

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

MONA CATES,

APPELLANT/CROSS APPELLEE

VS.

CAUSE NO: 2010-CA-01939

ELIZABETH SWAIN,

APPELLEE/CROSS-APPELLANT

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REPLY BRIEF FOR APPELLEE/CROSS-APPELLANT

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APPEAL FROM THE DECISION OF THE  
CHANCERY COURT OF TATE COUNTY, MISSISSIPPI

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NO 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 the case. These representations are made in order that the Justices of this Court may evaluate possible disqualifications or recusal.

1. Mona Cates Appellant/Cross-Appellee
2. Elizabeth Swain Appellee/Cross-Appellant
3. Jonathan S. Masters & law firm of Attorneys of Record for  
Holcomb Dunbar, PA Appellant/Cross-Appellee
4. Robert M. Stephenson & law firm of Attorneys of Record for  
Locke Lord Bissell & Liddell, LLP Appellant/Cross-Appellee
5. John T. Lamar, Jr. & law firm of Attorneys of Record for  
Lamar & Hannaford, P.A. Appellee/Cross-Appellant
6. David M. Slocum, Jr. & law firm of Attorney of Record for  
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7. Honorable Percy L. Lynchard, Jr. Chancellor

Respectfully submitted,  
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STATEMENT OF ISSUES

The issues presented by the Cross-Appellant in this Appeal are:

- ISSUE # 1:        WHETHER A CONSTRUCTIVE AND/OR RESULTING TRUST EXISTED BETWEEN ELIZABETH SWAIN AND MONA CATES.
- ISSUE #2:        WHAT IS AN EQUITABLE DIVISION OF THE ASSETS OF THE CONSTRUCTIVE AND/OR RESULTING TRUST.
- ISSUE #3:        WHETHER MONA CATES WAS UNJUSTLY ENRICHED BY ELIZABETH SWAIN.



## STATEMENT OF CASE

### A. NATURE OF CASE, COURSE OF PROCEEDINGS AND DISPOSITION IN THE COURT BELOW.

This appeal arises from an order rendered on September 30, 2010, and entered nunc pro tunc on October 25, 2010, in the Chancery Court of Tate County, Mississippi which found that the Defendant and/or Appellant/Cross-Appellee, Mona Cates (hereinafter "Cates"), was unjustly enriched and subsequently awarded the Plaintiff and/or Cross-Appellee, Elizabeth Swain (hereinafter "Swain"), a judgment in the amount of \$44,995.00. (Appellant/Cross-Appellee's R., Tab 2). Further, the Order found that no constructive or resulting trust existed between Cates and Swain. (Appellant/Cross-Appellee's R., Tab 2). The Appellant/Cross-Appellee's Notice of Appeal was filed on November 24, 2010. (Appellant/Cross-Appellee's R., Tab 1). The Appellee/Cross-Appellant's Notice of Cross Appeal was filed on November 29, 2010. (Appellant/Cross-Appellee's R., Tab 1). The Designation of Record was filed on December 2, 2010. (Appellant/Cross-Appellee's R., Tab 1).

On June 13, 2006, Swain filed her Complaint in the matter. (Appellant/Cross-Appellee's R., Tab 1). In her Complaint, Swain prayed that the Court recognize that a constructive and/or resulting trust existed between Swain and Cates in regard to certain items of real and personal property. (Appellant/Cross-Appellee's R., Tab 6). Additionally, Swain asked the court to

recognize Cates' conversion of certain items of personal property. (Appellant/Cross-Appellee's R., Tab 6). Within her complaint, Swain asked that the Court either divest Cates of title to the property in accordance with Swain's interest in the property and vest the property in Swain in accordance with her interest, or impose a lien upon the property commensurate with the monies, materials and labor invested by Swain in the property due to the existence of the constructive and/or resulting trust and the conversion. (Appellant/Cross-Appellee's R., Tab 6). In the alternative, Swain asked the Court to recognize that Cates was unjustly enriched by Swain. (Appellant/Cross-Appellee's R., Tab 6). Finally, Swain sought attorney's fees and costs incurred due to the necessity of filing suit in order to recover her proceeds from the trust or reimbursement for the sum which unjustly enriched Cates. (Appellant/Cross-Appellee's R., Tab 6).

In her Answer to Complaint and Amended Counter-claim, Cates sought repayment of loans made to Swain to allow her and her husband to purchase a home in the state of Florida, loans made to Swain to allow for her payment of a car lease, loans made to Swain for payment of living expenses and home improvements, and loans made to Swain for the purchase of two cars and the respective car insurance. (Appellee/Cross-Appellant's R., p. 1-6). Additionally, Cates counterclaimed for repayment of funds expended by Cates on a E-320 Mercedes and the trade-in value of the Mercedes. (Appellee/Cross-Appellant's R., p. 1-6). Cates also sought

compensation for alleged physical damage to her home in Mississippi, conversion of certain items of personal property, and loss of profits and resulting tax consequences from Swain's alleged partial liquidation of Cates' E-trade account. (Appellee/Cross-Appellant's R., p. 1-6). Finally, Cates sought punitive damages and attorney's fees. (Appellee/Cross-Appellant's R., p. 1-6).

#### B. STATEMENT OF THE FACTS

Elizabeth Swain and Mona Cates shared a loving, trusting, and cohabitative relationship for approximately six (6) years. (Appellee/Cross-Appellant's R., p. 7-31). Their relationship began on or about April 24, 2000, when Swain and Cates met and began dating. (Appellee/Cross-Appellant's R., p. 7). Their cohabitation started on or about December 29, 2000, when Swain purchased a house located at 5907 Strickland Place, Pensacola, Florida and Cates moved in with her. (Appellee/Cross-Appellant's R., p. 9 & 13). While living in the state of Florida, Swain paid the note on the house as well as the homeowner's insurance and ad valorem taxes. (Appellant/Cross-Appellee's R., Tab 2; and Appellee/Cross-Appellant's R., p. 14 & 26). During their time together in Florida, Cates assisted with the cost of groceries and with some of the repairs and maintenance around the house, but did not pay rent. (Appellant/Cross-Appellee's R., Tab 2; and Appellee/Cross-Appellant's R., p. 14 & 26). As is the case with many individuals involved in a trusting relationship, Swain and Cates established a joint bank account at Peoples First during their time together in

the state of Florida, in order to pay for needs around the house. (Appellee/Cross-Appellant's R., p. 14 & 26).

On or about September 12, 2003, Swain sold the house located at 5907 Strickland Place, Pensacola, Florida, and received proceeds from her sale of the property in the amount of \$32,855.86. (Appellee/Cross-Appellant's R., p. 32). In order to promote their joint venture and in continuation of their relationship, Swain wrote a certified check on September 18, 2003, to Mona L. Cates in the amount of \$34,000.00 in order to provide for the down payment on a home located at 2486 SE Tucci Place, Port Orchard, Washington.

(Appellee/Cross-Appellant's R., p. 32). Cates subsequently purchased the house located at 2486 SE Tucci Place, Port Orchard, Washington on September 26, 2003, for a purchase price of \$191,000.00, and a total gross amount due of \$194,493.58. (Appellee/Cross-Appellant's R., p. 47). Payment of the \$194,493.58 gross proceeds consisted of a loan in the amount of \$152,800.00, earnest money in the amount of \$2,500.00, a rate lock fee credit in the amount of \$600.00, and a down payment in the amount of \$38,593.58. (Appellee/Cross-Appellant's R., p. 47). The earnest money and the majority of the remainder of the down payment, which was approximately \$4,593.58 after accounting for the \$34,000.00 previously tendered by Swain, came from the parties' joint account with Peoples First. (Appellee/Cross-Appellant's R., p. 47).

Swain moved with Cates to the State of Washington where they continued their relationship and cohabitation. (Appellee/Cross-

Appellant's R., p. 27 & 30). In continuation of their joint ventures, Swain added Cates to her Navy Federal Account as a joint owner in December of 2003. While residing in the state of Washington, Swain purchased groceries, paid for the utilities, performed repairs and improvements to the Washington home, and incurred the costs of the repairs and improvements to the Washington home. (Appellee/Cross-Appellant's R., p. 30). Furthermore, Swain was the primary resident of the Washington home. (Appellee/Cross-Appellant's R., p. 30). As her part of the bargain, Cates paid the note on the house as well as the homeowner's insurance and taxes. (Appellant/Cross-Appellee's R., Tab 2; and Appellee/Cross-Appellant's R., p. 30).

On or about September 19, 2005, Cates sold the house located at 2486 SE Tucci Place, Port Orchard, Washington for the contract sales price of \$300,000.00 with a credit for the payment of taxes in advance in the amount of \$576, and the following deductions: (1) settlement charges in the amount of \$21,712.51, (2) a loan payoff in the amount of \$134,340.98 and (3) payment of taxes in the amount of \$1,012.22. (Appellant/Cross-Appellee's R., Tab 2; and Appellee/Cross-Appellant's R., p. 44). Cates received proceeds in the amount of \$143,511.12 from the sale of the home located at 2486 SE Tucci Place, Port Orchard, Washington. (Appellant/Cross-Appellee's R., Tab 2; and Appellee/Cross-Appellant's R., p. 44). The proceeds were subsequently invested into a home located at 1173 Silver Hills Drive, Senatobia, Tate County, Mississippi.

(Appellant/Cross-Appellee's R., Tab 2; and Appellee/Cross-Appellant's R., p. 46).

On September 22, 2005, Cates purchased a house located at 1173 Silver Hills Drive, Senatobia, Mississippi for a purchase price of \$350,000.00 and a total gross amount due of \$355,394.53. (Appellant/Cross-Appellee's R., Tab 2; and Appellee/Cross-Appellant's R., p. 46). Payment of the \$355,394.53 gross proceeds consisted of a loan in the amount of \$190,000.00, earnest money in the amount of \$10,000.00, a credit for proration of the ad valorem taxes in the amount of \$1,914.93, and a down payment in the amount of \$153,379.60. (Appellee/Cross-Appellant's R., p. 46). Furthermore, Swain contributed \$5,000.00 to the closing costs on the purchase of the home in Mississippi. (Appellant/Cross-Appellee's R., Tab 2; and Appellee/Cross-Appellant's R., p. 43). Swain moved with Cates to the State of Mississippi where they continued their relationship and cohabitation. (Appellant/Cross-Appellee's R., Tab 2). While residing in the state of Mississippi, Swain performed repairs and improvements to the home and paid a portion of the utilities. (Appellant/Cross-Appellee's R., Tab 2). Cates paid the note on the house as well as the homeowner's insurance and taxes. (Appellant/Cross-Appellee's R., Tab 2). However, the parties time together in the state of Mississippi was short lived. (Appellant/Cross-Appellee's R., Tab 2).

In March of 2006, Swain and Cates relationship ended. (Appellant/Cross-Appellee's R., Tab 2). From September of 2003,

until March of 2006, Swain spent at least \$13,157.25 on repairs and maintenance and/or materials for repairs and maintenance to the Washington home and the Mississippi home. (Appellant/Cross-Appellee's R., Tab 2).

#### SUMMARY OF ARGUMENT

Mississippi law clearly recognizes a constructive trust and/or resulting trust under certain circumstances. It is apparent that a constructive trust and/or resulting trust did in fact exist between Swain and Cates from at least May of 2000, until March of 2006. This fact is evidenced by their jointly owned accounts, their jointly titled vehicles, their shared efforts and resources in the purchase and improvements to real property, and their continued cohabitation over a span of nearly six (6) years and residences in three (3) separate states. After acknowledging the existence of this constructive trust, the next determination that must be made is an equitable division of the assets of this constructive and/or resulting trust. This inquiry should and would encompass any claims for conversion, repayment of loans, unjust enrichment, destruction and/or dissipation of property, and lost profits.

Under any approach taken toward an equitable division of the assets of the constructive and/or resulting trust, Swain is entitled to a minimum sum of \$76,755.56 plus her attorneys' fees and costs, which as of the beginning of trial had been incurred in the amount of \$12,531.42, or at least twenty-two percent (22%) interest in the property located at 1173 Silver Hills Drive,

Senatobia, Mississippi. As a result, this Court should award Swain a judgment against Cates in excess of \$76,755.56, plus tax Cates with the costs of Court, and award Swain reasonable attorneys' fees, or divest Cates of at least twenty-two percent (22%) interest in the real property located at 1173 Silver Hills Drive, Senatobia, Mississippi and vest said interest in Swain.

Finally, the facts of this matter clearly evidence the unjust enrichment of Cates by Swain as determined by the learned Chancellor. Article 14 Section 263A of the Mississippi Constitution has absolutely no application to the case at bar because the establishment of a homosexual marriage is not an issue before the court, nor is it a prerequisite to the plaintiff's claims. As a result, the court, at the very least, should affirm the decision of the chancellor. Additionally, the Court should tax the costs of Court to Cates and award Swain reasonable attorneys' fees incurred in this matter.

#### ARGUMENT

##### A. STANDARD OF REVIEW

Mississippi appellate courts consider the decisions of chancellors under a limited standard of review. *McNeil v. Hester*, 753 So.2d 1057, 1063 (Miss. 2000). The Court will not disturb the findings of a chancellor when supported by substantial credible evidence unless the chancellor abused his discretion, was



manifestly wrong, clearly erroneous, or if the chancellor applied an erroneous legal standard. *Sanderson v. Sanderson*, 824 So.2d 623, 625 (Miss. 2002). Even if the appellate court disagrees with the lower court on the finding of fact and might have arrived at a different conclusion, it is bound by the chancellor's findings unless manifestly wrong, clearly erroneous, or an erroneous legal standard was applied. *Richardson v. Riley*, 355 So.2d 667, 668 (Miss. 1987).

The determination of the existence of a constructive trust is a matter of law and thus subject to de novo review. *McNeil v. Hester*, 753 So.2d 1057, 1063 (Miss. 2000)

ISSUE # 1:           WHETHER A CONSTRUCTIVE AND/OR  
                  RESULTING TRUST EXISTED BETWEEN  
                  ELIZABETH SWAIN AND MONA CATES.

Based upon the facts of this case, it is clear that a constructive and/or resulting trust existed between Swain and Cates regarding the real and personal property acquired during the course of their relationship. A constructive trust is one that arises by operation of law against one who, by fraud, actual or constructive, by duress or abuse of confidence, by commission of wrong, or by any form of unconscionable conduct, artifice, concealment, or questionable means, or who in any way against equity and good conscience, either has obtained or holds the legal right to property which he ought not, in

equity and good conscience, to hold and enjoy. *Allred v. Fairchild*, 785 So.2d 1064, 1067 (Miss. 2001); citing *Sojourner v. Sojourner*, 247 Miss. 342, 153 So.2d 803, 807 (1963). Such a trust arises by implication from the relationship and conduct of the parties and may be established by parol testimony notwithstanding the statute of frauds. *In re Estate of Horrigan*, 757 So.2d 165, 170 (Miss. 1999); citing *Triplett v. Bridgeforth*, 38 So.2d 756, 764 (Miss. 1949).

The purpose of a constructive trust is to prevent unjust enrichment by a person gaining property which rightfully belongs to someone else. *McNeil v. Hester*, 753 So.2d 1057, 1063 (Miss. 2000). It is the relationship plus the abuse of confidence that authorizes a court of equity to construct a trust for the benefit of the party whose confidence has been abused. *In re Estate of Hood*, 955 So.2d 943, 949 (Miss. App. 2007); citing *Thornhill v Thornhill*, 905 So.2d 747, 753 (Miss.Ct.App. 2004). While a confidential or fiduciary relationship does not itself give rise to a constructive trust, an abuse of confidence rendering the acquisition or retention of property by one person unconscionable against another suffices. *Sojourner*, 153 So.2d at 807. Clearly, Swain had a confidential and/or fiduciary relationship with Cates. Evidence of the parties' confidential relationship

exists in their jointly owned bank accounts, a joint E-trade account, jointly titled vehicles, which were held during the course of their relationship, and the parties cohabitation in the various pieces of real property in three (3) separate states. (Appellee/Cross-Appellant's R., pp. 8-40). Additionally, Swain invested proceeds from the sale of her home, additional monies, sweat equity and materials into the repair, maintenance and improvements made to the three (3) pieces of real property acquired by the parties. (Appellee/Cross-Appellant's R., pp. 8-32, 41-43, 49-64).

Confidential relationships are construed liberally in favor of the confider and against the confident with regard to constructive trusts. *Russell v. Douglas*, 138 So.2d 730, 733 (Miss. 1963). In *Russell*, the Court imposed a constructive trust against an aunt in favor of her nephew holding that "there was a confidential relation...and that [nephew] relied on this relationship in allowing the title to this property to be placed in his aunt's name". *Id.* The facts of this case show that Swain placed a high degree of confidence in Cates regarding their acquisition and improvements to property. Clearly, Swain relied upon her relationship with Cates in allowing the title to the real property to be placed in Cates' name. Accordingly, the court in this case should follow the

lead of the Court in *Russell* and impose a constructive trust against Cates.

Moreover, an abuse of confidence within the rule may be an abuse of either a technical fiduciary relationship or of an informal relationship where one person trusts in and relies upon another, whether the relation is a moral, social, domestic, or merely personal one. *Sojourner*, 153 So.2d at 808. A confidential relationship within the rule need involve neither a promise for the benefit of another nor an express fiduciary relationship. *Id.* Swain placed her trust in Cates and Cates clearly abused the confidence placed in her by Swain when she removed her from her home and refused to return any of Swain's contribution toward the parties' joint venture.

A resulting trust is a subspecies of a constructive trust. *Allgood v. Allgood*, 473 So.2d 416, 421 (Miss. 1985). Resulting trusts arise when one person is granted legal title but is required to hold this title for the benefit of another. *In re Estate of Gates*, 876 So.2d 1059, 1064 (Miss.App. 2004). The parties of a resulting trust must have "mutually agreed to the manner in which title to property was to be held and subsequently an inequity occurs when the trustee is unwilling to fulfill the original agreement." *Id.* The facts of this case clearly indicate that a mutual agreement had been reached

by Swain and Cates regarding property acquired during the course of their relationship. Further, an inequity has occurred in that Cates is unwilling to fulfill the original agreement. Thus a resulting trust exists in regard to the real and personal property that is the subject of this suit.

Further, constructive trusts are not subject to the statute of frauds. *Sample v. Romine*, 193 Miss. 706, 9 So.2d 643 (1942). Therefore, any statute of frauds defenses are not applicable in the event that a constructive trust exists.

Further, the Defendant's reliance on *Davis v. Davis*, 643 So.2d 931 (Miss. 1994) is misplaced. The facts in *Davis* revealed that the de facto wife was given a new house, a new car, approximately \$80,000.00 in cash, and \$33,000.00 in home improvements and furniture by the de facto husband. *Id.* at 933. Her claims were in regard to money that the "husband" earned during their relationship. *Id.* However, the court found that the monetary gains received by the "wife" were a fair and adequate return for the household services that were rendered by her during the relationship. *Id.* at 934. As a result, the court clearly recognized a trust agreement, but perceived that the "wife" had already received her fair share. In the case at bar, the plaintiff clearly invested substantial sums into the trust for which she has not been compensated.

Thus a constructive and/or resulting trust clearly exists.

ISSUE # 2:           WHAT IS AN EQUITABLE DIVISION OF THE  
                  ASSETS OF THE CONSTRUCTIVE AND/OR  
                  RESULTING TRUST.

Both Swain and Cates seek reimbursement for monies, either loaned, invested, or destroyed over the course of their relationship, which both parties claim are due as a result of their involvement with the other party. Additionally, both parties filed claims for conversion. In order to make out a claim for conversion, there must be proof of a wrongful possession, or the exercise of a dominion in exclusion or defiance of the owner's right, or of an unauthorized and injurious use, or of a wrongful detention after demand. *Mississippi Motor Finance, Inc. v. Thomas*, 246 Miss. 14, 20, 149 So.2d 20, 23 (1963). In other words, conversion requires the intent to exercise dominion or control over goods inconsistent with the true owner's right. *Walker v. Brown*, 501 So.2d 358, 361 (Miss. 1987).

In regard to the conversion arguments, Swain traded in the E-320 Mercedes vehicle on the purchase of a vehicle which was titled solely in her name while Cates traded in the Volkswagen vehicle for a vehicle which was titled solely in her name. Cates closed out the E-trade account shortly after the parties' relationship ended and kept the funds from that

closure. (Appellee/Cross-Appellant's R., pp. 34-40). The E-trade account and the vehicles were jointly titled in the names of both parties. (Appellee/Cross-Appellant's R., pp. 33-40).

Swain's remaining portion of one-half ( $\frac{1}{2}$ ) of the E-trade account was approximately \$14,979.00 and her one-half ( $\frac{1}{2}$ ) interest in the value of the Volkswagen automobile was approximately \$6,000.00. (Appellee/Cross-Appellant's R., pp. 34-40). Over the course of the parties' relationship, Swain also invested time, money, and materials into the real property in excess of \$71,439.39, plus paid utilities in the approximate amount of \$7,080.00, and paid car insurance payments on the parties vehicles in the approximate amount of \$4,500.00. (Appellee/Cross-Appellant's R., pp. 8-31, 49-64). Under this evaluation, Swain's investment into the constructive and/or resulting trust would be at least \$103,998.39. However, this figure does not include any of the costs for utilities, repairs and/or improvements, interest, taxes, and insurance that were incurred on the home in the state of Florida, but begins from the sale of the home in Florida and proceeds until the termination of the parties' relationship in Mississippi in March of 2006. An alternative approach to the division of the real property portion of the

constructive and resulting trust would be to divide the equity equally due to the equal investments of both parties over the course of their relationship. The parties lived in the home in Florida from December of 2000, until September of 2003, or approximately 33 months, with Swain paying the note, the homeowner's insurance, and the taxes while Cates paid for and performed a portion of the repairs and maintenance but paid no rent. (Appellee/Cross-Appellant's R., pp. 8-32). Additionally, the parties lived in the homes in Washington and Mississippi from September of 2003, until March of 2006, or approximately 31 months, with Cates paying the note, the homeowner's insurance, and the taxes while Swain paid for and performed repairs and maintenance to the real property, as well as paid for utilities but paid no rent. (Appellee/Cross-Appellant's R., pp. 8-32, 44-48). Since both parties invested time, money, and resources in approximately the same amount into the various pieces of real property, one solution would be to take the proceeds from the sale of the home in Washington, which was \$143,511.12, divide it by two, which would be \$71,755.56, and give Swain credit for her payment of closing costs on the Mississippi house in the amount of \$5,000.00. (Appellee/Cross-Appellant's R., pp. 43-45). Swain's share for the real estate investments that arose from



the constructive and/or resulting trust would be \$76,755.56 under this analysis. Additionally, the principles of equity require that Swain be awarded attorneys' fees and costs, which as of the beginning of trial had been incurred in the amount of \$12,531.42. (Appellee/Cross-Appellant's R., pp. 65-80).

A final alternative approach toward an equitable division of the real property portion of the constructive and resulting trust would be to divest a portion of the title in the home located at 1173 Silver Hills Drive, Senatobia, Mississippi from Cates and vest a portion of the title in Swain. The purchase price on the home located at 1173 Silver Hills Drive, Senatobia, Mississippi was \$350,000.00 and Swain's share of the real estate investments that arose from the constructive and/or resulting trust is at least \$76,755.56, plus Swain's attorneys' fees and costs, which as of the beginning of trial had been incurred in the amount of \$12,531.42. (Appellee/Cross-Appellant's R., pp. 8-32, 46-47, 65-80). Under this scenario, Swain's interest in the home located at 1173 Silver Hills Drive, Senatobia, Mississippi would be approximately twenty-two percent (22%). As a result, Cates could be divested of twenty-two percent (22%) interest in the aforementioned real property and Swain vested with twenty-two percent (22%) interest in the aforementioned real property.

ISSUE #3: WHETHER MONA CATES WAS UNJUSTLY ENRICHED  
BY ELIZABETH SWAIN.

Cates was clearly unjustly enriched at Swain's expense. The theory of unjust enrichment is based on equity and states that a person shall not be allowed to enrich herself at the expense of another. *Koval v. Koval*, 576 So.2d 134, 136 (Miss. 1991). The facts of this case indicate that Cates was substantially enriched by the money invested by Swain as well as the work performed and materials supplied by Swain. Swain invested a substantial amount of money, labor, materials, and time into acquiring and improving the real and personal property that is the subject of this suit. Therefore, Cates would be wrongfully and unjustly enriched at the significant expense of Swain if she is able to retain all of the real property held in her name and all of the proceeds from the personal property that has been converted to cash money.

Under the requisite standard of review, the Chancellor is granted broad discretion to determine whether unjust enrichment has occurred and to what extent it occurred. The learned chancellor's decision that unjust enrichment has occurred is clearly supported by the facts of this matter and equity requires that Swain be repaid for her contributions. As a result, this court should at a bare minimum affirm the

Chancellor's judgment in the amount of \$44,995.00.

CONCLUSION

For a period of approximately six (6) years, Elizabeth Swain and Mona Cates resided together, purchased and maintained property and vehicles together, made collaborative decisions on changes in location, and shared joint ownership of various accounts. The facts clearly support the existence of a joint venture and a resulting constructive trust between Swain and Cates regarding the real and personal property acquired during the course of their relationship. The fact that Swain and Cates maintained a homosexual relationship for that period of time is not the central issue in this matter, nor does that relationship in and of itself necessitate equitable relief in this scenario. It was Cates' clear abuse of this confidential relationship that prompts the Court's intervention and an equitable division of assets among the parties.

For these reasons, the Court should recognize that a constructive and/or resulting trust existed and award Swain a an equitable division of the assets of the constructive and/or resulting trust. Swain is entitled to a minimum sum of \$76,755.56 plus attorneys' fees and costs incurred in her efforts to regain property that rightfully belonged to her, or

at least twenty-two percent (22%) interest in the property located at 1173 Silver Hills Drive, Senatobia, Mississippi. Alternatively, this court should affirm the Chancellor's judgment in the amount of \$44,995.00. Additionally, the Court should tax the costs of Court to Cates and award Swain reasonable attorneys' fees and costs incurred in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

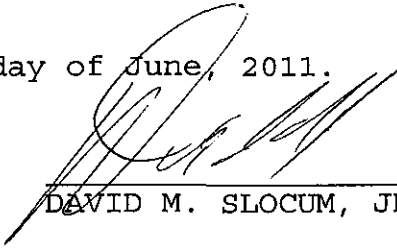
I, David M. Slocum, Jr., attorney for Appellee/Cross Appellant, Elizabeth Swain, do hereby certify that I have this day mailed, by United States mail, postage prepaid, a true and correct copy of the above and foregoing Brief for Appellees to:

Honorable Percy L. Lynchard, Jr.  
Chancellor  
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So certified, this the 8th day of June, 2011.

  
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DAVID M. SLOCUM, JR.