (Chancery CP, 79-83) and, following oral argument, Judge Bradley denied All American's motion. (Chancery CP, 91). All American subsequently filed its Notice of Appeal. (Chancery CP, 92-93).

For ease of reference, the following concise chronology is provided:

- 01/04/06 All American obtains the property at issue. (County CP, 32-38)
- 08/09/07 Ruckdeschels enter a contract for their modular home which was to be constructed on property owned by All American. (County CP, 90-94)
- 06/10/08 Notice of *Lis Pendens* filed. (County CP, 49-59)
- 06/23/08 First Amended Complaint filed by All American against the

- Ruckdeschels to cancel the *lis pendens*. (County CP, 27-59)
- 06/23/08 Default Judgment against Bruce Garceau in Jackson County Circuit Court. (County CP, 100-101)
- 06/25/08 Amended Complaint filed by Ruckdeschels against All American. (County CP, 77-89)
- 06/26/08 Hearing held in County Court on All American's Complaint to cancel the *Lis Pendens*.
- 06/27/08 Property at issue sold by All American. (County CP, 95-97)
- 07/03/08 Judgment of the County Court cancelling the *Lis Pendens*. (County CP, 62-63)
- 07/09/08 Ruckdeschels' Motion for a New Trial in County Court. (County CP, 64-67)
- 09/19/08 Default Judgment against All American in Jackson County Circuit Court. (County CP, 98-99)
- 11/12/08 Ruckdeschels' Supplement to Motion for New Trial, or alternatively, Motion for Relief from Judgment pursuant to MRCP 60(B) in County Court. County CP, 68-101)
- 11/19/08 Order of the County Court denying the Ruckdeschels' Motions. (County CP, 102)

12/19/08 Notice of Appeal to Jackson County Chancery Court. (County CP, 103-104)

09/22/09 Chancery Court reverses, renders, and reinstates the *Lis Pendens* (Chancery CP, 76-78)

SUMMARY OF THE ARGUMENT

As All American states in its brief, “the ‘legal function of a *lis pendens* is simply to give notice of an alleged claim of a lien or interest in property,’ [however,] the lien or interest must have a specific relationship to the real property upon which such notice is placed.” The Ruckdeschels agree and argue that when, based on good faith, a person or party has reason to believe that his or her funds have been stolen and converted into real estate, a properly filed *lis pendens* is a proper vehicle to provide legal notice of a pending lawsuit asserting such facts and claiming an equitable lien, and thus an “interest in,” the real estate. To hold otherwise allows a wrongdoer to, in this case, illegally convert money into real estate and subsequently sell the real estate before the victims underlying litigation can be resolved.

STANDARD OF REVIEW

This Court, in *Richardson v. Riley*, 355 So.2d 667, 668 (Miss. 1978) held that the standard of review for matters of equity was that:

. . . findings of fact on conflicting evidence cannot be disturbed by this Court on appeal unless we can say with reasonable certainty that these findings were manifestly wrong and against the overwhelming weight of the evidence. Even if this Court disagreed with the lower court on the finding of fact and might have arrived at a different conclusion, we are still bound by the chancellor's findings unless manifestly wrong

ARGUMENT

- A. ***A Lis Pendens* is a valid and appropriate means by which to give legal notice that an individual(s) is asserting a claim of an equitable interest or equitable lien in a parcel of property**

Mississippi Code Annotated §11-47-3, at the heart of this appeal, states in part:

“When any person shall begin a suit in any court, whether by declaration or bill or by cross-complaint, to enforce a lien upon, **a right to, or interest in, any real estate...**” (Emphasis added)

In the underlying Jackson County Circuit Court action, the Ruckdeschels assert a “...right to, or interest in, any real estate...” by claiming, in part,

17. The Defendant, All American Processing, Inc., at all times relevant hereto, owned the property located in Jackson County at the Southwest Quarter of Section 32, Township 7 South, Range 5 West, where the Plaintiffs’ home was to be fabricated. Defendant, Bruce Garceau, is the President, Treasurer, and a Director of All American Processing, Inc. The Plaintiffs, upon information and belief, assert the Defendant, All American Processing, Inc., was a conduit through which the Plaintiffs’ monies, or a portion of said monies, were funneled by the various defendants, all in an effort to defraud the Plaintiffs as set forth below. The Plaintiffs are entitled to an equitable interest in any and all property or other assets of All American Processing, Inc., including the afore-referenced site upon which the Plaintiffs’ home was to be constructed, all as a result of the Defendants conversion of the Plaintiffs funds into the corporate assets of All American Processing, Inc. (County CP, 81)

Further, a complete reading of the Amended Complaint sets forth numerous claims against All American, including material misrepresentation, fraud, fraud in the inducement, conversion, and conspiracy, all in furtherance of the Ruckdeschels’ claim

that "The Plaintiffs are entitled to an equitable interest in any and all property or other assets of All American Processing, Inc., including the aforereferenced site upon which the Plaintiffs' home was to be constructed, as a result of the Defendant's conversion of the Plaintiffs' funds into the corporate assets of All American Processing, Inc."

The Mississippi Supreme Court has provided:

Lis pendens simply means a pending suit, and the doctrine denotes those principles and rules of law which define and limit the operation of the common-law maxim: "pendente lite nihil innovetur", or that is to say, pending the suit nothing should be changed. 34 Am. Jur., *Lis Pendens*, § 2, p. 361.

The object of the doctrine of *lis pendens* is to keep the subject in controversy within the power of the court until final decree and make it possible for courts to execute their judgment.

...
It is said by Judge Griffith in his work on Mississippi Chancery Practice that: "The doctrine of *lis pendens* is that every person, including a stranger to the suit and whether bona fide or not, who acquires from a party to the litigation any interest in property real or personal during the pendency of a suit respecting a right, title or interest in such property takes subject to, and is conclusively bound by, the decree in such litigation" See § 527, Griffith's Miss. Chancery Practice (2d ed. 1950), p. 541.

Jones v. Jones, 161 So.2d 640, 643 (1964).

This case simply consists of litigants, the Ruckdeschels, who filed a *lis pendens* to give notice that due to fraud and conversion, they claimed an equitable

interest/equitable lien in a parcel of property owned by All American and the issue was being litigated in the Circuit Court of Jackson County.

The Mississippi Supreme Court has provided that “the legal function of a *Lis Pendens* is to give notice to the world of an alleged claim of a lien or interest in the property.” *Aldridge v. Aldridge*, 527 So. 2d 96, 99 (Miss. 1988). A valid claim of an equitable interest in the assets, including the real estate, of All American Processing, existed at the time of the County Court hearing and was subsequently confirmed upon the Judgment in the Jackson County Circuit Court litigation. The Ruckdeschels complied with Miss. Code Ann. §11-47-3 which states that:

[w]hen any person shall begin a suit in any court, whether by declaration or bill, or by cross-complaint, to enforce a lien upon, *right to, or interest in, any real estate* . . . such person shall file with the clerk of the chancery court of each county where the real estate . . . is situated, a notice containing the names of all the parties to the suit, a description of the real estate, and a brief statement of the nature of the lien, right, or interest sought to be enforced.... (Emphasis added).

In its Brief, All American expanded upon the Ruckdeschels aforementioned citation of the Supreme Court’s language in *Aldridge* stating “the sentences before and after the . . . quote provide a better perspective:

Mississippi case law clearly illustrates that a lien is not obtained by the mere filing of a *Lis Pendens* Notice. The legal function of a *Lis Pendens* is to give notice to the world of an alleged claim of lien or interest in the property. The *Lis Pendens* notice itself does not constitute an independent basis for imposition of a lien. Therefore, it was necessary

that the chancellor make specific findings of fact sufficient to constitute an independent basis for imposing a lien on property rather than simply relying on the presence of a *lis pendens* notice as grounds therefor. [Aldridge at 99].["]

(Appellant's Brief p. 18).

The Ruckdeschels concede that the additional sentences might provide a better perspective of what the Court had in mind. However, the additional language only provides further support for the Ruckdeschels' argument. The Ruckdeschels claimed and, with the Default Judgment, have proven that they have an equitable interest and/or an equitable lien in All American's property. Additionally, the Chancellor in this case did make specific findings to establish a basis for imposing a lien. The Chancery Court, in its Order which reinstated the *lis pendens*, stated:

[S]ubstantial evidence existed to grant the Ruckdeschels' Motion for New Trial with the County Court as a Default Judgment had been entered against All American in Circuit Court. As such, all factual allegations filed in Circuit Court against All American were confessed as true and found to be true by a competent court. Therefore the County Court should have reconsidered its Order lifting the *lis pendens*.

(Chancery CP, 78).

Finally, All American's Complaint, not filed in the Circuit Court where the underlying action is pending, is akin to a motion for injunctive relief pursuant to MRCP 65. In *Marett v. Scott*, 2000 U.S. Dist., Lexis 5356 (ND Miss. April 7, 2000), the Court granted injunctive relief and lifted a *lis pendens*, not based on the propriety

or impropriety of the filing of the *lis pendens*, but based on a four part test for the granting of a preliminary injunction. The court ultimately stated “Thus, in an effort to provide adequate protection for both parties, the court, in accordance with the requisites of Rule 65(c), of the Federal Rules of Civil Procedure, hereby conditions the entry of the injunction upon the issuance of a bond, in the sum of One Million Dollars (\$1,000,000), payable to the Plaintiff/Respondent in the event it is ultimately determined that the Plaintiff has been wrongfully enjoined.” *Id.* at 17-18.

All American did not plead this case seeking a Rule 65 MRCP injunction, the County Court did not treat this case as a request for injunctive relief, and the County Court required no security from All American, although the net effect of the County Court’s ruling is the same as a Rule 65 MRCP preliminary injunction, which requires security. There is no authority cited by All American for the relief it sought in its Complaint nor is there any authority cited by the County Court in its judgment and opinion.

B. The underlying claim upon which the *Lis Pendens* was based had a direct relation to the property at issue.

The Ruckdeschels’ claims, contrary to All American’s assertions, are more than a simple “breach of contract” with no relation to the property made the subject of this litigation. The Ruckdeschels claim an absolute conspiracy to defraud them,

and others, with All American's property being a part of the conspiracy. While it may be debated whether the Amended Complaint could or could not have been more artfully pled, it is clear from the Amended Complaint that the Ruckdeschels allege their money, as part of a fraud/conspiracy/conversion, ultimately was converted into the corporate asset (the real property) of All American. The Ruckdeschels have absolutely pled an "interest in" the property. The Default Judgment entered against All American judicially establishes as true the factual allegations asserted by the Ruckdeschels. All American does not dispute or contest this fact.

All American asserts, and the Ruckdeschels agree "that the 'legal function of a *Lis Pendens* is to give notice to the world of an alleged claim of a lien or interest in property,'" the lien or interest must have specific relationship to the real property upon which such notice is placed." (Appellant's Brief, p. 18) "It is well established in Mississippi Jurisprudence that in order for a *lis pendens* to be valid, the underlying claim by the proponent of a *lis pendens* must relate to the real property itself." (Appellant's Brief, p. 11) The "...right to, or interest in, any real estate, ..." has an absolute relationship to, "touches", and "involves" All American's property. All American concedes it owned the property upon which Hurricane Homes was to construct the Ruckdeschels' modular home (County CP, 28, Chancery CP, 41-42) and the Ruckdeschels' Complaint sets forth all of the necessary allegations showing the

specific relationship to the real property upon which such notice is placed.

All American cites, in support of its position (along with the authority cited therein), *WH Hopper & Associates, Inc. v. Dunaway*, 369 So.2d 43 (Miss. 1981). The Ruckdeschels do not dispute the Supreme Court's holding in that case. *Hopper* was a plain breach of contract case in which the plaintiffs filed a *lis pendens* on property which the Defendant owned not related in **any** way, shape, or form to the litigation. As distinguished from this litigation, *Hopper* did not involve conspiracy or fraud or conversion, apparently did not involve allegations seeking an equitable interest in the property or allegations that funds were converted into corporate assets, did not involve a default judgment confessing all such allegations, and did not involve a situation where the property was involved in the actual fraud/conspiracy/conversion. *Hopper* is a simple case factually distinguishable and different in many particulars from the present litigation.

C. The Judgment against All American Processing, Inc., in the Circuit Court of Jackson County, Mississippi judicially established as true all factual allegations against All American Processing, Inc., including fraud, conversion of the Appellees' funds into corporate assets, and an equitable interest in the property at issue.

On September 19, 2008, All American Processing confessed the factual allegations asserted by the Ruckdeschels which support the *lis pendens* as evidenced

by the Default Judgment issued by the Circuit Court of Jackson County. Put another way, the factual allegations against All American Processing in the Amended Complaint have been judicially established as true via the September 19, 2008 Judgment. *Journey v. Long*, 585 So.2d 1268, 1272 (Miss. 1991), *Chassaniol v. Bank of Kilmichael*, 626 So.2d, 127, 132 (Miss. 1993), *MRCP 55 cmt.* The Ruckdeschels were successful in the underlying litigation upon which the *lis pendens* was based.

Despite such judicial establishment of the factual allegations, the County Court denied the Ruckdeschels' Motion for New Trial, or alternatively, Motion for Relief from Judgment pursuant to MRCP 60(b). In essence, the County Court has cancelled a properly filed *lis pendens* while the underlying Circuit Court litigation has established as true the Ruckdeschels' assertion that they "...are entitled to an equitable interest in any and all property or other assets of All American Processing, Inc., including the afore-referenced site upon which the Plaintiffs' home was to be constructed, as a result of the Defendant's conversion of the Plaintiffs' funds into the corporate assets of All American Processing, Inc."

D. The Appellees have not, and did not, use the *Lis Pendens* to impound a debt against All American Processing, Inc.

It is asserted that the Appellees used the *Lis Pendens* statute to impound a debt against All American. As stated and shown throughout this brief, the Ruckdeschels

were not attempting to impound a debt but were simply attempting to provide notice of litigation pending in the Circuit Court of Jackson County in which they claimed an equitable interest in property due to fraudulent behavior which led to the conversion of their funds into the property of All American. All American and Garceau cared little about and had little respect for the court system as evidenced by the default judgments entered against them.

Warren Paving in its Amicus Brief, also alleges the Ruckdeschels filed the "*lis pendens* to be utilized for the purpose of impounding a debt." (Amicus Brief p. 8). While the Ruckdeschels do hope to sell the property in order to recoup the damages alleged and awarded in the Circuit Court action, they filed a *lis pendens* because it was the proper means to show the world they had an interest in All American's property. Again, the Ruckdeschels filed the *lis pendens* "to keep the subject in controversy within the power of the court until final decree and make it possible for courts to execute their judgment."

CONCLUSION

“Lis pendens simply means a pending suit, and the doctrine denotes those principles and rules of law which define and limit the operation of the common-law maxim: ‘pendente lite nihil innovetur’, or that is to say, pending the suit nothing should be changed” *Jones v. Jones*, 249 Miss. 332, 329, 161 So. 2d 640, 643 (Miss. 1964)(citing 34 Am. Jur., *Lis Pendens*, §2, p. 361.) “The object of the doctrine of *lis pendens* is to keep the subject in controversy within the power of the court until final decree to make it possible for courts to execute their judgment. All property which is the subject matter of the suit under this doctrine is *res litigiosa* and is in *custodia legis*.” *Id.*

The Ruckdeschels maintain they complied with the requirements of Miss. Code Ann. §11-47-3, the underlying Circuit Court action properly stated a claim for a “right to, or interest in, any real estate,” and the cancellation of the *lis pendens* was manifestly in error. The Ruckdeschels’ claims have been confessed by All American Processing and have been judiciously established by the default judgment issued by the Jackson County Circuit Court. The Ruckdeschels respectfully request this Court affirm the Chancery Court of Jackson County and maintain the *lis pendens* properly filed on June 10, 2008.

Respectfully submitted,

LAWRENCE M. RUCKDESCHER and
KATHERINE R. RUCKDESCHER,
Appellees

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CERTIFICATE OF FILING

Pursuant to M.R.A.P. Rule 25(a) I, JAMES H. COLMER, JR., hereby certify that I forwarded, for filing, the original and three (3) true and correct copies of the above and foregoing Brief of Appellee, via United States Mail, to the following:

Hon. Kathy Gillis
Clerk, Supreme Court of Mississippi
450 High Street
Post Office Box 249
Jackson, MS 39205-0249

I further certify that, pursuant to M.R.A.P. Rule 28(m), that I have also mailed an electronic copy of the above and foregoing on an electronic disk, saved in Adobe Portable Document Format (.pdf).

SO CERTIFIED, this the 7th day of December, 2010.



JAMES H. COLMER, JR.

CERTIFICATE OF SERVICE

I, JAMES H. COLMER, JR., of the law firm of Heidelberg, Steinberger, Colmer & Burrow, P.A., do hereby certify that Pursuant to MRAP Rule 25(a) I have caused to be delivered the original and three (3) true and correct copies of the above and foregoing Brief of Appellee, and that pursuant to MRAP Rule 28(m), I have caused to be delivered an electronic copy of the Brief of Appellee stored on a compact disc in Adobe Portable Document Format (PDF), all being delivered via First Class U.S. Mail to:

Hon. Kathy Gillis
Clerk, Supreme Court of Mississippi
450 High Street
Post Office Box 249
Jackson, MS 39205-0249

I further certify I have this day served via U. S. Mail, postage prepaid, a copy of the Brief of Appellees on the following:

Terry Miller, Chancery Clerk
Jackson County Chancery Court
Jackson County Courthouse
Pascagoula, Mississippi 39567

Honorable Jaye Bradley
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SO CERTIFIED, this the 7th day of December, 2010.



JAMES H. COLMER, JR.