

IN THE SUPREME COURT OF MISSISSIPPI
CASE NO. 2010-CP-02034

CITIBANK (SOUTH DAKOTA) N.A.

PLAINTIFF/APPELLEE

V.

JONATHAN HICKMAN

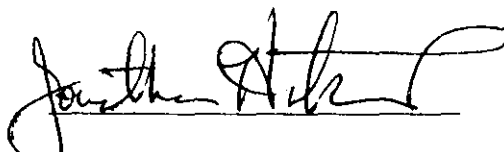
DEFENDANT/APPELLANT

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 Justices of this Court may evaluate possible disqualification or recusal:

1. CITIBANK (SOUTH DAKOTA) N.A.;
2. John Simpson, Attorney for Plaintiff;
3. Michelle Arnold, Attorney for Plaintiff;
4. Honorable Judge Henry Lackey, Circuit Court, Marshall County;
5. Jonathan Hickman, Defendant, pro se;
6. Jonathan Carpenter (unknown)

RESPECTFULLY SUBMITTED,



JONATHAN HICKMAN, *pro se*

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STATEMENT OF THE ISSUES

The issues presented to this honorable Court on appeal are as follows:

Whether the lower court committed reversible error in granting summary judgment in favor of the Plaintiff?

Whether the Circuit Court had and maintained jurisdiction over the case?

Whether Plaintiff properly complied with the pleading requirements of the Mississippi Rules of Civil Procedure.?

Whether the summary judgment is void and all subsequent orders sustaining that order?

Whether a Plaintiff can claim to be a Holder in Due Course of credit card debt thereby allowing said claim to constitute a legally sufficient and proper pleading?

Does credit card debt allow for Holder in Due Course status in Mississippi?

Can a Court grant relief to a Plaintiff based on claim for relief when standing of Plaintiffs making said claim is facially false?

Can a Court grant an amended complaint without the Court issuing a written order and placing the Court's intentions on the docket?

Once challenged, is Plaintiff required to prove any asserted jurisdiction on the record?

Does the Plaintiff's attempt to taint the record by adding a statement of a jurisdictional finding to an order when the Judge and the record never made such a finding constitute unclean hands?

STATEMENT OF THE CASE

Before this Court comes Defendant/Appellant, Jonathan Hickman, pro se, (Hickman) to humbly beg this Honorable Court's indulgence as I attempt to make the Court aware of my objections to various issues herein, I also request that this Honorable Supreme Court (1) vacate the Marshall County Circuit Court's 11/15/2010 Summary Judgment, (2) along with the Court's denial of Hickman's 12/04/2009 Motion to Dismiss for Failure to State a Cause of Action entered on 03/12/2010. Although I am inarticulate compared to a lawyer, I am passionate about my desire to have this injustice remedied.

SUMMARY OF THE ARGUMENT

On 7/16/2009 CITIBANK (SOUTH DAKOTA) N.A. (Citibank) filed a complaint alleging that Jonathan Hickman was indebted to them, and that by virtue of their alleged status as holder in due course of credit card debt, they were entitled to collect from a different person, an unknown Jonathan Carpenter.

Plaintiff has never shown authoritatively how they could overcome the legal impossibility of holding credit card debt in due course especially since (1) credit card debt is not a negotiable instrument and; (2) the Plaintiff or its attorneys cannot legally or in good faith, contend that it is.

Further, Plaintiff has never shown any reason for their failure to attempt to sue Hickman on a theory of "on open account." This failing at least robs the Plaintiff of legally sufficient pleadings or alternatively it constitutes the Plaintiff's fraudulent attempt to use the Court to condone a legally impermissible act of changing the character and nature of alleged credit card debt to one that would

allow for recovery on that fictitious theory. Court's are empowered by the sufficiency of pleadings filed therein. Thus, Plaintiff's pleadings requesting such relief from the Court are insufficient, facially void and they deprive the lower Court of the required jurisdiction because the lower Court is not authorized to grant Plaintiff's request on the basis of their alleged standing.

Additionally, Appellant alleges that there exists a genuine attempt by the Plaintiffs to deceive the Court about their alleged standing and the Court's jurisdiction. This is supported by the fact that as lawyers and officers of the Court, the Plaintiffs attorneys knew or should have known, prior to filing the complaint herein that (1) they are precluded from recovery of alleged credit card debt under the theory of Holder in Due Course status; (2) the Supreme Court of Mississippi has never decided that credit card debt is a negotiable instrument, thereby allowing their claim to be a Holder in Due Course; and (3) pursuant to Mississippi Law or the Uniform Commercial Code, they are not and cannot be a Holder in Due Course of credit card debt and are therefore, not entitled to relief under the assertions in their complaint; (4) the lower court is not authorized as a matter of law to grant relief to the Plaintiff on the grounds stated in their complaint; and (5) credit card debt is governed by contract law and not by negotiable instrument law. "Jurisdiction is determined solely from face of information or indictment." *State v. Lainez*, 771 So.2d 617, and *Snyder v. State* 715 So.2d 367, review denied 727 So.2d 911 (2000).

Thus, the only reasonable explanation for Plaintiff's filing such a complaint is for the purpose of delay, or the harassment of Hickman and an attempt to defraud Hickman and the lower Court. Hickman urges this Court that such acts of deception by Plaintiff should be discouraged by this Court because of what is stated in *Ellzey v. James F/K/A Waller*, 970 So.2d 193, 195 (Miss 2007):

"It is one of the oldest maxims of the law that no man shall, in a court of justice, take an advantage which has his own wrong as a foundation for that advantage." Moreover, one of the maxims of equity is, "He who comes into equity must come with clean hands."

ARGUMENT

In the case before the court, the Appellant (Hickman) is seeking to overturn a summary judgment rendered against him based on the fact that the lower court had no jurisdiction due to the insufficiency of the complaint and the fact that based on the face of the complaint, the plaintiff had no standing which would entitle them to relief.

On 7/16/2009 CITIBANK (SOUTH DAKOTA) N.A. (Citibank) filed a complaint alleging that Jonathan Hickman was indebted to them, and that by virtue of their alleged status as holder in due course of credit card debt, they were entitled to collect from a different person, an unknown Jonathan Carpenter. "The law provides that once State and Federal Jurisdiction has been challenged, it must be proven." *Main v. Thiboutot*, 100 S. Ct. 2502 (1980).

"Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but, rather, should dismiss the action." *Melo v. US*, 505 F2d 1026. Additionally, the Plaintiff fraudulently attempted to taint the record by including a jurisdictional finding in an order presented to the court when the issue of jurisdiction was never decided by the court. (*See Defendant's Objection To Plaintiff's Proposed Order record pages 1 and 2*) Further the matter of Hickman's challenge of the Plaintiffs jurisdiction required the Plaintiff to prove their assertion of jurisdiction on the record, which they failed to do. Thus, the summary judgment granted by this Court and obtained by the Plaintiff is void.

The Plaintiff has never proved jurisdiction pursuant to the requirements of, *Warth v. Seldin*, 422 U.S. 490, 518 (1975), which requires the Plaintiff "clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute." Consequently, until such time as the Plaintiff proves any alleged jurisdiction on the record, the lower Court had no authority to enter any

judgment in this matter and the Plaintiff has no standing. Proof of Plaintiffs alleged right to invoke the jurisdiction does not appear on the record. Thus, Plaintiffs complaint is defective.

From the beginning of this matter Hickman challenged the Plaintiff's wrongful assertion of standing and the Court's jurisdiction. Since jurisdiction is initially determined from the pleadings, a Plaintiff "bears the burden of demonstrating standing and must plead its components with specificity." *Coyne*, 183 F. 3d at 494; *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464 (1982). Should Plaintiffs fail to prove this condition precedent, this Court has no discretionary function but to stop them at the gate and dismiss the action. The lower Court's failure to dismiss the Plaintiff's Complaint based on Hickman's Motion to Dismiss or on its own motion for want of jurisdiction is error. Based on the existing record, there is no statutory or common law basis for the Plaintiffs claims.

Since jurisdiction was challenged and never shown and proved on the record, the lower court did not have subject matter jurisdiction over this case. This Court has ruled that both are necessary in order for a final judgment to be valid. See *Rice v. McMullen*, 43 So.2d 195, 201 (Miss. 1949). In *Lexington Ins. v. Buckley*, 925 So.2d 859, 864 (Miss. Ct. App. 2005), the Mississippi Court of Appeals, affirmatively stated:

"To enter a valid judgment, a court must not only have jurisdiction of the subject matter, but also of the persons of the parties to give validity to its final judgment."

Plaintiff lacks standing as they have not shown themselves to have suffered any injury. They have not shown that they have any signed contract with the Defendant. They are not a valid holder in due course with rights to enforce. Further the alleged negotiable Instrument which

Plaintiffs claim to hold in due course in unrecorded primarily because it is non-existent. These jurisdictional failings adversely affect my due process rights.

Even if someone were to believe credit card debt to be a negotiable instrument, the Plaintiff has shown no claim or proof that they possess any valid power of attorney, nor that any such alleged instrument was ever assigned or recorded as the law requires under the Uniform Commercial Code.

The Plaintiff failed to adequately plead facts which would allow them to recover any amount when it attempted to collect credit card debt as a holder in due course. The Plaintiff failed to attach to the complaint or submit into evidence any proof of (1) their alleged status as holder in due course or (2) any alleged right to enforce said instrument held in due course. The Plaintiff failed to prove or demonstrate its right to invoke the Court's jurisdiction and said failure was objected to and challenged on several occasions. (*Record of Affidavit and Notice to Judge Lackey at pages 1, 2, 3, 4; Record of Answer and Motion to Dismiss with Prejudice at pages 1, 2, 3*) To this date the Plaintiff has never proved its right to assert the jurisdiction of the Court in violation of decisions made by the U.S. Supreme Court: "A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court" *Old Wayne Mut. L. Assoc. v. McDonough*, 204 U. S. 8, 27 S. Ct. 236 (1907).

"There is no discretion to ignore lack of jurisdiction." *Joyce v. U.S.* 474 2D 215.

"Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted." *Latana v. Hopper*, 102 F. 2d 188; *Chicago v. New York*, 37 F Supp. 150.

"The law provides that once State and Federal Jurisdiction has been challenged, it must be proven." *Main v. Thiboutot*, 100 S. Ct. 2502 (1980).

“Jurisdiction can be challenged at any time.” and “Jurisdiction, once challenged, cannot be assumed and must be decided.” *Basso v. Utah Power & Light Co.*, 495 F.2d 906, 910.

“Court may always raise question of subject matter jurisdiction on appeal and in courts below.” *U.S. v. Prestenbach*, 230 F.3d 780 (2000)

“Courts can always consider questions as to subject matter jurisdiction whenever raised and even sua sponte.” *U.S. v. White*, 139 F.3d 998 cert den 119 S.Ct 343, 525 U.S. 393, 142 L.Ed.2d 283 (1998)

The Plaintiff’s complaint sought relief from a “Johnathan Carpenter” and the Plaintiff never obtained a written order from this court granting them leave to amend their complaint. Additionally, there are conflicting opinions about the decision of the Judge between the Plaintiff and the Defendant. The decision made and the issues discussed occurred in the hallway of the courthouse without a court reporter present while the Judge was between cases. Each side is confident that the other misremembered what the Judge said. Nevertheless, if/once the Plaintiff is granted leave of Court to amend their complaint, this case starts anew.

Plaintiff has failed to argue or show that the case does not start anew when they are granted leave to amend. Nor have they shown that leave to amend should not be in writing. If leave is granted in writing, as the Defendant, I would then have to respond to or answer the amended Complaint and submit my affirmative defenses. Since leave was never granted to amend the Plaintiffs complaint and no Order was signed by this Court granting leave to amend until the day that summary judgment was granted, Defendant was never given an opportunity to answer any proposed amended Complaint because this Court never granted such leave in writing as I would expect the Court to do based on the Mississippi Rules of Civil Procedure (MRCP).

Therefore, entry of a Judgment, in favor of the Plaintiff in this matter is based on an alleged failure of the Defendant to respond to said amended complaint when leave to file the amended complaint was not granted until the day that summary judgment was granted. No authority was cited on the record for doing so. In that the putative amended Complaint, which the Plaintiff unfairly expected me to respond to, was without leave of Court and not supported by the MRCP, the Judgment entered herein is premature and in error.

The court record should reflect entry of order granting leave to amend before I am required to answer proposed amended complaint, otherwise this Appeal Court would have to rely on conflicting hearsay and misremembering if court does not issue its orders in writing. I have the right to expect all Orders, Writs, Judgments will be noted on the docket sheet of the case before my opponent relies on them against me as stated by **RULE 79, BOOKS AND RECORDS KEPT BY THE CLERK AND ENTRIES THEREIN**; (a) "General Docket. The clerk shall keep a book known as the "general docket" of such form and style as is required by law and shall enter therein each civil action to which these rules are made applicable. The file number of each action shall be noted on each page of the docket whereon an entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be noted in this general docket on the page assigned to the action and shall be marked with its file number. These entries shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made. In the event a formal order is entered, the clerk shall insert the order in the file of the case."

The lower Court's entry of a Summary Judgment ruling in favor of a Plaintiff with no standing to seek relief as a Holder In Due Course of credit card debt when such is legally impermissible deprives said Court of authority to enter summary judgment. Plaintiff sought leave

to amend their complaint to correct errors they made in identifying the person from whom they sought relief. However, the lower Court never signed or issued a written order granting leave to amend until the day that it granted summary judgment. This irregular event served to cloud the issue and confuse Hickman regarding the time Hickman should be allowed to respond to Plaintiffs amended complaint which was not an amended complaint until such time as the Court entered its order granting leave to amend. (*See Transcript page 8, 9, 10, 11, 12*)

The Plaintiff has never proved any alleged standing to bring this action, on this record. It is a long-settled principle that standing cannot be "inferred argumentatively from averments in the pleadings," *Grace v. American Central Ins. Co.*, 109 U.S. 278, 284 (1883), but rather "must affirmatively appear in the record." *Mansfield C. & L. M. R. Co. v. Swan*, 111 U.S. 379, 382 (1884). See *King Bridge Co. v. Otoe County*, 120 U.S. 225, 226 (1887) (facts supporting . . . jurisdiction must "appea[r] affirmatively from the record"). And it is the burden of the "party who seeks the exercise of jurisdiction in his favor," *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936), "clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute." *Warth v. Seldin*, 422 U.S. 490, 518 (1975). Thus, **plaintiff in this case must "allege facts essential to show jurisdiction. If [they] fail[] to make the necessary allegations, [they have] no standing."** *McNutt*, *supra*, at 189.

Even if the Plaintiff had standing to sue in this Court, Plaintiff would have to prove standing to sue Jonathan Hickman by offer of presentment of admissible proof of a valid debt that Defendant owes to Plaintiff, along with testimony from witnesses with first-hand knowledge thereof, while subject to cross examination. This was never done and this violates the Defendants right to due process and Defendants right to face his accusers. Hickman's due process right to

face his accuser was denied because the lower court entered summary judgment simultaneously with its granting of leave to amend.

Defendant received a proposed Motion to Amend Complaint along with a Motion for Summary Judgment filed on April 21, 2010. However, there is no Order in the Court file granting to the Plaintiff, leave to amend. Therefore, because the Defendant filed a responsive pleading before the Plaintiff sought to amend their Complaint, Plaintiff had no such leave to amend without leave from the Court and an Order from the Court.

The court record should reflect entry of order granting leave to amend before I am required to answer proposed amended complaint, otherwise this Appeal Court would have to rely on conflicting hearsay and misremembering if court does not issue its orders in writing. I submit that I reasonably have the right to expect that all Orders, Writs, Judgments will be noted on the docket sheet of the case before my opponent relies on them against me as stated by **RULE 79, BOOKS AND RECORDS KEPT BY THE CLERK AND ENTRIES THEREIN**; (a) "General Docket. The clerk shall keep a book known as the "general docket" of such form and style as is required by law and shall enter therein each civil action..."

The Court has failed to rule on other pending Motions before the Court and filed by the Defendant as follows:

On April 15, 2010 the Defendant filed a request with the Circuit Court of Marshall County, Mississippi and addressed to the Honorable Judge Henry L. Lackey, copy attached and received by certified mail, the following Motion to Findings of Fact and Conclusions of Law in re: the Punitive Hearing occurring on February 22, 2010 at 1:30pm:

1. The defendant requested, without response, that the court identify, from the court case file or

the judgment roll, the names of all competent fact witnesses, subject to cross examination, who testified in support of the plaintiff's, CITIBANK (SOUTH DAKOTA), N.A., opposition to defendant's motion to dismiss.

2. The defendant requested, without response, that the court identify, from the court case file or the judgment roll, the names of all competent fact witnesses, subject to cross examination, who disputed defendant's testimony.

3. The defendant requested, without response, that the court identify, from the court case file or the judgment roll, each and every authenticated item of evidence the court found reliable to determine the facts of the case thus far.

4. The court was asked, without response, to please cite the statute rule or law the court found reliable to evaluate the facts of this instant case without a trial on the merits regarding plaintiff's alleged standing.

5. The defendant requested, without response, that if the court could not cite competent fact witnesses who:

a. Made statements under oath, and

b. rebutted the testimony of Jonathan Hickman, please cite the statute, rule or law the court found reliable to abrogate United Supreme Court Doctrine to the effect that statements of counsel are not facts before the court.

6. The defendant requested, without response that if the court could not cite authenticated evidence in support of each and every one of the aforementioned defendant's factual contentions as required by law, to please explain why the Mississippi Rules of Civil Procedure were not applicable in these proceedings.

7. The defendant requested, without response, for the court to please cite the United States Supreme Court decisions which reversed that honorable court in Haines vs. Kerner, to wit: regardless of the form of the pro se's pleadings, pro se litigants are entitled to present evidence in support of their claims, meaning pro se litigants are entitled to a trial on the merits.
8. The defendant requested, without response, that the court explains, based on statute of law, how the party plaintiff's papers, which were never supported by one word of testimony and little or no authenticated evidence were non-frivolous.
9. Please explain, based on statute law, how Jonathan Hickman's un-rebutted and uncontroverted affidavits and testimony could, under any theory be considered frivolous.

WHEREFORE, Premises Considered, Defendant Moves this Court to Vacate the Judgment entered on November 15, 2010, and for an order staying enforcement of said judgment until the motion can be heard."

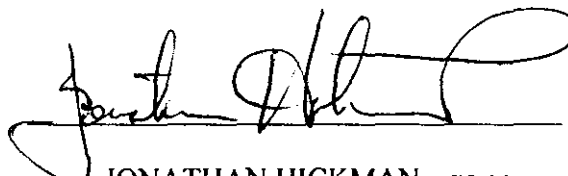
In that there was/is no contract between Hickman and the Plaintiff authorizing attorney fees Hickman submits that the Plaintiff was never entitled to any such award.

CONCLUSION

Without jurisdiction, no valid judgment or orders can issue from the lower court. Therefore, the judgment issued by the lower court based upon its lack of jurisdiction and the Plaintiffs insufficient pleadings and the lower court's failure to enter its intended orders on the record, the lower Court's summary judgment ruling is null and void. This honorable Court should so declare. Moreover, Plaintiff's have demonstrated "unclean hands" by filing a complaint based on allegations it knew were not based in law, and by attempting to taint the record in their favor by adding a finding to an order which was not decided by the Judge or proven on the record, and such should cause

justice to close the courthouse doors on this Plaintiff and prevent it from doing any further injustice in this matter.

RESPECTFULLY SUBMITTED, this the 21st day of September 2011.



JONATHAN HICKMAN, *pro se*

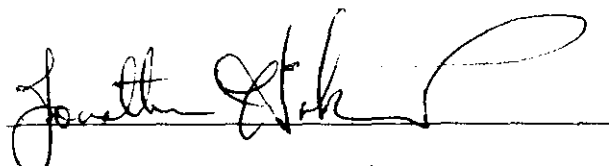
CERTIFICATE OF SERVICE

I, Jonathan Hickman, *pro se* do hereby certify that I have caused a true and correct copy of the foregoing BRIEF OF APPELLANT to be delivered by U.S. Mail, postage prepaid, to the following:

Michele Clay Arnold, MSB #10643
John Simpson, MSB # 8525
Simpson Law Firm, P.A.
Post Office Box 1410
Ridgeland, MS 39158-1410

Kathy Gillis
Office of the Clerk
Supreme Court of Mississippi
450 High Street
Jackson, MS 39201-1082

This the 21st day of September, 2011.



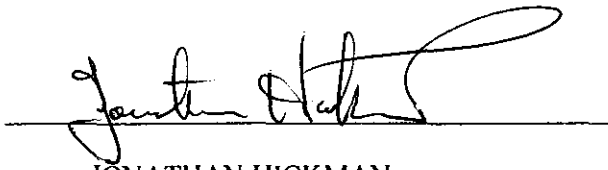
JONATHAN HICKMAN, *pro se*

CERTIFICATE OF SERVICE

I, Jonathan Hickman, *pro se* do hereby certify that I have caused a true and correct copy of the foregoing BRIEF OF APPELLANT to be delivered by U.S. Mail, postage prepaid, to the following:

Honorable Judge Henry Lackey
PO Box 459
Holly Springs, MS 38635

This the 21st day of September, 2011.

A handwritten signature in black ink, appearing to read 'Jonathan Hickman', is written over a horizontal line.

JONATHAN HICKMAN, *pro se*