

IN THE SUPREME COURT OF MISSISSIPPI

No. 2010-CA-01427

ROBERT L. McCLATCHY, III

PLAINTIFF/APPELLANT

V.

BROTHERHOOD'S RELIEF &  
COMPENSATION FUND

DEFENDANT/APPELLEE

From the Circuit Court of Adams County, Mississippi  
Civil Action No. 08-KV-0005-J

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REPLY BRIEF OF THE APPELLEE,  
BROTHERHOOD'S RELIEF & COMPENSATION FUND

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Respectfully submitted, this the 27<sup>th</sup> of January, 2011.

TRULY, SMITH & LATHAM, P.L.L.C.

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## **STATEMENT OF ISSUES PRESENTED TO THE COURT**

- A. Whether the Circuit Court properly granted summary judgment to Brotherhood's Relief & Compensation Fund where the Plaintiff, Robert L. McClatchy III, failed to present any facts which would support a breach of contract claim?

## **STATEMENT OF THE CASE**

Appellant, Robert L. McClatchy III ("McClatchy"), was a member of the Brotherhood's Relief & Compensation Fund ("BRCF") and a conductor for Kansas City Southern Railroad ("KCS") working at the Latanier Yard, Latanier, Louisiana. KCS terminated McClatchy March 6, 2007, for violating the company's reporting of injury procedures. McClatchy then filed a claim seeking "Held Out of Service" benefits from BRCF. BRCF denied McClatchy's claim because the basis of his termination by KCS clearly makes him ineligible for benefits under BRCF's Constitution. T.R. 1, 2.

BRCF is a Pennsylvania non-profit company organized in 1912 for the purpose of providing job-income benefits to its dues-paying railroad employee members who suffer temporary or permanent job loss under a prescribed set of work-related circumstances as outlined in the BRCF's Constitution (i.e. "Held Out of Service" benefits). The BRCF's Board of Directors is permitted to use their railroad experience to interpret the provisions of the Constitution concerning benefits claims, and their decision whether to pay a claim cannot be disturbed except for an "abuse of discretion". T.R. 41, 43, 44.

On January 17, 2008, McClatchy filed the above styled lawsuit, claiming that BRCF breached its contract with him in failing to provide to him "Held Out of Service" benefits. T.R. 1.

At its core, McClatchy's arguments are premised on a disagreement with KCS's stated reason

for his termination, which exceeds BRCF's scope of responsibility. So long as certain procedural requirements are met by a member's employer, BRCF does not have the authority or responsibility to challenge their decision.

BRCF filed a Motion for Summary Judgment based on three separate and distinct defenses to the claims by McClatchy:

1. McClatchy's claim for "Held Out of Service" benefits did not arise while McClatchy was in the actual and authorized performance and furtherance of the duties of his employment at the time of occurrence of the cause of such "Held Out of Service", as required by Article XII, Sec. 4 of the Constitution of the Brotherhood's Relief and Compensation Fund.
2. The occurrence for which McClatchy claims "Held Out of Service" benefits was a result of McClatchy's willful or intentional violation of the rules and regulations of KCS, the result of which makes McClatchy ineligible to receive benefits under the provisions of BRCF's Constitution. Article XXXIII, Sec. 1-a.
3. McClatchy failed to timely provide notice of appeal as required by the Constitution, and, therefore, the Board of Directors' decision to deny McClatchy's claim is final, binding and conclusive. Article XXXI, Sec. 4.

T.R. 98 - 101.

On July 30, 2010, the lower court granted summary judgment to BRCF, finding that "there is no genuine issue of fact that the Board of Directors abused their contractually vested discretion in any way." The lower court further reasoned that the Board of Directors at BRCF are in a much better position to determine discretionary issues involved in a closed railroad employee organization

than the court or juries. The lower court determined that there were no facts presented by McClatchy that BRCF in any way abused its discretion in making its determination that McClatchy was not entitled to "Held Out of Service" benefits. T.R. 123 - 125.

### **SUMMARY OF THE ARGUMENT**

1. The lower court was proper in granting summary judgment in favor of Appellee where the facts are undisputed and the facts presented by the Appellant fail to establish a claim against the Appellee. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986); See also *Clark v. Commercial Credit Corp.*, 357 F.Supp.2d 962 (5<sup>th</sup> Cir. 2005); *U.S. v. Southland Oil*, 399 F.Supp.2d 764 (5<sup>th</sup> Cir. 2005).
2. Appellee denied Appellant's claim for "Held Out of Service" Benefits because his claim was not compensable under the Constitution of Appellee. Appellant was simply dissatisfied with the decision of Appellee's Board of Directors. Appellant did not make any allegations that the provisions of the Constitution violated public policy or any laws of the land, nor did Appellant allege that Appellee's decision was arbitrary and unreasonable or the product of fraud. Appellant's allegations do not rise to the level of a legal claim against Appellee under the terms and provision of Appellee's Constitution. *Lowery v. International Brotherhood of Boilermakers*, 231 Miss. 458, 130 So.2d 831 (1961); See also *Morfv. North Central Mississippi Board of Realtors, Inc.*, 27 So.3d 1188 (Miss. 2009).

## ARGUMENT

### **A. Summary Judgment Standard**

Rule 56 of the *Mississippi Rules of Civil Procedure* states, in relevant part, that summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Further, the United States Supreme Court has held that the language of this Rule “mandates the entry of summary judgment, after adequate time for discovery and upon Motion, against a party who fails to make a sufficient showing to establish the existence of an essential element to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986); See also *Clark v. Commercial Credit Corp.*, 357 F.Supp.2d 962 (5<sup>th</sup> Cir. 2005); *U.S. v. Southland Oil*, 399 F.Supp.2d 764 (5<sup>th</sup> Cir. 2005).

The party moving for summary judgment bears the initial responsibility of informing the Court of the basis for its Motion and identifying those portions of the record in the case which it believes demonstrates the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323. The movant, however, need not support the motion for summary judgment with materials that negate the opponent’s claim. *Id.* As to issues on which the nonmoving party has the burden of proof, the nonmoving party must “make a showing sufficient to establish the existence of elements essential to his case.” *Kerr-McGee Corp. v. Maranatha Faith Ctr., Inc.*, 873 So.2d 103, 107 (Miss. 2004) (citing *Cothorn v. Vickers, Inc.*, 759 So.2d 1241, 145 (Miss. 2000)). The nonmoving party must then go beyond the pleadings and designate specific facts showing that there is a genuine issue for trial. *Kerr-McGee Corp. v. Maranatha Faith Ctr., Inc.*, 873 So.2d 103, 107 (Miss. 2004). In other words,



a simple denial to a Motion for Summary Judgment is not enough to create an issue of fact. The opposing party, in order to defeat a motion for summary judgment, must provide more than general allegations; specific facts showing that material issues of fact exist are required. *Brooks v. Roberts*, 822 So.2d 229, 232 (Miss. 2004) (citing *Bowie v. Monfort Jones Mem'l Hosp.* 861 So.2d 1037, 1040-41 (Miss. 2003)).

The purpose of Rule 56 is to expedite the determination of actions on their merits and eliminate unmeritorious claims without the necessity of a full trial. Thus, the Motion for Summary Judgment challenge is the very existence or legal sufficiency of the claim or defense to which it is addressed; in effect, the moving party takes the position that he is entitled to prevail as a matter of law because his opponent has no valid claim for relief or defense to the action, as the case may be. *Miss. R. Civ. P.*, 56, Comment. If the Court finds that there is no genuine issue of material fact, then the moving party is entitled to a judgment as a matter of law.

The lower court did, in fact, find that no genuine issue of material fact existed, and granted Appellee a judgment as a matter of law.

**B. There is No Evidence to Support a Breach of Contract Claim**

**BRCF did not abuse its discretion or breach any obligation to McClatchy under the BRCF Constitution.**

The courts in the State of Mississippi have long since recognized that private organizations and voluntary associations are entitled to establish their own rules and regulations of their organizations. The courts in the State of Mississippi have been reluctant to interfere with the internal affairs of voluntary associations except in such cases as fraud or lack of jurisdiction. *Lowery v. International Brotherhood of Boilermakers*, 231 Miss. 458, 130 So.2d 831 (1961).

Accordingly, courts will become involved in the internal affairs of an association in only narrow circumstances. Judicial review is generally limited to whether an exercise of power by the association conformed to its own internal rules or whether an association violated a member's fundamental right to a fair hearing. *Morf v. North Central Mississippi Board of Realtors, Inc.*, 27 So.3d 1188 (Miss. 2009). McClatchy has not made a claim that he did not receive a fair hearing nor were any facts produced that would indicate otherwise. T.R. 1-3.

It has been generally established that private clubs and associations have the right to establish their own rules and qualifications for membership. *Lowery* at 130 So.2d 836. The Court in *Lowery* further stated that "it is generally held that by becoming a member of a voluntary association, one engages to be bound by its rules, subjects himself to its discipline, and assumes, of necessity, such obligations as are incident to membership, as, for example, the obligation to pay dues and assessments prescribed by the articles of association as necessary to defray expenses." *Id.* (citing 4 Am.Jur. 463, Associations and Clubs, Sec. 13). Mississippi courts have held that the liability of a private association is determined by the provisions of the constitution and by-laws and the rights of a member are determined by the provisions of the constitution and by-laws. *Bruton v. Brotherhood of Locomotive Firemen and Engineers*, 176 Miss. 224, 167 So.2d 423 (1936).

Mississippi courts have further held that the rules and regulations of the constitution of a private association must be strictly followed, even in a case where the application of the rules and regulations may cause great hardship on the claimant. *Brotherhood of Railroad Trainmen v. Bridges*, 164 Miss. 356, 144 So.2d 554 (1932).

In the case at bar, by giving the officers and Board of Directors the power to interpret BRCF's Constitution, it grants them discretion in deciding "Held Out of Service" claims. T.R. 65,

Art. XI (Sec. 8); T.R. 74, Art. XXXI (Sec. 3). So long as the officers and Board of Directors interpret the bylaws in a reasonable manner, the contract has not been breached. Considering Mississippi law pertaining to associations and ordinary principles of contract law, it is clear that BRCF's officers and Board of Directors are owed considerable deference to their interpretation of the "Held Out of Service" benefit claims provision, which should be sustained unless it is found to be arbitrary and capricious. Provided the officers' and Board of Directors' method of interpretation is neither arbitrary or fraudulent, there is no basis for judicial intervention. The lower court found that the Board of Directors of BRCF did not abuse their discretion in any way. T.R. 125. There were no allegations of fraud or abuse of discretion, and none were found.

In the case at bar, after reviewing the record and the basis for the officers' and Board of Directors' interpretation of the Constitution, it is apparent that their interpretation was not arbitrary and capricious, unreasonable or a result of fraud. In fact, the decision to deny McClatchy's claim for "Held Out of Service" benefits is well-supported in the provisions of the Constitution and the reasons for his termination as shown by the evidence gathered as part of the record. In reviewing a decision by an association's tribunal, if a court is convinced that the facts upon which the decision was based could reasonably have been determined by the tribunal acting in good faith, the court should refuse to overturn an otherwise proper proceeding. *Multiple Listing Service of Jackson, Inc., et al v. Century 21 Cantrell Real Estate, Inc., et al*, 390 So.2d 982 (Miss. 1980).

First, it is important to note that McClatchy does **not** claim that BRCF failed to follow any procedures under the Constitution in handling his claim. T.R. 1-3. McClatchy makes no claim that BRCF failed to review his first notice of claim and the documents and materials he sent along in support of his claim. *Id.* McClatchy makes no claim that BRCF failed to consider something it

should have as part of his claim for benefits. *Id.* McClatchy submitted all documents with his claim for benefits that he thought were relevant to his benefits claim, and he did not discover any relevant documents thereafter that were not submitted to BRCF. T.R. 45, lines 5-8. McClatchy simply states that BRCF breached the contract, without alleging a basis for the breach other than he was not satisfied with the outcome of BRCF's Board of Directors' decision.

Second, McClatchy asserts unpersuasively that the Board of Directors improperly decided his claim for benefits by concluding that it was not covered by the provisions of the Constitution. His complaint does *not* allege - - as it must - - that the Board of Directors *abused its discretion* in making that determination. The Constitution vests authority in the officer reviewing the claim and the Board of Directors on appeal to interpret its provisions using discretion and their railroad experience. T.R. 65, See Art. XI, Sec. 8; T.R. 74, Art. XXXI, Sec. 3. McClatchy did not allege any facts to establish that the officers and Board of Directors abused their discretion when they concluded that the provisions of the Constitution prohibited payment of benefits to McClatchy. McClatchy's complaint fails to include *any* factual basis to support his claim for breach of contract. In fact, McClatchy has totally ignored the provision in BRCF's Constitution permitting BRCF's Board of Directors to use discretion in determining whether a claim for "Held Out of Service" benefits is covered - - he has failed to allege or produce *any* evidence of an abuse of discretion by the Board. Moreover, the discovery process has similarly failed to reveal *any* factual basis for claiming that BRCF somehow abused its discretion and/or breached any obligation it owed to McClatchy under the Constitution in processing and determining his claim for benefits.

After reviewing the record and the basis for the officers' and Board of Directors' interpretation of the Constitution, it is apparent that their interpretation was not arbitrary and

capricious, unreasonable or the product of fraud. Jesse E. Taylor, who was the International Secretary-Treasurer at that time, and L.V. Galati, who was Assistant Secretary-Treasurer at that time, reviewed all relevant claim materials submitted by McClatchy and determined that the claim was not eligible for benefits under the BRCF Constitution. T.R. 44 and 45; T.R. 36 and 37. There were no other documents or materials that were needed in order to determine if McClatchy's claim for benefits should be paid out under the terms of the Constitution. T.R. 45, lines 6-8; T.R. 35, ¶8.

The facts are undisputed that McClatchy violated certain rules and/or regulations of the KCS in failing to timely report an injury as cited in the letter of termination of McClatchy sent by KCS dated March 6, 2007. McClatchy was cited for violating KCS's General Code of Operating Rule 1.1 - Safety; Rule 1.1.3 - Accidents, Injuries and Defects; Rule 1.1.2 - Alert and Attentive; Rule 1.2.5 - Reporting and Rule 1.6 - Conduct. T.R. 77. The violation of these rules and regulations are taken very seriously. The decision to discipline McClatchy was submitted to a Public Law Board established under the jurisdiction of the Railway Labor Act, as amended, and was upheld by said Board on January 26, 2009 and reported as Public Law Board No. 5760. T.R. 78, 79. The Board stated that "[a]s this and other boards have held, there is no question that the prompt reporting of an on-the-job personal injury is highly important and necessary given a common carrier's potential liability for such matters." The Board further stated that McClatchy "... essentially admitted that he was aware at various times from the date of injury to its report that he had in fact sustained a reportable injury." T.R. 79. Article XXXIII, Sec. 1-a specifically provides that "Held Out of Service" does not provide for any termination of employment resulting from the willful or intentional violation or infraction of any rule or rules, regulation or regulations, expressed or implied, of his employer. T.R. 74. McClatchy independently made the decision both willfully and intentionally not

to report the injury that allegedly occurred on February 3, 2007 until February 20, 2007. Under this Article of the Constitution, McClatchy would be unable to receive benefits of the BRCF's Constitution. According to BRCF's Constitution, "[w]hether offenses are willful and intentional shall be determined within the discretion of the Board of Directors and no appeal shall lie therefrom." T.R. 74, Art. XXXI, Sec. 3.

The Court should note that in reviewing the cases cited by Appellant, the narrow issue upon which Appellant focuses is the assessment of fines against association members. In both of the cases, *Multiple Listing Service of Jackson, Inc., et al v. Century 21 Cantrell Real Estate, Inc., et al*, 390 So.2d 982 (Miss. 1980) and *Communication Workers of America, Local 10517 v. Gann*, 510 So.2d 781 (Miss. 1987), the courts found that the private associations did not have an established procedure and/or schedule of maximum fines that may be imposed for violations by members of the rules and regulations of the private associations. The Court has merely stated that under contract law, before a fine can be imposed upon an association member, there has to be some basis for imposing the fine through either a schedule of offenses and fines or a maximum fine that can be imposed; otherwise, the imposition of fines with no procedure would subject the members of the association to arbitrary and unreasonable fines. 390 So.2d at 986; 510 So.2d at 783. Courts certainly recognized the rights of the private associations to discipline association members, provided that the method and procedure is set forth in their contract with the members. Similarly, in the *Morf* case, the court upheld the private association's authority to discipline its member; however, the court determined that the Board of Realtors had not followed the guidelines set forth in the code of ethics and, therefore, they had acted arbitrarily and capriciously. 27 So.3d at 1198. The court in no way indicated that the private association, the Board of Realtors, in this particular case, did not have the

authority to impose discipline, provided they conducted their actions according to their own regulations and by-laws.

Furthermore, the *Lowery* case, which is also cited by the Appellant, strongly supports the ruling by the lower court in instant case. The *Lowery* court stated that “[i]t is also a rule of general application that one who has become a member of an incorporated social club will be deemed to have known and assented to the provisions of its charter and by-laws, which it was authorized to make, and cannot object to the enforcement thereof on the ground that he is deprived of any legal or constitutional right.” 130 So.2d at 839 (citing 4 Am.Jur. 460, Associations and Clubs, Sec. 8).

In the case at bar, the lower court found that BRCF had followed its policies and procedures, and that BRCF had not abused its discretion.

**C. As an Alternate and Supporting Basis for Summary Judgment, McClatchy Failed to Follow the BRCF Constitution’s Time Limits for Notice of Lawsuit**

Mississippi law recognizes the validity of reasonable contractual limitations on the time to file lawsuits. See *Hartford Accident & Indemnity Co. v. Delta & Pine Land Co.*, 189 Miss. 496, 195 So. 667 (1940). As stated hereinabove, our Courts recognize the right of private associations to establish their own rules and regulations in the operation of their business. In holding that the Court will not disturb decisions of Executive Boards and Councils of private associations and organizations, the Mississippi Supreme Court cited 4 Am. Jur. 472, Associations and Clubs, Sec. 27, which states as follows: “The decisions of any kind of voluntary society or association is [sic] in disciplining, suspending, or expelling members are of a quasi judicial character. In such cases the courts never interfere except to ascertain whether or not the proceeding was pursuant to the rules and laws of the society, whether or not the proceeding was in good faith, and whether or not there was

anything in the proceeding in violation of the laws of the land. If it is found that the proceeding was had fairly, in good faith, and pursuant to the laws of the organization, and that there was nothing in it in violation of the law of the land, the decision is conclusive". *Lowery* at 831.

Here, McClatchy does not allege in his *Complaint*, nor did he produce any evidence during discovery, that he provided timely notice to BRCF of his intention to proceed with litigation against the BRCF or that he filed a lawsuit in the requisite time frame. In fact, McClatchy admits receiving the Board of Directors' final decision upholding BRCF's decision to deny his claim. T.R. 2, ¶6.

Following the April 23, 2007 letter to McClatchy, BRCF received no further documents or communications from him until receipt of a December 18, 2007 letter from McClatchy's attorney, stating their intention to file suit if payment was not immediately made to McClatchy. T.R. 48, ¶24. Specifically, McClatchy failed to comply with Art. XXXI, Sec. 4 of the Constitution in that he did not provide notice by registered mail to BRCF's principal office in Harrisburg, Pennsylvania of his intent to institute legal proceedings within one hundred (100) days after receipt of the Board's decision. In addition, McClatchy did not file a lawsuit within one hundred fifty (150) days after receipt of the Board's decision, which is also required under Art. XXXI, Sec. 4. *Id.*, T.R. 38, ¶16. Instead, McClatchy simply filed a lawsuit against BRCF in this Honorable Court in January, 2008. As such, he has waived his right to pursue litigation against BRCF and is bound by the decision made by the Board of Directors of BRCF as provided in Article XXXI, Sec. 4 of the Constitution.

Although the lower court found that the provisions of the Constitution providing for time limits for filing suits were contrary to Section 15-1-5 of the Mississippi Code Annotated of 1972, as amended, BRCF takes the position that the Constitution is not merely contractual in nature. The



Constitution establishes rules and procedures for membership, processing benefits, and organizational policies and procedures.

These voluntary organizations are established similarly to administrative organizations, such as the Workers' Compensation Commission, except they are private. These organizations are entitled to establish their administrative rules and regulations, which would not be subject to the provisions of Sec. 15-1-5 of the Mississippi Code Annotated, as amended. The quasi-judicial nature of the proceedings of these types of organizations certainly allows them to establish time frames within which members can challenge the findings of the Boards of Directors. *Lowery* at 831.

Since the lower court found that BRCF did not act fraudulently, arbitrarily and capriciously or unreasonably in exercising their discretion, McClatchy's claim was time barred.

### **CONCLUSION**

Contrary to Appellant's statement, the Mississippi Supreme Court does not allow an individual to contest the constitution or by-laws of a voluntary association in state court, unless the constitution or the by-laws are contrary to public policy or to the law of the land. *Lowery* at 834.

Appellant states that all he wants is to present his claim to the Adams County Circuit Court. Appellant has had that opportunity, and the Court determined that he did not have a claim. The lower court found that Appellee in no way abused its contractually vested discretion.

Appellee submits that this Court should affirm the lower court's granting of Appellee's Motion for Summary Judgment and dismiss this appeal with costs assessed to the Appellant.

Respectfully submitted, this 27<sup>th</sup> day of January, 2011.

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**CERTIFICATE OF SERVICE**

I certify that I have this day served the foregoing Appellee's Reply Brief and Records Excerpts on C.E. Sorey, II, Law Offices of William S. Guy, P.O. Box 509, McComb, Mississippi 39649-0509, attorney of record for Robert L. McClatchy III, Appellant, by depositing a copy in the United States mail, this 27<sup>th</sup> day of January, 2011.

  
Robert C. Latham

**CERTIFICATE OF MAILING TO CLERK**

I certify that I have this day forwarded the original and three (3) copies of the foregoing Appellee's Reply Brief and Records Excerpts to the Clerk of the Supreme Court of Mississippi, by United States mail, this 27<sup>th</sup> day of January, 2011.

  
Robert C. Latham

**CERTIFICATE OF SERVICE ON TRIAL COURT JUDGE**

I certify that on this date, a true and correct copies of the foregoing Appellee's Reply Brief and Records Excerpts were hand-delivered to the Honorable Forrest A. Johnson, this 27<sup>th</sup> day of January, 2011.

  
Robert C. Latham